

FAC Exhibits 1-9

APP 1-303

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FAC Exhibit 1

Joint Committee on Capital Review (JCCR) with Exhibits
December 19, 2017

JOINT COMMITTEE ON CAPITAL REVIEW

Tuesday, December 19, 2017

9:00 a.m.

House Hearing Room 1

JLBC

STATE OF ARIZONA

Joint Committee on Capital Review

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VINCE LEACH
REBECCA RIOS

JOINT COMMITTEE ON CAPITAL REVIEW

Tuesday, December 19, 2017

9:00 A.M.

House Hearing Room 1

MEETING NOTICE

- Call to Order
- [Approval of Minutes of September 19, 2017.](#)
- DIRECTOR'S REPORT (if necessary).
- 1.* [ARIZONA STATE LOTTERY COMMISSION - Review of FY 2018 Building Renewal Allocation Plan.](#)
- 2.* [ARIZONA GAME AND FISH DEPARTMENT - Review of FY 2018 Building Renewal Allocation Plan.](#)
- 3.* [STATE DEPARTMENT OF CORRECTIONS - Review of FY 2017 Building Renewal Plan Reallocation.](#)
- 4.* [ARIZONA DEPARTMENT OF ADMINISTRATION - Consider Recommending FY 2018 Partial Rent Exemption.](#)
- 5. [UNIVERSITY OF ARIZONA - Review of Athletics Facilities Projects.](#)
- 6. ARIZONA STATE UNIVERSITY
 - [A. Consider Approval and Review of the Hayden Library Renovation.](#)
 - [B. Informational Item on West Campus Property.](#)

7.

ARIZONA BOARD OF REGENTS AND ARIZONA STATE UNIVERSITY - Recommendations
Concerning Commercial Development of University Lands.

- * Consent Agenda - These items will be considered in one motion and no testimony will be taken.

The Chairman reserves the right to set the order of the agenda.

12/12/17

kp

People with disabilities may request accommodations such as interpreters, alternative formats, or assistance with physical accessibility. Requests for accommodations must be made with 72 hours prior notice. If you require accommodations, please contact the JLBC Office at (602) 926-5491.

**Joint Legislative Budget Committee
Staff Memorandum**

1716 West Adams
Phoenix, Arizona 85007

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azleg.gov

DATE: December 14, 2017
TO: Members of the Joint Committee on Capital Review
FROM: Richard Stavneak, Director *RS*
SUBJECT: JCCR - REVISED STAFF MEMO ON ITEM 6B

Item 6B on the December 19th agenda of the Joint Committee on Capital Review addresses Arizona State University's West Campus. We provided JCCR members with our memorandum on that agenda item on December 12th as part of regular meeting packet materials. Our memorandum also included a brief discussion of ASU's Thunderbird Campus in Glendale. Since we wrote the memorandum, ASU has announced plans to move the Thunderbird graduate programs to downtown Phoenix. As a result, we are sending a revised memorandum that provides more background on the Thunderbird transfer.

The revised memorandum is also available online.

If you have any questions, please let us know.

RS:kp

JLBC



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DATE: December 14, 2017
TO: Members of the Joint Committee on Capital Review
FROM: Matt Beienburg, Senior Fiscal Analyst MB
SUBJECT: Arizona State University - Informational Item on West Campus Property

Request

Arizona State University (ASU) has been requested to provide information on its development plans for the West Campus. Due to new information, we have updated the last section of our December 12, 2017 memorandum on the Thunderbird School of Global Management.

Committee Options

This agenda item does not require Committee action. The Committee, however, may provide ASU with its perspective on West Campus or request additional information.

Key Points

- 1) ASU received 300 acres of land in 1982 to establish a West Campus, with the stipulation that the lands would revert back to the state if not used for the campus.
- 2) A 2002 statutory change permits ASU to lease, but not sell, portions of the land on its West Campus for commercial development.
- 3) ASU has set aside 60 acres for possible commercial uses, but has no immediate plans for development.
- 4) In 2014, ASU acquired the Thunderbird School of Global Management in Glendale.
- 5) ASU is not restricted from selling the Thunderbird land, which is located roughly 1 mile from ASU West.
- 6) On December 12, 2017, ASU announced plans to relocate the Thunderbird School to the Downtown Phoenix Campus.
- 7) The university will construct a new, roughly 90,000 sq. foot facility to be completed by 2021.
- 8) ASU Enterprise Partners is working with the City of Glendale to develop the vacated 148-acre parcel of land.

(Continued)

Analysis

Laws 1982, Chapter 248 provided 300 acres of former state trust lands to the Arizona Board of Regents (ABOR) to establish the ASU West Campus between 43rd and 51st Avenues and Sweetwater Avenue and Thunderbird Road.

The legislation required that "the lands revert back to the state if for any reason [ABOR] desires to or does relinquish their ownership or control of the lands [or] decides not to eventually use the lands consisting of approximately 300 acres for a western campus of [ASU]."

According to a draft issue paper that was prepared by ASU circa 2002:

The reason for the inclusion of these restrictions is not available in any official records. However, certain members of the "Westside Citizens Committee for Higher Education", a group which has been aggressively lobbying for the establishment of an ASU West Campus since 1972, remember and report that these restrictions were deliberately requested to be included . . . to serve as a means of pressuring [ABOR] to follow through with the development of the West campus (<https://repository.asu.edu/items/13605>).

Laws 2002, Chapter 200 eliminated the requirement that ABOR use all of the lands for the ASU West Campus. The amended statute required that ABOR "shall not sell or otherwise convey title" to the lands, but granted ABOR authority to "lease, license, or otherwise authorize the use of the lands for any purpose approved by [ABOR]" as long as "all revenues received by [ABOR] from such uses shall be used solely for education and education related purposes at the [ASU] West Campus."

ASU reports that approximately 150 acres are identified for current and future ASU education and support purposes, with approximately 60 undeveloped acres potentially available as lease opportunities. The remaining 90 acres are reserved for a City of Phoenix community park and K-12 district use.

ASU states that there are no immediate plans to enter into lease agreements at the ASU West Campus for commercial or private development of the 60 acres.

Background

Campus Plans Over Time

The original 1985 campus plan envisioned a "total build-out" of 10,000 full-time equivalent (FTE) students at the ASU West Campus. As of fall 2016, ASU West enrollment had reached 8,504 FTE students (with a corresponding headcount of 19,382).

The 1985 campus plan envisioned 1.1 million gross square feet of academic space on 15 acres and 302,500 gross square feet of commercial space on 6.5 acres, which would include "rental apartments available to the general public." The remaining 278.5 acres were envisioned for desertscape/open spaces, athletic fields/recreation, parking and vehicle access, and pedestrian circulation/malls.

The 2002 issue paper states that the 1998 ASU West Campus Master Plan identified "about 110 acres of developable tracts of land that would remain excess even after the additional development of instructional and related facilities to serve the needs of a 15,000 student campus."

(Continued)

The most recent available West Campus Master Plan (2011) shows 860,000 square feet of existing academic/research/student housing space, with a proposed target of 2.9 million gross square feet for 15,000 FTE students, in addition to 70 acres remaining for (commercial) development opportunities.

Thunderbird School of Global Management

In our December 12, 2017 memorandum, we noted the following:

"In 2014, ASU acquired the Thunderbird School of Global Management, located roughly 1 mile from ASU West between 55th and 59th Avenues and Greenway Road and Acoma Road. The Thunderbird School lands total 148 acres, of which 85 are developed, 62 are undeveloped, and 1 is used as an APS substation. The Thunderbird lands are not restricted from sale in the same manner as the West Campus."

After our memorandum was written, ASU subsequently announced that it will relocate the Thunderbird School's graduate programs to ASU's Downtown Phoenix Campus (DPC). Thunderbird's undergraduate programs are already housed at the ASU West Campus and will remain there. ASU reports Thunderbird campus enrollment of 327 students as of fall 2017. The Thunderbird Global Management degrees are part of separate academic program from ASU's W.P. Carey School of Business in Tempe.

ASU will construct an approximately 90,000 square foot facility adjacent to the Sandra Day O'Connor College of Law, north of Polk Street between 1st and 2nd Streets. Students will be relocated to interim space at the Downtown Phoenix Campus by January 2019 until the building is completed in 2021.

The City of Phoenix leased three-quarters of the block bounded by Taylor Street, 1st Street, Polk Street and 2nd Street to ASU for the Law School in 2014. The lease cost was estimated to be \$125,000 annually starting in 2025 until the transfer of the land's ownership to ASU in approximately 2035. We are attempting to confirm the lease arrangements for the new Thunderbird site.

The university reports that ASU Enterprise Partners—which was created in 2016 to incorporate the ASU Foundation and the university's real estate development functions, among others—has initiated discussions with the City of Glendale to create a master plan for the development of the existing Thunderbird School campus. ASU Enterprise Partners is a 501(c)3 non-profit entity.

MB:kp

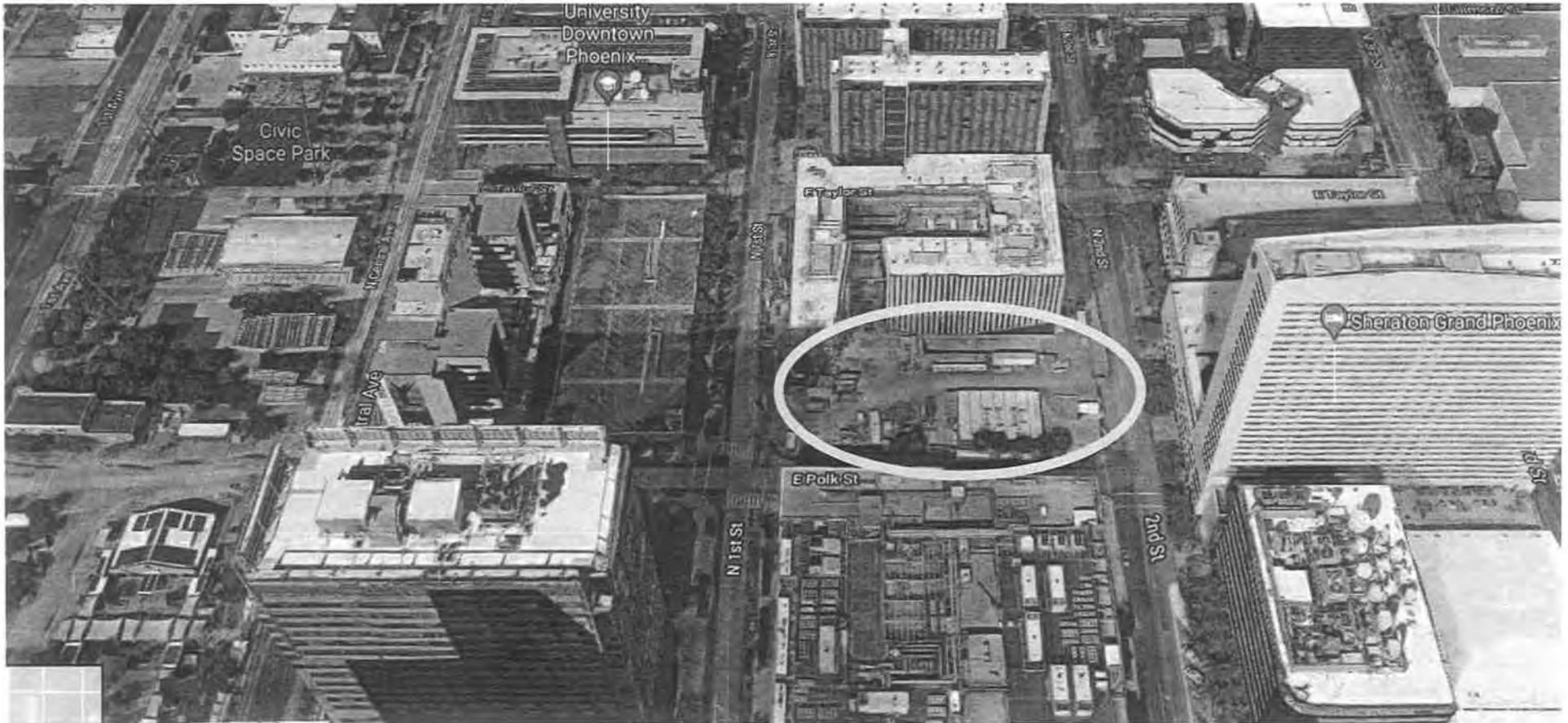
ASU West Campus



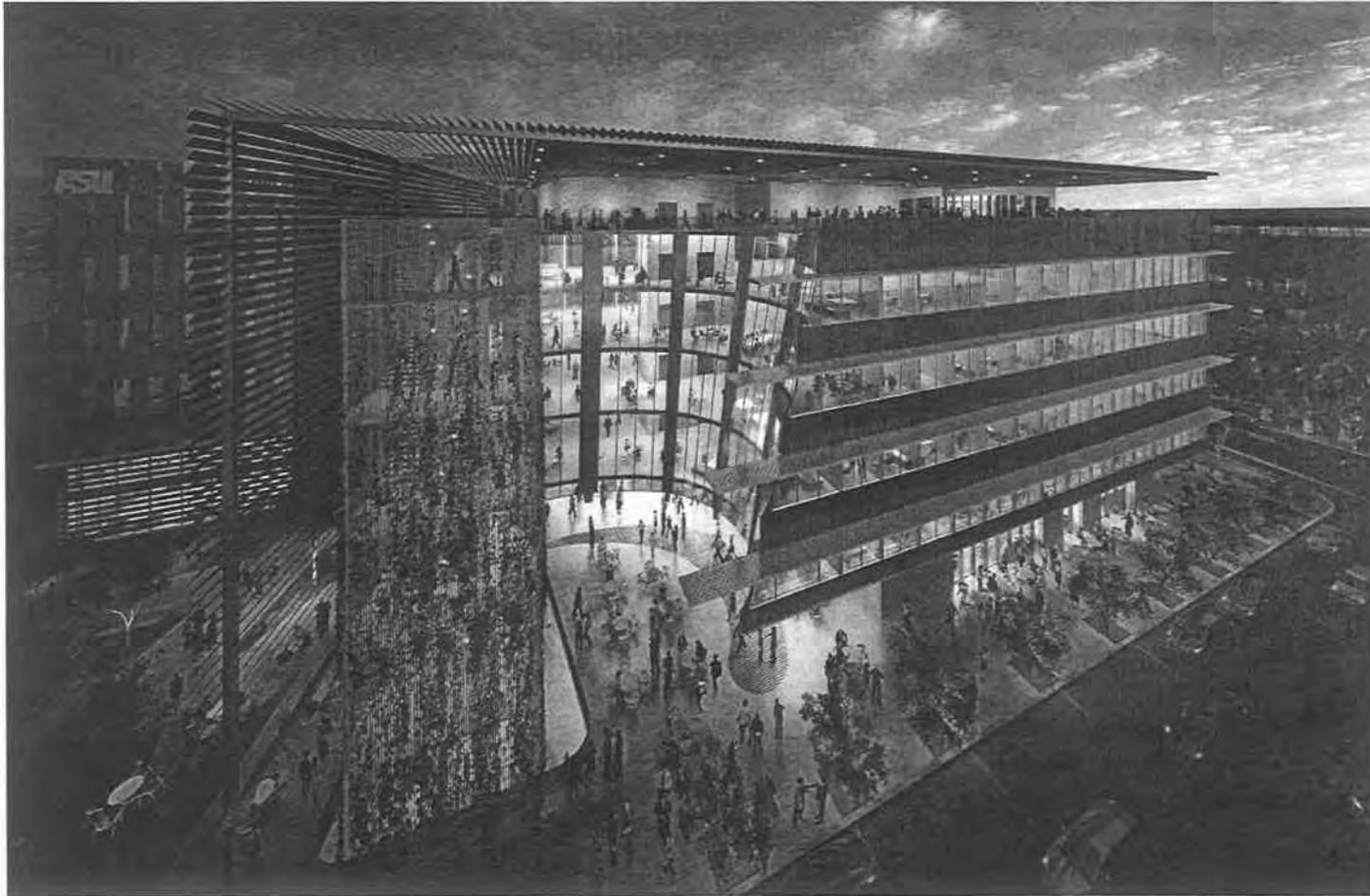
ASU Thunderbird School Campus



ASU Thunderbird School - Planned Downtown Facility



ASU Thunderbird School - Planned Downtown Facility





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REBECCA RIOS

DATE: December 12, 2017

TO: Members of the Joint Committee on Capital Review

FROM: Matt Beienburg, Senior Fiscal Analyst MB

SUBJECT: Arizona Board of Regents and Arizona State University - Recommendations Concerning Commercial Development of University Lands

Request

As requested by the Chairman, the Arizona Board of Regents (ABOR) and Arizona State University (ASU) have submitted a report on the proposed development of a senior retirement community and a hotel/conference center on university land at Mill Avenue and University Drive. A.R.S. § 15-1682.02 permits the Committee to make recommendations concerning commercial development on university land. While Legislative Council believes this provision is applicable for the Mill Avenue development, ASU does not.

Committee Options

The Committee has at least the following 2 options:

1. Make a recommendation on the report. A recommendation to not proceed with the retirement community or hotel/conference center may not be practicable given the current status of the projects.
2. Accept the report with no recommendations.

Under either option, the Committee may also consider the following provisions:

- A. Committee action does not constitute a review of the planned multi-level parking garage project or any bond issuances necessary for its financing.

(Continued)

Standard University Financing Provision

- B. Committee action does not constitute endorsement of General Fund appropriations to offset any revenues that may be required for debt service, or any operations and maintenance costs when the projects are complete.

Key Points	
1)	ASU plans to lease university land for commercial development of a 20-story senior retirement community and a 330-room hotel/conference center.
2)	The projects are expected to generate at least \$12.9 million in up front revenue and \$1.7 million in annual payments to ASU.
3)	Legislative Council believes ASU is required to report these projects to the Committee under current statute. ASU disagrees.
4)	ASU will return to the Committee at a later date for review of an adjacent parking garage development.

Analysis

In 2016, ABOR approved 2 ASU proposals to lease university-owned land at Mill Avenue and University Drive for the development of a senior retirement community and a hotel/conference center. As part of the arrangements, ASU will lease approximately 3.5 of the 10 acres available on the site in exchange for ground lease and in-lieu-of-tax payments. As shown in *Table 1*, these payments will generate an estimated \$12.9 million in revenue for ASU up front and \$1.7 million per year thereafter. ASU also intends to develop a multi-level parking garage adjacent to these facilities.

	Payments to ASU	
	Up Front Lease Payment	Annual Payment in-lieu of Taxes ^{1/}
Mirabella Retirement Community	\$7.0 M	\$0.6 M
Omni Hotel/Conference Center	<u>\$5.9 M</u>	<u>\$1.1 M</u>
Total	\$12.9 M	\$1.7 M

^{1/} ASU expects to receive annual in-lieu-of-tax payments of \$500,000-\$600,000 for the retirement center once fully occupied. ASU estimates \$1,090,000 of in-lieu payments for the Omni Hotel in its first year, increasing 2.5% each year thereafter.

Mirabella Senior Retirement Community

ASU will lease 1.9 acres to the ASU Foundation (ASUF), which will partner with Pacific Retirement Services to develop the "Mirabella" branded facility.

ASU's 2016 presentation materials to ABOR stated that the Mirabella "Lifelong Learning Center" will support active living for faculty, alumni, and the broader community to allow "residents to act as academic advisors and mentors for university spin-outs and teaching . . . strengthen engagement with alumni and friends . . . collaborate with residents to become partners in grant studies and programs, [and] provide financial returns with little debt and maximum cash flow."

The 614,000 square foot development will feature a 20-story north tower and 13-story south tower, which together will include 266 housing units, a 1.5 story lecture hall, a 10,000 square foot multi-purpose room, 4 dining venues, and one level of underground parking. Both the lecture hall and multi-purpose room will be "available for use by ASU."

According to Mirabella promotional materials, the facility will also offer an "onsite continuum of care, including home services, assisted living, skilled nursing and rehabilitation, and memory care." Specifically, ASU reports that 41 memory care and skilled nursing units are anticipated to be constructed as part of the project.

While construction is not scheduled to begin until 2018, ASUF and Pacific Retirement Services have been actively marketing the facility. ASU reports that over 370 households have submitted priority deposits of \$1,000 to reserve a unit.

ASU will enter into a 99-year ground lease with the ASU Foundation and receive a one-time up front lease payment of \$7 million, "based on two independent appraisals received, determining the value to be \$85 per square foot." The Foundation will also make payments to ASU in lieu of taxes "in an amount that would have been payable for ad valorem taxes and assessments with respect to the number of senior housing units that have been sold." ASU estimates that these annual payments could reach \$600,000 once the facility is fully occupied "based on current Maricopa County tax rates."

The \$219 million facility will be funded by the developer and is expected to open in fall 2020.

Omni Hotel/Conference Center

ASU will lease 1.6 acres to the Omni Hotels Corporation for the construction of a privately-operated hotel and conference center. The Omni Hotel will feature roughly 330 guest rooms and a 30,000 square foot conference center.

ASU has stated that the hotel will benefit the university by "facilitating the hosting of university-related meetings and public functions" and provide community and economic development to the City of Tempe.

ASU will fund construction of the conference center portion of the facility with \$19.5 million in cash, but the university will enter into a management agreement that leaves Omni to "construct, operate, and maintain the hotel/conference center." Under the agreement, ASU "will have a presence and right to use the conference center, while Omni will pay all operating and capital maintenance costs and be entitled to revenues therefrom."

ASU states that parking for the facility will be provided in an ASU-owned parking area, of which 275 spaces will be reserved for Omni guests. *(Please see Parking Garage section below.)*

Omni will make an up front pre-paid ground lease payment of \$5.9 million to ASU in addition to annual payments in lieu of property tax of \$1.1 million per year (increasing 2.5% per year for inflation). ASU states that it will use the annual payments to recoup the construction costs of the conference center before making them "available to support other university initiatives."

Omni will fund the \$110 million hotel and will have the option to acquire the land and improvements at the end of the 60-year ground lease term "for a nominal amount."

Parking Garage

ASU's development plans also include the issuance of \$30.0 million of system revenue bonds for the construction of a multi-level, joint-use parking structure to replace an existing surface parking lot. The garage's expected 1,200 vehicle capacity "will support the academic, cultural, and social activities on the Tempe campus and accommodate the parking needs of [the Omni Hotel] and conference center, as well as future site development."

ASU's Capital Improvement Plan includes the parking garage in its proposed FY 2019 project list. ASU will be required to submit this project for Committee review separately. The Committee may consider *Provision A* stating that consideration of this current item does not constitute review of the planned multi-level parking garage project or its associated bond issuance.

Reporting Requirements

In 2006, the Legislature enacted legislation to require Committee review of university projects funded with indirect/third-party financing. Indirect/third-party financing involves agreements in which private developers finance costs for capital projects that are for the use or benefit of the university. In the following year, the Legislature further clarified the application of these provisions to commercial development in Laws 2007, Chapter 265. The universities are still required to submit commercial projects for Committee review if the majority of the project's business is from the university population. If the majority of the project's business is from a non-university population, however, the commercial project is no longer subject to Committee review.

While the 2007 legislation modified the review requirements, Chapter 265 established a reporting requirement that the universities submit a report on these latter types of projects to the Committee before executing any agreements. Chapter 265 also states that the Committee may provide recommendations on these projects.

As noted above, statute limits Committee review or recommendations to projects that are "for the use or benefit" of the university. ASU has previously said that "since Mirabella will not be used by ASU, it is not a project as defined" in statute, and therefore a project report is not required.

Legislative Council believes that the revenues generated for ASU by the Mill Avenue development projects constitute a benefit and require a report under A.R.S. § 15-1682.02. Additionally, ASU's report to the Chairman states that the lecture hall and multi-purpose space at Mirabella will be available for use by ASU.

Given that ASU executed an option to lease with ASUF in June 2016 and plans to finalize the ground lease the week of December 10, 2017, Committee recommendations may not be practicable at this time. The Committee may, however, provide recommendations on future projects of this type.

MB:kp


ARIZONA STATE UNIVERSITY

November 28, 2017

Senator Debbie Lesko
Arizona State Senate
1700 West Washington, Suite S 302
Phoenix, AZ 85007

Dear Senator Lesko:

Pursuant to your November 14, 2017 letter, we are pleased to provide you an update on the scope, estimated costs and expected revenue of Mirabella at ASU, the Omni Hotel and Conference Center at ASU, and additional Tempe campus parking.

Accompanying this letter are Arizona Board of Regents executive summaries for each project.

Mirabella at ASU

Mirabella at ASU is privately and jointly developed by University Realty LLC, a subsidiary of ASU Enterprise Partners, the private nonprofit organization comprised of distinct entities that generate resources in support of Arizona State University, and Pacific Retirement Services (PRS), the premier developer and operator of not-for-profit continuing care retirement communities in the western United States. When completed, the Mirabella at ASU facility will be located on a land parcel leased from Arizona State University (ASU). No public funds will finance or develop this project.

Welcoming retirement-age adults to ASU's campus fulfills a number of the New American University design principles: it encourages community interaction, creates pathways to lifelong learning for a demographic not traditionally associated with college classrooms, provides a platform to conduct use-inspired research that pursues healthcare solutions for aging adults, enhances the university's academic programs, generates work-study opportunities for students and engages older alumni, faculty, staff and friends with Tempe residents. In ten years, ASU will have 120,000 alumni over the age of 65, with half living in Arizona.

Research indicates that aging Americans increasingly prefer active, urban living where they can continue to learn alongside multi-generational communities. With 10,000 individuals in the United States turning 65 each day and a quarter of the population – about 77 million people – approaching retirement age, there is considerable demand for this first-of-its-kind local facility.

Across the nation, there are some 100 similar university-based retirement communities that exist and thrive, including at Duke University, Dartmouth College, Stanford University, the University of California, Davis, Pennsylvania State University, the University of Texas, Oberlin College and Cornell University. Mirabella at ASU will be the third "Mirabella" property developed by PRS: Mirabella Seattle opened in December 2008 and averages 98% occupancy with a 300+-person waiting list; Mirabella Portland opened in September 2010 and averages 99% occupancy with a 350+ person waiting list.

In recognition of the project's benefits and alignment with ASU's design principles, the Arizona Board of Regents in June 2016 approved a 99-year land lease to develop Mirabella at ASU at 65 East University

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Drive in Tempe. A one-time lease payment of approximately \$7 million will be paid upon lease execution. Additionally, annual contractual payments in lieu of property tax will contribute revenue to the university, estimated at \$500,000 to 600,000 when full occupied and based on current Maricopa county tax rates. The project also provides potential opportunities for estate giving directed in support of ASU and other manifestations of residents' philanthropy.

Following the ground lease approval, in January 2017, Mirabella at ASU received a permit to accept deposits from prospective residents; in response to their enthusiasm, Pacific Retirement Services opened a dedicated Mirabella at ASU sales office in August 2017. By the middle of August, 374 households (600+ individuals) submitted priority deposits of \$1,000 to reserve the opportunity to reside in the Mirabella at ASU community. These residents' contributions will extend to increasing attendance at local events, enhancing retail sale dollars and broadening the economic impact of this thriving part of our state.

Later that month, Mirabella at ASU received full entitlements, which included design review by the ASU/City of Tempe Joint Review Committee. The site area will comprise a 20-story north tower, a 13-story south tower, a 1.5-story lecture hall and multi-purpose room and one level of below-grade parking. It will contain 266 dwelling units made up of independent living, assisted living and guest units. Forty-one memory care and skilled nursing units are anticipated. The development will feature four dining venues, a pool, fitness center, library and hobby shop; the lecture hall and 10,000-square foot multi-purpose space will be available for use by ASU. It will offer residents a comprehensive wellness program, maintenance-free living and a myriad of cultural opportunities in the heart of Tempe and ASU's arts, social and educational district. Construction on the project is expected to begin in January 2018, with occupancy beginning in fall 2020. The project has a construction budget of \$219 million.

As the Mirabella at ASU project progresses, University Realty LLC and PRS will collaborate with ASU to develop programming that engages eager future residents. This programming will align with the university's mission to provide access to high-quality learning opportunities for all Arizonans. Partnerships could include research, teaching and learning at ASU's College of Nursing and Health Innovation, the Osher Lifelong Learning Institute, the Mary Lou Fulton Teachers College, the Herberger Institute for Design and the Arts, the School of Nutrition and Health Promotion and with Mirabella at ASU's neighbor, ASU Gammage. Mirabella at ASU will build on the university's existing lifelong learning programs, including those for children and high school students, while creating an environment that helps older adults remain mentally active (a crucial element in preventing dementia), mentor undergraduates and enjoy campus cultural, social and athletic activities.

Omni Hotel and Conference Center

The Omni Hotel and Conference Center at ASU will include a 330-room, four-star, full-service hotel with an approximately 30,000-square-foot conference center on the Tempe campus. The Omni Hotel and Conference Center at ASU will be constructed on 1.6 acres at the corner of University and Mill, adjacent to and West of Mirabella at ASU.

The presence on campus of a high-quality hotel/conference center will be highly beneficial to the University, supporting its mission as a leading global educational and research institution, by facilitating the hosting of University-related meetings and public functions. The Omni Hotel and Conference Center at ASU also will be an asset to downtown Tempe, as a larger, high-end hotel/conference center long has been an important City objective.

Examples of universities directly or indirectly partnering or developing hotels and conference centers, both on and adjacent to campus, include the NAU High Country Conference Center and Drury Inn, UCLA Luskin Conference Center and Hotel, University of Utah Marriott University Park Hotel, Purdue

University Union Club Hotel, Portland State University, University Place Hotel and Conference Center, and the Hotel at the University of Maryland.

Omni is a nationally recognized, innovative hotel brand that owns and operates 60 properties in urban and resort destinations, with a portfolio that includes over 21,000 guest rooms. As approved by the Arizona Board of Regents, Omni will make a one-time land lease payment at a market rate verified by a third-party appraisal, estimated at \$5.9 million. Omni will invest approximately \$110 million to develop the four-star Omni Hotel at ASU. Design is expected to begin in early calendar year 2018 and the hotel and conference center are projected for completion in 2020.

Annually, additional rent in lieu of property tax will be paid to the University, estimated at \$1.1 million in the first year of operations. ASU will invest \$19.5 million of working capital cash for construction of the conference center, funded by the in-lieu contractual payments over the first fifteen to twenty years of operation, after which the annual payments will be available to support other University initiatives. Omni will manage the hotel and conference center and be responsible for all costs to operate and maintain the facilities.

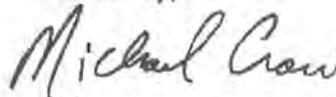
Tempe Campus Parking Structure

ASU is in need of additional student, staff and visitor parking on the Tempe campus to support academic, cultural, and social activities. ASU plans to construct a multi-level parking structure to replace approximately 700 existing surface spaces and add additional capacity. Parking for the Omni Hotel and Conference Center at ASU also will be provided within the structure. Omni will be responsible to operate and maintain the 275 spaces available to hotel and conference center guests. The approximately 1,200-space-parking structure will be constructed at University and Mill, south of the Omni Hotel and Conference Center. The estimated project budget of \$30 million will be financed through an ASU bond issuance with debt service paid from parking revenues.

These projects are important initiatives that enable the university to increase its programmatic and economic contributions to the state, using innovative public/private partnerships that avoid burdening the State of Arizona financially. We believe these partnerships will be increasingly important in making our state an even better place to live and work; an important element in our increasingly competitive global economic environment.

Thank you for this opportunity to share more information on these exciting initiatives.

Sincerely,



Michael M. Crow
President

Attachments



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Phoenix, Arizona 85004

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F 602.229.2555

AZRegents.edu

November 28, 2017

Senator Debbie Lesko
State Capitol
1700 West Washington, Suite S 302
Phoenix, AZ 85007-2844

Dear Senator Lesko,

Thank you for the opportunity to provide information on the Lifelong Learning Center (Mirabella) and Omni Hotel/Conference Center projects.

As you noted, the universities look for all possible opportunities to optimize the use of available assets to further the university mission of educating Arizona residents. Leasing land for the Mirabella and the hotel/conference projects will provide revenue streams that contribute to that goal.

We appreciate the funding the state has provided for our university enterprise and hope we can continue to partner with the state to achieve the funding levels outlined in our resident student funding model. The social and economic benefits for our state from an educated workforce are significant and measurable, and we hope we can get an opportunity to meet with you to review our supporting reports.

ABOR recognizes the importance of the 5-acre site for these projects as it serves as the western gateway to the ASU Tempe Campus. As a result, and beyond the financial benefits to ASU, the ABOR discussion also incorporated the connection and contribution of these projects to the ASU strategic plan and goals, as well as ensuring the site is the best location for these projects.

Both of these projects are based on ASU receiving ground lease payments from other entities that will develop the projects. In addition, ASU will receive additional revenue either through in lieu ad valorem taxes and assessments and/or additional lease payments.

REGENTS

Chair Bill Ridenour, *Paradise Valley* • Ron Shoopman, *Tucson* • Ram Krishna, *Yuma* • Jay Heiler, *Paradise Valley*
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EX-OFFICIO: Governor Doug Ducey • Superintendent of Public Instruction Diane Douglas

ENTERPRISE EXECUTIVE COMMITTEE

Board President Eileen J. Klein • ASU President Michael M. Crow • NAU President Rita Cheng • UJA President Robert Robbins

Ground leases with terms greater than 10 years or annual lease payments greater than \$500,000 require ABOR approval. The following provides an overview of the structure of these projects as reviewed by ABOR.

Mirabella

- At its June 8-10, 2016 committee and board meetings, ABOR reviewed and received a presentation from ASU regarding the Mirabella proposal. See Attachments A and B.
- At its June 22, 2016 meeting, ABOR approved the proposal. The approval allowed ASU to execute a 99-year lease with the ASU Foundation for 1.5 acres at \$85 per square foot, based on 2 independent appraisals. In addition, the ASU Foundation will provide semi-annual payments in lieu of ad valorem taxes and assessments on the number of housing units that have been sold.
- The 500,000 square foot project anticipates 300 housing units, assisted care space, restaurant, and underground parking.

Omni Hotel/Conference Center

- At its November 16-18, 2016 committee and board meetings, ABOR reviewed and approved ASU executing a 60-year ground lease with Omni for 1.6 acres at \$85 per square foot, based on 2 independent appraisals. In addition, ASU will receive additional rent beginning after construction is complete with a 2.5% increase each year through the end of the ground lease term. See Attachment C.
- The project anticipates 330 rooms and a \$19.5 million 30,000 square foot conference center which ASU would fund.
- Omni would manage and operate the hotel and conference center and have the option to acquire the land and improvements at the end of the term.
- ASU would also provide 275 parking spaces in an ASU-owned parking area.

Both of these projects will bring economic activity to the community and state, and will also provide opportunities for ASU to develop relationships and partnerships that will contribute to the core academic and research missions of the university.

ASU is also providing a response to your letter that will provide the institution's perspective on the benefit these projects provide.

Sincerely,



Lorenzo Martinez
Associate Vice President for Finance and Administration

Attachments

EXECUTIVE SUMMARY

Item Name: **Option to Lease Land to the ASU Foundation for a New American University (ASU)**

- Committee Recommendation to Full Board
- Full Board Approval

Issue: Arizona State University asks the board to approve an option to lease approximately 1.5 acres of real property located at the southeast corner of Mill Avenue and University Drive (southwest corner of University Drive and Myrtle Avenue) in Tempe (the "**Property**"), to the Arizona State University Foundation for a New American University, an Arizona non-profit corporation ("**ASUF**") for development of a senior housing project.

Enterprise or University Strategic Plan

- Empower Student Success and Learning
- Advance Educational Attainment within Arizona
- Create New Knowledge
- Impact Arizona
- Compliance
- Real property purchase/sale/lease
- Other:

Statutory/Policy Requirements

- ABOR Policy 7-207 A requires board approval for the lease of real property.

Background/History of Previous Board Action

- The Property is located at the southeast corner of Mill Avenue and University Drive, Tempe, adjacent to the core ASU Tempe campus and downtown Tempe.
- The Property is a portion of a five-acre site on Block 22 in Tempe. ASU intends to develop and/or lease for development the balance of the site for use as a hotel and conference center and other ancillary improvements (parking, driveways, walkways).
- ASUF will develop and operate a senior housing project that will be marketed initially to active seniors including ASU alumni, faculty, and staff (the "**Senior Housing Project**").

Discussion

Contact Information:

Morgan R. Olsen, Executive Vice President, Treasurer and CFO • (480) 727-9920 • Morgan.R.Olsen@asu.edu

EXECUTIVE SUMMARY

- The current real estate market is favorable for senior housing development.
- Senior housing provides an attractive opportunity for ASU alumni to maintain a close relationship with their alma mater and to assist with ASU Foundation fundraising efforts.
- The proposed 500,000 square foot project will include approximately 300 housing units, including independent living, skilled nursing and assisted living units, a 5,000 square foot restaurant and an underground parking structure.
- The Property will be offered in an option to lease format that focuses on proof of financial feasibility, committed funding and an acceptable delivery schedule for the senior housing product.
- The ground lease term will be 99 years, with rates based on two independent appraisals received, determining the value to be \$85 per square foot. Following construction of the improvements, ASUF will make semi-annual payments in lieu of ad valorem taxes and assessments in an amount that would have been payable for ad valorem taxes and assessments with respect to the number of senior housing units that have been sold.

Committee Review and Recommendation

The Business and Finance Committee reviewed this item at its June 8, 2016 meeting and recommended forwarding the item to the full board for approval.

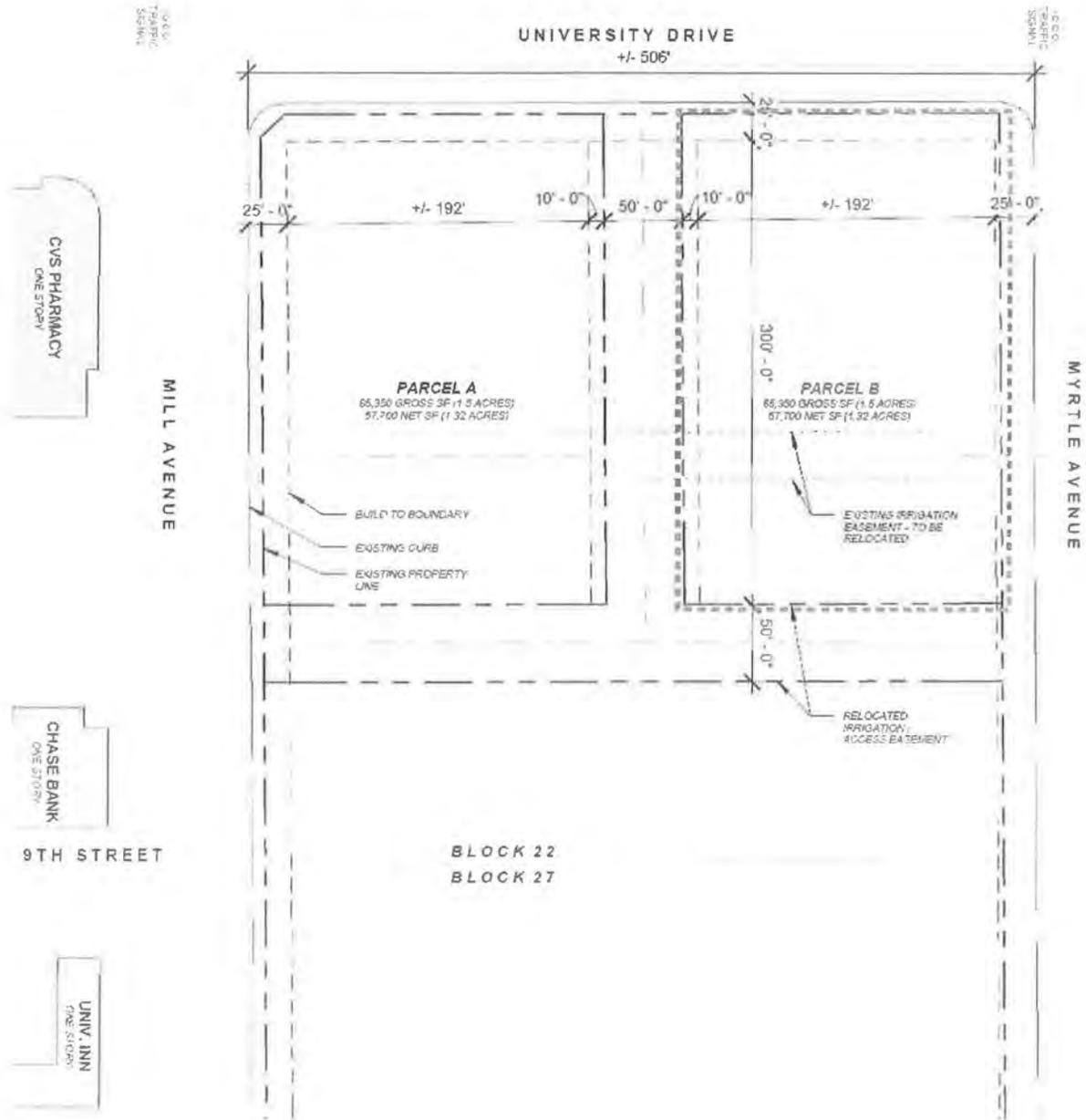
Requested Action

Arizona State University asks the board to approve authorization for the ASU President, the ASU Executive Vice President, Treasurer and Chief Financial Officer, and the ASU Assistant Vice President for Real Estate Development, or any successor titles to such positions, each separately, to take all appropriate actions to lease the Property in Tempe, Arizona, as described in this executive summary.

EXECUTIVE SUMMARY

Appendix

EXHIBIT A – LOCATION MAP



EXECUTIVE SUMMARY

Item Name: Ground Lease, with Option to Acquire, and Related Agreements for Development of Hotel/Conference Center with Omni Hotels Corporation (ASU)

- Action Item
- Committee Recommendation to Full Board
- First Read of Proposed Policy Change
- Information or Discussion Item

Issue: Arizona State University asks the board for authorization to enter into agreements to ground lease and develop approximately 1.6 acres of real property located at the southeast corner of Mill and University Drive on the Tempe Campus (the "**Parcel**"), to Omni Hotels Corporation, a Delaware corporation, or affiliate ("**Omni**"), for development of a privately-operated hotel, and a \$19.5 million, together with an option to permit Omni to acquire the land and improvements at the end of the ground lease term.

Enterprise or University Strategic Plan

- Empower Student Success and Learning
- Advance Educational Attainment within Arizona
- Create New Knowledge
- Impact Arizona
- Compliance
- Real property purchase/sale/lease
- Other:

Statutory/Policy Requirements

- ABOR Policy 7-102(B) requires committee review and board approval of projects shared with outside entities, such as third parties.
- ABOR Policy 7-102(B) requires committee review and board approval of projects with a total project cost over \$10 million.
- ABOR Policy 7-204(A) requires committee review and board approval for the sale of real property by public auction in accordance with ABOR Policy 7-104.G.
- ABOR Policy 7-202 allows the board to alter the procedures or waive any requirement or other condition for any individual transaction on application by a university.

Contact Information:

Morgan R. Olsen, Executive Vice President, Treasurer and CFO; (480) 727-9920; Morgan.R.Olsen@asu.edu

EXECUTIVE SUMMARY

- ABOR Policy 7-206(B) requires two appraisals for the sale of real property.
- ABOR Policy 7-207(A) requires committee review and board approval for the lease of real property.

Background

- ASU owns five acres of land located on the southeast corner of Mill and University in Tempe adjacent to and connecting the Tempe campus with downtown Tempe. The redevelopment of a portion of this site for a hotel and conference center, which would be embedded within and serve the ASU and Tempe communities, has been a long-standing plan of the University.
- Omni is a nationally recognized, innovative, "four-star" hotel brand with a comprehensive management infrastructure and talent pool. Omni is an owner/operator with 60 managed properties in urban and resort destinations. Their portfolio includes over 21,000 guest rooms in 42 markets spanning 21 states, Canada and Mexico.
- In June of 2016, ABOR approved an Option to Lease Land with the ASU Foundation for a New American University for development of a lifelong learning community. The Lifelong Learning Community development will be located adjacent to the proposed Omni Hotel. Together, the projects will create a cohesive and vibrant development at the western perimeter of the Tempe campus and adjacent to Downtown Tempe.

Discussion

- The presence on campus of a high-quality hotel/conference center will be highly beneficial to the university, supporting its mission as a leading global educational and research institution by facilitating the hosting of university-related meetings and public functions. It also will be an asset to downtown Tempe, as a larger, high-end hotel/conference center long has been an important City objective.
- This hotel/conference center development, along with the planned adjacent Lifelong Learning Community, will create public-private partnerships to positively affect and increase community and economic development with strategic value to the university.
- The hotel/conference center will be located on approximately 1.6 acres of land at the southeast corner of University and Mill, as depicted on the site map attached hereto as Exhibit A (the "**Parcel**"), and will include approximately 330 guest rooms and an approximately 30,000 square foot conference center, with the capability to accommodate at least 1,000 people at a seated event. Other

EXECUTIVE SUMMARY

amenities will be determined during the design phase with input from ASU and the City of Tempe.

- ASU anticipates entering into an agreement that will provide Omni an approximately twelve-month time period to complete due diligence, finalize design, obtain approval from the ASU/City of Tempe Joint Review Committee, and reach agreement on the various transaction documents. During this period, Omni also will be required to provide proof of financial feasibility, committed funding and an acceptable delivery schedule for the completed project.

Fiscal Impact and Management Plan

- The Parcel will be ground leased to Omni for a term of 60 years.
- Omni will construct, operate and maintain the hotel/conference center. Omni will have an option to acquire the land and improvements at the end of the ground lease for a nominal amount.
- The transaction, as structured, generates the highest and best offer for the Property; therefore, ASU requests that the board waive the requirement of 7-204(A) for a public auction, as permitted by 7-202.
- The ground lease rent will be pre-paid, equal to the fair market value of the Parcel. The fair market value of the Parcel is approximately \$85.00 per square foot, based on appraisals received by ASU in accordance with Board policy. The estimated lease payment is approximately \$5,900,000. Omni will pay its share of maintenance, repair, replacement and operation costs for the common areas of the project and parking, as well as annual payments of additional rent to be designated by ASU. The additional annual rent payments are estimated to be approximately \$1,090,000 the first year following the completion of construction, escalating at 2.5 percent per year every year thereafter for the term of the ground lease.
- The conference center will be fully integrated within the hotel. The project budget for construction of the conference center is \$19.5 million, which will be funded by ASU.
- ASU will enter into a management agreement with Omni for operation of the conference center to ensure seamless, coordinated management of the hotel and conference center. Under the terms of the management agreement, ASU will have a presence in and a right to use the conference center, while Omni will pay all operating and capital maintenance costs and be entitled to revenues therefrom.

EXECUTIVE SUMMARY

- Parking for the hotel will be provided in an ASU-owned parking area. ASU will provide Omni with space for 275 vehicles and Omni will improve, configure and manage the space at Omni's cost. Omni will pay all ongoing operating and maintenance costs associated with its parking.

Exhibits

- Exhibit A – Location and Site Map

Committee Review and Recommendation

The Business and Finance Committee reviewed this item at its November 16, 2016 meeting and recommended forwarding the item to the full board for approval.

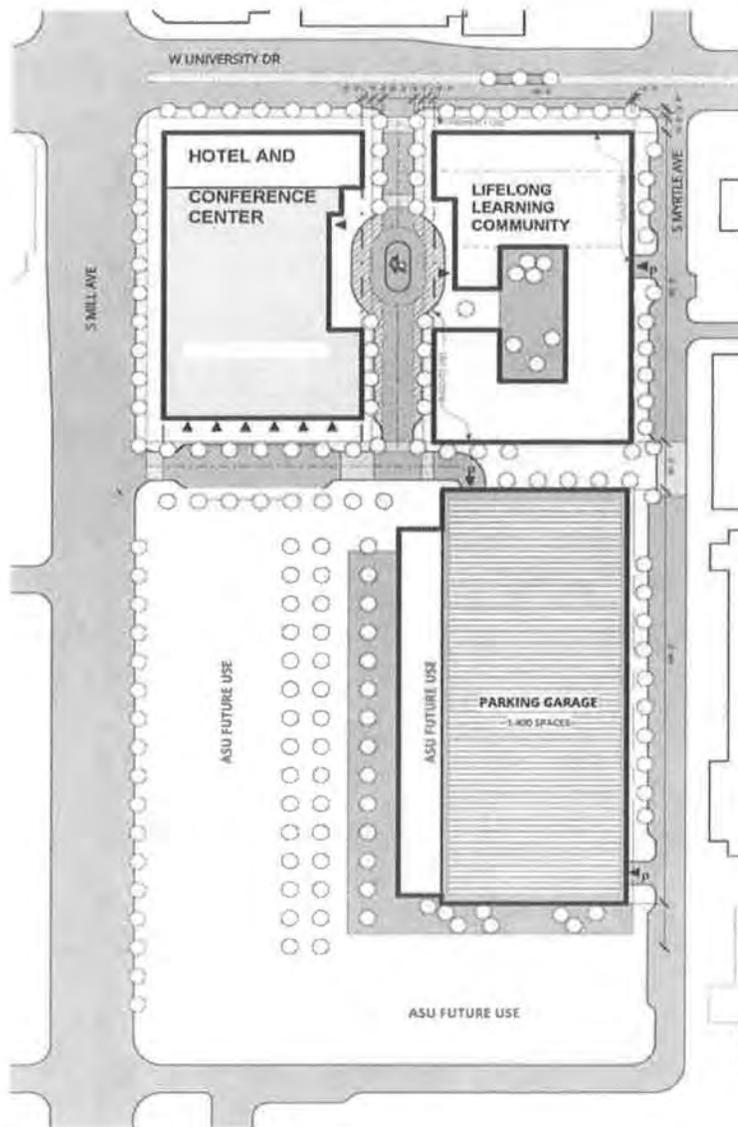
Requested Action

Arizona State University requests the board authorize the ASU President, the ASU Executive Vice President, Treasurer and Chief Financial Officer, and the ASU Assistant Vice President for University Real Estate Development, or any successor titles to such positions, each separately, to take all appropriate actions to enter into any and all necessary documents to lease, develop and convey the Parcel in Tempe, Arizona, on substantially the terms described in this executive summary, including Project Approval of the Conference Center.

EXECUTIVE SUMMARY

EXHIBIT "A"

LOCATION AND SITE MAP



BLOCK PLAN DIAGRAM - 08/22/2016



EXECUTIVE SUMMARY

FY 2019 Project Description

Project Name: Tempe Campus Parking Structure

Priority: 3

Description

This proposed new energy-efficient, multi-level parking structure will replace an existing surface lot on a new development site at the southeast corner of University Drive and Mill Avenue in Tempe. A solar panel system is planned on this structure to provide the campus with an additional source of renewable energy and to maintain the university's commitment to sustainability. This approximately 1,200-space parking structure will support the academic, cultural and social activities on the Tempe campus and accommodate the parking needs of a new on-site hotel and conference center, as well as future site development.

Justification

This new energy-efficient parking structure will provide the essential capacity required to support the institutional priority of establishing ASU as a global center for interdisciplinary research, discovery and development. Given the close proximity of this parking structure to the rich cultural and social life that is fostered by ASU Gammage and the Mill Avenue District in downtown Tempe, this project also will enhance the local impact and social embeddedness of the university in the communities it serves.

Estimated Project Cost: \$30,000,000

Funding Source: System Revenue Bonds



Lifelong Learning Center

Tempe, Arizona



Universities with Affiliated Communities

There are approximately 100 University-based lifelong learning communities including:



Cornell University



THE UNIVERSITY OF
TEXAS
— AT AUSTIN —



PennState

Development Partners



Mirabella Seattle



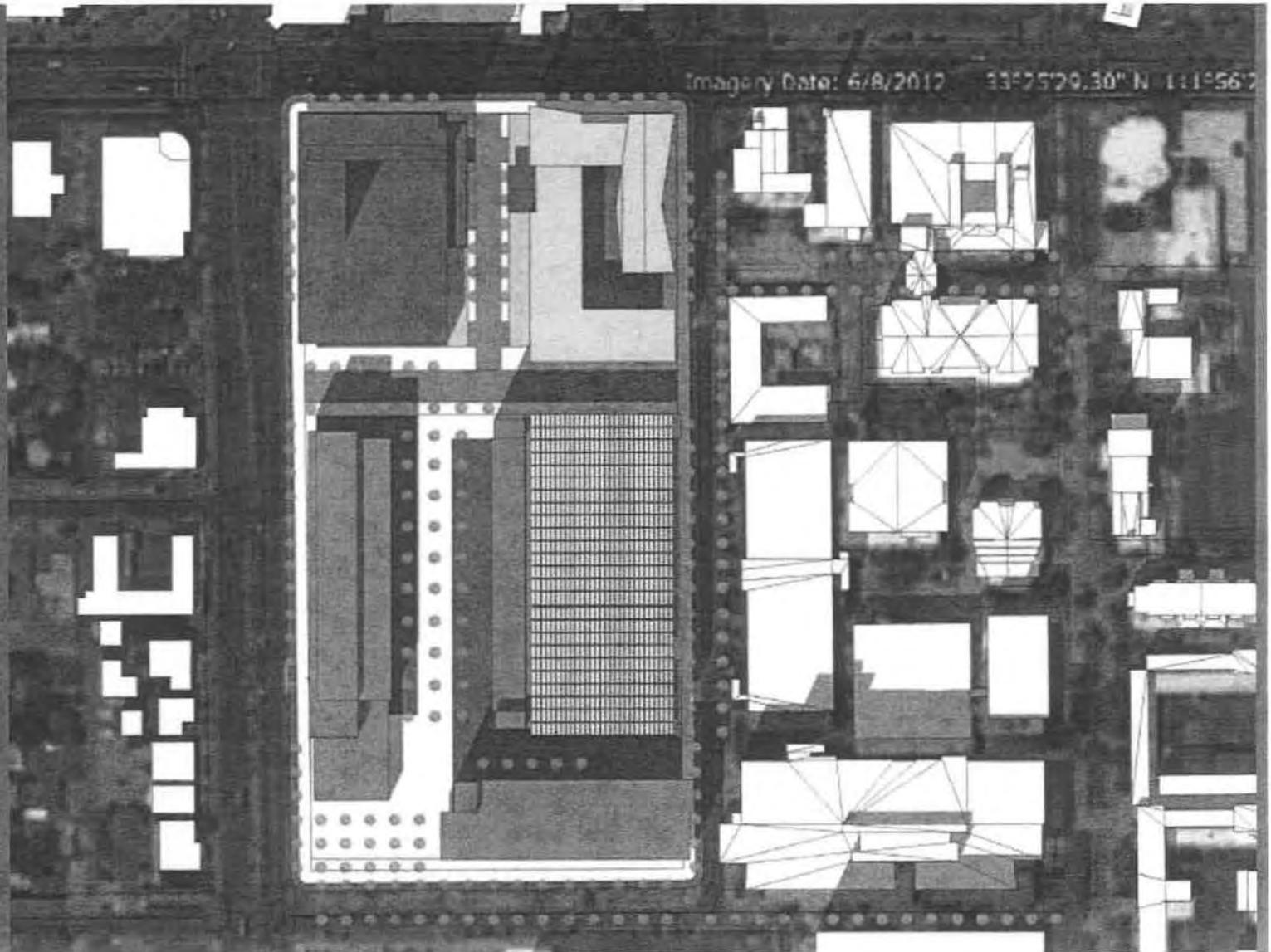
Mirabella Portland



Trinity Terrace Fort Worth



Tempe Center Master Plan



Senior Living is Changing

- Seniors today are pro-active “planners” charting out the next 30 years
- Desiring to “age-in-place” within an active and supportive environment
- Intersection of real estate/healthcare/hospitality

Benefits to ASU

- Strengthens engagement with alumni and friends
- Extends research and service mission to the broader community
- Attracts younger, vibrant and affluent residents for longer-term stay and ASU affinity
- Collaborates with residents to become partners in grant studies and programs
- Provides financial returns with little debt and maximum cash flow

Emerging Role of Universities in Lifelong Learning Communities

- Provides lifelong learning opportunities
- Gives access to on-campus cultural, social, and sports activities
- Creates an environment to remain mentally active
- Residents act as academic advisors and mentors for university spin-outs and teaching
- Advances research initiatives that contribute to life-cycle wellness
- Builds a strong base of alumni, employees, and friends
- Supports financial/estate planning and philanthropy

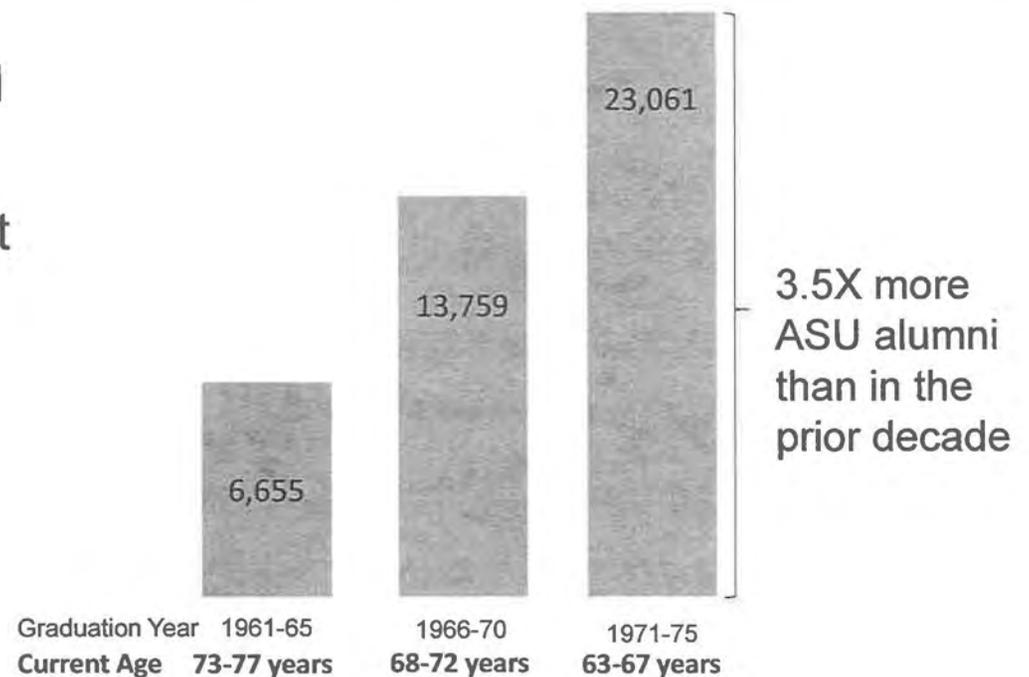
ASU Collaboration Opportunities

- Mayo Clinic/Medallion Program
- ASU/Mayo Medical School Partnership
- ASU College of Nursing & Health Innovation
- Osher Lifelong Learning Institute
- ASU Mary Lou Fulton Teachers College/Early Childhood Education
- Herberger Institute for Design & the Arts
- School of Nutrition & Health Promotion
- Office of Knowledge Enterprise Development



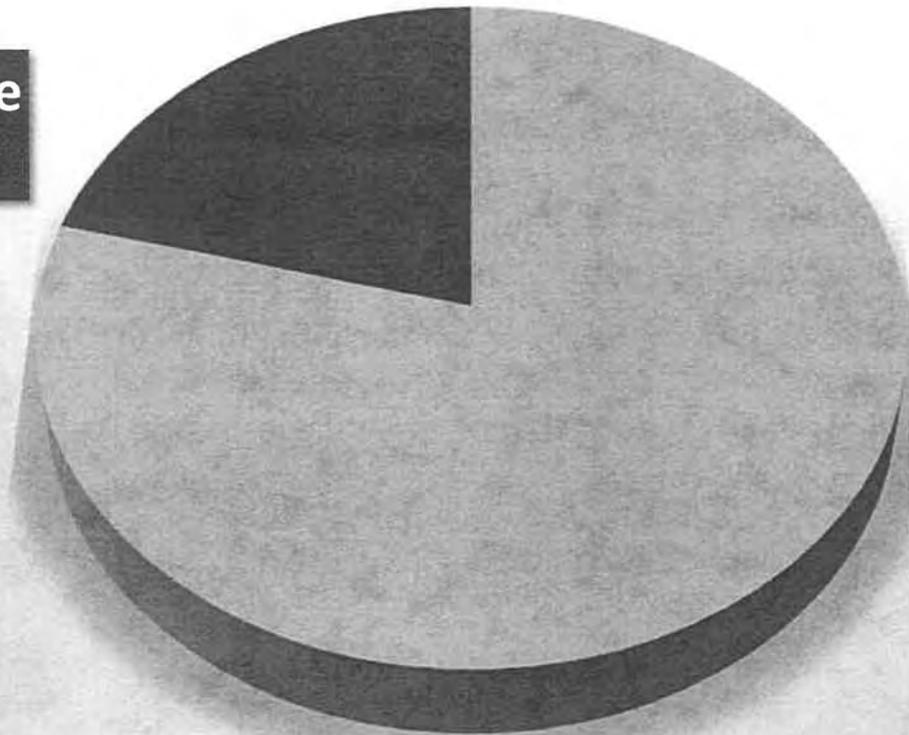
Alumni Connections

- Attract ASU alumni base as potential residents
- Create an environment for significant individual and family philanthropic funding
- Integrate more deeply with ASU



Proposed Unit Mix

Assisted care
20%



Apartment homes
80%

Questions?



Lifelong Learning Center

Tempe, Arizona



FAC Exhibit 2

Option to Lease and Escrow Instructions for a Portion of
Block 22 with Exhibits

**OPTION TO LEASE
AND ESCROW INSTRUCTIONS
FOR A PORTION OF BLOCK 22**

Between

ARIZONA BOARD OF REGENTS,
a body corporate, for and on behalf of Arizona State University

and

OMNI TEMPE, LLC, a Delaware limited liability company

Dated February 28, 2018

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**OPTION TO LEASE
AND ESCROW INSTRUCTIONS
FOR A PORTION OF BLOCK 22**

THIS OPTION TO LEASE AND ESCROW INSTRUCTIONS FOR A PORTION OF BLOCK 22 (this “**Agreement**”) is dated as of February 28, 2018 (“**Effective Date**”), and entered into by and between ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University (“**ASU**”), and OMNI TEMPE, LLC, a Delaware limited liability company (“**Omni**”).

RECITALS

A. ASU is the owner of certain real property described on **Exhibit A-1** attached hereto, but excluding any portion thereof previously dedicated or conveyed (the “**Block 22**”) located in the City of Tempe (the “**City**”) and bounded on the north by University Drive, on the south by 9th Street, on the west by Mill Avenue and on the east by Myrtle Avenue, and is part of ASU’s Tempe campus (the “**Campus**”).

B. ASU has agreed to grant Omni the option to execute a lease for a portion of Block 22 consisting of approximately 1.6 acres and generally located on the southeast corner of Block 22 and legally described on **Exhibit A-2** attached hereto (the “**Property**”).

C. If Omni exercises its option and leases the Property, it will develop and operate a hotel and conference center, and other ancillary improvements serving the same such as parking facilities, driveways, and loading docks (the “**Hotel/CC**”). The permitted uses and prohibited uses of the Property will be set forth in the Project Lease and the Declaration each described in more detail below.

D. ASU has leased a portion of Block 22 (the “**Mirabella Parcel**”) to Mirabella at ASU, Inc., an Arizona nonprofit corporation (“**MAT**”) for development by MAT of a lifelong learning campus that will be marketed initially to active seniors, including without limitation, Arizona State University alumni, faculty and staff, and other ancillary improvements serving the same such as parking facilities, driveways, and loading docks (the “**Mirabella Project**”), and has entered into the following agreements (the “**Block 22 Documents**”), with the intent to develop Block 22 in an integrated fashion with certain improvements benefitting both the Mirabella Project and the Hotel/CC:

(1) Development Administrative Services Agreement, dated December 20, 2017, executed by and between ASU and MAT, as evidenced by Memorandum of Development Administrative Services Agreement, dated December 20, 2017, and recorded December 20, 2017 as Instrument No. 20170942793, records of Maricopa County, Arizona, executed by and between ASU and MAT (collectively, the “**Development Agreement**”);

(2) Construction License Agreement, dated December 20, 2017, executed by and between ASU and MAT (the “**Construction License**”);

(3) Declaration of Easements and of Covenants, Conditions, and Restrictions (Block 22 and Block 27), dated December 20, 2017 and recorded December 20, 2017 as Instrument No. 20170942790, records of Maricopa County, Arizona, executed by ASU (the “**Declaration**”);

(4) Declaration of Use Restrictions (Block 22), dated December 20, 2017 and recorded December 20, 2017 as Instrument No. 20170942789, records of Maricopa County, Arizona, executed by ASU (the “**Use Restrictions**”); and

(5) Non-Exclusive Access, Use and Maintenance Easement, dated December 20, 2017 and recorded December 20, 2017 as Instrument No. 20170942792, records of Maricopa County, Arizona, executed by ASU (the “**Access Easement**”).

E. A site plan for Block 22 (the “**Site Plan**”) is attached hereto as **Exhibit B** showing the boundaries of (1) the Property, (2) the Mirabella Parcel and (3) the Common Areas (as defined in the Declaration). ASU shall have the right to modify, in its sole discretion, the Site Plan from time to time for portions of Block 22 not included in the Property, provided that any material modification to Common Areas shall be subject to Omni’s prior written approval, which will not be unreasonably withheld, conditioned or delayed.

F. ASU agrees to construct, at its expense, a shared-use parking structure (the “**Parking Structure**”) located on a portion of Block 27, which is located directly south of Block 22 (“**Block 27**”) for use by ASU, Omni and, at ASU’s option, other owners and occupants of Block 22 and Block 27 and the general public.

G. The City of Tempe and Omni enter into that certain Development Agreement, dated as of January 11, 2018 (the “**Tempe Development Agreement**”), pursuant to which the City of Tempe will, contingent upon the execution of this Agreement and a ground lease for the Property, provide Omni certain economic incentives for the Project in exchange for certain public benefits and use restrictions.

NOW THEREFORE, intending to be legally bound, for valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

ARTICLE 1 GRANT OF OPTION

1.1 Effectiveness of Agreement. This Agreement shall be effective when both ASU and Omni have executed and delivered this Agreement to the other party.

1.2 Option. In consideration of the terms and conditions set forth in this Agreement, and subject to performance and satisfaction in all material respects by Omni of the covenants, terms and conditions set forth in this Agreement, ASU hereby grants to Omni an exclusive right and option (the “**Option**”) to lease the Property, and Omni hereby accepts such right and such

grant of such Option subject to the terms and conditions of this Agreement. Omni must exercise the Option to lease the Property, if at all, no later than four hundred fiftieth (450th) day following after the Effective Date, as may be extended pursuant to the terms hereof (the “**Outside Exercise Date**”).

1.3 Exercise of Option. If Omni desires to exercise its Option to lease the Property in accordance with this Agreement (and provided that all conditions to the exercise of such Option have been satisfied or waived pursuant to Article 5), Omni shall notify ASU in writing (such written notice being referred to herein as the “**Notice of Exercise**”), which Notice of Exercise must be given no later than the Outside Exercise Date, as may be extended pursuant to the terms hereof. The date the Notice of Exercise is given by Omni shall be the “**Exercise Date.**”

1.4 Termination of Option. If Omni fails to exercise its Option to lease the Property by the Outside Exercise Date, or having exercised its Option to lease the Property, fails to execute and deliver a ground lease for the Property, or fails to satisfy any other condition required for the Closing to occur, this Agreement (and all provisions that do not expressly survive the termination of this Agreement) shall terminate. If this Agreement is terminated for any reason, including on account of Omni’s failure to satisfy any other condition required for the execution of a ground lease for the Property by the Closing Date, Omni shall be entitled to receive a refund of the Option Deposit without further authorization or approval of ASU, unless this Agreement is terminated by ASU pursuant to Section 5.4 (for the avoidance of doubt, only after Omni’s exercise of the Option) or Section 9.1, in which case ASU shall be entitled to receive the Option Deposit.

1.5 Adjustment of the Property Boundary. Prior to the expiration of the Site Inspection Period, Buyer may propose to Seller an adjustment to the southern boundary of the Property in order to reduce the size of the Property. Any proposed adjustment to the Property boundary shall be in writing and shall be accompanied by the proposed Property description and a site plan depicting the proposed Property boundary and the portion of Block 22 described on **Exhibit A-2** to this Agreement that would no longer be included in the Property if the boundary is adjusted (the “**Excluded Parcel**”). Any adjustment to the Property boundary shall be subject to ASU’s prior written approval, which approval shall not be unreasonably withheld. Without limiting the foregoing, ASU may withhold its approval if the Excluded Parcel is not of a size or configuration that is useable by ASU. If ASU approves an adjustment to the Property boundary, (a) the parties shall execute an amendment to this Agreement replacing **Exhibit A-2** with the new Property description, and (b) certain of the Block 22 Documents may need to be amended to reflect that Block 22 will include three (3) parcels, which amendments will require the approval of MAT. If the parties have not agreed on an adjustment to the Property boundary by the expiration of the Site Inspection Period, the Property shall be the property described on **Exhibit A-2** to this Agreement.

ARTICLE 2 OPTION DEPOSIT AND LAND LEASE PAYMENT

2.1 Option Deposit. On or before the third (3rd) Business Day following the Effective Date, Omni shall pay to Escrow Agent the sum of Two Hundred Fifty Thousand Dollars (\$250,000) (together with any interest earned thereon, the “**Option Deposit**”) by check or wire

transfer of immediately available funds. If the Closing occurs, the Option Deposit shall be applied to the Pre-Paid Rent.

2.2 Option Fee. On or before the third (3rd) Business Day following the Effective Date, Omni shall pay to ASU the sum of One Thousand Dollars (\$1,000) (the "**Option Fee**") as independent consideration for ASU's agreement to lease the Property, the sufficiency of which is hereby acknowledged. The Option Fee shall be non-refundable to Omni under any circumstances other than a termination on account of a default by ASU.

2.3 Pre-Paid Rent. At the Closing, Omni shall deposit in Escrow the Pre-Paid Rent, less the Option Deposit. All payments that Omni is required to make under this Section shall be made by cashier's check payable to Escrow Agent or by wire transfer of ready funds to the account of Escrow Agent.

2.4 Investment of Deposited Funds. All funds deposited by Omni with Escrow Agent pursuant to this Agreement shall be invested by Escrow Agent in such interest-bearing investments in federally insured institutions as may be directed from time to time by Omni, and for which Omni shall pay any applicable fees. All earnings on such invested funds while the same are deposited with Escrow Agent shall belong to the party receiving said funds pursuant to the terms of this Agreement (provided that at Closing, if Closing occurs, Omni shall receive a credit toward the Pre-Paid Rent in the amount of the accrued interest).

ARTICLE 3 ESCROW

3.1 Establishment of Escrow; Escrow Instructions. An escrow for this transaction shall be established with First American Title Insurance Company, 2425 East Camelback Road, Suite 300, Phoenix, AZ 85016, Attention Carol Peterson and Brandon Grajewski ("**Escrow Agent**") and in its capacity as the underwriter (the "**Title Insurer**"), and Escrow Agent is engaged to administer the escrow. Immediately upon execution of this Agreement by both parties, Omni will deliver a fully executed copy of this Agreement to Escrow Agent. Upon the Notice of Exercise being given in a timely fashion by Omni, this Agreement shall serve as the instructions to the Escrow Agent for consummation of the leasehold transaction as to the Property. ASU and Omni agree to execute such additional and supplementary escrow instructions as may be appropriate to enable the Escrow Agent to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any standard form escrow instructions, the terms of this Agreement shall control.

3.2 Acceptance; Escrow Agent Not a Party. By accepting this escrow, Escrow Agent agrees to be bound by the terms of this Agreement as they relate to the duties of Escrow Agent. However, such agreement does not constitute Escrow Agent as a party to this Agreement and no consent or approval from Escrow Agent shall be required to amend, extend, supplement, cancel or otherwise modify this Agreement except to the extent any such action increases the duties of Escrow Agent or exposes Escrow Agent to increased liability, in which such action shall not be binding on Escrow Agent unless Escrow Agent has consented to the same in writing.

3.3 IRS Reporting. Escrow Agent agrees to be the designated “reporting person” under §6045(e) of the U.S. Internal Revenue Code of 1986 as amended (the “Code”) with respect to the real estate transaction described in this Agreement and to prepare, file and deliver such information, returns and statements as the U.S. Treasury Department may require by regulations or forms in connection with such requirements, including Form 1099-B.

ARTICLE 4

INFORMATION REGARDING PROPERTY

4.1 Information and Other Items to be Provided to Omni.

(a) Omni acknowledges that ASU has made, or will make available to Omni, access to certain materials and information relating the Property. After the Effective Date, ASU shall make available to Omni additional materials in the possession or control of ASU’s Real Estate Development Office related to the Property identified on **Exhibit C** or that Omni may reasonably request in writing, provided that (i) Omni identifies with specificity the requested materials (i.e., Omni may not identify “all documents in ASU’s possession related to the Property”), (ii) the requested materials are not proprietary, privileged or confidential, and (iii) ASU shall not be required to incur any fees or costs in providing the requested materials (other than duplicating costs if applicable). The information and materials made available to Omni pursuant to the preceding two sentences are referred to as the “**Due Diligence Materials**”. Omni acknowledges that any Due Diligence Materials which Omni has received or may receive from ASU or ASU’s agents are furnished on the express condition that ASU does not warrant or represent to Omni the accuracy, sufficiency or completeness of the matters contained or depicted in any Due Diligence Materials. If this Agreement terminates pursuant to the terms hereof any Due Diligence Materials in Omni’s possession will be promptly returned to ASU, and such provision shall survive the termination of this Agreement.

(b) Within fifteen (15) days following the Effective Date, Escrow Agent shall provide to Omni and ASU a current preliminary title report or commitment for title insurance (the “**Title Report**”) for the Property prepared by Escrow Agent showing the status of title to the Property as of the date of the Title Report and accompanied by the most legible copies available of all documents referred to in the Title Report.

4.2 Information and Other Items to be Obtained by Omni.

(a) Following receipt of the same, Omni shall provide promptly to ASU, at no cost to ASU, copies of all feasibility studies, reports, surveys, assessments prepared by third-parties for Omni in connection with its investigation, inspection and review and condition of the Property and pertaining in whole or in part to the Property and any plans and specifications relating to utilities or other off-site improvements to be constructed in whole or in part on or for the benefit of the Property (the “**Omni Materials**”), but excluding therefrom any confidential, privileged or proprietary information and the Hotel Plans (as defined below), which shall be governed by Section 5.5 below. Omni shall request that the third party preparer of any Omni Materials allow ASU to rely on such Omni Materials (or shall have the Omni Materials addressed and/or issued jointly to ASU

and Omni), provided that in no event shall Omni be required to incur any additional cost or expense as a result of such reliance. Omni does not warrant or represent to ASU the accuracy, sufficiency or completeness of the matters contained or depicted in any Omni Materials. The provisions of this paragraph shall survive the termination of this Agreement.

(b) Without limiting the provisions of Section 4.2(a), promptly following the Effective Date and prior to the exercise of the Option for the Property, Omni shall obtain a current survey (the “**Survey**”) of the Property prepared by a civil engineer licensed in Arizona. The Survey will be an ALTA/NSPS survey, showing (i) all easements, encroachments, and other encumbrances of record affecting the Property as required by Escrow Agent to issue the Title Policy, (ii) the boundaries of the Property, and (iii) the gross square footage of the Property. The Survey will be certified to be accurate, complete and correct to Omni, ASU and Escrow Agent. The cost of the Survey and all updates thereto will be paid by Omni.

4.3 Right to Enter and Inspect the Property.

(a) During the period from the date of execution of this Agreement by Omni and ASU until the earlier of (i) the Closing, or (ii) termination of this Agreement, ASU grants Omni and all Omni’s representatives, agents, contractors and consultants (“**Consultants**”) the non-exclusive right and license to enter upon the Property (the “**Right of Entry**”) for the purposes of investigating and inspecting the Property and conducting tests, studies, assessments and analyses. All inspections, tests, examinations, surveys, and other activities performed by Omni on the Property shall be performed in accordance with applicable present and future federal, state, and local laws, statutes, rules, regulations, and ordinances, including, but not limited to zoning ordinances, and building codes; access, health, safety, environmental, and natural resource protection laws and regulations; and all other applicable laws (“**Legal Requirements**”). ASU shall notify Omni of any policies or procedures relating to the entry onto the Property and Omni shall comply with the same. Omni acknowledges that ASU has active and ongoing presence and operations on the Property. Accordingly, Omni shall not unreasonably disturb ASU or any tenants or occupants of the Property. Omni shall not conduct any invasive testing without notifying ASU in writing and allowing representatives of ASU to be present when such testing is performed. Omni, at its expense, shall reasonably repair any damage to the Property caused by Omni, or its agents, contractors or employees, arising out of this Right of Entry, and restore the Property to substantially the same condition it was in prior to the occurrence of damage. Omni shall cause its Consultants to execute and deliver to ASU such waivers of liability and evidence of insurance as ASU may reasonably request as to exercising its Right of Entry.

(b) Omni acknowledges that MAT is presently constructing the Mirabella Project on the Mirabella Parcel and certain Common Area Improvements (as defined in the Development Agreement) on other portions of Block 22 and Block 27. The Construction License allows MAT to use the Property for certain uses related to construction of the Mirabella Project and the Common Area Improvements as

specifically described in the Construction License. Upon execution of the Project Lease, MAT's use of the Property shall be limited to activities necessary to construct the Common Area Improvements thereon. Omni shall coordinate its entry on the Property with MAT and its contractors and shall use commercially reasonable efforts not to disturb MAT's construction of the Common Area Improvements.

4.4 Pre-Paid Rent. ASU has obtained appraisal(s) for the Property valuing the Property as if a fee interest therein were being sold to a third party in an arm's length transaction for its highest and best use. Based on such appraisal(s) ASU has set the value of the Property for purposes of this Agreement and the Pre-Paid Rent, which shall be \$85 per square foot of the Property (the "**Per Square Foot Price**"). Upon receipt of the Survey, ASU shall calculate the "**Pre-Paid Rent**" by multiplying the Per Square Foot Price by the gross square footage of the Property as shown on the Survey. If the Property boundary is adjusted pursuant to Section 1.5, the Pre-Paid Rent shall be reduced accordingly.

ARTICLE 5 CONDITIONS TO EXERCISE OF OPTION AND CLOSING

5.1 Omni Conditions to Exercise of Option. Omni's ability to exercise its Option to lease the Property shall be subject to its satisfaction of the following conditions on and as of the Outside Exercise Date (or such earlier date as may be set forth below):

(a) Title Review. Omni is satisfied with the status of title to the Property as disclosed by the Title Report and the Survey. In that regard:

(i) Omni shall have until the sixtieth (60th) day following the date that it has received both the Title Report and the Survey, but in no event later than one hundred eighty (180) days following the Effective Date (the "**Review Period**") in which to review and to give ASU and Escrow Agent written notice (a "**Disapproval Notice**") of any survey matters or title exception, requirement of Omni which is unacceptable to Omni, in Omni's sole and absolute discretion (each such matter or exception, a "**Disapproved Matter**"). If, prior to Closing, Escrow Agent issues a supplemental or amended title report (an "**Amended Title Report**"), including the amendment to identify the legal description of the Property and to incorporate any exceptions based on the Survey, Omni shall have a period of time equal to the later of (i) fifteen (15) Business Days from the date of receipt of the Amended Title Report and a legible copy of each document referred to therein or (ii) the expiration of the Review Period in which to give a Disapproval Notice as to any newly identified exceptions or survey matters not caused or created by Omni and that would have a material adverse impact on Omni's development plans for the Property. If Omni does not object to a Survey matter or an exception to title or requirement as disclosed by the Title Report or an Amended Title Report or the Survey within the applicable time period, such matter or exception shall be deemed to have been approved by Omni.

(ii) If Omni gives a timely Disapproval Notice, then ASU may, at its option, but without obligation to do so, attempt to remove the Disapproved

Matters or obtain title insurance endorsements satisfactory to Omni against such Disapproved Matters. If ASU does not remove such Disapproved Matters to Omni's satisfaction on or before the fifteenth (15th) Business Day following a Disapproval Notice (a "**Cure Period**"), then, at Omni's election, given on or before five (5) Business Days after the expiration of the Cure Period, Omni, at its sole option, may either terminate this Agreement by written notice to ASU (in which case the Option shall be deemed revoked if exercised prior to such termination), or Omni may waive such unresolved Disapproved Matters. If Omni does not notify ASU in writing of its election to cancel this Agreement within the time frame referenced above, Omni will be deemed to have waived such unresolved Disapproved Matters.

(iii) The matters shown in the Title Report and Survey and in any Amended Title Report or Amended Survey that are approved or deemed approved by Omni in accordance with this Section 5.1(a), any matters created by Omni, and any other matters approved by Omni in writing, are referred to in this Agreement as the "**Approved Title Exceptions**."

(iv) Notwithstanding the foregoing, ASU shall deliver leasehold title to the Property free and clear of any monetary lien on the Property (other than any liens to be created by pursuant to the Project Lease, the Declaration, the Parking Agreement or any other document to be recorded pursuant to this Agreement) and any right of first refusal, right of first offer and options signed by ASU or its authorized officers or agents (other than this Agreement).

(v) Except as expressly contemplated in this Agreement, following the execution of this Agreement, ASU will not record any documents with respect to the Property that will continue in effect following the Closing without the prior written consent of Omni, which consent will not be unreasonably withheld, conditioned or delayed.

(b) Omni's Investigations. Omni shall use good faith, commercially reasonable efforts to complete its site inspection and other on-site diligence of the Property (which shall include obtaining environmental and geotechnical reports) by the date that is ninety (90) days following the Effective Date (the "**Site Inspection Period**"). If Omni is not satisfied with Omni's investigations and inspections with respect to the Property and this transaction, it may cancel this Agreement by written notice to ASU prior to the expiration of the Site Inspection Period. However, until Omni exercises its right to cancel, Omni will proceed in good faith with Omni's preliminary investigatory steps with respect to this transaction. Notwithstanding the foregoing, ASU acknowledges that Omni has the right to not exercise its option pursuant to Section 1.3 and that if Omni does not exercise (or is deemed not to have exercised) the Option, the Option Deposit shall be returned to Omni in accordance with Section 1.4 without further authorization or approval by ASU and Omni shall have no further obligations under this Agreement except for those that expressly survive the termination.

(c) Waterline Relocation. ASU, at its expense, shall relocate the waterline bisecting the Property to the location generally depicted on that certain Mirabella at ASU Irrigation Relocation Plan Project No. 152610 dated November 9, 2017. ASU shall be entitled to retain any reimbursements payable by the City on account of such relocation.

If either of the foregoing conditions are not fulfilled on or before the applicable date set forth above and such condition has not otherwise been waived by Omni in writing, in the exercise of its sole discretion, Omni may terminate this Agreement by written notice to ASU. If Omni terminates this Agreement pursuant to this Section 5.1, then the Option Deposit shall be returned to Omni without further authorization or approval of ASU.

5.2 Joint Conditions to Exercise of Option. Omni's ability to exercise its Option to lease the Property shall be subject to its satisfaction of the following conditions benefitting both parties:

(a) Transaction Documents. Omni and ASU shall have agreed upon the form of the following documents:

(i) a parking easement agreement (the "**Parking Agreement**") whereby ASU agrees to construct the Parking Structure. The Parking Agreement shall include, among other provisions, the material terms set forth on **Exhibit F**; and

(ii) a license agreement (the "**Construction License**") granting Omni the right to (i) stage construction on certain portions of Block 22 not leased to Omni or the LLP Developer, and/or 9th Street in locations to be designated in the Construction License and (ii) swing cranes over certain portions of Block 22 not leased to Omni and/or 9th Street, Myrtle Avenue and Block 27 in locations to be designated in the Construction License. The Construction Staging License will be subject to Omni's obligation to maintain insurance, and to indemnify ASU from claims and repair damage caused by Omni's use of the license property.

ASU and Omni shall use good-faith, commercially reasonable efforts to reach agreement on the documents described in this Section 5.2(b) (the "**Transaction Documents**") on or before the expiration of the Site Inspection Period. Agreement to such Transaction Documents shall be evidenced by an amendment to this Agreement signed by the parties, which shall have attached to it the agreed-upon forms of Transaction Documents. If the parties have not reached agreement on the Transaction Documents on or before the expiration of the Site Inspection Period, and such condition has not otherwise been waived by both Omni and ASU in writing, each in the exercise of its sole discretion, either party may terminate this Agreement by written notice to the other party until such time as the parties have agreed to the same. If either party elects to terminate this Agreement within the time period specified but the other party elects to waive the condition, then the election to terminate shall govern and control. If this Agreement is terminated pursuant to this Section 5.2(a), the Option Deposit shall be returned to Omni without further authorization or approval of ASU.

(b) ASU Approval of Hotel/CC Improvements.

(i) ASU shall have approved plans for the improvements to be constructed on the Property (the “**Hotel/CC Improvements**”) on or before the Outside Exercise Date. Such plans shall include, without limitation, (i) a site plan for the Property showing, without limitation, building locations and entrances to and exits from the Property, (ii) exterior elevations for the improvements to be constructed by Omni on the Property and, if applicable, pursuant to the Development Agreement, (iii) and interior layout showing the entrances to the Hotel/CC and the layout and layout of the lobby, Conference Center and ASU Boardroom (as defined in the Lease), and (iv) the exterior building materials and color schemes (collectively the “**Approval Items**”). The Plans shall be prepared in stages, as follows:

(A) a concept design for the Hotel/CC Improvements (the “**Concept Plan Package**”), containing substantially similar level of detail set forth on **Exhibit E-1**;

(B) schematic design plans for the Hotel/CC Improvements (the “**SD Plan Package**”), containing substantially similar level of detail set forth on **Exhibit E-2**, which shall identify any changes from the approved Concept Plan Package;

(C) design and drawing plans for the Hotel/CC Improvements (the “**DD Plan Package**”, and together with the Concept Plan Package and the SD Plan Package, shall each be referred to as a “**Plan Packages**” and collectively as the “**Plan Packages**”), which shall identify any changes from the approved SD Plan Package and contain a sufficient level of detail for the City to issue permits for construction of the Hotel/CC Improvements to commence following its approval thereof.

(ii) Omni shall endeavor to submit the Plan Packages to ASU on or before the following dates:

(A) Concept Plan Package: on or before the ninety (90th) day following the Effective Date;

(B) SD Plan Package: on or before the one hundred fiftieth (150th) day following the Effective Date; and

(C) DD Plan Package: on or before the three hundred sixty fifth (365th) day following the Effective Date.

(iii) ASU shall endeavor to review each Plan Package and respond to Omni in writing by the tenth (10th) Business Day following each submittal by Omni. Unless approved by ASU in writing, Omni will not incur any costs on any Plan Package that would be subject to reimbursement under Section 5.5 until ASU has approved the Plan Package for the prior phase in writing.

(iv) ASU's approval of the Concept Plan Package shall not be unreasonably withheld, conditioned or delayed. ASU shall not unreasonably withhold its approval of the SD Plan Package and/or the DD Plan Package so long as there have not been any material modifications, alterations or additions to the Approval Items. Once approved by ASU, no material changes to the DD Plan Package shall be permitted without ASU's approval (which approval shall not be unreasonably withheld, conditioned or delayed) in accordance with this Section or, following the Closing, the Project Lease.

(v) The Hotel/CC Improvements shall be designed to meet minimum standards for silver certification for "Leadership in Energy and Environmental Design" ("**LEED Silver Certification**") according to the applicable criteria of the U.S. Green Building Council. Along with the DD Plan Package, Omni shall provide to ASU a LEED scorecard and a narrative on how the design and/or construction will meet the LEED credit criteria for LEED Silver Certification. Without limiting the provisions of this Section, ASU may withhold its approval of any Plan Package if the Hotel/CC Improvements as depicted therein fail to meet LEED Silver Certification. Following completion of the Hotel/CC Improvements, Omni shall provide to ASU an updated LEED scorecard and a narrative on how the design and/or construction met the criteria for LEED Silver Certification. The provisions of this paragraph shall survive Closing.

If ASU has not approved all Plan Packages in writing by the Outside Exercise Date, and such condition has not otherwise been waived by both Omni and ASU in writing, each in the exercise of its sole discretion, either party may terminate this Agreement by written notice to the other party until such time as ASU has approved the same. If either party elects to terminate this Agreement within the time period specified but the other party elects to waive the condition, then the election to terminate shall govern and control. If this Agreement is terminated pursuant to this Section 5.2(b), the Option Deposit shall be returned to Omni without further authorization or approval of ASU.

(c) Entitlements. The joint City/ASU Review Commission (the "**JRC**") shall have approved a development plan review application (the "**DPR Application**") for the Hotel/CC Improvements.

(i) On or before the one hundred eightieth (180th) day following the Effective Date (the "**DPR Submittal Deadline**"), Omni shall submit a the DPR Application for the Hotel/CC Improvements to the JRC, and thereafter shall use commercially reasonable efforts to obtain the necessary JRC approvals. Notwithstanding the foregoing, neither the DPR Application nor any other requests for entitlement shall be submitted to the joint City/ASU Review Commission (the "**JRC**") and/or the City without ASU's prior written approval thereof. If Omni fails to submit the DPR Application to the JRC by the DPR Submittal Deadline, ASU may give Omni notice and Omni shall have thirty (30) days following such notice to submit the DPR Application before ASU shall have the right to exercise any remedies under this Section.

(ii) On or before the Outside Exercise Date (the “**Entitlement Deadline**”) the JRC shall have approved the DPR Application and Omni shall have obtained all entitlements and approvals required for the City to issue permits for commencement of construction of the Hotel/CC Improvements (“**Hotel/CC Approvals**”). All Hotel/CC Approvals must be obtained by the Entitlement Deadline.

If Omni has not (I) submitted the DPR Application to the JRC by the thirtieth (30th) day following the notice delivered pursuant to **Section 5.2(c)(i)** above, or (II) obtained all Hotel/CC Approvals by the Entitlement Deadline, or such condition(s) has not otherwise been waived by both Omni and ASU in writing, each in the exercise of its sole discretion, either party may terminate this Agreement by written notice to the other party until such time as the DPR Application is submitted to the JRC or the Hotel/CC Approvals are obtained, as applicable. If either party elects to terminate this Agreement within the time period specified but the other party elects to waive the condition, then the election to terminate shall govern and control. If this Agreement is terminated pursuant to this Section 5.2(c), the Option Deposit shall be returned to Omni without further authorization or approval of ASU.

(d) ABOR Approval of the Parking Area. On or before three hundred (300th) day after the Effective Date (the “**Parking Approval Deadline**”), ASU shall have obtained ABOR approval for construction of the Parking Structure (the “**Parking Approval**”) to the extent it includes parking for other than the Hotel/CC. If ASU has not obtained the Parking Approval by the Parking Approval Deadline, and such condition has not otherwise been waived by both Omni and ASU in writing, each in the exercise of its sole discretion, either party may terminate this Agreement by written notice to the other party until such time as the Parking Approval is obtained. If either party elects to terminate this Agreement within the time period specified but the other party elects to waive the condition, then the election to terminate shall govern and control. If this Agreement is terminated pursuant to this Section 5.2(d), the Option Deposit shall be returned to Omni without further authorization or approval of ASU.

5.3 Conditions to Omni’s Obligation to Close. Omni’s obligation to Close following its exercise of the Option is subject to the satisfaction of the following conditions on and as of the Closing:

(a) Escrow Agent Prepared to Close and Issue Title Policy. Escrow Agent is prepared to close the transactions contemplated by this Agreement and Title Insurer is unconditionally and irrevocably prepared to issue a Title Policy in the form required by this Agreement.

(b) Truthfulness of Representations. ASU’s representations and warranties set forth in this Agreement are true, complete and correct on and as of the Closing.

(c) Default. ASU shall not be in default in any material respect under this Agreement or the Transaction Documents.

If any of the foregoing conditions is not fulfilled on or before the Closing Date and such condition has not otherwise been waived by Omni in writing in the exercise of its sole discretion, Omni may, in addition to any right or remedy otherwise available to Omni in the event of a default terminate this Agreement by written notice to ASU. If this Agreement is terminated pursuant to this Section 5.3, the Option Deposit shall be returned to Omni without further authorization or approval of ASU, and, if applicable, Omni shall be entitled to the remedies set forth (i) in Section 9.2(b) if this Agreement is terminated on account of a default by ASU, and (ii) in the second to the last paragraph of Section 7.1 if the Agreement is terminated on account of a breach of the representation in Section 7.1(d).

5.4 Conditions to ASU's Obligation to Close. ASU's obligation to Close following Omni's exercise of the Option is subject to the satisfaction of the following conditions on and as of the Closing, unless an earlier date is specified:

(a) Truthfulness of Representations. Omni's representations and warranties set forth in this Agreement are true, complete and correct in all material respects on and as of the Closing.

(b) Default. Neither Omni nor any permitted assignee shall be in default in any material respect under this Agreement or the Transaction Documents.

If any of the foregoing conditions is not fulfilled on or before the Closing Date and such condition has not otherwise been waived by ASU in writing in the exercise of its sole discretion, ASU may terminate this Agreement by written notice to Omni. If this Agreement is terminated pursuant to this Section 5.4, ASU shall be entitled to retain the Option Deposit subject to Section 9.1(b).

5.5 Legal Challenge Condition.

(a) If following the Effective Date and prior to the Closing a complaint is filed or threatened by a third party other than ASU, Omni or the City (a "**Third Party**") or a demand letter or a notice of claim is submitted to ASU or the City by a Third Party and such complaint, threat, demand letter or notice of claim challenges the legality of this Agreement or the Tempe Development Agreement under applicable laws (a "**Legal Challenge**"), the party receiving notice of such Legal Challenge shall promptly notify the other party in writing, and ASU and Omni shall meet and confer as to the appropriate action with respect to such Legal Challenge. Following its consultation with Omni and without limiting the foregoing, ASU may, at any time after a Legal Challenge occurs and from time to time thereafter, choose to (a) defend such action as it relates to this Agreement (or take no further action if the City elects to defend the Tempe Development Agreement) or (b) terminate this Agreement. ASU may elect either item (a) or item (b) under the preceding sentence and later elect a different option by written notice to Omni. If ASU elects item (a), (i) the Outside Exercise Date and the Parking Approval Deadline (if such deadline has not occurred prior to the Legal Challenge) shall be tolled until the Legal Challenge is resolved to ASU's satisfaction, and (ii) ASU may instruct Omni by written notice to either (A) continue preparation of the Plan Packages or (B) cease preparation of the Plan Packages until the Legal Challenge is resolved to ASU's

satisfaction (such notice being referred to as a “**Stop Design Notice**”), in which event the Site Inspection Period, the DPR Submittal Deadline and the Entitlement Deadline (if such deadlines have not occurred prior to the Legal Challenge) shall be tolled until the Legal Challenge is resolved to ASU’s satisfaction. If a Legal Challenge is not resolved on or prior to twenty four (24) months after the date notice of a Legal Challenge is received, Omni shall have the right to terminate this Agreement, by written notice to ASU.

(b) ASU acknowledges that Omni will incur actual out-of-pocket costs to third parties related to preparation of the Plan Packages (the “**Design Costs**”) prior to the exercise of the Option. If this Agreement is terminated solely pursuant to this Section 5.5, (A) the Option Deposit shall be returned to Omni without further authorization or approval of ASU and (B) ASU agrees to reimburse Omni for all Design Costs that it has incurred or irrevocably committed to incur as of the date of such termination in an amount not to exceed \$2,000,000; provided, that ASU shall not be liable for any Design Costs incurred after a Stop Design Notice or a termination notice under this Section 5.5 other than for Design Costs Omni already committed to incur; provided Omni shall use commercially reasonable efforts to work with its contractors to prevent any such Design Costs from being incurred after receipt of such Stop Design Notice or termination. ASU shall not have any obligation to reimburse Omni for any Design Costs if this Agreement is terminated for any reason other than a Legal Challenge. If this Agreement is terminated pursuant to this Section 5.5 and ASU reimburses Omni’s Design Costs in accordance with the preceding sentence, Omni shall assign to ASU all its rights in all plans and specification for the Hotel/CC Improvements prepared prior to such termination (the “**Hotel Plans**”), and in contracting with any design professionals Omni shall include provisions allowing the Hotel Plans to be assigned to ASU. This provision shall survive termination of this Agreement.

ARTICLE 6 CLOSING

6.1 Time of Closing. The Closing of this transaction and escrow (referred to in this Agreement as the “**Closing**”) shall occur on a date to be mutually agreed upon by Buyer and Seller, but in no event later than five (5) Business Day following the Exercise Date (the “**Closing Date**”).

6.2 Closing Statements. Prior to the Closing, Escrow Agent will prepare separate closing settlement statements for ASU and Omni, reflecting the various charges, prorations and credits applicable to such party, as provided in this Agreement, and provide ASU with a copy of ASU’s closing settlement statement and Omni with a copy of Omni’s closing settlement statement. Prior to the Closing, ASU shall have the right to review and approve its closing settlement statement to insure that such settlement statement conforms to the terms of this Agreement, and the settlement statement for ASU, as approved by ASU, is referred to in this Agreement as the “**ASU Closing Settlement Statement**”. Prior to the Closing, Omni shall have the right to review and approve its closing settlement statement to insure that such settlement statement conforms to the terms of this Agreement, and the settlement statement for Omni, as approved by Omni, is referred to in this Agreement as the “**Omni Closing Settlement Statement**”.

6.3 ASU's Closing Documents. On or before the Closing, ASU shall deposit into escrow the following documents for delivery to Omni at the Closing, each of which shall have been duly executed and, where appropriate, acknowledged:

- (a) The project lease substantially in the form attached hereto as **Exhibit D** (the "**Project Lease**");
- (b) A Memorandum of Project Lease in the form attached to the Project Lease;
- (c) A certification to Omni and Escrow Agent, signed and acknowledged by ASU under penalties of perjury, certifying that ASU is not a nonresident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person within the meaning of Section 1445 and 7701 of the Internal Revenue Code of 1986 and the related Treasury Regulations;
- (d) The Parking Agreement;
- (e) The Construction Staging License;
- (f) A title affidavit in form and substance required for the Title Insurer to issue an extended leasehold policy of title insurance subject to the standard pre-printed exceptions and exclusions and the Approved Title Exceptions; and
- (g) Such other documents as may be necessary or appropriate to consummate this transaction in accordance with the terms of this Agreement.

6.4 Omni's Closing Documents. On or before the Closing, Omni shall deposit into escrow the following documents for delivery to ASU at the Closing, each of which shall have been duly executed and, where appropriate, acknowledged:

- (a) The Project Lease;
- (b) A Memorandum of Project Lease in the form attached to the Project Lease;
- (c) The Parking Agreement;
- (d) The Construction Staging License; and
- (e) Such other documents as may be necessary or appropriate to consummate this transaction in accordance with the terms of this Agreement.

6.5 Title Policy.

- (a) As a condition of the Closing, the Title Insurer shall be unconditionally and irrevocably committed to issue an extended leasehold policy of title insurance (the "**Title Policy**") together with those endorsements Omni has requested in the full amount

of the Prepaid Rent, effective as of such Closing, insuring Omni or its assignee that a leasehold interest in the Property is vested in Omni or its assignee, subject only to the usual printed exceptions and exclusions contained in such title insurance policies and to the Approved Title Exceptions (the foregoing condition shall not impose any covenant by ASU to provide the Title Policy, and shall not be deemed a default by ASU or allow Omni any remedy other than termination of this Agreement if Title Insurer will not issue the Title Policy; provided that the foregoing shall not relieve ASU of any obligations under any other covenants contained in this Agreement with respect to matters that may affect the issuance of the Title Policy).

(b) ASU, at ASU's expense, shall deliver to Escrow Agent such documents as may be necessary to evidence its authority to consummate this transaction, a customary owner's affidavit, and such documents as may be necessary to remove any exceptions which ASU has agreed to remove pursuant to Section 5.1(a)(ii), but ASU shall not be obligated to satisfy any requirements, if any, within Omni's control or which Omni is required to satisfy hereunder. ASU shall pay that portion of the premium for the Title Policy attributable to standard coverage for the Property and any endorsements it agrees to provide to cure any Disapproved Matter. Omni shall pay the premium for each Title Policy attributable to extended coverage for the Property and any endorsements requested by Omni, unless required to cure any Disapproved Matter.

(c) Notwithstanding anything contained herein to the contrary, if Title Insurer fails to issue a Title Policy for any reason other than ASU's failure to pay the premium or execute the documents required under Section 6.5(b) above (in which case Section 9.1(b) shall apply), then Omni's sole remedy will be to terminate this Agreement, and the Option Deposit shall be returned to Omni without further authorization or approval of ASU.

6.6 Closing Costs. Upon each Closing, ASU shall pay all recording fees, and Omni and ASU shall each pay one-half of escrow charges. All other closing costs shall be allocated pursuant to local custom in the jurisdiction where the Property is located. Each party shall each pay its own attorneys' fees. The various charges and credits contemplated by this Agreement will be handled by Escrow Agent through the escrow by appropriate charges and credits to Omni and ASU and will be reflected in the ASU Closing Settlement Statement or the Omni Closing Settlement Statement, as appropriate. All amounts payable pursuant to this Agreement will be paid to Escrow Agent for disposition through the escrow. Escrow Agent is authorized to make all disbursements to the parties and to third parties contemplated by this Agreement from funds deposited for those purposes, as necessary or appropriate to close this transaction and as set forth in the ASU Closing Settlement Statement and the Omni Closing Settlement Statement.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

7.1 ASU's Representations. ASU represents and warrants to Omni as of the Effective Date, and, as of the Closing, shall be deemed to have represented and warranted to Omni with respect to the transaction and agreement which are the subject of such Closing, which representations and warranties shall survive termination of this Agreement, as follows:

(a) ASU has the power and authority to execute, deliver and perform its obligations under this Agreement and/or such agreements (including the Project Lease) which are the subject of the Closing, as applicable, and has obtained all necessary consents, authorizations and approvals required as a condition to the execution and delivery thereof.

(b) The execution of this Agreement and/or such agreements (including the Project Lease) which are the subject of the Closing, as applicable, will not violate or constitute a default on the part of ASU under any agreement to which ASU is a party or by which it is bound.

(c) The representatives of ASU who have executed this Agreement and/or such agreements (including the Project Lease) which are the subject of the Closing, as applicable, have the power and the authority to have done so.

(d) ASU has not, to its knowledge, received service of process regarding, and ASU knows of no, litigation, proceeding or investigation, nor threat thereof, contesting the powers of ASU or its officials with respect to the Property, this Agreement and/or such agreements (including the Project Lease) which are the subject of the Closing, as applicable, or that could materially impact ASU's ability to enter into this Agreement or consummate the transactions contemplated by this Agreement (a "**Pending Litigation**").

(e) Since August 1, 2016, ASU has not, to its knowledge, received any written notices from any insurance companies, governmental agencies or authorities or from any other parties with respect to any material violation of any Legal Requirements related to the Property, including, but not limited to, applicable zoning, building, health, environmental, traffic, flood control, fire safety, handicap or other law, code, ordinance, rule or regulation (a "**Notice of Violation**").

If at any time after the Effective Date and prior to Closing, ASU obtains knowledge of any Pending Litigation or Notice of Violation, it shall notify Omni in writing (an "**Exception to Warranty Notice**") and Omni will, within thirty (30) calendar days following receipt of an Exception to Warranty Notice (the "**Election Period**"), have the right, as its sole and exclusive remedy, to elect to either (i) terminate this Agreement, or (ii) waive any claim against ASU arising out of or related to the information disclosed in the Exception to Warranty Notice, in which case this representation and warranty will be deemed modified as necessary to conform with the additional information disclosed to Omni in the Exception to Warranty Notice. Omni's failure to timely elect in writing to terminate this Agreement in accordance with clause (i) above will be deemed an election to proceed in accordance with clause (ii) above. If Omni elects to terminate this Agreement pursuant to this Section and the Pending Litigation is dismissed or the Notice of Violation is cured prior to the end of the Election Period, the Exception to Warranty Notice and Omni's election to terminate shall be deemed withdrawn. If this Agreement is terminated pursuant to this Section 7.1, the Option Deposit shall be returned to Omni at the end of the Election Period without further authorization or approval of ASU. For purposes of this Section the term "**knowledge**" shall mean and be limited to the actual (as distinguished from an implied, imputed or constructive) knowledge of the individual now or hereafter serving as the Assistant Vice President, Real Estate (the "**Real Estate VP**"), after inquiry to the Office of

General Counsel and the counsel for ABOR. In no event shall the Real Estate VP be personally liable for any representation or warranty contained herein.

Except as otherwise expressly provided in this Agreement, Omni acknowledges that the Property will be leased to Omni in its "AS IS" condition, that ASU has not made and does not make any representations or warranties whatsoever with respect to the Property, and that Omni accepts the Property subject to all risks resulting from any defects (patent or latent) in the Property or from any failure of the same to comply any Legal Requirements. Except as otherwise provided in this Agreement, ASU and ASU's Related Parties shall have no responsibility and liability to Omni regarding the Property, including the development potential of the Property; the condition, valuation or utility of the Property, or its suitability for any purpose whatsoever; and any responsibility or liability with respect to the presence in the soil, air, structures, and surface and subsurface waters, of hazardous substances.

7.2 Omni's Representations. Omni represents and warrants to ASU which representations and warranties shall survive termination of this Agreement, as follows:

(a) Omni has the power and authority to execute, deliver and perform its obligations under this Agreement and/or such agreements (including the Project Lease if and to the extent Omni is the Project Lessee) which are the subject of the Closing, as applicable, and has obtained all necessary consents, authorizations and approvals required as a condition to the execution and delivery thereof.

(b) The execution of this Agreement and/or such agreements (including the Project Lease) which are the subject of the Closing, as applicable, will not violate or constitute a default on the part of Omni under any agreement to which Omni is a party or by which it is bound.

(c) The representatives of Omni who have executed this Agreement and/or such agreements (including the Project Lease) which are the subject of the Closing, as applicable, have the power and the authority to have done so.

(d) Omni is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and is qualified to do business in the State of Arizona.

ARTICLE 8 ADDITIONAL COVENANTS

8.1 Possession. Exclusive possession of the Property shall be delivered to Omni at the Closing subject to the Approved Title Exceptions and the Transaction Documents. Prior to delivery of possession, ASU shall, at ASU's sole cost and expense, demolish the existing building on the Property and remove the debris resulting from such demolition.

8.2 Condemnation. If, prior to the Closing for the Property, all or any portion of the Property is taken by or under threat of condemnation or eminent domain (including by deed in lieu of condemnation) or ASU receives notice from any governmental agency or other person with the power of eminent domain threatening the taking of all or any portion of the Property

(any such event being referred to as a “**Condemnation Event**”), ASU shall immediately notify Omni and Omni may, at its election, either (a) submit to ASU for approval a revised Site Plan that modifies the boundary of the Property to remove the portion thereof that is the subject of the Condemnation Event or (b) terminate this Agreement by giving written notice of termination to ASU and Escrow Agent within sixty (60) days after receipt of ASU’s notice of the occurrence of the Condemnation Event. If, prior to Closing of the Property, there is a Condemnation Event as to the Property and Omni elects to close the escrow notwithstanding the taking and lease the portion of the Property that is subject to the Condemnation Event, then Omni shall proceed to close the escrow and pay the total Project Lease Payment and the awards or payments payable with respect to such taking shall be allocated pursuant to the Project Lease. If Omni elects to terminate this Agreement pursuant to this Section 8.2, the Option Deposit shall be returned to Omni without further authorization or approval of ASU.

8.3 Risk of Loss. In case of loss or damage to the Property occurring following the date of this Agreement but prior to the Closing, ASU shall immediately give Omni notice thereof. Omni’s sole option shall be to (a) elect to terminate this agreement by giving written notice of termination to ASU within sixty (60) days after receipt of ASU’s notice of the occurrence of loss or damage, in which case, the Option Deposit shall be returned to Omni without further authorization or approval of ASU, or (b) proceed with the Closing of the Property in its “as is” condition following the loss or damage. Without limiting the foregoing, in the event of any damage to any improvements on the Property, ASU shall have no obligation to restore such improvements and ASU shall have the right to retain any insurance proceeds resulting from such loss or damage.

8.4 Brokerage. Omni warrants that Omni has not dealt with any broker in connection with this transaction. ASU warrants that ASU has not dealt with any broker in connection with this transaction. If any person shall assert a claim to a finder’s fee, brokerage commission or other compensation on account of alleged employment as a finder or broker or performance of services as a finder or broker in connection with this transaction, the party under whom the finder or broker is claiming shall indemnify, defend, and hold harmless the other party and such party’s Related Parties for, from and against any and all Claims in connection with such claim or any action or proceeding brought on such claim.

8.5 Omni Indemnity. Omni shall indemnify, defend and hold harmless ASU and its Related Parties for, from and against any and all Claims of every kind and nature (including, without limitation, reasonable attorneys’ fees and court costs) arising from or as a result of (a) the entry by Omni or any of Omni’s Related Parties on the Property, except to the extent attributable to acts or omissions by ASU or the ASU Related Parties; (b) the negligence, acts or omissions of Omni and its Related Parties; or (c) Omni’s failure to comply with any applicable Legal Requirements. Omni will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. The terms of this Section 8.5 shall survive the termination of this Agreement as to events occurring or liability arising prior to the termination of this Agreement.

8.6 Omni Insurance.

(a) Liability Insurance. Within three (3) Business Days following the Effective Date and prior to any entry on the Property, Omni shall carry and maintain, and shall require any Consultant which will access the Property pursuant to this Agreement to carry and maintain:

(i) Insurance against claims for personal injuries (including death) or property damage, under a policy of commercial general liability insurance, such that the total available limits will not be less than Two Million Dollars (\$2,000,000) per occurrence, which may be satisfied by any combination of primary, secondary, and other coverages, naming ASU and its Related Parties as additional insureds. The coverage afforded each additional insured shall be primary and shall apply to loss prior to any coverage carried by ASU. Any insurance or self-insurance maintained by ASU or its Related Parties shall be in excess of Omni's commercial general liability insurance coverage and shall not contribute with it. Certificates of insurance shall include a copy of the endorsement evidencing additional insured status.

(ii) Business automobile liability insurance, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, with Insurance Service Office, Inc. Declarations to include owned, non-owned and hired motor vehicles, applicable to claims arising from bodily injury, death or property damage arising out of the ownership, maintenance or use of any automobile. The policy shall be endorsed to add ASU and its Related Parties as additional insureds and shall stipulate that the insurance shall be primary, and that any self-insurance or other insurance carried by ASU or its Related Parties shall be excess and not contributory to the insurance provided by Omni.

(b) Workers' Compensation Insurance. Throughout the term of this Agreement, Omni shall carry and maintain, and shall require its Consultants to carry and maintain, workers compensation and employers liability insurance as required by the State of Arizona Workers Compensation statutes as follows:

Workers Compensation (Coverage A) Employers Liability (Coverage B)	Statutory Arizona benefits
Each Accident	\$1,000,000
Disease - each employee	\$1,000,000
Disease - policy limit	\$1,000,000

This policy shall include endorsement for All State coverage for state of hire.

(c) Evidence of Insurance. Within three (3) Business Days following the Effective Date and prior to any entry on the Property by Omni or its Consultants, Omni will provide ASU with certificates of insurance and any additional documentation reasonably requested by ASU to assure compliance with this Section 8.6. All coverages,

conditions, limits and endorsements shall remain in full force and effect as required in this Agreement.

(d) Waiver of Subrogation. Omni hereby waives, and shall cause its Consultants and each of their insurers to waive, any claims, causes of action or other rights of any nature that Omni may have against ASU and its Related Parties, arising out of property damage to the Property or any other property owned or leased by Omni or its Consultants or which at the time of such damage is located on the Property, to the extent that Omni or its Consultants actually carries or is required hereby to carry insurance on the damaged real or personal property. There is no parallel waiver by ASU or any of ASU insurance providers.

ARTICLE 9 DEFAULTS AND REMEDIES

9.1 Defaults by Omni.

(a) Omni's Default. Omni shall be in default under this Agreement if it fails to observe or perform in any material respect any of the covenants or agreements contained in this Agreement to be observed or performed by Omni, provided, however, that except as expressly provided herein, if such failure is of a type that can be cured or corrected by Omni, such failure will not be a default unless it continues for fifteen (15) days after written notice of breach is given by ASU to Omni.

(b) ASU's Remedies. If Omni is in default under this Agreement beyond the expiration of any applicable notice and cure period, ASU's sole and exclusive remedy with respect to such default shall be to terminate this Agreement and the escrow, such termination to be effective immediately upon ASU giving written notice of termination to Omni and Escrow Agent, whereupon (i) the Option Deposit shall be delivered to ASU and (ii) ASU and Omni shall be released from all further obligations hereunder except for those obligations which expressly survive the termination of this Agreement, including, without limitation, the obligation to indemnify ASU for any Claims relating to Omni or its agents entry on the Property pursuant hereto. Nothing herein shall limit ASU's right to seek indemnity pursuant to any provision hereof or to recover its attorneys' fees and costs under Section 10.4 below or to seek indemnification from Omni in accordance with the terms hereof.

9.2 Default by ASU.

(a) ASU's Default. ASU shall be in default under this Agreement if it fails to observe or perform any of the covenants or agreements contained in this Agreement to be observed or performed by ASU, provided, however, that except as expressly provided herein, if such failure is of a type that can be cured or corrected by ASU, such failure will not be a default unless it continues for fifteen (15) days after written notice of breach is given by Omni to ASU.

(b) Omni's Remedies. If ASU is in default under this Agreement beyond the expiration of any applicable notice and cure period, Omni's sole and exclusive remedy

with respect to such default shall be to either (i) terminate this Agreement and the escrow, such termination to be effective immediately upon Omni giving written notice of termination to ASU and Escrow Agent, whereupon (1) the Option Deposit shall be returned to Omni, (2) ASU shall, within ten (10) days after receipt of demand therefor, together with satisfactory evidence thereof, reimburse Omni for all actual out-of-pocket costs, expenses and fees incurred in connection with the transaction contemplated hereby, including, without limitation, attorney fees and costs incurred in connection with negotiating the terms hereof and drafting all documents necessary therefor and fees and costs incurred in conducting any due diligence and any fees and costs incurred in connection with obtaining any financing commitments for the Hotel/CC Improvements, not to exceed \$2,000,000, and (3) ASU and Omni shall be released from all further obligations hereunder except for those obligations which expressly survive the termination of this Agreement, (ii) enforce specific performance, or (iii) waive said failure or breach and proceed to Closing. If within sixty (60) days following any default or breach Omni does not exercise its right to either seek specific performance by filing an action in a court of competent jurisdiction or notify ASU in writing of its waiver of such failure or breach, Omni shall be deemed to elect to terminate this Agreement pursuant to item (i) above. Nothing herein shall limit ASU's right to recover its attorneys' fees and costs under Section 10.4 below or to seek indemnification from ASU in accordance with the terms hereof.

ARTICLE 10 GENERAL PROVISIONS

10.1 Certain Definitions. As used in this Agreement, certain capitalized terms are defined as follows:

- (a) **"ABOR"** means the Arizona Board of Regents, a body corporate.
- (b) **"Affiliate"** applied to any entity other than ASU, means any entity that is directly or indirectly controlling, controlled by, or under common control with another entity. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that entity, whether through the ownership of voting securities or by contract or otherwise. **"Affiliate"**, as applied to ASU, means any "Component Unit Affiliate" of ABOR or Arizona State University, as defined from time to time in accordance with the policies of ABOR or Arizona State University, and/or as listed in any financial statement of ABOR or Arizona State University, and will include affiliates that meet this definition other than for being deemed immaterial for purposes of the financial reporting by such entities.
- (c) **"Business Day"** means a day other than a Saturday, Sunday or day which is a legal holiday in the State of Arizona.
- (d) **"Claims"** means any and all obligations, debts, covenants, conditions, representations, costs, and liabilities and any and all demands, causes of action, and

claims, of every type, kind, nature or character, direct or indirect, known or unknown, absolute or contingent, determined or speculative, at law, in equity or otherwise, including attorneys' fees and litigation and court costs.

(e) “**Related Parties**” means, with respect to any person or entity, the officers, directors, shareholders, partners, members, employees, agents, attorneys, successors, personal representatives, heirs, executors, or assigns of any such person or entity. With respect to ASU, Related Parties shall also include ABOR and the State of Arizona and their regents, officers, officials, agents, employees and volunteers.

10.2 Assignment.

(a) Except as set forth in Section 10.2(b), Omni may not assign, sell, hypothecate, or transfer its rights and obligations under this Agreement (a “**Transfer**”) without ASU’s prior written consent, which may be given or withheld in ASU’s sole discretion. At least fifteen (15) days prior to any Transfer, Omni shall notify ASU in writing specifying the proposed transferee. Notwithstanding anything contained herein to the contrary, if ASU reasonably determines that any such Transfer will have a material adverse effect on ASU, it will notify Omni in writing specifying its concerns, and ASU and Omni will promptly meet and confer regarding whether the proposed Transfer may be restructured to accommodate ASU’s concerns.

(b) Omni may, without ASU’s consent but with at least fifteen (15) days prior written notice, make a Transfer to any Affiliate of Omni (a “**Permitted Transfer**”).

(c) Any Transfer by Omni (including a Permitted Transfer) shall be by a written instrument executed by Omni and the assignee, wherein such assignee shall agree in writing for the benefit of ASU to assume, to be bound by, and to perform the terms, covenants and conditions of this Agreement to be done, kept and performed by Omni. One executed copy of such written instrument shall be delivered to ASU prior to the effective date of the Transfer. No Transfer shall relieve Omni of its obligations under this Agreement. Any Transfer that fails to conform to the terms of this Section shall be void.

10.3 Binding Effect. Subject to the provisions of Section 10.2, the provisions of this Agreement are binding upon and shall inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

10.4 Attorneys’ Fees. If either party to this Agreement initiates or defends any legal action or proceeding with the other party in any way connected with this Agreement, the prevailing party in any such legal action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to recover from the losing party in any such legal action or proceeding its reasonable costs and expenses of suit, including reasonable attorneys’ fees and expert witness fees. If either party to this Agreement initiates or defends any legal action or proceeding with a third party because of the violation of any term, covenant, condition or agreement contained in this Agreement by the other party to this Agreement, then the party so litigating shall be entitled to recover its reasonable costs and expenses of suit,

including reasonable attorneys' fees and expert witness fees, incurred in connection with such litigation from the other party to this Agreement. All such costs and attorney's fees shall be deemed to have accrued on commencement of any such legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment. Attorneys' fees under this Section include attorneys' fees on any appeal and in any bankruptcy or similar or related proceeding in federal or state courts. Any dispute as to the amounts payable pursuant to this Section shall be resolved by the court and not by a jury.

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

10.6 Notices. Any notice, request, approval, consent or document required or permitted in this Agreement (collectively, "Notices", or individually a "Notice") shall be in writing and delivered either by private messenger service (including overnight courier) or by certified mail, postage prepaid, return receipt requested, addressed as provided below. Any Notice shall be deemed to be given or received on the date received or on which receipt is refused. Any Notice to be given by any party hereto may be given by legal counsel for such party. Counsel for the parties may give simultaneous Notice hereunder to the opposing party and its counsel. Each address shall for all purposes be as set forth below unless otherwise changed by Notice to the other party as provided herein:

To ASU: Arizona State University
Attn: Assistant Vice-President, University Real Estate
Development
300 E. University Drive, Suite 320
Tempe, AZ 85281-2061

For mail delivery at:
P. O. Box 873908
Tempe, AZ 85287-3908

With a mandatory copy to:

Arizona State University
Attn: Vice President for University Administration and
Legal Affairs
300 E. University Drive, Suite 335
Tempe, AZ 85287-7505

For mail delivery at:
P. O. Box 877405
Tempe, AZ 85287-7405

and:

Snell & Wilmer L.L.P.
Attn: Jody Pokorski
One Arizona Center
Phoenix AZ 85004-2202

To Omni: c/o Omni Hotels
Attn: Mike Smith
4001 Maple Avenue, Suite 600
Dallas, Texas 75219

With a mandatory copy to:

c/o Omni Hotels
Attn: Paul Jorge
4001 Maple Avenue, Suite 600
Dallas, Texas 75219

and:

Winstead PC
Attn: T. Andrew Dow
500 Winstead Building
2728 N. Harwood Street
Dallas, TX 75201

10.7 Further Documentation. Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

10.8 Survival. The following obligations of the parties will survive a Closing or cancellation of this Agreement:

- (a) Post-Closing Covenants. Any and all obligations of the parties that are to be performed following the Closing;
- (b) Indemnification Obligations. All indemnity obligations of the parties;
- (c) Warranties. Any and all warranties or representations of the parties; and
- (d) Other Obligations. Any other obligation with respect to which it is expressly provided that it will survive the Closing or cancellation of this Agreement.

10.9 Counterparts. This Agreement may be executed in counterparts (and by different parties to this Agreement in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed

counterpart of a signature page of this Agreement by telecopy to the other party shall be effective as delivery of a manually executed counterpart of this Agreement.

10.10 No Third Party Rights. Nothing in this Agreement shall be construed to permit anyone other than ASU, Omni and their respective successors and permitted assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third party beneficiary or otherwise) on account of any nonperformance hereunder.

10.11 Construction. Unless the context of this Agreement clearly requires otherwise or unless otherwise expressly stated in this Agreement, this Agreement shall be construed in accordance with the following:

(a) Use of Certain Words. References to the plural include the singular and to the singular include the plural and references to any gender include any other gender. The part includes the whole; the terms “include” and “including” are not limiting; and the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereby,” “hereunder,” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.

(b) References. References in this Agreement to “Articles,” “Sections,” or “Exhibits” are to the Articles and Sections of this Agreement and the Exhibits and to this Agreement. Any reference to this Agreement includes any and all amendments, extensions, modifications, renewals, or supplements to this Agreement. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement.

(c) Recitals. Omni and ASU acknowledge that the Recitals are accurate and that they are a part of this Agreement.

(d) Construing the Agreement. Each of the parties to this Agreement acknowledges that such party has had the benefit of independent counsel with regard to this Agreement and that this Agreement has been prepared as a result of the joint efforts of all parties and their respective counsel. Accordingly, all parties agree that the provisions of this Agreement shall not be construed or interpreted for or against any party to this Agreement based upon authorship or any other factor but shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties to this Agreement.

(e) Partial Invalidity. If any portion of this Agreement is determined to be unconstitutional, unenforceable or invalid, such portion of this Agreement shall be stricken from and construed for all purposes not to constitute a part of this Agreement, and the remaining portion of this Agreement shall remain in full force and effect and shall, for all purposes, constitute the entire Agreement.

(f) Governing Law and Venue. This Agreement will be governed by the laws of the State of Arizona without regard to any conflicts of laws principles. Any proceeding arising out of or relating to this Agreement will be conducted in Maricopa

County, Arizona. Each party waives any objection it may now or hereafter have to venue or to convenience of forum.

(g) Time of Essence; Time Periods. Time is of the essence of this Agreement; provided, however, that as set forth in Article 9 either party shall be entitled to a fifteen (15) day cure period for the failure to observe or perform any covenant or obligation set forth in this Agreement. The time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (local Phoenix time) on the last day of the applicable time period provided for in this Agreement. If the time for the performance of any obligation or taking any action under this Agreement expires on a Saturday, Sunday or legal holiday, or any other day that Escrow Agent is closed for business, the time for performance or taking such action shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday or day on which Escrow Agent is closed for business.

(h) Entire Agreement. This Agreement, which includes **Exhibits A** through **F**, constitutes the entire agreement between the parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by ASU and Omni.

ARTICLE 11 SUPPLEMENTARY PROVISIONS

11.1 Nonliability of ABOR and ASU Officials and Employees. No current or former regent, officer, official, employee, agent or representative of ASU shall be personally liable to Omni or any successor in interest, in the event of any default or breach by ASU for any amount which may become due to Omni or any successor in interest, or on any obligation incurred under the terms of this Agreement. No current or former officer, director, official, employee, agent or representative of Omni or any successor in interest, shall be personally liable to ASU or any successor in interest in the event of any default or breach by Omni or any successor in interest for any amount which may become due to ASU or its successors in interest or on any obligation interest under the terms of this Agreement. The liability of ASU, Omni, or any successor in interest, under this Agreement shall be limited to its interest in the Property or portion thereof.

11.2 Arbitration in Superior Court. As required by A.R.S. § 12 1518, the parties agree to make use of arbitration in disputes that are subject to mandatory arbitration pursuant to A.R.S. § 12 133.

11.3 Dispute Resolution. If a dispute arises under this Agreement, the parties will exhaust all applicable administrative remedies provided for under Arizona Board of Regents Policy 3 809.

11.4 Failure of Legislature to appropriate. In accordance with A.R.S. § 35 154, if ASU's performance under this Agreement depends on the appropriation of funds by the Arizona Legislature, and if the Arizona Legislature fails to appropriate the funds necessary for

performance, then ASU may provide written notice of this to Omni and cancel this Agreement without further obligation of ASU. Appropriation is a legislative act and is beyond the control of ASU.

11.5 Omni's Records. To the extent required by A.R.S. § 35-214, (i) Omni shall retain all records relating to this Agreement for a period of five (5) years following the expiration or termination of this Agreement, (ii) Omni shall make those records available at all reasonable times for inspection and audit by ASU or the Auditor General of the State of Arizona during the term of this Agreement and for a period of five (5) years after the expiration or earlier termination of this Agreement (or such longer period as may be required by statute). The records shall be provided at the Campus or another location designated by ASU, upon reasonable notice to Omni.

11.6 Conflict of Interest. In accordance with A.R.S. § 38-511, ASU may cancel this Agreement within three years after the execution of this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of ASU, is or becomes an employee or agent of Omni. Notice is also given of A.R.S. §§ 41-2517 and 41-753.

11.7 Weapons, Explosive Devices and Fireworks. ASU prohibits the use, possession, display or storage of any weapon, explosive device or fireworks on all land and buildings owned, leased, or under the control of ASU or its affiliated or related entities, in all ASU residential facilities (whether managed by ASU or another entity), in all ASU vehicles, and at all ASU or ASU affiliate sponsored events and activities, except as provided in A.R.S. § 12-781 or unless written permission is given by the Chief of the ASU Police Department or a designated representative. Notification by Omni to all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of Omni ("**Omni Notification Parties**") of this policy is a condition and requirement of this Agreement. Omni further agrees to enforce this contractual requirement against all Omni Notification Parties. ASU's policy may be accessed through the following web page: <http://www.asu.edu/aad/manuals/pdp/pdp201-05.html>.

11.8 Nondiscrimination. To the extent applicable, the parties will comply with all applicable state and federal laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. **If applicable, the parties will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

11.9 Indemnification Limitation. Any other provisions of this Agreement to the contrary notwithstanding, the parties acknowledge that ASU is a public institution and any indemnification, liability limitation, or hold harmless provision will be limited as required by Arizona law, including without limitation Article 9, Sections 5 and 7 of the Arizona Constitution

and A.R.S. § 35-154 and § 41-621. Therefore, notwithstanding any other provision of this Agreement, ASU's liability under any claim for indemnification is limited to claims for property damage, personal injury, or death to the extent caused by acts or omissions of ASU.

11.10 Service Marks and Trademarks. Omni will not do any of the following, without, in each case, ASU's prior written consent: (i) use any names, service marks, trademarks, trade names, logos, or other identifying names, domain names, or identifying marks of ASU (“**ASU Marks**”), for any reason including online, advertising, or promotional purposes; provided that Omni may use “ASU” in the name of the hotel and conference center as provided in the Project Lease; (ii) issue a press release or public statement regarding this Agreement; or (iii) represent or imply any ASU endorsement or support of any product or service in any public or private communication. Any permitted use of any ASU Marks must comply with ASU's requirements, including using the ® indication of a registered trademark where applicable.

11.11 Tobacco-Free University. ASU is tobacco-free. For details visit www.asu.edu/tobaccofree.

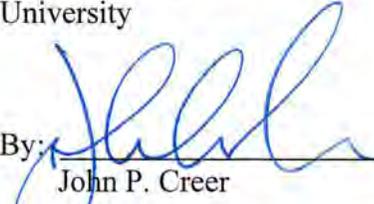
11.12 Confidentiality. ASU is a public institution and, as such, is subject to A.R.S. §§ 39-121 through 39-127 regarding public records. Accordingly, notwithstanding any other provision of this Agreement, any provision regarding confidentiality is limited to the extent necessary to comply with the provisions of Arizona law.

11.13 No Boycott of Israel. As required by A.R.S. § 35-393.01, Omni certifies it is not currently engaged in a boycott of Israel and will not engage in a boycott of Israel during the term of this Agreement.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the parties have caused their respective duly authorized representatives to execute this OPTION TO LEASE AND ESCROW INSTRUCTIONS on their behalf as of the date first above stated.

ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University

By:  _____
John P. Creer

Its: Assistant Vice President for University
Real Estate Development

OMNI TEMPE, LLC, a Delaware limited liability company

By: _____

Its: _____

IN WITNESS WHEREOF, the parties have caused their respective duly authorized representatives to execute this OPTION TO LEASE AND ESCROW INSTRUCTIONS on their behalf as of the date first above stated.

ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University

OMNI TEMPE, LLC, a Delaware limited liability company

By: _____
John P. Creer

By: 
_____ Michael G. Smith

Its: Assistant Vice President for University
Real Estate Development

Its: Vice President

ESCROW AGENT ACCEPTANCE

The undersigned hereby accepts, and agrees to fully perform, the obligations of Escrow Agent set forth herein and hereby waives any right to collect a cancellation charge if this transaction fails to close for any reason whatsoever.

**FIRST AMERICAN TITLE INSURANCE
COMPANY**

By: Tom Amaldoss

Its: ESCROW OFFICER

Date: March 1, 2018

EXHIBIT A-1
LEGAL DESCRIPTION OF BLOCK 22

Block 22 of Gage Addition to Tempe, Arizona as shown on the Final Plat recorded in Book 3, page 58, Maricopa County Records (M.C.R.), and Amended Plat recorded in Book 8, page 41, M.C.R., lying within the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 22, Township 1 North, Range 4 East, of the Gila and Salt River Meridian, Maricopa County, Arizona.

EXCEPT any portion thereof previously dedicated or conveyed.

**EXHIBIT A-2
LEGAL DESCRIPTION OF PROPERTY**

(Attached)

PARCEL DESCRIPTION
ASU Blocks 22/27
Parcel B

A portion of Block 22 of Gage Addition to Tempe, Arizona as shown on the Final Plat recorded in Book 3, page 58, Maricopa County Records (M.C.R.), and Amended Plat recorded in Book 8, page 41, M.C.R., lying within Section 22, Township 1 North, Range 4 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the intersection of Mill Avenue and University Drive (8th Street) as shown on said Final Plat, a 3-inch City of Tempe brass cap in handhole, from which the intersection of University Drive (8th Street) and Myrtle Avenue, a 3-inch City of Tempe brass cap in handhole, bears North 89°48'20" East (basis of bearing), a distance of 561.84 feet;

THENCE along the centerline of said University Drive (8th Street), North 89°48'20" East, a distance of 323.05 feet;

THENCE leaving said centerline, South 00°11'40" East, a distance of 33.00 feet, to the south right-of-way line of said University Drive (8th Street) and the **POINT OF BEGINNING**;

THENCE leaving said south right-of-way line, South 00°32'39" East, a distance of 371.34 feet, to the beginning of a curve;

THENCE southwesterly along said curve to the right, having a radius of 93.50 feet, concave northwest, through a central angle of 62°23'57", a distance of 101.83 feet, to a point of intersection with a non-tangent line;

THENCE South 89°37'34" West, a distance of 167.79 feet, to the east right-of-way line of Mill Avenue;

THENCE along said east right-of-way line, North 00°35'54" West, a distance of 440.03 feet;

THENCE North 44°36'13" East, a distance of 21.14 feet, to said south right-of-way line;

THENCE leaving said east right-of-way line, along said south right-of-way line, North 89°48'20" East, a distance of 203.40 feet, to the **POINT OF BEGINNING**.

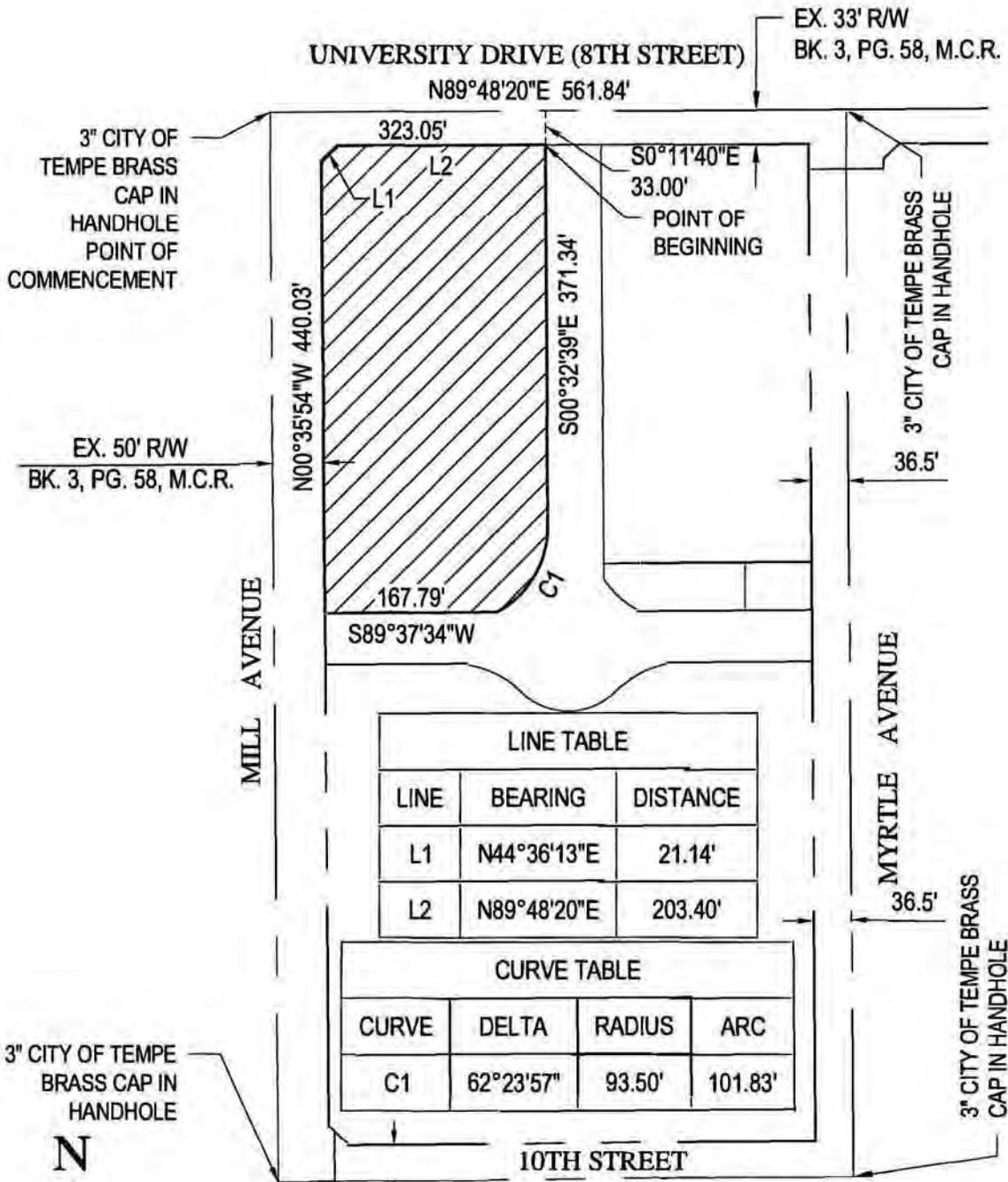
Containing 97,897 square feet or 2.2474 acres, more or less.

Subject to existing rights-of-way and easements.

This parcel description is based on the Final Plat of Gage Addition to Tempe, Arizona, recorded in Book 3, page 58, M.C.R. and Amended Plat recorded in Book 8, page 41, M.C.R., and other client provided information. This parcel description is located within an area surveyed by Wood, Patel and Associates, Inc. during the month of July, 2013. Any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey

Y:\WP\Parcel Descriptions\2016 Parcel Descriptions\164555 01 ASU Block 22-27 Parcel B L04 10-30-17.docx





3" CITY OF TEMPE BRASS CAP IN HANDHOLE POINT OF COMMENCEMENT

EX. 50' R/W BK. 3, PG. 58, M.C.R.

EX. 33' R/W BK. 3, PG. 58, M.C.R.

3" CITY OF TEMPE BRASS CAP IN HANDHOLE 36.5'

MILL AVENUE

MYRTLE AVENUE

3" CITY OF TEMPE BRASS CAP IN HANDHOLE

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N44°36'13"E	21.14'
L2	N89°48'20"E	203.40'

CURVE TABLE			
CURVE	DELTA	RADIUS	ARC
C1	62°23'57"	93.50'	101.83'



WOOD/PATEL
MISSION: CLIENT SERVICE®
(480) 834-3300
WWW.WOODPATEL.COM



ASU BLOCKS 22/27
PARCEL B
10/30/2017
WP# 164555.01
PAGE 2 OF 2
NOT TO SCALE

Z:\2016\164555\Survey\Legal\4555-L04.dwg

EXHIBIT C
DUE DILIGENCE MATERIALS REQUEST

Any of the following in the possession or control of ASU's Real Estate Development Office related to the Property:

1. Copies of any environmental reports or site assessments, and any engineering and technical reports (including soil studies) related to the Property.
2. A copy of ASU's most current title insurance information, if any, and most current survey of the Property, if any.
3. Copies of all contracts related to the operation, ownership or management of the Property, including maintenance, service, construction, and parking contracts, if any, that will survive the Closing and are not referenced in the Title Report or an Amended Title Report.
4. Surveys or diagrams showing the locations of electrical lines and electrical service on the Property.

Exhibit D (Ground Lease) extracted and
attached separately as FAC Exhibit 3

Exhibits E-1 and E-2 removed to protect
potentially commercial information

EXHIBIT F
PROVISIONS TO BE INCLUDED IN THE PARKING AGREEMENT

Without limiting the terms thereof, the Parking Agreement shall include the following:

(a) ASU shall grant to Omni a perpetual easement (which shall not be terminated except to the extent expressly provided in the Parking Agreement) for the exclusive use of a mutually agreed upon area within the Parking Structure that will accommodate at least 275 parking spaces (“**Omni Parking Area**”). The easement will be an easement appurtenant to the Property and will run with the Property.

(b) ASU shall deliver the Omni Parking Area in “shell” condition, and Omni shall pay (i) to improve the same (i.e., security devices, striping, lighting, etc.), (ii) the reasonable costs of operating and maintaining the Omni Parking Area, and (iii) its pro rata share of cost to maintain portions of the Parking Structure not available for the exclusive use of Omni or ASU.

(c) Omni shall be entitled to all parking and related revenues from the Omni Parking Area; provided that Omni may not permit such spaces to be used by parties other than guests and employees of, and visitors to, the Hotel/CC.

(d) The Parking Structure shall have an exterior entrance and exit in a location to be agreed to between Omni and ASU that provides access exclusively to the Omni Parking Area. The Parking Structure may include another entrance to the Parking Structure on the same side as the entrance to the Omni Parking Area.

(e) Upon a casualty event whereby ASU has determined not to rebuild the Parking Structure, ASU shall provide to Omni replacement parking that contains space for at least 275 parking spaces either (i) on a surface parking lot on the same property where the Parking Structure was located or (ii) in an alternate parking area approved by Omni in its reasonable discretion.

(f) At any time in which Omni does not have access to the Parking Structure due to rebuilding on account of a casualty, renovation, eminent domain, or the failure to complete construction prior to the opening of the hotel, ASU shall provide, at its sole cost and expense, (i) temporary parking spaces (in an amount sufficient to meet the current needs of the Hotel/CC, not to exceed 275 spaces) on the main ASU campus adjacent to the Hotel (within a 1.5 mile radius of the Property) or, if not on ASU’s campus, within a 0.5 mile radius of the Property and (ii) a regular shuttle service to and from the Hotel/CC.

(g) ASU and Omni shall meet at least bi-annually to discuss Omni’s usage of the Omni Parking Area. If portions of the Omni Parking Area are no longer necessary for the efficient operation of the Hotel/CC and ASU is willing to assume responsibility for the same, Omni shall have the right, in its sole, but reasonable, discretion, to reduce the size of the Omni Parking Area, subject to the following: (i) ASU shall have no obligation to pay Omni for the relinquished space, but following any relinquishment, ASU shall be responsible for the pro rata share of costs related to the relinquished space, (ii) ASU shall be responsible for any costs associated with converting the space for ASU’s use, such as revised signage, and (iii) if the size

of the Omni Parking Area is reduced, Omni shall have the right to use additional space in the Parking Structure on a limited basis as necessary for large events.

(h) ASU shall have the right to impose reasonable rules and regulations that govern the Parking Structure, provided that such rules and regulations are uniformly applied and are not in conflict with the Parking Agreement.

(i) Omni shall have reasonable approval rights over any third party operator of the Parking Structure, but only to the extent such operator will also manage the Omni Parking Area. Similarly, ASU shall have reasonable approval rights over any third party contractor utilized by Omni.

(j) If Omni assigns its rights under the Project Lease, Omni shall be deemed to have assigned, and its assignee shall be deemed to have assumed, the rights and obligations of Omni under the Parking Agreement.

(k) The Parking Agreement shall contain provisions whereby Omni indemnifies ASU on terms acceptable to the parties.

(l) The Parking Agreement shall provide that if the Omni Parking Area is abandoned, ASU shall have the right to terminate the Parking Agreement, in which event Omni's interest in the Omni Parking Area shall revert to ASU or its successors and assigns. For purposes of the Parking Agreement, "abandonment" shall mean that Omni shall cease all use of the Omni Parking Area (in its entirety) for the purpose granted in the Parking Agreement for a period of at least one year, and such cessation shall not be due to any casualty, remodeling or restoration of the Hotel/CC or the Parking Structure. Upon the occurrence of an abandonment, ASU may notify Omni in writing (an "**Abandonment Notice**") of its intent to terminate the Parking Agreement, and Omni shall have sixty (60) days to resume its use of the Omni Parking Area, and if Omni resumes its use of the Omni Parking Area within sixty (60) days following receipt of the Abandonment Notice, the Abandonment Notice shall be deemed rescinded.

* * * * *

FAC Exhibit 3

Ground Lease (Exhibit D to Option to Lease)

GROUND LEASE

OMNI HOTEL

by and between

**ARIZONA BOARD OF REGENTS, a body corporate,
for and on behalf of Arizona State University**

and

OMNI TEMPE, LLC, a Delaware limited liability company

[Drafting Note: Regenerate TOC prior to execution]

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Exhibits:

Exhibit A-1	Legal Description of Land
Exhibit A-2	Plot Plan of Land
Exhibit B	Site Plan of Block 22 Property
Exhibit C	Plan Package
Exhibit D	Recognition, Non-Disturbance and Attornment Agreement
Exhibit E	Memorandum of Lease
Exhibit F	Improvements Quitclaim Deed
Exhibit G	Work Letter Agreement
Exhibit H	Development Agreement
Exhibit I	Use Covenants Running with the Land
Exhibit J	Initial Improvements Guaranty
Schedule 5(f)	Additional Base Rent Schedule

GROUND LEASE

THIS GROUND LEASE (the “**Lease**”) is made and entered into as of _____, 20__ (the “**Effective Date**”), between ARIZONA BOARD OF REGENTS (“**ABOR**”), a body corporate, for and on behalf of Arizona State University (“**ASU**”), as “**Landlord**”, and OMNI TEMPE, LLC, a Delaware limited liability company, as “**Tenant**”.

RECITALS

A. ASU owns certain real property located in the City of Tempe, Arizona (the “**City**”), which is bounded on the north by University Drive, on the south by 9th Street, on the west by Mill Avenue, and on the east by Myrtle Avenue (the “**Block 22 Property**”), which is graphically depicted on the Site Plan attached hereto as **Exhibit B**, and which is part of ASU’s Tempe Campus (the “**Campus**”).

B. ASU and Tenant are parties to that certain Option to Lease and Escrow Instructions for a Portion of Block 22 (the “**OTL**”) dated as of February, __, 2018, granting Tenant the option to lease a portion of the Block 22 Property consisting of approximately 1.6 acres and generally located on the southeast corner of the Block 22 Property as described on **Exhibit A-1** hereto and graphically depicted on the plot plan attached as **Exhibit A-2** hereto (the “**Land**”).

C. Tenant wishes to lease the Demised Premises from Landlord, and Landlord wishes to lease the Demised Premises to Tenant, on the terms and conditions set forth in this Lease.

D. Tenant intends to develop and operate a hotel and conference center project on the Land with a building and other ancillary improvements such as parking facilities, driveways and loading docks (the “**Project**”).

E. ASU intends (without obligation) to develop and/or lease for development the balance of the Block 22 Property for use as (1) a lifelong learning campus and other ancillary improvements serving the same, and (2) other shared common facilities (the “**Block 22 Shared Facilities**”).

1. DEFINITIONS.

“**AAA Criteria**” means the operating criteria for the American Automobile Association’s designation for Four-Diamond hotels. If the American Automobile Association changes its operating criteria for its rating system, creates a category above Five-Diamond, or discontinues publication of operating criteria, Tenant shall propose a replacement AAA Criteria metric for Landlord’s approval, which approval shall not be unreasonably withheld, conditioned or delayed. If Landlord and Tenant are unable to agree upon such replacement criteria, determination of the AAA Criteria shall be resolved by arbitration pursuant to A.R.S. § 12-133 and subject to ABOR Policy 3-809.

“**Abandonment**” means as defined in Section 6(b).

“**Additional Base Rent**” means each amount payable by Tenant to Landlord pursuant to Section 5(f).

“**Additional Charges**” means as defined in Section 5(b).

“**Additional Rent**” means any sums payable by Tenant hereunder in addition to the Pre-Paid Base Rent, including without limitation the Additional Base Rent and Additional Charges.

“**Adjustment Date**” means the tenth (10th) anniversary of the Effective Date and each tenth (10th) anniversary thereafter.

“**Affiliate**,” as applied to any entity other than Landlord, means any other entity, that immediately prior to a Transfer, is directly or indirectly controlling, controlled by, or under common control with, the first entity. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as applied to any entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that entity, whether through the ownership of voting securities or by contract or otherwise. “**Affiliate**” as applied to Landlord, means any “Component Unit Affiliate” of ABOR or Arizona State University, as defined from time to time in accordance with the policies of ABOR or Arizona State University, and/or as listed in any financial statement of ABOR or Arizona State University, and will include affiliates that meet this definition other than for being deemed immaterial for purposes of the financial reporting by such entities.

“**Affiliate Transfer**” means any Transfer to an Affiliate of Tenant.

“**Alteration**” means as defined in Section 7(d).

“**Alteration Limit**” \$5,000,000.00, increased on each Adjustment Date by the percentage increase in the Consumer Price Index for all Urban Consumers – All Items (1982-84=100) (the “**CPI**”) immediately prior to the last Adjustment Date to the Index which was published prior to the Adjustment Date upon which each such adjustment shall be made; provided further that in no event shall the Alteration Limit be less than \$5,000,000. If (a) the Bureau of Labor Statistics of the United States Department of Labor ceases to use the 1982-4 average of 100 as the basis of calculation, or (b) a substantial change is made in the number or character of “market basket” items used in determining the CPI, or (c) the CPI shall be discontinued for any reason, the Bureau shall be requested to furnish a new index comparable to the CPI, together with information which will make possible the conversion to the new index in computing the CPI rate. If for any reason the Bureau does not furnish such an index and such information, the parties shall thereafter accept and use such other index or comparable statistics on the cost of living for the United States of America as shall be computed and published by an agency of the United States of America or by a responsible financial periodical of recognized authority then selected by Landlord.

“**Approved Brand**” means any entity operating under the brand standards of any “upper upscale” or “luxury” brand as defined by Smith Travel Research’s “chain scale.” If Smith Travel

Research changes its chain scale categories or discontinues its chain scale listing, Tenant shall propose a replacement brand scale metric for Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

"Approved Transferee" means (i) a real estate investment trust, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, educational endowment, charitable foundation, mutual fund, sovereign wealth fund, private equity fund, or other institutional investor, or any Third Party controlled by any of the foregoing; or (ii) any Third Party that has at least ten (10) years' experience operating hotels or similar facilities and which will Continuously Operate the Demised Premises for the Permitted Use.

"A.R.S." means Arizona Revised Statutes as in effect from time to time.

"ASU Data" means as defined in Section 34(l).

"ASU Marks" means as defined in Section 34(i).

"ASU Boardroom" means as defined in Section 6(e).

"Block 22 Property" means as defined in Recital A.

"Block 22 Shared Facilities" means as defined in Recital E.

"Building" means each roofed and walled structure constructed on the Land which is intended for other than temporary use and, where applicable, occupancy as part of the Demised Premises, including parking structures and parking garages.

"Bureau" means as defined in Section 7(d).

"Business Day" means a day other than a Saturday, Sunday or day that is a legal holiday in the State of Arizona.

"Casualty Event" means as defined in Section 13(a).

"CC Costs" means total costs of construction for the Conference Center to be determined pursuant to the Work Letter.

"CC Cost Reimbursement" means the lesser of the CC Costs or \$19,500,000.00.

"CC Cost Reimbursement Remainder" means the unamortized value of the CC Cost Reimbursement remaining at the time of payment, if any, where such CC Cost Reimbursement is fully amortized on a straight line basis commencing upon payment of the CC Cost Reimbursement and ending on the sixtieth (60th) anniversary of the Effective Date.

"CC Invoice" means as defined in the Work Letter.

"Change in Control" means any of the following activities occurring above the Tenant level: (a) merger, (b) consolidation, (c) sale, issuance or transfer to a Third Party of the assets or equity of such entity, including, without limitation, the sale, issuance or transfer of all of the

assets of a subsidiary of such entity in connection with the sale of all or substantially all of the assets of such parent entity, (d) sale, on a portfolio basis, of not less than five (5) hotels (including the Project) located within the United States, or (e) any other reorganization.

“**City**” means the City of Tempe, Arizona.

“**Claim(s)**” means defined in Section 10(a).

“**Claw Back Taxes**” means as defined in Section 5(i).

“**Commence Construction**” (or any variant thereof) shall mean that Tenant has obtained all permits required for construction of foundations and footings for the Initial Improvements, executed a construction contract for the Initial Improvements, mobilized on the Land, and begun pouring the foundations and footings for the Initial Improvements.

“**Commencement Failure**” means the failure by Tenant to Commence Construction of the Initial Improvements within thirty (30) days following the Effective Date of this Lease (the “**Outside Commencement Date**”). The period to Commence Construction of the Initial Improvements shall be automatically extended on account of any delay resulting from (a) a Force Majeure Event, or (b) a Landlord Delay.

“**Complete Construction**” (or any variant thereof) shall mean that Tenant has substantially completed construction of the Initial Improvements and the City has issued a certificate of occupancy (whether permanent or temporary), certificate of completion or equivalent document therefor.

“**Completion Delay**” means any delay in the Completion of Construction resulting from (a) Landlord’s or _____ (“**Mirabella Developer**”) **[NOTE TO DRAFT: INSERT NAME OF MIRABELLA DEVELOPER]** failure to timely complete the Block 22 Shared Facilities for which Landlord and Mirabella Developer are obligated pursuant to the Development Agreement, and/or (b) Landlord’s failure to timely construct the Parking Garage for which Landlord is obligated pursuant to the Parking Agreement.

“**Completion Failure**” means the failure by Tenant to Complete Construction of the Initial Improvements on or before the second (2nd) anniversary of the Effective Date (the “**Outside Completion Date**”). The period to Complete Construction of the Initial Improvements shall be automatically extended on account of any delay resulting from (a) a Force Majeure Event, (b) a Landlord Delay, and/or (c) a Completion Delay.

“**Conference Center**” means as defined in Exhibit 1 to the Work Letter.

“**Construction License**” means the Construction License, dated of even date herewith between Landlord and Tenant.

“**Continuously Operate**” or “**Continuously Operated**” means following the date both the hotel and the Conference Center located on the Demised Premises are each open for business, and at all times during the Term thereafter, the Demised Premises shall be open and operating for the Permitted Use twenty-four (24) hours per day, seven (7) calendar days per week, except

while the Demised Premises are untenable by reason of: (a) Force Majeure Events, (b) a Casualty Event, (c) a taking of all or any portion of the Demised Premises by eminent domain or purchase in lieu thereof, (d) any environmental release requiring remediation, (e) any Legal Requirement for any reason other than a Default, or (f) any Alteration made in compliance with this Lease; provided that in the event of any such closure, Tenant shall use commercially reasonable efforts to close only that portion of the Demised Premises that is affected by the causative event and to re-open the Demised Premises (or the closed portion thereof) as soon as reasonably practical under the circumstances.

“**Declaration**” means the Agreement of Reciprocal Easements and of Covenants, Conditions and Restrictions dated _____, 20__ and recorded _____, 20__, in the official records of the Recorder’s Office, as now or hereafter may be amended or modified.

“**Deed**” means as defined in Section 3(c).

“**Default**” means as defined in Section 15(a).

“**Default Rate**” means an annual rate equal to the lesser of (a) two (2) percentage points above the prime annual interest rate published from time to time by The Wall Street Journal under the masthead “Money Rates” as the Prime Rate in effect at the due date (and thereafter adjusted quarterly) or (b) the maximum rate permissible by law. If for any reason The Wall Street Journal does not publish a Prime Rate, the Prime Rate shall be the prime rate announced by a reasonably equivalent responsible financial periodical reasonably selected by Landlord.

“**Demised Premises**” means the Land together with all easements, rights-of-way, rights, privileges, benefits and appurtenances running with or appurtenant thereto and all Improvements now or hereafter constructed on the Land, title to which shall automatically vest in Landlord.

“**Development Agreement**” means the Development Agreement in the form attached hereto as **Exhibit H** relating to construction of the Block 22 Shared Facilities.

“**Demolition Activities**” means as defined in Section 13(a).

“**Demolition Limit**” means as defined in Section 13(c).

“**Effective Date**” means as defined in the introductory paragraph.

“**Entitlements**” means all permits and approvals that Tenant must obtain pursuant to the Project Documents and/or from any Governmental Authority or other Third Party in order to construct the Initial Improvements in accordance with Legal Requirements.

“**Environmental Law**” means any applicable federal, state, or local law, statute, ordinance, rule, regulation, policy, guidance, order, judgment, or decision of any governmental authority relating to the protection of the environment or to any emission, discharge, generation, processing, storage, use, holding, abatement, existence, Release, threatened or potential Release, or transportation of any Hazardous Substance, including any disclosure or reporting obligation thereof, whether to be disclosed or reported to any governmental authority or whether a report or record is required to be maintained internally, including (a) the Comprehensive Environmental

Response, Compensation and Liability Act, 42 U.S.C. §9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §300h *et seq.*; the Clean Water Act, 33 U.S.C. §1251 *et seq.*; the Clean Air Act, 42 U.S.C. §7401 *et seq.*; the Arizona Water Quality Assurance Revolving Fund, A.R.S. §49-281, *et seq.*; the Arizona Water Quality Control Program, A.R.S. §49-201, *et seq.*; and the Arizona Underground Storage Tank Law, A.R.S. §49-1001 *et seq.*, as amended now and as may be amended in the future; and (b) all other Legal Requirements, as they may be now or hereinafter enacted or amended, pertaining to reporting, licensing, permitting, approving, investigation, or remediation of emissions, discharges, Releases, or threatened or potential Releases of Hazardous Substances into, onto, or beneath the air, surface water, ground water, or land, or relating to the manufacture, processing, distribution, sale, use, treatment, receipt, storage, disposal, transport, or handling of Hazardous Substances.

“Extended Term” means the extended Lease term, if applicable, commencing on the last day of the month in which the sixtieth (60th) anniversary of the Effective Date occurs and continuing until earlier terminated (a) pursuant to Tenant’s exercise of the Purchase Option, or (b) in accordance with the provisions of this Lease.

“Fee Mortgage” means as defined in Section 18(q).

“Force Majeure Events” means as defined in Article 31.

“Future Taxes” means as defined in Section 5(i).

“Guarantor” means as defined in Section 7(g).

“Hazardous Substances” means any substance that (a) is or contains asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum or petroleum-derived substances or wastes, radon gas, or related materials, (b) requires investigation, removal or remediation or for which there are restrictions, regulations or rules pursuant to any Environmental Law regarding its use, handling or disposal, under any Environmental Law, or is defined, listed, or identified as a “hazardous waste,” “Hazardous Substance,” “contaminant,” “toxic substance,” “toxic material,” “pollutant,” or “hazardous substance,” thereunder, or (c) is toxic, explosive, corrosive, flammable, infectious, radiologically contaminated, carcinogenic, mutagenic, or otherwise hazardous and is regulated by any governmental authority or Environmental Law.

“Impositions” means all taxes (including personal property taxes, transaction privilege taxes and possessory interest taxes, if any, and if applicable Real Property Taxes), any assessments (including assessments hereinafter imposed pursuant to the Declaration and any other covenants, conditions and restrictions to which Tenant is a party or has consented as well as assessments hereinafter imposed in accordance with applicable Legal Requirements for public improvements or benefits including, if applicable, improvement districts and community facilities districts), water, sewer, electrical, natural gas, telephone, television, communication and other fees, rates and charges, whether foreseen or unforeseen, together with any interest or penalties imposed upon the late payment thereof, and all other charges which at any time during or in respect of the Term of this Lease may be assessed, levied, confirmed or imposed upon or in

respect of, or be a lien upon (a) the Demised Premises; (b) the Improvements; (c) any Additional Rent or Additional Charges payable by Tenant hereunder; (d) this Lease and the leasehold estate hereby created; or (e) the possession or use of the Demised Premises.

“Improvements” means all Buildings, together with related streets, curbs, sewers, drainage and flood control structures, sidewalks, hardscape, fences, utilities, landscaping, signs, monumentation, parking improvements and facilities, fountains, artwork and other related structures or improvements of every kind and nature which now, or at any time hereafter, exist upon, above or below the Land, including, but not limited to the Initial Improvements. The term **“Improvements”** shall not include the Block 22 Shared Facilities, personal property of Tenant or of any Subtenant, or any other item that is not affixed to the real estate.

“Improvements Quitclaim Deed” means as defined in **Section 7(e)**.

“Initial Improvements” means as defined in **Section 7(a)**.

“Initial Improvements Guaranty” means as defined in **Section 7(g)**.

“Land” means as defined in **Recital B**.

“Landlord Construction Notice” means as defined in **Section 7(b)**.

“Landlord Delay” means a delay that could not have been avoided by Tenant through the exercise of reasonable care resulting from (a) Landlord’s failure to execute and deliver to Tenant any instruments reasonably necessary to obtain all permits, approvals and other Entitlements related to construction of the Initial Improvements and as required under this Lease, (b) the gross negligence, willful misconduct of Landlord, (c) Landlord’s breach of this Lease beyond applicable any applicable notice and cure period, and/or (d) any unreasonable delay to the extent proximately caused by Landlord; provided that any such Landlord Delay shall commence upon delivery of Tenant’s notice to Landlord specifying in reasonable detail the nature of the Landlord Delay.

“Landlord Insurance Parties” means as defined in **Section 11(a)**.

“Landlord Notice” means as defined in **Section 3(b)**.

“Landlord Parties” means the State of Arizona, ABOR, and their respective current, former and future regents, officers, employees or agents.

“Lease Year” shall mean a twelve (12) full calendar month period, with Lease Year 1 being the period commencing on the Rent Commencement Date as ending as provided in **Section 5(f)**.

“Legal Requirements” means (a) all present and future laws, ordinances, requirements, orders, directions, permits, licenses, rules and regulations (collectively, a **“Requirement”**) of all governmental authorities and quasi-governmental authorities having jurisdiction over the Demised Premises or any part thereof (collectively, a **“Governmental Authority”**), which may

be applicable to the Demised Premises or any part thereof, (b) the Entitlements, and (c) all Project Documents.

“**Legislature**” means as defined in **Section 34(d)**.

“**Loss Payee Threshold**” means as defined in **Section 13(b)**.

“**Minimum Operating Standards**” means those operating criteria for management, operation, and maintenance of the Demised Premises (i) in accordance with the Omni brand standards, for so long as Omni Tempe, LLC or its Affiliate is the Tenant under this Lease, (ii) at a level consistent with the AAA Criteria in effect as of the Effective Date, which is incorporated in this Lease by reference, and (iii) if the AAA Criteria is modified after the Effective Date, at a level generally consistent with the then current AAA Criteria, taking into account the operating practices of hotels of similar class and age. For so long as Omni Tempe, LLC or its Affiliate is the Tenant under this Lease, in the event of a conflict between those guidelines and the Omni brand standards, the higher standard will be applicable for determining the Minimum Operating Standards.

“**Minimum Square Feet**” means _____ square feet ***[NOTE TO DRAFT: INSERT AREA EQUAL TO NINETY PERCENT (90%) OF THE TOTAL AIR CONDITIONED SQUARE FOOTAGE OF THE INITIAL IMPROVEMENTS AS DEPICTED IN THE PLAN PACKAGE THAT WILL BE APPROVED PRIOR TO LEASE EXECUTION.]***

“**New Lease**” means as defined in **Section 18(p)**.

“**New Lease Notice**” means as defined in **Section 18(p)**.

“**Open Transfer Period**” means as defined in **Section 17(a)**.

“**OTL**” means as defined in **Recital B**.

“**Outside Completion Date**” means as set forth in the definition of Completion Failure.

“**Parking Agreement**” means that certain Parking Agreement dated as of _____, 20____, by and between Landlord and Tenant.

“**Parking Garage**” means the structured parking improvements to be constructed pursuant to the Parking Agreement.

“**Permitted Mortgage**” means as defined in **Section 18(a)**.

“**Permitted Mortgagee**” means as defined in **Section 18(a)**.

“**Permitted Use**” means as defined in **Section 6(a)**.

“**Plan Package**” means the plans, specifications and other information attached or described on **Exhibit C**.

“**Pre-Paid Base Rent**” means as defined in Section 4(a).

“**Prohibited Transfer Period**” means as defined in Section 17(a).

“**Project**” means as defined in Recital D.

“**Project Documents**” means the Development Agreement, the Construction License, the Declaration, the Use Restrictions, the Parking Agreement and such other documents and agreements as may be entered into from time to time by Landlord and/or Tenant relating, in whole or in part, to development, maintenance, operation or use of the Demised Premises, but excluding Subleases of the Demised Premises or any portion thereof.

“**Public ASU Data**” means as defined in Section 34(l).

“**Purchase Option**” means as defined in Section 3(b).

“**Purchase Option Expiration**” means as defined in Section 3(b).

“**Real Property Taxes**” means real property and *ad valorem* taxes and assessments, both general and special, which would be levied by the Maricopa County Assessor against the Demised Premises, including the Improvements, if the Demised Premises and Landlord were not exempt from taxation pursuant to A.R.S. Title 42, Chapter 11, Article 3 (or any successor statutes).

“**Recorder’s Office**” means the Office of the County Recorder for Maricopa County, Arizona.

“**Reimbursement**” means the total Pre-Paid Base Rent paid by Tenant to Landlord pursuant to this Lease.

“**Release**” means any releasing, disposing, discharging, injecting, spilling, leaking, leaching, pumping, dumping, emitting, escaping, emptying, seeping, dispersal, migration, transporting, placing and the like, including the moving of any materials through, into or upon, any land, soil, surface water, ground water, or air, or otherwise entering into the environment.

“**Remaining Proceeds**” means as defined in Section 13(e).

“**Rent**” means the Pre-Paid Base Rent and any Additional Rent.

“**Rent Commencement Date**” means as defined in Section 5(f).

“**Restricted Transfer Period**” means as defined in Section 17(a).

“**Second Landlord Notice**” means as defined in Section 3(b).

“**Site Plan**” means as defined in Recital A.

“**Sublease**” means a lease by Tenant of all or a portion of the Demised Premises.

“**Subtenant**” means a lessee under a Sublease.

“**Tenant’s Notice**” means as defined in Section 3(b).

“**Tenant Notification Parties**” means as defined in Section 34(f).

“**Tenant Party(ies)**” means Tenant, each Subtenant, and their respective current, former and future members, directors, officers, agents, employees, and contractors.

“**Tenant’s Release**” means as defined in Section 17(c)(1).

“**Term**” means as defined in Section 3(a).

“**Termination Notice**” means written notice to Tenant delivered pursuant to Sections 6(b), 7(b), 13(a) or 13(f) expressly stating that this Lease and the Term shall terminate, subject to any cure periods specified in such Sections.

“**Third Party**” means any person or entity other than Landlord, Tenant or an Affiliate of either of them.

“**Transfer**” means as defined in Section 17(a).

“**Use Restrictions**” means that certain Declaration of Use Restriction dated _____, 20__ and recorded _____, 20__, in the official records of the Recorder’s Office, as now or hereafter may be amended or modified

“**Work**” means as defined in Section 11(d)(2).

“**Work Letter**” means the Work Letter Agreement between Landlord and Tenant in the form attached hereto as **Exhibit G**.

2. DEMISED PREMISES. Subject to the covenants and conditions herein contained, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Demised Premises. Tenant acknowledges that it has examined the Demised Premises, is familiar with the physical condition, expenses, zoning, status of title and use that may be made of the Demised Premises, and except as set forth in this Lease is leasing the same in its “AS IS” condition existing on the Effective Date. Landlord has not made and does not make any representations or warranties nor does Landlord have any obligations whatsoever with respect to the Demised Premises or otherwise with respect to this Lease except as expressly provided in this Lease. Tenant assumes all risks resulting from any defects (patent or latent) in the Demised Premises or from any failure of the Demised Premises to comply with applicable Legal Requirements, except as expressly provided in this Lease, or the uses or purposes for which the same may be used or occupied. Tenant acknowledges that neither Landlord nor any Landlord Party has made any representation or warranty as to the present or future suitability of the Demised Premises for any purpose or use whatsoever except as may be expressly provided in this Lease.

3. TERM; PURCHASE OPTION.

(a) The Lease term (hereinafter called the “**Term**”) shall commence on the Effective Date and, unless earlier terminated in accordance with the provisions of this Lease, shall expire on the day immediately prior to the sixtieth (60th) anniversary of the Rent Commencement Date, unless the Rent Commencement Date occurs on a day other than the first day of a calendar month, in which event the Term shall expire on the last day of the calendar month in which the sixtieth (60th) anniversary of the Rent Commencement Date occurs. If this Lease shall extend into the Extended Term pursuant to Section 3(b) below, the “Term” shall be deemed to include the Extended Term during such extension, where appropriate.

(b) Notwithstanding anything to the contrary set forth in this Lease, Tenant shall have a continuing right to purchase the Demised Premises from Landlord (the “**Purchase Option**”) pursuant to the terms of this Section 3(b). The Purchase Option shall be exercisable by written notice delivered to Landlord no later than twenty-four (24) months prior to the scheduled expiration of the Term (or at any time during the Extended Term, if applicable). If Tenant fails to send such written notice to Landlord prior to the scheduled expiration of the Term, then Landlord shall deliver to Tenant written notice of such failure, which shall request confirmation from Tenant as to whether Tenant desires to exercise its Purchase Option or expressly waive such right (the “**Landlord Notice**”). The following language must appear in the Landlord Notice in bold print: **“TENANT SHALL RESPOND TO THIS NOTICE WITHIN THIRTY (30) DAYS FROM ITS RECEIPT EITHER CONFIRMING TENANT’S EXERCISE OF ITS PURCHASE OPTION OR EXPRESSLY WAIVING THE SAME. LANDLORD HEREBY FURTHER DIRECTS TENANT TO PROMPTLY FORWARD A COPY OF THIS NOTICE TO THE ATTENTION OF AN OFFICER AT TENANT’S HEADQUARTERS.”** If either (a) Tenant fails to respond in writing to the Landlord Notice within such thirty (30) days following delivery of such Landlord Notice, or (b) Landlord does not send the Landlord Notice in accordance with this Section, then (w) neither Landlord nor Tenant shall be in default hereunder, (x) neither Landlord nor Tenant shall have the right to terminate this Lease pursuant to any such failure, (y) Tenant shall not be deemed to have waived the Purchase Option and Tenant shall continue to have the right to exercise the Purchase Option at any time during the Extended Term, and (z) this Lease shall automatically continue in full force and effect under the terms stated herein and shall thereafter expire on the earlier of (i) the date which Tenant affirmatively exercises or waives the Purchase Option during the Extended Term by delivering written notice to Landlord of the same, or (ii) automatic termination of this Lease pursuant to Tenant’s failure to affirmatively exercise or waive the Purchase Option in response to the Second Landlord Notice prior to the Purchase Option Expiration, pursuant to this Section 3(b). At any time during the Extended Term, Landlord may deliver a second written notice to Tenant (the “**Second Landlord Notice**”), which must include the following language in bold print: **“TENANT SHALL RESPOND TO THIS NOTICE WITHIN SIXTY (60) DAYS FROM ITS RECEIPT EITHER CONFIRMING TENANT’S EXERCISE OF ITS PURCHASE OPTION OR EXPRESSLY WAIVING THE SAME. LANDLORD HEREBY FURTHER DIRECTS TENANT TO PROMPTLY FORWARD A COPY OF THIS NOTICE TO THE ATTENTION OF AN OFFICER AT TENANT’S HEADQUARTERS.”** Within sixty (60) days after delivery of such Second Landlord Notice, Tenant shall send written notice to Landlord, which shall (a) confirm receipt of such Second Landlord Notice, and (b) suggest a time and place for a meeting between the then-current officers of Landlord and Tenant (“**Tenant’s Notice**”). Promptly after Landlord’s receipt of Tenant’s Notice, representatives of Landlord and Tenant shall then work together to schedule and attend a meeting at a mutually

agreeable date, time and venue (e.g. by way of telephone conference call, in-person meeting, etc.) to discuss whether Tenant desires to exercise its Purchase Option, and Tenant shall have a period of one (1) year after such meeting to affirmatively exercise or waive its Purchase Option (the “**Purchase Option Expiration**”). Subsequent to such meeting, if Tenant fails to send written notice to Landlord of its desire to affirmatively exercise or waive the Purchase Option prior to the Purchase Option Expiration, then Tenant shall be deemed to have waived the Purchase Option and this Lease shall automatically expire as of the date of the Purchase Option Expiration. Except as otherwise expressly specified in the immediately preceding sentence, under no circumstance shall Tenant be deemed to have waived its Purchase Option under this Lease unless and until Landlord receives express written notice of the same from Tenant. For purposes of this **Section 3(b)** only, any Landlord Notice or Second Landlord Notice hereunder shall be delivered to Tenant at each of (i) the notice address(es) for Tenant under **Section 31**, as such may be updated from time to time, and (ii) the physical mailing address for the hotel building on the Demised Premises, addressed to the attention of the general manager of the hotel.

(c) The Purchase Option shall be on the following terms and conditions: (i) no Tenant monetary obligations agreed upon by Landlord and Tenant, including, without limitation, obligations to pay Additional Charges, shall remain outstanding as of the date of conveyance to Tenant; provided that any such outstanding monetary obligations that Tenant is disputing in good faith shall survive the conveyance of the Demised Premises and expiration of this Lease and remain in effect until such dispute is resolved; (ii) the purchase price shall be Ten and No/100 Dollars (\$10.00); (iii) Landlord shall convey fee title to the Demised Premises to Tenant by a special warranty deed (the “**Deed**”); (iv) Tenant and Landlord shall enter into a Use Covenants Running with the Land agreement substantially in the form attached hereto as **Exhibit I** and record such instrument in the Official Records of Maricopa County immediately prior to recording of the Deed; (v) Landlord shall convey title to the Demised Premises free and clear of all monetary liens and encumbrances voluntarily placed on the Demised Premises by Landlord; (vi) Tenant shall be solely responsible for the first \$100,000.00 of (A) the standard owner’s title policy premium; and (B) escrow fees associated with the conveyance of the Demised Premises to Tenant; (vii) to the extent the cost of such standard owner’s title policy premium and escrow fees exceed \$100,000.00, Landlord shall be solely responsible for (Y) the standard owner’s title policy premium in excess of \$100,000.00 and (Z) fifty percent (50%) of all escrow fees; (viii) the cost of any endorsements or extended coverage shall, if elected by Tenant, be paid by Tenant; (ix) Tenant shall be solely responsible for the costs of any survey, broker commissions, recording fees related to the Deed or any other costs in connection with the purchase which are not otherwise listed in this **Section 3(d)**; (x) there shall be no due diligence contingencies or other contingencies for such purchase; and (xi) conveyance of the Demised Premises shall be effective as of the expiration of the Term and recording of the Deed. If Tenant validly exercises its Purchase Option, each of Landlord and Tenant acknowledges and agrees that Tenant shall remain obligated to pay Additional Base Rent and Additional Charges for the remainder of the Term.

4. RENT.

(a) Upon the Effective Date, Tenant agrees to pay pre-paid rent to Landlord in an amount equal to \$_____ **[NOTE TO DRAFT: TO BE EQUAL TO \$85.00]**

PER SQUARE FOOT OF THE DEMISED PREMISES AS SET FORTH IN THE NEW SURVEY PROVIDED IN CONNECTION WITH THE OTLJ (“Pre-Paid Base Rent”).

(b) All payments of Additional Rent that are payable directly to Landlord shall be considered delinquent if not received by Landlord on or before the fifth (5th) day after Tenant’s receipt of written notice from Landlord that any such payment is due and remains unpaid. Tenant shall pay to Landlord a late charge equal to five percent (5%) of any amount of delinquent Additional Rent that is not paid to Landlord within five (5) days following Tenant’s receipt of written notice from Landlord that such Additional Rent is due and remains unpaid. In addition, interest shall accrue on any amount of delinquent Rent at the Default Rate, to accrue from and after the fifth (5th) day following the date such amount was originally due until the date such amount is actually paid.

(c) Any Additional Rent relating to a fiscal period, a part of which is included within the Term hereof and a part of which extends beyond such Term, shall be prorated to the expiration of such Term.

(d) All rent to be paid by Tenant to Landlord pursuant to the terms and conditions of this Lease shall be paid in lawful money of the United States to Landlord at its address for notices, or at such other place as Landlord may from time to time designate in writing.

5. NET LEASE; ADDITIONAL CHARGES; TENANT PAYMENTS.

(a) It is the intention of the parties hereto that, except as expressly provided in this Lease, this Lease shall be a net lease and that Landlord shall receive the Rent and all sums which shall or may become payable hereunder to Landlord by Tenant free from all taxes, charges and expenses of every kind or sort whatsoever, extraordinary or ordinary, general or special, unforeseen or foreseen, which at any time during the Term shall become due and payable with respect to the Demised Premises or the use and operation thereof, and that Tenant shall and will and hereby expressly agrees to pay all such sums which, except for the execution and delivery of this Lease, would have been chargeable against the Demised Premises and payable by Landlord.

(b) All Impositions, insurance premiums, charges, costs, and expenses which Tenant assumes or agrees to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Tenant’s failure to pay the same as herein provided, and all other damages, costs and expenses which Landlord may suffer or incur, and any and all other sums which may become due, by reason of any default of Tenant or failure on Tenant’s part to comply with the agreements, terms, covenants and conditions of this Lease on Tenant’s part to be performed shall be referred to herein as “**Additional Charges**” and, in the event of their nonpayment, Landlord shall have with respect thereto all rights and remedies herein provided in the event of nonpayment of Rent.

(c) Any excise, transaction privilege or rental occupancy tax now or hereafter actually imposed by any government or governmental agency upon Landlord on account of, attributed to, or measured by Rent or other charges payable by Tenant to Landlord in accordance

with this Lease shall be paid by Tenant to Landlord in addition to and along with the Rent and the Additional Charges otherwise payable hereunder.

(d) Tenant shall not be required to pay, or reimburse Landlord for, (i) any local, state or federal capital levy, franchise tax, revenue tax, income tax, or profits tax of Landlord unless and to the extent such levy, tax or impost is in lieu of or a substitute for any other levy, tax or impost now or later in existence upon or with respect to the Demised Premises which, if such other levy, tax or impost were in effect, would be payable by Tenant under the provisions of this Lease, or (ii) any estate, inheritance, devolution, succession or transfer tax which may be imposed upon or with respect to any transfer (other than taxes in connection with a conveyance by Landlord to Tenant) of Landlord's interest in the Demised Premises.

(e) During the Term hereof, Tenant shall pay prior to delinquency all taxes assessed against and levied upon fixtures, furnishings, equipment and all other personal property owned by Tenant and situated on or within the Demised Premises, and when possible Tenant shall cause said fixtures, furnishings, equipment and other personal property to be assessed and billed separately from the real property demised to Tenant. Tenant shall, pay prior to delinquency, all business, occupation and occupational license taxes.

(f) Upon the date Tenant Completes Construction (the "**Rent Commencement Date**") and at all times thereafter, Tenant will pay to Landlord, as Additional Rent, the "**Additional Base Rent**" as follows:

(1) The Additional Base Rent for the twelve (12) full calendar month period commencing on the Rent Commencement Date occurs ("**Lease Year 1**") is One Million Ninety Thousand and No/100 Dollars (\$1,090,000.00). If the Rent Commencement Date occurs on a day other than the first day of a calendar month, Lease Year 1 shall end on the last day of the calendar month containing the first anniversary of the Rent Commencement Date.

(2) The Additional Base Rent for Lease Years 2 through Lease Year 11 is one hundred two and one-half percent (102.5%) of the Additional Base Rent for the prior Lease Year.

(3) The Additional Base Rent for Lease Years 12-15 shall be the same as the Additional Base Rent for Lease Year 11. On the first day of Lease Year 16 and on each five year anniversary thereafter (i.e. first day of Lease Years 21, 26, 31, etc.) until the end of the Term, the Additional Base Rent for each subsequent five year period is one hundred nine percent (109%) of the Additional Base Rent for the Lease Year immediately preceding such five year period.

(4) The Additional Base Rent for Lease Years during the Extended Term, if applicable, shall continue to escalate in accordance with this **Section 5(f)(4)**. On the first day of Lease Year 61 and on each five year anniversary thereafter (i.e. first day of Lease Years 66, 71, 76, etc.) until the end of the Extended Term, the Additional Base Rent for each subsequent five year period is one hundred nine percent (109%) of the Additional Base Rent for the Lease Year immediately preceding such five year period.

(5) A schedule of the Additional Base Rent is attached hereto as **Schedule 5(f)**. In the event of a conflict between this **Section 5(f)** and the Additional Base Rent amounts listed on **Schedule 5(f)**, **Schedule 5(f)** shall control.

(g) Landlord shall be entitled to determine the use of the Additional Base Rent in its sole discretion.

(h) The Additional Base Rent will be payable annually in advance (i) on or before the Rent Commencement Date at 5:00 P.M. for Lease Year 1 and (ii) on or before 5:00 P.M. of the first day of each subsequent Lease Year. The obligations of Tenant to pay any Additional Base Rent or portion thereof accrued as of the date of expiration or earlier termination of this Lease shall survive the expiration or earlier termination of this Lease and remain in effect until paid in full by Tenant.

(i) It is the intention of Landlord and Tenant that the Demised Premises (including the Land and the Improvements thereon) will be exempt from *ad valorem* property taxes and assessments. Landlord and Tenant will cooperate in good faith to ensure that any applicable exemptions are at all times in effect with respect to the Demised Premises. Landlord and Tenant shall not take any affirmative action for the purpose of causing, or with the intent to cause, the Demised Premises to become subject to assessment for or any obligation to pay *ad valorem* property taxes and assessments. If any such taxes or assessments are levied (or levy is attempted) against the Demised Premises or any portion thereof, then Landlord, in its own name and in the name of Tenant (or if Landlord does not have standing, then in the name of Tenant alone) at Landlord's sole cost and expenses, shall use its good faith efforts to judicially challenge (including seeking any available appeal rights), such levy (or attempted levy) within the applicable time frame provided pursuant to applicable legal requirements. Tenant will cooperate with Landlord in good faith and shall have the right, but not the obligation, at its expense, to participate to challenge or defend against such taxes or assessments. If, despite its good faith efforts to attempt to challenge or defend the levy of *ad valorem* property taxes and assessments, such *ad valorem* taxes and assessments are levied against the Demised Premises or against Tenant's leasehold interest therein ("**Future Taxes**"), Tenant shall be responsible for the payment of such Future Taxes thereafter assessed with respect to the Demised Premises and such Future Taxes shall be credited against Tenant's obligation for payment of the Additional Base Rent to Landlord during any period which Tenant is responsible for the payment of Future Taxes. In addition, if Maricopa County is successful in its effort to collect *ad valorem* property taxes and assessment for any period of time that the Demised Premises was previously deemed to be exempt from such property taxes and assessments ("**Clawback Taxes**"), Tenant shall be responsible for payment of all such Clawback Taxes to the extent payable for periods of time after the Effective Date **less** the aggregate amount of any Additional Base Rent paid to Landlord for such period, and Landlord shall be responsible for the difference. If Tenant's credit for Future Taxes result in no Additional Base Rent being due for three consecutive Lease Years, Tenant shall have the right to exercise the Purchase Option, exercisable by delivery of written notice to Landlord during the period in which Tenant's credit for Future Taxes results in no Additional Base Rent being due.

(j) During the Term hereof, Tenant shall pay prior to delinquency all assessments, common area expenses or other charges levied against the Demised Premises pursuant to the Declaration and any other applicable Project Documents.

(k) During the Term, Tenant shall be solely responsible (as Additional Charges) for payment of all charges for water, sewer, gas, electricity, telephone, CATV, and all other utility services of every kind and nature supplied to and used on the Demised Premises, including all connection fees and/or pending assessment charges. Any interruptions or impairments of utility services of any nature or in any manner whatsoever shall not affect any of Tenant's obligations under this Lease unless caused by the negligence or willful misconduct of Landlord. Landlord shall cooperate in good faith (but without any material out-of-pocket cost or expense to Landlord) with Tenant in connection with obtaining and maintaining utility services to the Demised Premises.

6. USE OF PREMISES.

(a) Tenant represents, warrants and covenants to Landlord that the Demised Premises shall be developed for the Permitted Use pursuant to **Section 7** of this Lease. Upon Tenant Completing Construction and opening of the Demised Premises for business pursuant to **Section 6(c)**, the Demised Premises shall be Continuously Operated in accordance with the Minimum Operating Standards as a hotel and conference center with related, ancillary uses under the name "Omni Tempe Hotel and Conference Center at ASU" or a similar name including "Tempe" and, if requested by Landlord, "ASU" (the "**Permitted Use**"). At such time as Omni Tempe, LLC or its Affiliate is no longer the Tenant under this Lease (subject to the limitations set forth in **Section 17(a)**), the name of the hotel and Conference Center shall no longer be required to include "Omni," but shall continue to include "Tempe" and, so long as requested by Landlord, "ASU." The Demised Premises shall be used for no purpose other than the Permitted Use unless approved by Landlord in writing, which approval shall not be unreasonably withheld so long as such uses are, in Landlord's reasonable judgment, compatible with the surrounding uses on the Campus, otherwise such approval may be given or withheld in Landlord's sole discretion. Without limiting the foregoing, Tenant acknowledges that from time to time Landlord may have certain strategic relationships in effect with third-parties related to operations on its campus, and Landlord may withhold its consent if any proposed use would materially conflict with such relationships. By way of example (but without limitation), Tenant shall not, without Landlord's prior written consent, (i) permit third party advertising or branding on the Demised Premises; provided, however, that Landlord's consent shall not be required for any third party advertising or branding related to or in connection with a present or future event at the Conference Center, (ii) permit third party advertising or branding on the Demised Premises for goods or service providers competing with Landlord's strategic relationship partners; provided, however, that Landlord's consent shall not be required for any competitor advertising or branding related to sales of goods or services at locations that are not a competitor branded location (as examples, a branded location would be a retail location primarily dedicated to a single brand such as a Nike Town or Apple store, while a more general shoe, apparel or electronics store may include branded displays and not be considered a branded location) or (iii) contract with any party not previously approved by Landlord to provide banking services or install an ATM on the Demised Premises. Without limiting the foregoing, in no event shall the Demised Premises be used for student housing without Landlord's prior written consent, which

may be given or withheld in Landlord's sole discretion. Promptly following Tenant's request, Landlord shall provide information related to Landlord's then current strategic relationships. Landlord and Tenant shall use good faith efforts to avoid conflicts with Landlord's strategic relationships.

(b) Following Completion of Construction, if Tenant fails to Continuously Operate the Demised Premises for the Permitted Use for a period of time that does not constitute an Abandonment, such event shall constitute a Default hereunder, but Landlord's sole and exclusive remedy for such Default shall be an action for actual (but not consequential or punitive) damages. In the event such failure to Continuously Operate continues for a period of three (3) consecutive years (an "**Abandonment**"), then Landlord's sole and exclusive remedy shall be limited to termination of this Lease and the right to pursue an action for damages for such three (3) year period leading up to an Abandonment. If Landlord elects to so terminate in the event of an Abandonment, Landlord shall give a Termination Notice to Tenant stating that this Lease and the Term hereby demised shall terminate on the date specified by such notice (provided such date shall be no earlier than ninety (90) days following such Termination Notice), which Termination Notice shall include the following language in bold print: "**FAILURE TO CURE ANY DEFAULT WITHIN NINETY (90) DAYS FROM RECEIPT OF THIS NOTICE MAY RESULT IN TERMINATION OF THE LEASE.**" Subject to the right of any Permitted Mortgagee under Section 18, if Tenant fails to commence operations for the Permitted Use within the time period specified in such Termination Notice, this Lease shall terminate upon Landlord's payment to Tenant of the Reimbursement, by wire transfer of immediately available funds or such other method of payment as Tenant may reasonably agree. Until such Reimbursement is made, this Lease shall continue in full force and effect and such termination shall be null and void. Upon a successful termination under this Section 6(b), Landlord may peaceably reenter the Demised Premises with or without process of law and take possession of the same and of all equipment and fixtures therein, and expel all other parties occupying the Demised Premises, without breach of the peace, without being liable to any prosecution for such reentry. In the event of an Abandonment where Landlord does not elect to terminate this Lease pursuant to this Section 6(b), then this Lease shall continue in full force and effect under the terms stated herein.

(c) Tenant shall open for business for the Permitted Use within ninety (90) days of Completion of Construction and thereafter Continuously Operate the hotel and Conference Center for the Permitted Use. Tenant's use of the Demised Premises shall at all times be subject to and shall be operated and maintained in compliance with the Permitted Use, the Use Restrictions and all Legal Requirements; provided, however, that Tenant shall not be bound by any modifications to any new Legal Requirements unilaterally imposed by Landlord to the extent that such new Legal Requirements would materially impair the right of Tenant to use the Demised Premises for the Permitted Use or would materially and adversely affect the rights and obligations of Tenant under this Lease, unless such Legal Requirement was adopted by Landlord in response to any new Legal Requirements adopted by a Governmental Authority other than Landlord.

(d) Tenant shall make the Conference Center, including the ASU Boardroom, available for Landlord's use, free of charge, for up to seven (7) days in each Lease Year; provided that (i) use of the Conference Center shall be scheduled with Tenant's established

scheduling procedures on a “first-come, first served” basis, (ii) Landlord shall follow Tenant’s reasonable rules, regulations and policies for the Conference Center, and (iii) food and beverage services, and other additional services not typically provided to Conference Center patrons, shall be provided at Landlord’s sole cost and expense. Tenant acknowledges that unavailability of the Conference Center due to existing bookings shall not give rise to any breach of Tenant under this Lease.

(e) The Conference Center shall include a conference room where Landlord is granted naming rights (the “**ASU Boardroom**”) as shown in the Plan Package. Landlord shall have the right to request a change in the name of the ASU Boardroom by delivery of written notice to Tenant. Promptly following any such request, Tenant shall deliver notice to Landlord with an estimate of the costs related to changing the ASU Boardroom’s name. If Landlord approves such estimate in writing and directs Tenant to so change the name of the ASU Boardroom, Tenant shall make such name change at Landlord’s sole cost and expense, not to exceed the cost estimate in Tenant’s notice. Landlord shall pay such costs within thirty (30) days of Tenant’s written request for payment, which request shall contain invoices and reasonable backup information evidencing such costs.

(f) Landlord will have the right, but not the obligation, to install a “Showcase Wall Display” area in the Conference Center consisting of a changeable wall-mounted exhibit as shown in the Plan Package. The Showcase Wall Display will highlight ASU achievements and research in its various academic disciplines including sustainability, technology, architecture, design, art, business, or other similar themes. The design of the overall display itself as well as the showcased items within the Showcase Wall Display shall be subject to approval by Tenant, which approval shall not be unreasonably withheld, conditioned or delayed so long as each is generally consistent with a museum design quality system. The Showcase Wall Display shall be developed, coordinated and maintained by Landlord, at Landlord’s expense, and the Showcase Wall Display exhibits shall be temporary in nature and will be removed and replaced periodically by Landlord. Landlord shall be entitled at any time and from time to time, to remove the Showcase Wall Display, provided that upon such removal it repairs any damage to the Demised Premises resulting from such removal.

7. CONSTRUCTION OF IMPROVEMENTS AND BLOCK 22 SHARED FACILITIES.

(a) In consideration of this Lease, Tenant agrees that the initial Improvements constructed by Tenant on the Land as of the date of Complete Construction (the “**Initial Improvements**”) shall be constructed in material conformance with the Plans and Specifications which have been approved by Landlord and which are described in the Plan Package and the Work Letter attached hereto as **Exhibit G**. At no time following Completion of Construction of the Initial Improvements will the Improvements located on the Demised Premises include less than the Minimum Square Feet except (i) due to the taking or condemnation of the Demised Premises under the right of eminent domain pursuant to **Section 14**, or (ii) during any period when such Improvements are being renovated or being restored due to a Casualty Event pursuant to **Article 13**, provided that the period of such restoration or renovation shall not exceed twenty-four (24) months following the date of Tenant’s actual receipt of the final, adjusted insurance proceeds from Tenant’s insurer with respect to such Casualty Event; provided that Tenant shall

use commercially reasonable efforts to complete such renovation or restoration, as applicable, within thirty-six (36) months following the date of such Casualty Event.

(b) If a Commencement Failure occurs with respect to the Initial Improvements, such event shall be a Default hereunder, and Landlord's sole remedies shall be limited to (i) enforcement of the Initial Improvements Guaranty and the subsequent right to provide for commencement and completion of the Initial Improvements using funds received therefor pursuant to Landlord's enforcement of the Initial Improvements Guaranty by written notice to Tenant (the "**Landlord Construction Notice**"), or (ii) the right to terminate this Lease by delivering a Termination Notice to Tenant stating that this Lease and the Term hereby demised shall terminate on the date specified by such notice (provided such date shall be no earlier than one hundred eighty (180) days following such Termination Notice), which Termination Notice shall include the following language in bold print: "**FAILURE TO CURE THE COMMENCEMENT FAILURE WITHIN ONE HUNDRED EIGHTY (180) DAYS FROM RECEIPT OF THIS NOTICE SHALL RESULT IN TERMINATION OF THE LEASE.**". If Landlord elects to proceed under subsection (ii) of this Section 7(b), such Termination Notice shall be deemed rescinded if Tenant cures the event causing such Commencement Failure within one hundred eighty (180) days following delivery of the Termination Notice. Landlord and Tenant hereby expressly agree, however, that if this Lease is terminated pursuant to this Section 7(b), such termination is expressly conditioned and shall only become effective upon the payment of a Reimbursement to Tenant, by wire transfer of immediately available funds or such other method of payment as Tenant may reasonably agree, otherwise such termination shall be null and void and this Lease shall continue in full force and effect. Upon either delivery of a Landlord Construction Notice or termination of this Lease pursuant to this Section 7(b), Tenant shall, at the request of Landlord, assign to Landlord (with no obligation of Landlord to assume) (A) all assignable agreements with contractors, engineers, architects and other professionals related to construction of the Initial Improvements, (B) all assignable plans and specifications for the Initial Improvements, and (C) all assignable permits, approvals and other Entitlements related to construction of the Initial Improvements.

(c) If a Completion Failure occurs with respect to the Initial Improvements, such event shall not be a Default hereunder, and Landlord's sole remedies shall be limited to (i) enforcement of the Initial Improvements Guaranty and (ii) the subsequent right to provide for completion of the Initial Improvements using funds received therefor pursuant to Landlord's enforcement of the Initial Improvements Guaranty by delivery of a Landlord Construction Notice to Tenant. Concurrently with delivery to Tenant, Landlord shall deliver the Landlord Construction Notice to any Permitted Mortgagee. Upon delivery of a Landlord Construction Notice pursuant to this Section 7(c), Tenant shall (A) at the request of Landlord, assign to Landlord (with no obligation of Landlord to assume) all assignable agreements with contractors, engineers, architects and other professionals related to construction of the Initial Improvements, (B) assign to Landlord all assignable plans and specifications for the Initial Improvements, and (C) assign to Landlord all assignable permits, approvals and other Entitlements related to construction of the Initial Improvements. Notwithstanding anything contained in this Section 7(c) to the contrary, a Completion Failure shall not be a Default hereunder and in no event may Landlord terminate this Lease as a result thereof.

(d) Following completion of the Initial Improvements, any alteration, renovation, restoration, modification or replacement of such Improvements (each an “**Alteration**”) shall be generally consistent with the Plan Package, and shall be constructed and/or installed in accordance with the Work Letter and all applicable Legal Requirements. Any material Alteration that is visible from the exterior of the Improvements shall be subject to approval by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed so long as the Alteration is generally consistent with the quality of comparable improvements within the Block 22 Property and Landlord’s rights under **Sections 6(d), (e) and (f)** are not materially and adversely affected. Under no circumstance shall Landlord have any such approval rights over any Alteration to the interior of the Improvements so long as such Alteration is not readily visible from the exterior of the Improvements and is consistent with the Permitted Use and Minimum Operating Standards. In constructing or installing any Alteration which is visible from the exterior of the Improvements, Tenant shall comply with **Section 1(b)** of the Work Letter.

(e) Upon installation or construction thereof, title to all Improvements, including all Alterations thereto, shall automatically vest in Landlord and become part of the Demised Premises; provided, however, that Tenant shall be entitled to realize all economic benefits from the ownership and operation of the Improvements and all Alterations during the Term of this Lease, including all rental and other revenues generated from the ownership and operation of the Demised Premises and; provided, further, however, that Tenant shall have the exclusive right to depreciate all such Improvements and Alterations for tax purposes and Landlord hereby waives any right, if any, with respect to any claim of depreciation prior to the expiration of the Term of this Lease. At Landlord’s request, Tenant shall execute and deliver to Landlord such further instruments as Landlord reasonably desires to evidence Landlord’s vested title to such completed Improvements, including, as applicable, one or more recordable quitclaim deeds as to all or any portion of such Improvements (“**Improvements Quitclaim Deed**”) in the form of **Exhibit F**. Unless (i) a New Lease is entered into pursuant to **Section 18(p)** or (ii) Tenant exercises its Purchase Option hereunder, possession of all Improvements shall be surrendered to Landlord pursuant to **Section 28(a)** at the expiration or earlier termination of this Lease.

(f) The Block 22 Shared Facilities shall be developed and constructed pursuant to the Development Agreement attached hereto as **Exhibit H**, subject to, among other things, Tenant’s self-help right to have the Block 22 Shared Facilities developed or constructed on behalf of Landlord upon Landlord’s failure to do so, as more particularly described in the Development Agreement.

(g) On or before the execution of this Lease, Tenant shall cause Omni Hotels Corporation, a Delaware corporation (“**Guarantor**”), to execute and deliver to Landlord a commencement and completion guaranty (the “**Initial Improvements Guaranty**”) for the benefit of Landlord in the form of **Exhibit J** attached hereto.

8. **MAINTENANCE AND REPAIRS.** Tenant shall at all times during the Term keep and maintain the Demised Premises in accordance with the Minimum Operating Standards and all Legal Requirements. Tenant waives any right created by any law now or hereafter in force to make repairs to the Demised Premises at Landlord’s expense, it being understood that

Landlord shall not be required to construct or install any improvements or make any Alterations thereto except as expressly provided in this Lease.

9. REGULATORY REQUIREMENTS.

(a) Tenant shall observe and promptly comply with all present and future Legal Requirements of all Governmental Authorities having or claiming jurisdiction over the Demised Premises or any part thereof and of all insurance companies writing policies covering the Demised Premises or any part thereof. Without limiting the generality of the foregoing, Tenant also shall procure each and every permit, license, certificate, approval or other authorization required in connection with the lawful and proper use of the Demised Premises or required in connection with construction of any Building or other Improvement now or hereafter erected thereon. Tenant shall pay all costs, expenses, liabilities, losses, fines, penalties, claims and demands including attorneys' fees that may in any way arise out of or be imposed because of the failure of Tenant to comply with such Legal Requirements except to the extent caused by failure of Landlord or any Landlord Party to comply with Legal Requirements.

(b) Tenant will not dispose of, generate, manufacture, process, produce, Release, store, transport, treat, or use, nor will it permit the disposal, generation, manufacture, presence, processing, production, Release, storage, transportation, treatment, or use of Hazardous Substances on, under, or about the Demised Premises in violation of Environmental Laws. Tenant covenants and agrees to pay all costs and expenses associated with enforcement, removal, remedial or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, and all audits, tests, investigations, cleanup, reports and other such items incurred in connection with any efforts to complete, satisfy or resolve any governmental or other regulatory matters, issues or concerns, arising out of or in any way related to the use, generation, Release, management, treatment, manufacture, storage or disposal of, on, under or about, or transport to or from the Demised Premises of any Hazardous Substances in any amount by any Tenant Party.

(c) Tenant shall save, hold harmless, indemnify and defend each of the Landlord Parties for, from and against any and all Claims with respect to the Demised Premises accruing during the Term on account of or in connection with:

- (1) The violation of any Environmental Law by any Tenant Party;
- (2) The presence, use, generation, storage or Release of Hazardous Substances occurring during the Term caused or resulting from the acts of any Tenant Party; or
- (3) The breach by Tenant of any of its obligations under this **Article 9.**

(d) Without limiting the foregoing, the indemnification in this Section shall include any and all costs incurred in connection with any investigations of all or any portion of the Demised Premises or any cleanup, removal, repair, remediation, detoxification or restoration and the preparation of any closure or other plans required or permitted by any Governmental Authority.

(e) If (i) Tenant is responsible for remediation costs pursuant to this **Article 9**, or (ii) during the Term, there is a Release of Hazardous Substances in, on, under or above the Demised Premises in violation of Environmental Law and not caused by Landlord or any Landlord Party, Tenant shall promptly conduct a site assessment, take any immediate action required by applicable Legal Requirements for containment of any Release, and prepare and submit to Landlord for review, a plan for clean-up of the Release and/or Hazardous Substances. Following approval of such plan, Tenant and Landlord shall work together to promptly implement the same.

(f) Tenant's indemnifications and obligations under this **Article 9** shall survive the expiration or termination of this Lease as to events occurring or liability arising after the Effective Date and prior to the expiration or termination of this Lease.

10. INDEMNIFICATION.

(a) Tenant shall save, hold harmless, indemnify and defend the Landlord Parties for, from and against all liabilities, obligations, claims, suits, damages, penalties, causes of action, costs and expenses, including, without limitation, reasonable attorneys' fees and expenses, expert witness fees, court costs, and costs of claim processing and investigation (each, a "**Claim**", and collectively, "**Claims**") incurred by, imposed upon or asserted against the Landlord Parties by reason of (i) any use or condition (exclusive of any pre-existing condition) of the Demised Premises or any part thereof during the Term, (ii) any accident, injury to or death of persons (including workmen) or loss of or damage to property occurring on the Demised Premises or any part thereof during the Term, (iii) any failure on the part of Tenant to perform or comply with any of the terms of this Lease relating to (A) the maintenance or repair of the Demised Premises and the Improvements constructed by Tenant thereon, (B) the purchase and maintenance of insurance, or (C) the Demolition Activities, (iv) performance of any labor or services or the furnishing of any materials or other property in respect of the Demised Premises or any part thereof by, on behalf of or at the request of Tenant or of any other Tenant Party, (v) any violation or breach of Legal Requirements by Tenant or any Tenant Party, or (vi) the negligence or willful misconduct of Tenant or any Tenant Party. Notwithstanding anything contained in this Section to the contrary, Tenant shall not be obligated to indemnify the Landlord Parties from any Claims to the extent resulting from the negligence, willful misconduct, or breach of this Lease of or by Landlord or any Landlord Party.

(b) In the event any party to be indemnified under this **Article 10** should be made a defendant in any action, suit or proceeding brought by reason of any act or omission of the indemnifying party, the indemnifying party shall, at its own expense resist and defend such action, suit or proceeding by counsel reasonably approved by the indemnified party. If any such action, suit or proceeding should result in any non-appealable final judgment against the indemnified party, the indemnifying party shall promptly satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged.

(c) The indemnity obligations in this **Article 10** shall survive the expiration of or earlier termination of this Lease as to events occurring or liability accruing during the Term or any other period when Tenant occupies or uses the Demised Premises.

11. INSURANCE.

(a) Liability Insurance. Tenant shall at all times during the Term self-insure (in conformance with Section 11(k) or purchase, maintain and keep in effect insurance against claims for personal injuries (including death) or property damage, under a policy of commercial general liability insurance (on an occurrence form), such that the total available limits will not be less than Two Million and No/100 Dollars (\$2,000,000) per occurrence, which may be satisfied by any combination of primary, secondary, and other coverages, naming the State of Arizona, ABOR, ASU, and their respective regents, officers, officials, agents, employees and volunteers (the “**Landlord Insurance Parties**”) as additional insureds. The coverage afforded the insured and each additional insured shall be primary and shall apply to loss prior to any coverage carried by Landlord. Any insurance or self-insurance maintained by the Landlord Insurance Parties shall be on an occurrence basis and shall be in excess of Tenant’s commercial general liability insurance coverage and shall not contribute with it. Tenant’s insurance policy must be endorsed, as required by this Lease, to include the Landlord Insurance Parties as additional insureds with respect to liability arising out of the activities performed by or on behalf of Tenant under this Lease. Tenant’s insurance policy shall include coverage for:

- Bodily injury
- Blanket broad form property damage (including completed operations)
Personal and advertising injury
- Blanket broad form contractual liability
- Fire and legal liability coverage
- Medical expense coverage

At least One Million Dollars (\$1,000,000.00) of such liability insurance coverage shall be primary coverage and the remainder of such coverage may be pursuant to an umbrella or excess liability policy.

(b) Workers’ Compensation Insurance. During all periods of the Term when Tenant has employees, Tenant shall purchase and maintain and keep in effect at all times during the Term workers compensation and employers liability insurance as required by the State of Arizona Workers Compensation statutes as follows:

Workers Compensation	Statutory
Employers Liability	
Each Accident	\$1,000,000
Disease - Each Employee	\$1,000,000
Disease - Policy Limit	\$1,000,000

This policy shall include endorsement for All State coverage for state of hire.

(c) Automobile Liability Insurance. During all periods of the Term when Tenant has employees, Tenant shall purchase and maintain and keep in effect business automobile liability insurance, with minimum limits of Two Million Dollars (\$2,000,000) per occurrence combined single limit. Declarations to include owned, non-owned and hired motor vehicles, applicable to claims arising from bodily injury, death or property damage arising out of

the ownership, maintenance or use of any automobile. The policy shall be endorsed to add the Landlord Insurance Parties as additional insureds and shall stipulate that the insurance shall be primary, and that any self-insurance or other insurance carried by the Landlord Insurance Parties shall be excess and not contributory to the insurance provided by Tenant.

(d) Property Insurance.

(1) Tenant shall self-insure (in conformance with Section 11(k)) or purchase, maintain and keep in effect (or cause to be maintained and kept in effect) at all times during the Term open peril/all risk commercial property insurance on the Demised Premises and Improvements on a replacement cost basis. Such insurance shall include coverage for clean-up, debris removal, business interruption and extra expense.

(2) During any period while Improvements or any Alteration thereof are being constructed or renovated on the Demised Premises (the “**Work**”), the insurance required pursuant to Section 11(d)(1) shall, if not self-insured be in the form of a builder’s “all risk” policy, which shall insure against physical loss or damage to all property incorporated into the Work and shall also insure finished products. Coverage shall also cover the interests of Landlord, the construction contractor and the construction subcontractors with respect to the Work, but it will not cover any machinery, tools, equipment, appliances or other personal property owned, rented or used by the construction contractor or any construction subcontractor(s) in the performance of the Work on the Demised Premises, which will not become a part of the completed Demised Premises. The property insurance obtained under the builder’s risk policy shall insure against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, false work, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirement, and shall cover reasonable compensation for the design professional’s and construction contractor’s services and expenses required as a result of such insured loss. The builder’s risk insurance shall include physical loss or damage to the Work on the Demised Premises, including materials and equipment in transit, on the Demised Premises or at another location as may be indicated in the construction contractor’s application for payment and approved by Tenant. As to the builder’s risk insurance policy, Tenant or the construction contractor, as applicable, shall be responsible for the deductible of each loss and shall retain responsibility for any loss not covered by the builder’s risk policy.

(3) All property insurance Tenant is required to maintain by this Lease shall stipulate that Tenant’s insurance shall be primary, and that any self-insurance or other insurance carried by the Landlord Insurance Parties shall be excess and not contributory to the insurance provided by Tenant.

(e) Additional Insurance. During construction of the Initial Improvements and any period while Work is being conducted on the Demised Premises for Alterations costing in excess of the Alteration Limit, Tenant’s contractor (if applicable) shall maintain the following additional insurance coverages:

(1) General Liability insurance with a minimum limit of \$1,000,000 per occurrence listing Landlord Insurance Parties as additional insureds.

(2) Automobile Liability If automobiles are used in connection with the Work, with a limit of \$1,000,000 combined single limit

(3) Worker's Compensation and Employers Liability insurance as required by the State of Arizona Workers Compensation statutes.

(4) Pollution Insurance. Pollution Legal Liability Insurance coverage approved by Landlord and listing the Landlord Insurance Parties as additional insureds, with a minimum limit of \$5,000,000.

(5) Professional Services. For contractors/subcontractors providing professional services under this Lease, Engineers' Professional Liability Insurance with a minimum limit of \$1,000,000 per claim and in the aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the assured.

(6) Hazardous Materials. For work that involves hazardous materials or pollution, pollution coverage with minimum limits of \$5,000,000 or an endorsement to their Commercial General Liability Insurance policy that provides coverage for bodily injury and property damage arising out of the use or transportation of asbestos or other hazardous materials.

The insurance required under this **Section 11(e)** will only be required concerning the entity which is actually performing such work.

(f) Evidence of Insurance. If not self-insured in conformance with **Section 11(k)**, Tenant shall provide and maintain all insurance required under this Lease with responsible, reputable and financially sound companies with a Best Policyholders Rating of "A-" or better and with a financial size rating of Class VII or larger, permitted to transact the business of insurance in the State of Arizona for the applicable lines of insurance. Upon the Effective Date, and no less than annually thereafter, Tenant shall deliver to Landlord certificates of insurance (unless self-insured in conformance with **Section 11(k)**) and any additional documentation reasonably requested by Landlord to assure compliance with this **Article 11**, which shall name the Landlord Insurance Parties as additional insureds for general liability coverage and auto liability coverage and as loss payees as to their interest pursuant to and as limited by **Article 13** for property coverage. All liability coverages shall stipulate that Tenant's insurance shall be primary and that any self-insurance or other insurance carried by the Landlord Insurance Parties shall be excess and not contributory to the insurance provided by Tenant. If any of the insurance policies required by this **Article 11** are cancelled prior to the stated expiration date, notice thereof will be given in accordance with the policy provisions, and further notice thereof promptly will be given by Tenant to Landlord. All coverages, conditions, limits and endorsements shall remain in full force and effect as required in this Lease.

(g) Copies and Additional Information. In connection with a bona-fide dispute with an insurance carrier as to whether Landlord is entitled to coverage under insurance policies required under this **Article 11** and upon Landlord's request, Tenant shall make available to a representative of Landlord such applicable insurance policies. The foregoing shall not affect a party's rights under law or court order with respect to the disclosure of such policy during the course of litigation.

(h) Landlord Procurement; Availability of Insurance Coverage. Failure on the part of Tenant to meet the requirements concerning insurance in this **Article 11** within ninety (90) days of Landlord's written notice to Tenant of such failure (or such shorter period as may be necessary to avoid a cancellation or lapse of any insurance) shall constitute a Default under this Lease, or, in Landlord's discretion, Landlord may procure or renew such insurance and pay any and all premiums in connection therewith if Tenant does not cure such failure within thirty (30) days of written notice from Landlord to Tenant (or such shorter period as may be necessary to avoid a cancellation or lapse of any insurance) specifying such failure, and all monies so paid by Landlord shall be repaid by Tenant as Additional Charges upon demand.

(i) Waiver of Subrogation. Tenant hereby waives and, to the extent available on commercially reasonable terms, shall cause its insurers to waive any claims, causes of action or other rights of any nature that Tenant may have against Landlord arising out of property damage to the Demised Premises, Improvements, or any other property owned or leased by Landlord or Tenant, to the extent that Tenant actually carries or is required hereby to carry insurance on the damaged real or personal property. Without limitation on the generality of the foregoing, the foregoing is intended, among other matters, to act as a waiver by each property insurer of Tenant providing liability or property insurance of such insurer's subrogation rights against such parties. There is no parallel waiver by Landlord or any of Landlord's insurance providers.

(j) Minimum Insurance Requirements; Modification of Insurance Requirements. The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained in this Lease. Landlord in no way warrants that the minimum limits contained herein are sufficient to protect Tenant from liabilities that arise out of the performance of its obligations under this Lease or performance of the Work by any Tenant Parties, and Tenant is free to purchase additional insurance. From time to time while this Lease is in effect, but not before the fifteenth (15th) anniversary of the Completion Date or more often than once in any ten (10) year period thereafter, Landlord may require that the insurance coverages specified in **Sections 11(a)** through **11(c)** be modified, subject to Tenant's written agreement, to the amounts then reasonable and customary for ground lease tenants of similar properties within the Greater Phoenix Metropolitan Area and Tenant shall be entitled to a period of one hundred eighty (180) days to obtain such insurance, if not self-insured in conformance with **Section 11(k)**.

(k) Self-Insurance.

(1) So long as Omni Tempe, LLC or its Affiliate is the Tenant under this Lease, Tenant shall have the right to self-insure under this **Section 11**; provided that if Tenant's self-insured retention exceeds \$2,000,000 (which amount shall be increased annually

by the percentage increase in the CPI) per claim, Tenant shall inform Landlord of such increase and provide evidence reasonably satisfactory to Landlord that such retention remains reasonable under Tenant's self-insurance program.

(2) Upon a Transfer in accordance with **Section 17**, Tenant's right to self-insure under this **Section 11** is subject to Landlord's written consent (which shall not be unreasonably withheld). Without limiting the grounds for withholding consent which may be reasonable, it shall be reasonable for Landlord to withhold consent if Landlord reasonably believes that the proposed self-insurance is not financially prudent with respect to any of the following: (A) funding of losses; (B) methodology used to determine funding level; (C) which coverages are self-insured; (D) the existence of a stop loss policy above any self-insured retention; (E) alternative risk transfer or (F) administration of claims.

(3) Tenant shall, upon Landlord's written request from time to time, provide current evidence concerning Tenant's self-insurance program.

(4) Nothing herein limits or diminishes the waiver of subrogation rights and obligations as provided for in this Lease or the rights that Landlord's insurance carriers would have had under "other insurance" or similar clauses in Landlord's insurance policies had Tenant not exercised Tenant's self-insurance rights under this **Section 11(k)**.

12. LIENS AND ENCUMBRANCES.

(a) Tenant shall be responsible for all costs and charges for any Work done by or for Tenant or any Tenant Party on or about the Demised Premises or in connection with Tenant's occupancy thereof, and, subject to the provisions of **Section 12(b)**, Tenant shall keep the Demised Premises free and clear of all mechanics' liens and other liens and encumbrances on account of work done for or authorized by Tenant or any Tenant Party or arising out of Tenant's or any Tenant Party's occupancy of the Demised Premises except as provided in this **Section 12(a)**. Tenant shall indemnify, defend and hold Landlord harmless for, from and against any and all Claims on account of such claims of lien or other encumbrances of laborers or materialmen or others for Work performed or materials or supplies furnished for or authorized by Tenant or any Tenant Party.

(b) If, because of any act or omission (or alleged act or omission) of Tenant or any Tenant Party, any mechanics', materialmen's or other lien, charge or order for the payment of money shall be filed or recorded against Landlord's estate in the Demised Premises or against Landlord (whether or not such lien, charge or order is valid or enforceable as such), Tenant shall, at its own expense, cause the same to be released and discharged of record within thirty (30) days after Tenant shall have received notice of the filing or recording thereof, or Tenant may, within said period, record a surety bond pursuant to A.R.S. § 33-1004 (or any applicable successor statute), in the case of mechanics' or materialmen's liens, or furnish to Landlord a bond, letter of credit or other instrument reasonably satisfactory to Landlord against any other lien, charge or order, in which case Tenant shall have the right to contest the validity or amount thereof provided that Landlord shall not thereby become subject to any civil or criminal liability for Landlord and Tenant's failure to comply.

(c) Tenant may enter into agreements granting non-monetary encumbrances on the Demised Premises, including, without limitation, easements for use or right-of-ways, provided such encumbrances are consistent with, the Permitted Use. Tenant shall obtain Landlord's prior written consent, not to be unreasonably withheld or delayed, to any such encumbrance which (i) affect fee title to the Property and (ii) require Landlord's execution.

13. DAMAGE OR DESTRUCTION.

(a) If, at any time during the Term hereof, the Demised Premises, including the Improvements or any part thereof, are damaged or destroyed by fire or any other occurrence of any kind or nature (a "**Casualty Event**"), Tenant shall use commercially reasonable efforts to promptly secure the site to minimize any danger to the Subtenants or the public and shall proceed with reasonable diligence with the work of repairing or restoring the same using any proceeds from insurance maintained by Tenant to complete such Work; provided that if Tenant determines in its good faith discretion that it would not be financially viable for Tenant to repair or restore the Improvements or such affected part thereof or that Tenant cannot accomplish such repair or restoration in the time and manner required by this **Article 13**, in which case Tenant shall demolish and remove any damaged Improvements or part thereof, together with all rubble and debris related thereto (collectively the "**Demolition Activities**"). Such Demolition Activities shall be diligently pursued to completion following the Casualty Event (as such time period may be extended for Force Majeure Events pursuant to **Article 31**). If Tenant elects to proceed with Demolition Activities and not continue operation of the Demised Premises for the Permitted Use, Tenant shall notify Landlord of such decision within two hundred seventy (270) days after the date of such Casualty Event; provided that if Tenant reasonably requires an extension of such date to determine the financial viability of restoration, including, without limitation, obtaining adjustment of insurance proceeds, Tenant shall notify Landlord of such requirement and the date for such notice shall be extended as reasonably required for Tenant to make such determination. If Tenant sends such notice, Landlord may elect to terminate this Lease by delivering a Termination Notice; provided that such Termination Notice shall be deemed either (i) rescinded if Tenant elects to construct Improvements and re-open for the Permitted Use and commences the Work one hundred eighty (180) days following delivery of the Termination Notice, or (ii) effective one hundred eighty (180) days following delivery of the Termination Notice if Tenant has not commenced the Work within said one hundred eighty (180) days and only upon payment of the Reimbursement to Tenant, less any CC Cost Reimbursement Remainder as of the date such Reimbursement is paid to Tenant, by wire transfer of immediately available funds or such other method of payment as Tenant may reasonably agree. Landlord and Tenant hereby expressly agree that if this Lease is to be terminated pursuant to this **Section 13(a)**, such termination is expressly conditioned and shall only become effective upon the payment of such Reimbursement (less the CC Cost Reimbursement Remainder) to Tenant. If the CC Cost Reimbursement Remainder exceeds the Reimbursement, Tenant shall pay such excess to Landlord within thirty (30) days of termination of this Lease pursuant to this **Section 13(a)** to the extent Landlord has not recovered such amounts pursuant to **Section 13(d)**.

(b) So long as Omni Tempe, LLC or its Affiliate is the Tenant under this Lease, Landlord agrees that Landlord's interest as loss payee shall be limited to any Casualty Event with losses in excess of \$40,000,000 (which amount shall be increased annually by the percentage increase in the CPI) (the "**Loss Payee Threshold**"). For any Casualty Event with

losses equal to or less than the Loss Payee Threshold, Landlord shall not be a loss payee with respect to property insurance proceeds for such Casualty Event. If Tenant's insurer(s) issue proceeds with Landlord as loss payee for a Casualty Event with losses equal to or below the Loss Payee Threshold, Landlord shall promptly release its interest in any insurance proceeds subject to the proceeds being used for the purposes stated in this **Article 13** for the applicable Casualty Event. For a Casualty Event with losses in excess of the Loss Payee Threshold, insurance proceeds shall include Landlord as loss payee. For a Casualty Event with losses in excess of the Loss Payee Threshold, Tenant shall notify Landlord of such Casualty Event and applicable insurance proceeds. After receipt of such notice, if, in Landlord's good faith and reasonable discretion, the available insurance proceeds and Tenant's financial resources:

(1) are adequate to complete restoration of the Improvements, Landlord shall promptly release its interest in any insurance proceeds subject to the proceeds being used for the purposes stated in this **Article 13** for the applicable Casualty Event; provided that if Tenant fails to commence such restoration work within ninety (90) days of Landlord's release of its interest, Tenant, at Landlord's request, shall deposit such proceeds, up to the Demolition Limit, with a third party escrow provider reasonably acceptable to Landlord; or

(2) are not adequate to complete such restoration, Landlord may condition release of its interest in any insurance proceeds subject to the proceeds being used for the purposes stated in this **Article 13** for the applicable Casualty Event on Tenant's deposit of proceeds, up to the Demolition Limit, with a third party escrow provider reasonably acceptable to Landlord. In determining whether to condition sign off on establishment of an escrow, the parties agree that it shall not be reasonable for Landlord to consider any Default or alleged Tenant breach of this Lease.

(c) Upon a Transfer in accordance with **Section 17**, Landlord's interest as loss payees shall no longer be limited to Casualty Events with losses in excess of the Loss Payee Threshold.

(d) Funds deposited with a third party escrow provider shall be disbursed directly to the contractor performing the Demolition Activities in accordance with the terms of the contract for the Demolition Activities or as follows: (1) fifty percent (50%) of funds upon commencement of restoration Work or Demolition Activities and (2) the remaining fifty percent (50%) of funds upon fifty percent (50%) completion of such restoration Work or Demolition Activities; provided if this Lease is terminated pursuant to this **Article 13** and the Demolition Activities are not performed by Tenant, any remaining funds shall be disbursed to Landlord. The "**Demolition Limit**" shall mean (1) the cost of the Demolition Activities, as reasonably estimated by a third party insurance adjustment; plus (2) the CC Cost Reimbursement as of the date of the Casualty Event less (3) the Reimbursement.

(e) All insurance proceeds on account of such damage or destruction under the policies of insurance maintained by Tenant as provided for in **Section 11(d)** not used to pay for the cost of the Work, if applicable, and Tenant's other reasonable costs incurred in connection with such Casualty Event or the Work or, if applicable, the Demolition Activities (the "**Remaining Proceeds**"), shall be paid directly to Tenant. Except as provided in this **Article 13**, Landlord shall have no right or claim to any insurance proceeds collected under this **Article 13**.

Landlord's interest in any insurance proceeds collected under this **Article 13** shall be limited to the Demolition Limit.

(f) If (i) following a Casualty Event, (ii) Tenant has elected to restore the Improvements and (iii) the Work has not been commenced within seven hundred thirty (730) days after the final adjustment of insurance proceeds by Tenant's insurer, but in no event later than one thousand ninety-five (1,095) days after the date of such Casualty Event (as such time periods may be extended for Landlord Delays or Force Majeure Events pursuant to **Article 31**), thereafter Landlord shall have the right to terminate this Lease by delivering a Termination Notice prior to Tenant's commencement of restoration Work. If Landlord elects to send a Termination Notice under this **Section 13(f)**, such Termination Notice shall be deemed either (i) rescinded if Tenant commences the Work within sixty (60) days following delivery of the Termination Notice, or (ii) effective sixty (60) days following delivery of the Termination Notice if Tenant has not commenced the Work within said sixty (60) days and only upon payment of the Reimbursement to Tenant. Landlord and Tenant hereby expressly agree that if this Lease is terminated pursuant to this **Section 13(f)**, such termination is expressly conditioned and shall only become effective upon the payment of the Reimbursement, less any CC Cost Reimbursement Remainder as of the date of such Reimbursement, to Tenant.

(g) Except with respect to payment of the Reimbursement, Tenant shall not be entitled to any refund of any portion of the Pre-Paid Base Rent or abatement, allowance, reduction or suspension of the Additional Rent and Additional Charges on account of all or any portion of the Demised Premises being 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 Additional Rent and Additional Charges nor release Tenant of or from obligations imposed upon Tenant under this Lease.

14. EMINENT DOMAIN.

(a) If the whole of the Demised Premises shall be taken or condemned under the right of eminent domain or if such a substantial part of the Demised Premises shall be taken as shall result in the portion remaining being, in Tenant's reasonable determination, unsuitable for the use being made thereof at the time of such taking, then this Lease shall terminate as of the date upon which title shall vest in such condemning authority and Tenant shall have the right to receive the entirety of any condemnation awards or payments on account of such taking, less any CC Cost Reimbursement Remainder as of the date of such taking or condemnation, which Tenant shall pay to Landlord. Except as expressly stated in this **Section 14(a)**, under no circumstance shall Landlord have any right or claim to any condemnation proceeds collected under this **Section 14**.

(b) If only a part of the Demised Premises shall be so taken or condemned and the part not so taken can, in Tenant's reasonable judgment, be adapted for the use then being made thereof, this Lease shall remain in full force and effect without any refund of the Pre-Paid Base Rent or any abatement or reduction in Additional Rent and Additional Charges, and Tenant, whether or not its portion of the awards or payments, if any, on account of such taking shall be sufficient for the purpose, at its own expense shall either promptly commence and complete the restoration of the Improvements on the Demised Premises as nearly as possible to their intended

use, condition and character immediately prior to such taking or condemnation or otherwise render the Demised Premises operationally safe and aesthetically presentable. Tenant shall have the right to receive the entirety of any condemnation award in connection with any temporary taking or condemnation occurring during the Term of this Lease.

(c) Each of Landlord and Tenant shall have the right, at its own expense, to appear in any condemnation proceeding and participate in any and all hearings, trials and appeals therein. At the request of Tenant, Landlord shall appear in any condemnation proceeding which Tenant deems Landlord's presence reasonably necessary. If either Landlord or Tenant shall receive notice of any proposed or pending condemnation proceedings affecting the Demised Premises or any part thereof, the party receiving such notice shall promptly notify the other party of such notice and contents thereof.

15. TENANT'S DEFAULTS AND REMEDIES.

(a) The occurrence of any one or more of the following events shall constitute a "Default" hereunder by Tenant:

(1) The failure by Tenant to make any payment of Pre-Paid Base Rent before considered as delinquent pursuant to Section 4(a).

(2) The failure by Tenant to make any payment of Additional Rent (including any Additional Base Rent) required to be paid by Tenant hereunder on the date such payment was due, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant.

(3) The failure by Tenant or any Tenant Party to observe or perform any covenant or provision of this Lease to be observed or performed by Tenant, other than as specified in subparagraphs (1) or (2) immediately above, where such failure shall continue for a period of ninety (90) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's Default is such that it is capable of being cured but more than ninety (90) days are reasonably required for its cure, then Tenant shall not be deemed to be in Default if Tenant shall commence such cure within said ninety (90) day period and thereafter prosecute such cure to completion with reasonable diligence.

(b) In the event of a Default by Tenant, under no circumstance whatsoever shall Landlord have the right to terminate this Lease or Tenant's possession of the Demised Premises for any reason, except as otherwise expressly provided in Sections 6(b), 7(b), 13(a) or 13(f). Except as so limited herein, Landlord may, at its option, have as its remedies any one or more of the following:

- (1) pursue an injunction to enjoin the breach or threatened breach;
- (2) pursue specific performance of Tenant's obligations under this Lease;
- (3) seek money damages for losses arising from Tenant's default of this Lease; or

(4) make any payment or perform any covenant on Tenant's part to be kept, observed or performed hereunder, which Tenant has failed to so make or perform, for the account of Tenant. If Landlord makes any reasonable expenditure or properly incurs any obligation for the payment of money in connection therewith, the same shall be due and payable by Tenant upon demand, together with interest thereon at the Default Rate from the date of receipt of Landlord's demand until repaid, and if Tenant should fail to pay such sum within thirty (30) days following demand, such failure shall constitute a Default hereunder.

(c) In the event of any breach or threatened breach by Tenant of any of the terms, covenants or agreements contained in this Lease, Landlord shall be limited to the specific remedies provided in this Lease and in equity. Under no circumstance shall Landlord have the right to terminate this Lease except and only to the extent allowed under **Sections 6(b), 7(b), 13(a) or 13(f)**.

(d) Each right and remedy of Landlord provided for in this Lease shall be cumulative and in addition to every other right or remedy provided for in this Lease, except as otherwise specified in this Lease; and the exercise or beginning of the exercise by Landlord of any one or more of such rights or remedies shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease.

(e) No waiver by Landlord or breach by Tenant of any term of this Lease shall be construed as a waiver of any succeeding breach of the same or any other term.

16. **LANDLORD'S DEFAULTS AND REMEDIES.**

(a) In the event of any breach by Landlord of any of the terms, covenants or obligations of Landlord under this Lease, Tenant shall, before exercising any remedy available to it at law or in equity, give Landlord written notice of the claimed breach. For thirty (30) days following delivery of such notice, Landlord shall have the right to cure the breach, or, if such breach cannot be cured within such thirty (30) days, such additional time as may be necessary if within such thirty (30) days Landlord has commenced and is diligently pursuing the remedies necessary to cure such breach. If such breach remains uncured, then a Landlord default shall be deemed to have occurred and Tenant may, at its option, and in addition to all other remedies specified elsewhere in this Lease, have as its remedies any one or more of the following: (i) pursue an injunction to enjoin the breach or threatened breach; (ii) pursue specific performance of Landlord's obligations under this Lease; or (iii) seek money damages for loss arising from Landlord's default of this Lease.

(b) Each right and remedy of Tenant provided for in this Lease shall be cumulative and in addition to every other right or remedy provided for in this Lease; and the exercise or beginning of the exercise by Tenant of any one or more of such rights or remedies shall not preclude the simultaneous or later exercise by Tenant of any or all other rights or remedies provided for in this Lease.

(c) No waiver by Tenant or breach by Landlord of any term of this Lease shall be construed as a waiver of any succeeding breach of the same or any other term.

17. ASSIGNMENT AND SUBLETTING.

(a) Commencing on the Effective Date and continuing until the last day of the month in which the third (3rd) anniversary of the Rent Commencement Date occurs (the “**Prohibited Transfer Period**”), Tenant shall not, either voluntarily or by operation of law, (i) sell, assign or transfer its interest under this Lease, in whole or in part, (ii) sublet all or substantially all of the Demised Premises or any part thereof, or (iii) sell, issue or transfer fifty percent (50%) or more of any direct or indirect legal or beneficial ownership in Tenant (together with the immediately preceding **subsections (i) and (ii)**, collectively a “**Transfer**”), except as otherwise provided in **Section 17(b)**. Commencing on the expiration of the Prohibited Transfer Period and continuing until the last day of the month in which the eighth (8th) anniversary of the Rent Commencement Date occurs (the “**Restricted Transfer Period**”), Tenant may complete a Transfer to an Approved Transferee so long as such Approved Transferee operates the Demised Premises under an Approved Brand during the Restricted Transfer Period (but thereafter, such Approved Transferee may operate the Demised Premises under any brand of its choosing), without Landlord’s consent; but otherwise, Tenant shall not complete a Transfer during the Restricted Transfer Period without the prior written consent of Landlord, which consent may not be unreasonably withheld, conditioned or delayed. Commencing on the expiration of the Restricted Transfer Period and continuing until the expiration or earlier termination of this Lease (the “**Open Transfer Period**”), Tenant may complete a Transfer to an Approved Transferee without Landlord’s consent; but otherwise, Tenant shall not complete a Transfer to a Third Party during the Open Transfer Period without the prior written consent of Landlord, which consent may not be unreasonably withheld, conditioned or delayed. Any Transfer which is not in compliance with the provisions of this **Section 17** shall be void.

(b) Notwithstanding anything to the contrary set forth in **Section 17(a)**, under no circumstance shall the consent of Landlord be required for any (i) Affiliate Transfer (but Tenant shall provide Landlord at least ten (10) days’ advance notice of any Affiliate Transfer and, if such Affiliate Transfer results in a change in the Tenant entity, a copy of the assignment and assumption of this Lease), (ii) Change in Control (but Tenant shall provide Landlord notice within thirty (30) days after any Change in Control), (iii) lease/leaseback or assignment/leaseback transaction entered into for financing purposes; or (iv) assignment, sale, hypothecation, encumbrance, or transfer to a Permitted Mortgagee or to any purchaser of Tenant’s leasehold interest at a foreclosure sale or in lieu of foreclosure of a Permitted Mortgage, even if any such transaction would otherwise fall under the definition of a Transfer.

(c) If Landlord fails to respond in writing to Tenant’s request for Landlord’s consent to a Transfer within fifteen (15) days following delivery of such notice, then Tenant may give a second notice to Landlord requesting approval of such Transfer, on which the following language must appear in bold print: “**FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) DAYS FROM ITS RECEIPT SHALL RESULT IN THE TRANSFER DESCRIBED HEREIN BEING DEEMED APPROVED BY LANDLORD.**” If Landlord fails to respond in writing (in the manner described above) to such as second request for approval of a Transfer within ten (10) days following delivery of such second notice, the Transfer shall be deemed to have been approved by Landlord. Landlord’s consent to any Transfer shall not be construed as relieving Tenant from obtaining the express written consent of Landlord to any further assignment or subletting or approving a use other than the Permitted Use.

(1) No Transfer shall relieve the transferor of Tenant's obligation to pay the Additional Rent and Additional Charges and perform all the other covenants and obligations to be performed by Tenant hereunder accruing prior to the date of such Transfer.

(2) Without Landlord's express written agreement, which may be granted or withheld in Landlord's sole discretion, no Transfer shall relieve the transferor of Tenant's obligation to pay the Additional Rent and Additional Charges and perform all the other covenants and obligations to be performed by Tenant hereunder accruing from and after the Transfer if a Default has occurred and is continuing as of the date of such Transfer.

(3) No Transfer occurring during the Prohibited Transfer Period shall relieve the transferor of Tenant's obligation to pay the Additional Rent and Additional Charges and perform all the other covenants and obligations to be performed by Tenant hereunder accruing from and after the Transfer through the first to occur of (i) the date Landlord consents to a Tenant's Release (such release not to be unreasonably withheld, conditioned or delayed after the Prohibited Transfer Period) and (ii) the date of the commencement of the Open Transfer Period (a "**Tenant's Release**"). If a Transfer occurs during the Restricted Transfer Period, Tenant's Release shall be conditioned on Landlord's consent to such Tenant's Release, which consent shall not be unreasonably withheld, conditioned or delayed. If a Transfer occurs during the Open Transfer Period, a Tenant's Release is automatic and shall not be conditioned on Landlord's consent to such Tenant's Release. For the avoidance of doubt, if a Transfer occurs during the Prohibited Transfer Period or the Restricted Transfer Period and a Tenant's Release has not already occurred, a Tenant's Release shall automatically occur upon the date of commencement of the Open Transfer Period.

(4) Notwithstanding the terms of **subsection (1)**, the acceptance by Landlord of any payment in the nature of rent from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any assignment or subletting.

(5) No Affiliate Transfer or Transfer to which there has been consent shall be effective unless it is evidenced by a written instrument executed by the assignor or sublessor, and by which the assignee or Subtenant shall agree in writing for the benefit of Landlord to assume, to be bound by, and to perform the terms, covenants and conditions of this Lease to be done, kept and performed by Tenant. One executed copy of such written instrument shall be delivered to Landlord.

(6) Tenant shall be responsible for and shall pay all reasonable and actual out-of-pocket costs in excess of \$10,000.00 and incurred by Landlord (including attorneys' fees) in responding to any request for consent to a proposed Transfer.

(d) Tenant may enter into Subleases without Landlord's consent on such terms and conditions as Tenant may deem to be appropriate in light of all the circumstances; provided that (i) no Sublease shall permit the use of the Demised Premises for any purpose other than a Permitted Use hereunder, (ii) no Sublease shall be for a term extending beyond the Term hereunder, and (iii) each Sublease shall be subject to all of the terms and conditions of this Lease. No Sublease shall release Tenant from any of Tenant's obligations under this Lease.

(e) Termination of this Lease by Landlord, by cancellation or otherwise, shall not serve to terminate (i) any Sublease that complies with **Section 17(d)** or (ii) any Sublease otherwise approved in writing by Landlord; provided that (A) the rent payable under such Sublease shall be substantially consistent with market rate terms generally available for comparable space in the Greater Phoenix Metropolitan Area at the time such Sublease was executed and shall be payable by the Subtenant in equal monthly installments during the term of the Sublease, and (B) the Sublease shall require the Subtenant to pay an equitable share of all Project operating expenses, which shall include, but may not be limited to, common area maintenance expenses. Termination of this Lease by Landlord shall operate as an assignment to Landlord of all such Subleases described in the preceding sentence, and Landlord shall honor all such Subleases (including honoring the rights of any mortgagees in respect of any such Sublease), and shall not disturb the tenancy of any Subtenant thereunder except in accordance with the applicable provisions of such Sublease, provided, that:

(1) Landlord shall not be: (i) liable for any act or omission of (A) any prior sublessor (including Tenant) under the Sublease, provided, however, that Landlord shall remain responsible for performing day-to-day maintenance and repairs required of any prior sublessor (including Tenant); or (B) Subtenant (or its successors or permitted assigns) under the Sublease; or (ii) subject to any offsets or defenses which Subtenant may have against any prior sublessor (including Tenant) under the Sublease; or (iii) bound by any payment which Subtenant might have paid for more than one month in advance to any prior sublessor (including Tenant); or (iv) bound by any provision set forth in the Sublease requiring any prior sublessor (including Tenant) to indemnify or hold Subtenant harmless; or (v) responsible for representations, warranties, covenants and indemnities of any prior sublessor (including Tenant) except to the extent that such representations, warranties, covenants and indemnities apply to the Demised Premises and relate to the operation of the Demised Premises after assignment of the Sublease to Landlord; or (vi) liable for any prior sublessor's (including Tenant's) obligations for Alterations, demolition, or other improvements or work at the Demised Premises, provided, however, that the Subtenant may elect to complete such sublessor's (including Tenant's) obligations for alterations, demolition, or other improvements or work and offset Subtenant's costs to complete from rental payments due under the Sublease; and

(2) no Subtenant shall be required to make any payment to Landlord unless and until such Subtenant shall have received written notice from Landlord of the termination of this Lease and direction that payments and performance thereafter be made directly to Landlord. Thereafter, upon such Subtenant's timely payment or performance to Landlord, Landlord shall not be entitled to claim a default for not having received any corresponding payment or performance from Tenant. If a Subtenant receives conflicting written notices demanding payment or performance from Landlord and Tenant, such Subtenant shall have the right to interplead such payment and/or other matters in any court of competent jurisdiction, in which event such Subtenant shall not be deemed in default. Payment or performance when and as ordered by such court shall constitute full performance. So long as a Subtenant has made payment or performance to Landlord or interpleaded such matters and is not subject to termination for default of the pertinent Sublease, Landlord shall not join that Subtenant as a party defendant in any action or proceeding or take any other action for the purpose of terminating Subtenant's interest and estate because of any default under or termination of this Lease.

The terms of this **Section 17(e)(2)** are self-effectuating; provided, however, at the request of a Subtenant, Landlord shall cooperate with such Subtenant in executing a separate instrument in recordable form confirming the terms of this **Section 17(e)(2)**, but Subtenant shall reimburse Landlord for all reasonable administrative and legal fees and costs incurred by Landlord in connection with such instrument.

(f) Notwithstanding anything contained herein to the contrary, each time Tenant intends to market the Demised Premises to a Third Party for the sale, assignment, transfer or other conveyance of all of Tenant's right, title and interest under this Lease, Tenant shall use commercially reasonable efforts to notify Landlord of such intent. However, under no circumstance shall Tenant's failure to notify Landlord pursuant to this **Section 17(f)** constitute a Default by Tenant hereunder. Furthermore, the rights under this **Section 17(f)** are granted to Landlord by Tenant merely as a courtesy, and under no circumstance whatsoever shall such rights be deemed as a right of first refusal or a right of first offer in favor of Landlord.

18. **HYPOTHECATION OF LEASEHOLD ESTATE.**

(a) Tenant, from time to time, and without approval from Landlord, may in any manner mortgage, pledge or encumber Tenant's leasehold estate in the Demised Premises and rights under this Lease to secure any obligation of Tenant to any Third Party providing financing secured by the Demised Premises, including, without limitation, in connection with a so-called carryback purchase money loan made by Tenant to an assignee of this Lease with respect to the entire Demised Premises (such lien may be referred to herein as a "**Permitted Mortgage**," and any Third Party holder of any such lien shall be referred to herein as a "**Permitted Mortgagee**"). A Permitted Mortgagee may enforce such lien and acquire title to Tenant's leasehold estate in any lawful way without approval from Landlord, and, pending foreclosure of such lien, the Permitted Mortgagee may take possession of, develop, use and operate the Demised Premises, performing all obligations performable by Tenant, and upon foreclosure of such lien by power of sale, judicial foreclosure or acquisition of the leasehold estate by deed in lieu of foreclosure, the Permitted Mortgagee may, upon notice to Landlord, but without consent from Landlord, sell and assign the leasehold estate hereby created in accordance with the terms hereof at which point such purchaser shall have all rights and obligations of Tenant hereunder. No lien of any Permitted Mortgagee or the foreclosure thereof shall extend to or affect the interest of Landlord in the Demised Premises or this Lease.

(b) Landlord, upon providing Tenant with written notice of: (i) Default under this Lease, or (ii) any matter on which Landlord may predicate or claim a Default, shall at the same time provide a true copy of such notice to every Permitted Mortgagee which has delivered to Landlord, in the manner provided herein for the giving of notice to Landlord, notice of the Permitted Mortgage and notification of the address of the Permitted Mortgagee to which notices shall be sent. At Tenant's request, Landlord shall provide Tenant with a receipt acknowledging receipt of a copy of such notice described in the immediately preceding sentence. As between Landlord and any Permitted Mortgagee which has complied with the foregoing delivery requirement, no such notice by Landlord to Tenant shall be effective against the Permitted Mortgagee unless and until a copy thereof has been provided to the Permitted Mortgagee. From and after any such notice has been given to a Permitted Mortgagee, such Permitted Mortgagee shall have thirty (30) days following the expiration of the period given Tenant to remedy or

cause to be remedied the Defaults or acts or omissions that are the subject matter of such notice, i.e., the Permitted Mortgagee's remedy period runs beyond Tenant's remedy period. If Tenant or the Permitted Mortgagee fails to remedy the Default, act or omission that is the subject matter of such notice within such cure period, Landlord may, subject to the provisions of **Section 18(e)** below, exercise the remedies set forth in this Lease.

(c) In the event Tenant Defaults under any of the provisions of this Lease, each Permitted Mortgagee shall have the right to cure such Default whether the same consists of the failure to pay Additional Rent or Additional Charges or the failure to perform any other matter or thing which Tenant is hereby required to do or perform and Landlord shall accept such performance on the part of the Permitted Mortgagee as though the same had been done or performed by Tenant. In the event any such cure by Permitted Mortgagee requires the Permitted Mortgagee to enter upon the Demised Premises to pursue such cure to completion, Landlord and Tenant hereby grant Permitted Mortgagee permission to enter upon the Demised Premises for the purposes necessary to complete such cure; provided that such Permitted Mortgagee's entry upon the Demised Premises shall be as Tenant's invitee and shall not diminish or otherwise modify Tenant's obligations under this Lease.

(d) Any Permitted Mortgagee may at the time of any Casualty Event, at its sole cost and expense, repair or replace the same or construct new Improvements, as the case may be, and in such event, if the Permitted Mortgagee repairs, replaces or constructs in accordance herewith, Landlord agrees that Permitted Mortgagee may be subrogated to the rights of Tenant to all insurance proceeds payable as a result of such damage or destruction as provided for in the agreement between Tenant and such Permitted Mortgagee. Notwithstanding the foregoing or anything herein to the contrary, Landlord agrees that the name of any Permitted Mortgagee may be added as an additional insured or to the "loss payable endorsement" or named under a standard mortgagee clause of any and all insurance policies carried by Tenant (or a Subtenant, if applicable) and, provided such Permitted Mortgagee is prior in lien to any other Permitted Mortgagee, the proceeds of any such insurance policies may be held by a bank or title company chosen by such Permitted Mortgagee which is authorized to do business in Arizona and distributed pursuant to the provisions of this Lease except such Permitted Mortgagee may reserve the right of such Permitted Mortgagee to apply to the mortgage debt all, or any part, of Tenant's share of such proceeds payable pursuant to **Article 13**.

(e) In the event of a Default by Tenant, Landlord will take no action to exercise any remedy available to Landlord under this Lease, as permitted, by reason of any such Default so long as the periods for the Permitted Mortgagee's opportunity to cure Tenant's Defaults as set forth herein have not run. If Landlord elects to terminate this Lease as permitted under **Sections 6(b)**, **7(b)**, **13(a)** or **13(f)**, such termination will not become effective if within thirty (30) days of the date of issuance of the Termination Notice to Tenant and the Permitted Mortgagee, the Permitted Mortgagee shall cure all Defaults of Tenant or, if such Default cannot reasonably be cured within thirty (30) days, within a further reasonable period of time, provided the Permitted Mortgagee commences cure within the initial thirty (30) day period and thereafter diligently pursues cure of the Default and diligently completes the same within ninety (90) days.

(f) Any Permitted Mortgagee or any purchaser of Tenant's leasehold interest at a foreclosure sale may become the legal owner and holder of this Lease by foreclosure of a

Permitted Mortgage or as a result of the assignment of this Lease in lieu of foreclosure. Thereafter, such Permitted Mortgagee or purchaser at a foreclosure sale shall immediately thereafter become and remain liable under this Lease to the same extent as Tenant and any and all benefits that would thereafter accrue to Tenant under this Lease shall belong to such Permitted Mortgagee or purchaser, and Landlord hereby agrees to recognize such Permitted Mortgagee or purchaser as Tenant under this Lease without the necessity of the execution and delivery of any further instruments on the part of Landlord or Permitted Mortgagee or purchaser to effectuate such recognition; provided, however, that Landlord shall execute and deliver a Recognition, Non-Disturbance and Attornment Agreement in the form of **Exhibit D** attached hereto at the request of a Permitted Mortgagee or purchaser within thirty (30) days from Landlord's receipt of such request. Any Permitted Mortgagee or purchaser at a foreclosure sale shall be liable under this Lease to Landlord only to the extent of its interest in the Demised Premises. No Permitted Mortgagee or any purchaser of Tenant's leasehold interest at a foreclosure sale that becomes the legal owner or holder of this Lease shall have any liability under or with respect to this Lease except during such period as such person is Tenant under this Lease.

(g) Landlord shall upon request of a Permitted Mortgagee execute, acknowledge and deliver to each Permitted Mortgagee an instrument prepared at the sole cost and expense of Tenant or Permitted Mortgagee, in form reasonably satisfactory to such Permitted Mortgagee and Landlord, agreeing to all of the provisions of this **Article 18**.

(h) Notwithstanding anything to the contrary in this Lease, any (a) amendment or modification of this Lease; (b) surrender by Tenant of all or any portion of the Demised Premises; (c) termination of this Lease by written agreement of Landlord and Tenant; or (d) other cancellation of this Lease by written agreement of Landlord and Tenant shall not be binding on a Permitted Mortgagee without such Permitted Mortgagee's prior written consent thereto.

(i) Any Permitted Mortgagee shall have a right to receive notice of and to intervene in and be made a party to any arbitration proceedings or legal proceedings by the parties hereto involving obligations under this Lease, and the parties hereto do hereby consent to such intervention.

(j) As to any Permitted Mortgage, Landlord consents to a provision therein for an assignment of rents due from Tenant or Subtenant to the holder thereof, effective upon any default under the Permitted Mortgage, and to a provision therein that the holder thereof, in any action to foreclose the same, shall be entitled to the appointment of a receiver.

(k) Nothing herein contained shall be deemed to impose any obligation on the part of Landlord to deliver physical possession of the Demised Premises to any Permitted Mortgagee, or to its nominee. Landlord further agrees that Landlord will, at the sole cost and expense of such Permitted Mortgagee, cooperate in the prosecution of summary proceedings to evict the then defaulting Tenant or Subtenant, if necessary.

(l) Tenant may delegate irrevocably to the Permitted Mortgagee the authority to exercise any or all of Tenant's rights hereunder, but no such delegation shall be binding upon

Landlord unless and until either Tenant or said Permitted Mortgagee gives to Landlord a true copy of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Permitted Mortgage itself, in which case the service upon Landlord of written notice and a true copy of the applicable section of the Permitted Mortgage in accordance with **Article 31**, shall be sufficient to give Landlord notice of such delegation. The rights set forth in this **Section 18(l)** shall not effect, modify or limit the rights of the Permitted Mortgagee contained in this Lease.

(m) No payment made to Landlord by a Permitted Mortgagee shall constitute agreement that such payment is, in fact, due under the terms of this Lease. A Permitted Mortgagee having made any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken notice of demand shall be entitled to the return of any such payment or the relevant portion thereof.

(n) Nothing herein contained shall require any Permitted Mortgagee, as a condition to its exercise of its rights hereunder or subsequent to such exercise of its right, to cure any default of Tenant not reasonably susceptible of being cured by such Permitted Mortgagee or subsequent owner of the leasehold interest through foreclosure. Upon any Permitted Mortgagee or any purchaser of Tenant's leasehold interest at a foreclosure sale becoming the legal owner of the leasehold estate under this Lease, or upon any Permitted Mortgagee entering into a New Lease, any default of Tenant not reasonably susceptible of being cured by such Permitted Mortgagee or such purchaser shall be deemed waived by Landlord so long as all defaults reasonably susceptible of cure are also cured.

(o) So long as any Permitted Mortgage is in existence, unless all Permitted Mortgagees shall otherwise consent in writing, the fee title to the Demised Premises and the leasehold estate of Tenant therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of such fee title and such leasehold estate by Landlord or by Tenant or by a Third Party, by purchase or otherwise.

(p) Within thirty (30) days following any lawful termination of this Lease for any reason (including a rejection in a bankruptcy proceeding affecting Tenant), but excluding a termination following a Casualty Event or condemnation under the right of eminent domain, a Permitted Mortgagee may notify Landlord in writing (a "**New Lease Notice**") of its desire to enter into a new lease of the Demised Premises (the "**New Lease**") and may request from Landlord a statement of all uncured defaults. In such event Landlord will enter into a New Lease with such Permitted Mortgagee (or such Permitted Mortgagee's designated successor tenant) for the remainder of the Term of this Lease subject to the terms of this **Section 18(p)**. The New Lease shall be effective simultaneously with the termination of this Lease, at the Additional Rent and upon the same terms, covenants and conditions of this Lease; provided that:

(1) The Permitted Mortgagee shall execute and deliver to Landlord the New Lease within thirty (30) days after receipt of the statement of uncured defaults from Landlord, and failure to do so shall be deemed a revocation of the New Lease Notice.

(2) The Permitted Mortgagee shall pay to Landlord at the time of execution and delivery of the New Lease all sums then due and in arrears pursuant to this Lease

that were listed in the statement of uncured defaults. Additionally, Permitted Mortgagee shall be responsible for and shall pay all reasonable and actual out-of-pocket costs in excess of \$10,000.00 and incurred by Landlord (including attorneys' fees) by reason of such termination and the execution and delivery of the New Lease.

(3) Landlord shall not be deemed to have waived any uncured non-monetary Defaults by virtue of having entered into the New Lease and, to the extent such non-monetary Defaults are reasonably susceptible of being cured by the Permitted Mortgagee, Landlord shall have the right to assert such Defaults under the New Lease.

(4) Any New Lease and any extension of this Lease exercised by a Permitted Mortgagee shall be prior to any Fee Mortgage.

(5) In the event that more than one Permitted Mortgagee delivers a New Lease Notice, Landlord shall only have an obligation to execute a New Lease with the most senior Permitted Mortgagee.

(q) Any mortgage, pledge or encumbrance of Landlord's fee interest in the Demised Premises (a "**Fee Mortgage**") shall be subject and subordinate to, and shall not attach to Tenant's leasehold estate in the Demised Premises or Tenant's interest in this Lease, any New Lease, any Sublease or any Permitted Mortgage. In the event of a foreclosure of a Fee Mortgage or delivery of a deed in lieu of such foreclosure, the holder of the Fee Mortgage or grantee or successful bidder at the foreclosure sale, shall succeed only to Landlord's fee interest in the Demised Premises subject to this Lease, any New Lease, any Sublease and any Permitted Mortgage.

19. ATTORNMENT. From and after recording of the Memorandum of this Lease, no transfer by Landlord or encumbrance of Landlord's interest in the Demised Premises shall be made unless such transfer or encumbrance can be effectuated in a manner which will preserve all rights and benefits conferred on Tenant hereunder. In such event, Tenant shall attorn to Landlord's permitted transferee. Upon any such permitted transfer and the assumption of obligations and liability under this Lease by Landlord's transferee, and upon providing Tenant with a copy of such assignment and assumption agreement, Landlord shall be and is hereby entirely freed and released of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act or omission related to this Lease occurring from and after the consummation of such transfer. Such transfer shall not release Landlord from liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act or omission related to this Lease occurring prior to the consummation of such transfer. Without limitation on the foregoing, Landlord shall not have the right to transfer its interest in the Demised Premises to any entity that is not the State of Arizona or a political subdivision thereof that is exempt from *ad valorem* property taxation.

20. ESTOPPEL CERTIFICATE. Upon receipt of a written request from the other party, Landlord and Tenant shall each, from time to time, and within thirty (30) days from receipt of such request, execute, acknowledge and deliver a certificate in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified, is in full force and effect) and the

dates to which the Additional Rent and Additional Charges have been paid in advance, if any, (ii) acknowledging that there are not, to its knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed, (iii) if requested, certifying the particulars of material terms of this Lease, and (iv) any other such terms as may be reasonably requested by a prospective purchaser or Permitted Mortgagee. Any such certificate may be relied upon by a prospective purchaser or encumbrancer of all or any portion of an estate in the Demised Premises, including a Permitted Mortgagee. Tenant shall be responsible for all reasonable attorneys' fees incurred by Landlord in responding to any Tenant request for an estoppel certificate.

21. STATUS OF TENANT. Tenant covenants that it is a valid and existing limited liability company organized under the laws of the State of Delaware and qualified to do business in the State of Arizona, and that it has full power and authority to enter into this Lease.

22. ATTORNEYS' FEES. If either party hereto shall bring suit upon this Lease, then all costs and expenses, including reasonable attorneys' fees, expert witness fees and court costs, incurred by the prevailing party therein (including attorneys' fees, expert witness fees and costs, incurred in connection with any bankruptcy proceeding), shall be paid by the non-prevailing party, which obligation on the part of the non-prevailing party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment. For the purposes of this Section, the term "prevailing party" shall mean, in the case of the claimant, one who is successful in obtaining substantially all of the relief sought, and in the case of the defendant or respondent, one who is successful in denying substantially all of the relief sought by the claimant after all appeals have been exhausted or rights to appeal have expired.

23. Intentionally Deleted.

24. RECORDING. A Memorandum of Lease in the form attached hereto as **Exhibit E** shall be executed by Landlord and Tenant and recorded promptly following the Effective Date. Neither party may record this Lease. Upon the expiration or earlier termination of this Lease, Landlord and Tenant shall execute, acknowledge and record an instrument indicating that this Lease has expired or been terminated.

25. LIMITATION ON LIABILITY.

(a) No current, former or future regent, officer, official, employee, agent or representative of Landlord shall be personally liable to Tenant or any successor in interest to Tenant, in the event of any default or breach by Landlord for any amount which may become due to Tenant or any successor in interest to Tenant, or on any obligation incurred under the terms of this Lease.

(b) No current, former or future member, director, officer, official, employee, agent or representative of Tenant shall be personally liable to Landlord or any successor in interest to Landlord, in the event of any default or breach by Tenant for any amount which may become due to Landlord or any successor in interest to Landlord, or on any obligation incurred under the terms of this Lease.

26. NONSUBORDINATED LEASE. This is a nonsubordinated lease. Landlord is not obligated to subordinate its rights in the Demised Premises to any loan or money encumbrance that Tenant shall place against Tenant's leasehold interest in the Demised Premises except as expressly provided herein.

27. CONSENT OF LANDLORD AND TENANT. Unless specifically stated otherwise herein, whenever consent or approval of Landlord or Tenant is required under the terms of this Lease, such consent or approval shall not be unreasonably withheld, delayed or conditioned. If either party believes the other party has failed to act reasonably in withholding or conditioning its consent, the requesting party shall be entitled to seek specific performance at law and shall have such other remedies as are reserved to it under this Lease, but in no event shall Landlord or Tenant be responsible for damages for such failure to give consent or approval.

28. SURRENDER; HOLDING OVER.

(a) If Tenant does not exercise its Purchase Option pursuant to the terms of this Lease, then upon the expiration or other termination of the Term, (i) Tenant shall quit and surrender to Landlord the Demised Premises, including all Improvements, buildings, replacements and Alterations thereon, with all non-trade fixtures in their then existing condition (but excluding any personal property of Tenant), and (ii) Tenant's leasehold interest in the Improvements shall cease and Tenant shall have no further right to use or occupy the Improvements.

(b) If Tenant or any successor in interest to Tenant remains in possession of the Demised Premises after expiration of the Term or earlier termination of this Lease, other than pursuant to Tenant's exercise of its Purchase Option hereunder or a New Lease, then such holding over shall be construed as a tenancy from month-to-month, subject to all the covenants, terms, provisions and obligations of this Lease. Nothing contained herein shall be construed as Landlord permission for Tenant to hold over. Notwithstanding anything contained herein to the contrary, in the case of such hold over, under no circumstance shall Tenant be liable to Landlord for any damages beyond Rent payments hereunder, including, without limitation, for any consequential damages.

29. QUIET POSSESSION. Landlord agrees that Tenant, upon paying the Additional Rent and the Additional Charges in accordance with the terms of this Lease, and upon performing all other covenants and conditions of this Lease, may quietly have, hold and enjoy the Demised Premises during the Term hereof, subject to all matters of record, without hindrance by Landlord or any person claiming the by, through or under Landlord. It is further the intention of the parties hereto that the covenants of this Lease be independent of each other.

30. FORCE MAJEURE. Excluding the payment of Rent, if either party hereto shall be delayed or prevented from the exercise of any right or the performance of any obligation of such party under this Lease by reason of (a) acts of God, (b) strikes, (c) work stoppages, (d) unavailability of or delay in receiving labor or materials, (e) defaults by contractors or subcontractors, (f) inclement weather conditions, (g) governmental moratoria on building permits or other approvals required for compliance with such deadline, (h) delays caused by the City for reasons (1) that do not relate to failure of any party to meet any requirement or provide any

information to the City and (2) that otherwise are not within the control of any party, or other person acting on behalf of such party, (i) Casualty Event, (j) delays caused by acts of war or domestic terrorism, or (k) other cause without fault and beyond the control of the party obligated (financial inability excepted) (collectively, the “**Force Majeure Events**”), timely exercise of such right or performance of such act shall be excused for the period of the delay or one (1) year, whichever is shorter, provided that if any Force Majeure Event occurs, the affected party must give written notice to the other party within thirty (30) days of the occurrence of the event, such notice to describe the event, estimate the anticipated duration and describe the party’s plans for dealing with the event, and the affected party shall use commercially reasonable efforts to minimize the impact of the event. Lack of financial capacity shall not be a Force Majeure Event.

31. NOTICES. Notices may be delivered either by (i) private messenger service (including overnight courier); (ii) United States mail, postage pre-paid, registered or certified mail, return receipt requested, addressed as provided below or (iii) email or facsimile, so long as the original of the email or facsimile notice is simultaneously delivered in another manner permitted hereby, each to be. Any notice or document required or permitted hereunder shall be in writing and shall be deemed to be effective on the date received; provided, however, that any notice or document shall be deemed received one (1) business day after deposit therewith marked for next business day delivery, and notice by United State mail in accordance herewith will be effective three (3) business days after deposit in an official United States mail depository in the manner above described, and notice by email or facsimile will be effective upon electronic verification of receipt. Any obligation of Landlord to provide notice to any Permitted Mortgagee is subject to Landlord having received written notice in accordance with this Section of such Permitted Mortgagee’s address. Each address shall for all purposes be as set forth below unless otherwise changed by delivering appropriate written notice thereof to the other party, which change in notice address will be effective ten (10) days after the date of such delivery of the notice thereof:

To Landlord:

Arizona State University
Attn: Executive Vice President, Treasurer and
Chief Financial Officer

Mailing Address:

P.O. Box 877505
Tempe, AZ 85287-7505

Delivery Address:

300 East University Drive, Suite 320
Tempe, AZ 85281-2061

With a mandatory copy to: Arizona State University
Attn: Assistant Vice President for University
Real Estate Development
Mailing Address:
P.O. Box 873908
Tempe, AZ 85287-3908
Delivery Address:
300 East University Drive, Suite 320
Tempe, AZ 85281-2061

With a mandatory copy to: Arizona State University
Attn: Senior Vice President and General Counsel
Mailing Address:
P.O. Box 877405
Tempe, AZ 85287-7405
Delivery Address:
300 East University Drive, Suite 335
Tempe, AZ 85281-2061

To Tenant: c/o Omni Hotels
Attn: Mike Smith
4001 Maple Avenue, Suite 600
Dallas, Texas 75219

With a mandatory copy to: c/o Omni Hotels
Attn: Paul Jorge
4001 Maple Avenue, Suite 600
Dallas, Texas 75219

With a mandatory copy to: Winstead PC
Attn: T. Andrew Dow
500 Winstead Building
2728 N. Harwood Street
Dallas, TX 75201

32. **BROKERS.** Each party warrants to the other party that the warranting party had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, and that it knows of no real estate broker or agent who is or might be entitled to a commission in connection with this Lease and agrees to hold the other party harmless from any claims of any brokers claiming a commission on account of any actions of the warranting party.

33. **GENERAL PROVISIONS.**

(a) This Lease shall be governed by and construed pursuant to the substantive laws of the State of Arizona (without regard to the conflict of law provisions of such state) and it is agreed that the venue of any legal suit or action for enforcement of any obligation contained herein shall be Maricopa County, Arizona. This Lease shall not be construed either for or against

Landlord or Tenant, but rather shall be interpreted in accordance with the general terms of the language in an effort to reach an equitable result.

(b) Except as otherwise provided in this Lease, all of the covenants, conditions and provision of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns.

(c) No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed; provided, however, that acceptance by a party of any performance by a defaulting party after the time the same shall have become due shall constitute a waiver of the applicable default, and such default shall be deemed cured. Notwithstanding the foregoing, no waiver of a default of any covenant, term or condition shall be deemed to be a waiver of any subsequent default of any covenant, term or condition.

(d) Time is of the essence with respect to the performance of every provision of this Lease in which time or performance is a factor; provided, however, that either party shall be entitled to a fifteen (15) day cure period (or such other longer period as provided in this Lease or as mutually agreed to by Landlord and Tenant) for failure to observe or perform any covenant or obligation set forth in this Lease. The time for performance of any obligation or taking any action under this Lease shall be deemed to expire at 5:00 p.m. (local Tempe, Arizona time) on the last day of the applicable time period provided for in this Lease. If the time for the performance of any obligation or taking any action under this Agreement expires on a day which is not a Business Day, the time for performance or taking such action shall be extended to the next succeeding day which is a Business Day.

(e) This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.

(f) If any phrase, clause, sentence, paragraph, section, article or other portion of this Lease shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Lease shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law.

(g) This Lease may be executed in any number of counterparts, each of which will be deemed to be an original but all of which will constitute one and the same instrument. To facilitate execution of this Lease, Landlord and Tenant may execute and exchange executed counterparts of this Lease via .pdf email or facsimile, and such .pdf or facsimile counterparts shall be effective as original signatures. It will not be necessary for the signature of, or on behalf of, each party hereto, or that the signature of all persons required to bind any such party, appear on the same counterpart of this Lease. Each signature page to any counterpart of this Lease may be detached from such counterpart without impairing the legal effect of the signatures thereon

and thereafter attached to another counterpart of this Agreement identical thereto except having attached to it additional signature pages.

(h) This Lease is not intended to be, and shall not be construed as, a joint venture, partnership or other business entity created by or between the parties, and neither party is an agent for the other for any purpose nor has the power to bind the other for any purpose.

(i) The headings of the Articles and Sections in this Lease are for convenience of location reference only and are not intended to, and shall not, be used in the interpretation of the text therein or be deemed to limit, expand, amend, modify, define or otherwise affect the text therein. Any number, gender or pronoun used in this Lease shall mean any other number, gender or pronoun where the context clearly requires such interpretation.

(j) The language in all parts of this Lease shall in all cases be construed as a whole and simply according to its fair meaning and not strictly for nor against any of the parties, and the construction of this Lease and any of its various provisions shall be unaffected by any claims, whether or not justified, that it has been prepared, wholly or in substantial part, by or on behalf of either of the parties. "Including" means "including but not limited to." "Include" means "include but not limited to." "Any" means "any and all." Except to the extent context requires otherwise, "may" means "may but shall not be obligated to." "At any time" means "at any time and from time to time."

34. SUPPLEMENTARY PROVISIONS.

(a) Nonliability of Officials and Employees. No current, former or future regent, officer, official, employee, agent or representative of Landlord shall be personally liable to Tenant or any successor in interest, in the event of any default or breach by Landlord for any amount which may become due to Tenant or any successor in interest, or on any obligation incurred under the terms of this Lease.

(b) Arbitration in Superior Court. As required by A.R.S. § 12-1518, the parties acknowledge and agree, subject to ABOR Policy 3-809, that they will be required to make use of arbitration in disputes that are subject to mandatory arbitration pursuant to A.R.S. § 12-133.

(c) Failure to appropriate. If Landlord's performance under this Lease depends upon the appropriation of funds by the State Legislature of Arizona (the "**Legislature**"), and if the Legislature fails to appropriate an amount necessary for performance by Landlord, then Landlord may provide written notice to Tenant of such failure to appropriate. In such case, Landlord shall not be in default hereunder, as appropriation is a legislative act and is beyond the control of Landlord.

(d) Tenant's Records. To the extent required by A.R.S. § 35-214, Tenant will retain all records relating to this Lease. Tenant will make those records available at all reasonable times for inspection and audit by Landlord or the Auditor General of the State of Arizona during the term of this Lease and for a period of five (5) years after the expiration or sooner termination of this Lease. The records will be provided at Arizona State University, Tempe, Arizona, or another location designated by Landlord on reasonable notice to Tenant.

(e) Conflict of Interest. In accordance with A.R.S. §38-511, Landlord may cancel this Lease upon sixty (60) days written notice to Tenant within three (3) years after the execution of this Lease, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of Landlord, at any time while this Lease or any extension hereof is in effect, becomes an employee or agent of Tenant in any capacity or a consultant to Tenant with respect to the subject matter of this Lease.

(f) Weapons, Explosive Devices and Fireworks. Landlord prohibits the use, possession, display or storage of any weapon, explosive device or fireworks on all land and buildings owned, leased, or under the control of Landlord or its affiliated or related entities, in all Landlord residential facilities (whether managed by Landlord or another entity), in all Landlord vehicles, and at all Landlord or Landlord affiliate sponsored events and activities, except as provided in A.R.S. § 12-781, or unless written permission is given by the Chief of the Arizona State University Police Department or a designated representative. Notification by Tenant to all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of Tenant (“**Tenant Notification Parties**”) of this policy is a condition and requirement of this Lease. In that regard, Landlord may provide notices of this policy, in poster or other printed form, which notices shall be posted on the Demised Premises in up to five (5) locations reasonably approved by Landlord and Tenant, which locations shall be reasonably visible to persons entering the Demised Premises including Tenant Notification Parties who enter the Demised Premises. Landlord’s policy may be accessed through the following web page: <http://www.asu.edu/aad/manuals/pdp/pdp201-05.html>.

(g) Nondiscrimination. The parties will comply with all applicable state and federal laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. **If applicable, the parties will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

(h) Indemnification Limitation. Landlord is a public institution and, as such, any indemnification, liability limitation, or hold harmless provision will be limited as required by Arizona law, including without limitation, Article 9, Sections 5 and 7 of the Arizona Constitution and A.R.S. §§ 35-154 and 41-621. Therefore, notwithstanding any other provision of this Lease, Landlord’s liability under any claim for indemnification is limited to claims for property damage, personal injury, or death to the extent caused by acts or omissions of Landlord.

(i) Use of Names and Signage.

(1) Tenant will not do any of the following, without, in each case, Landlord’s prior written consent: (i) use any names, service marks, trademarks, trade names,

logos, or other identifying names, domain names, or identifying marks of Landlord (“**ASU Marks**”), for any reason including online, advertising, or promotional purposes; provided that Tenant may use “ASU” in the name of the hotel and conference center if requested by Landlord pursuant to **Section 6(a)**; (ii) issue a press release or public statement regarding this Lease; or (iii) represent or imply any Landlord endorsement or support of any product or service in any public or private communication. Any permitted use of any ASU Marks must comply with Landlord’s requirements, including using the ® indication of a registered trademark where applicable.

(2) Any signage of any Tenant Party visible from the exterior of the Improvements is subject to the prior written approval of Landlord which shall not be unreasonably withheld, conditioned or delayed; provided in all cases, Tenant shall be solely responsible for ensuring that such signage complies with all Legal Requirements and for all costs and expenses relating to any such signage, including, without limitation, design, installation, any operating costs, maintenance, cleaning, repair and removal. Tenant shall be obligated to pay the cost and expense of repairing any damage associated with the removal of any such signage. Tenant shall have no right to place any signage outside the Demised Premises other than such signage as Tenant elects to use in connection with the name or other identification of Tenant or the Demised Premises.

(j) Tobacco-Free University. The Tempe Campus is tobacco-free. For details visit www.asu.edu/tobaccofree.

(k) Confidentiality. Landlord is a public institution and, as such, is subject to A.R.S. §§ 39-121 through 39-127 regarding public records. Accordingly, notwithstanding any other provision of this Lease, any provision regarding confidentiality is limited to the extent necessary to comply with the provisions of Arizona law.

(l) Data Use and Ownership. As between the parties, Landlord will own, or retain all of its rights in, all data and information that Landlord provides to Tenant, as well as all data managed by Tenant on behalf of Landlord, including all output, reports, analyses, and other materials relating to or generated by the services, even if generated by Tenant (collectively, the “**ASU Data**”). The ASU Data also includes all data and information provided directly to Tenant by Landlord, and includes personal data, metadata, and user content. The ASU Data will be Landlord’s intellectual property and Tenant will treat it as Landlord’s proprietary information and, except to the extent the ASU Data is generally available to the public on Landlord’s website or filed with the City (“**Public ASU Data**”), Tenant will treat the ASU Data as confidential information. Tenant will not use, access, or disclose or provide to third parties, any ASU Data (other than Public ASU Data) or any materials derived therefrom nor shall Tenant license any ASU Data, except: (i) to the extent necessary to fulfill Tenant’s obligations to Landlord hereunder; or (ii) as authorized in writing by Landlord. Without limiting the generality of the foregoing, Tenant may not use any ASU Data (other than Public ASU Data), whether or not aggregated or de-identified, for product development, marketing, profiling, benchmarking, or product demonstrations, without, in each case, Landlord’s prior written consent. Upon request by Landlord, Tenant will deliver, destroy, and/or make available to Landlord, any or all of the ASU Data (other than the Public ASU Data).

(m) No Boycott of Israel. As required by A.R.S. § 35-393.01, Tenant certifies it is not currently engaged in a boycott of Israel and will not engage in a boycott of Israel during the term of this Lease.

[Signatures on next page]

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

LANDLORD:

ARIZONA BOARD OF REGENTS, a body corporate,
for and on behalf of Arizona State University

By: _____

Printed Name: _____

Title: _____

TENANT:

OMNI TEMPE, LLC, a Delaware limited liability company

By: _____

Printed Name: _____

Title: _____

EXHIBIT A-1

Legal Description of Land

[To be added.]

EXHIBIT A-2

Plot Plan of Land

[To be attached.]

EXHIBIT B

Site Plan of Block 22
With Demised Premises Depicted Thereon

[To be attached.]

EXHIBIT C

Plan Package

[To be attached.]

EXHIBIT D

Recognition, Non-Disturbance and Attornment Agreement

[Attached]

When recorded, return to:

RECOGNITION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

This Recognition, Nondisturbance and Attornment Agreement (this "**Agreement**"), is made to be effective as of _____, 20__ (the "**Effective Date**"), by and among ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of ARIZONA STATE UNIVERSITY, with an address at Assistant Vice-President for University Real Estate Development, Arizona State University, 300 East University Drive, Suite 320, Tempe, Arizona 85281-2061

(**"Landlord"**);
_____, a(n)
_____, with an address at _____
_____, (**"Tenant"**); and
_____, a(n) _____, with
an address at _____ (**"Lender"**).

RECITALS

A. Landlord and Tenant are parties to that certain Ground Lease dated _____, 20__ (the "**Lease**"), for certain real property which is legally described on **Exhibit A** attached hereto and by reference incorporated herein (the "**Demised Premises**"), for a term ending on _____, and upon the terms and conditions set forth in the Lease.

B. Tenant has obtained a loan from Lender to be secured by, among other things, a **[Leasehold Deed of Trust, Assignment of Rents and Security Agreement]** encumbering Tenant's interest in the Lease (the "**Leasehold DOT**").¹

C. Landlord, Tenant and Lender desire to enter into this Agreement to confirm their understanding with respect to the Lease.

¹ ASU must be provided with a copy of the Leasehold DOT prior to execution of Agreement.

AGREEMENTS

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

1. The fee estate of Landlord in the Demised Premises may not be encumbered except by an express grant executed by Landlord. The Leasehold DOT does not encumber the fee estate in the Demised Premises of the Landlord.

2. The Lease is in full force and effect and has not been canceled, assigned or modified, except as stated in the Recitals above.

3. Landlord acknowledges that all "Pre-Paid Base Rent" (as said term is defined or described in the Lease) has been paid in full for the entire term of the Lease. Such prepayment, however, does not in any way affect Tenant's liability for the "Additional Rent," "Additional Charges" or "Additional Base Rent" (as such terms are defined in the Lease).

4. The Leasehold DOT is a "Permitted Mortgage" as defined in Section 18(a) of the Lease, Lender is a "Permitted Mortgagee" as defined in Section 18(a) of the Lease, and Lender shall be afforded all of the rights and benefits applicable to a Permitted Mortgagee under Article 18 of the Lease.

5. Lender or any purchaser of Tenant's leasehold interest at a foreclosure sale may become the legal owner and holder of the Tenant's interest in the Lease by foreclosure of the Leasehold DOT or as a result of the assignment of the Lease in lieu of foreclosure. Thereafter, Lender or such purchaser at a foreclosure sale shall immediately thereafter become and remain liable under the Lease to the same extent as Tenant, and any and all benefits that would thereafter accrue to Tenant under the Lease shall belong to Lender or such purchaser, and Landlord hereby agrees to recognize Lender or such purchaser as Tenant under the Lease without the necessity of the execution and delivery of any further instruments on the part of Landlord or Lender or purchaser to effectuate such recognition. However, neither Lender nor any purchaser of Tenant's leasehold interest at a foreclosure sale that becomes the legal owner or holder of Tenant's interest in the Lease shall have any liability under or with respect to the Lease except during such period as such person is Tenant under the Lease.

6. All notices hereunder shall be given by mailing such notice via United States registered or certified mail, with return receipt requested, postage prepaid, to a party at the address for such party shown at the beginning of this Agreement (or at such other address as shall be designated in writing by the party in a notice given in accordance with the requirements hereof) and in the case of Landlord, with a copy to Senior Vice President and General Counsel, Arizona State University, P.O. Box 877405, Tempe, Arizona 85287-7405, and to the Assistant Vice President for University Real Estate Development, Arizona State University, P.O. Box 873908, Tempe, Arizona 85287-3908; and such notices shall be deemed to have been given seventy-two (72) hours after deposit in the mail.

7. This Agreement supersedes any inconsistent provisions of the Lease.

8. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement cannot be altered or amended except pursuant to an instrument, in writing, signed by Landlord, Tenant and Lender. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

9. Each covenant, condition and provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law but if any covenant, condition or provision of this Agreement shall be held to be void or invalid, the same shall not affect the remainder hereof which shall be effective as though the void or invalid covenant, condition or provision had not been contained herein.

10. The parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, nondiscrimination and affirmative action.

11. The parties agree that notwithstanding any provision of this Agreement or the Lease to the contrary, if performance under this Agreement or the Lease by Landlord ever shall be dependent upon the appropriation of funds by the State Legislature of Arizona (the "Legislature"), and if the Legislature should fail to appropriate the necessary funds for such performance, then, by written notice to Tenant and Landlord, Landlord shall be excused from such performance to the extent of such failure to appropriate and for so long as such failure continues. Tenant and Lender recognize and understand that appropriation is a legislative act and is beyond the control of Landlord.

12. Notice is hereby given that this Agreement may be canceled pursuant to the provisions of Arizona Revised Statutes, Section 38-511 for conflict of interest reasons.

13. In the event of a dispute under this Agreement, the parties agree that such dispute shall be subject to arbitration to the extent required by Arizona Revised Statutes, Sections 12-1518 and 12-133 and rules promulgated thereunder.

14. To the extent required by Section 35-214, Arizona Revised Statutes, Tenant and Lender agree to retain all records relating to this Agreement. The parties agree to make those records available at all reasonable times for inspection and audit by Landlord or the Auditor General of the State of Arizona during the term of this Agreement and for a period of five (5) years after the completion of this Agreement. The records shall be provided at Arizona State University, Tempe, Arizona, or another location designated by Landlord upon reasonable notice to the parties.

[Signatures follow on next pages]

IN WITNESS WHEREOF, the parties execute this Agreement as of the date and year first above written.

LANDLORD:

ARIZONA BOARD OF REGENTS, a body corporate, for
and on behalf of ARIZONA STATE UNIVERSITY

By: _____

Name: _____

Title: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, the _____ for Arizona State University, on behalf of ARIZONA BOARD OF REGENTS, a body corporate, acting for and on behalf of ARIZONA STATE UNIVERSITY.

Notary Public

[NOTARY SEAL]

EXHIBIT A

to Recognition, Nondisturbance and Attornment Agreement

LEGAL DESCRIPTION

EXHIBIT E

Memorandum of Lease

[Attached]

After recording, return to:

MEMORANDUM OF LEASE

WITNESSETH: This is a Memorandum of that certain Ground Lease, identified below, wherein the Landlord demised and leased and does by these presents demise and lease to Tenant those certain premises hereinafter described:

LANDLORD: ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University

TENANT: OMNI TEMPE, LLC, a Delaware limited liability company

DATE OF LEASE: _____, 20__ (the “**Effective Date**”)

TERM: Commencing as of the Effective Date and expiring 60 years following Completion of Construction of the Initial Improvements as may be extended for Tenant’s right to purchase the Demised Premises.

DEMISED PREMISES: See **Exhibit A** attached hereto.

PURCHASE OPTION: Tenant has a continuing right to purchase the Demised Premises from Landlord. The Term is subject to extension if Tenant fails to exercise its purchase rights prior to scheduled expiration of the Term.

This Memorandum is intended for record notice purposes and does not modify, supersede, diminish, add to or change all or any of the terms of the Ground Lease in any respect.

The offices of Landlord and Tenant are located as follows:

LANDLORD: Arizona State University
Attn: Executive Vice President, Treasurer and
Chief Financial Officer
Mailing Address:
P.O. Box 877505
Tempe, AZ 85287-7505
Delivery Address:
300 East University Drive, Suite 320
Tempe, AZ 85281-2061

With a mandatory copy to: Arizona State University
Attn: Assistant Vice President for University
Real Estate Development
Mailing Address:
P.O. Box 873908
Tempe, AZ 85287-3908
Delivery Address:
300 East University Drive, Suite 320
Tempe, AZ 85281-2061

With a mandatory copy to: Arizona State University
Attn: Senior Vice President and General Counsel
Mailing Address:
P.O. Box 877405
Tempe, AZ 85287-7405
Delivery Address:
300 East University Drive, Suite 335
Tempe, AZ 85281-2061

TENANT: c/o Omni Hotels
Attn: Chief Executive Officer
4001 Maple Avenue, Suite 600
Dallas, Texas 75219

With a mandatory copy to: c/o Omni Hotels
Attn: General Counsel
4001 Maple Avenue, Suite 600
Dallas, Texas 75219

IN WITNESS WHEREOF the undersigned Landlord and Tenant have executed this Memorandum of Lease effective as of the _____ day of _____, 20__.

LANDLORD:

ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University

By: _____

Name: _____

Title: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ of ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

[SEAL]

Exhibit A to
Memorandum of Lease

Legal Description of Demised Premises

EXHIBIT F

Improvements Quitclaim Deed

[Attached]

EXHIBIT G

Work Letter Agreement

LANDLORD: _____

TENANT: _____

DATE: As of the Lease Effective Date

RECITALS

A. Concurrently with the execution of this Work Letter Agreement (the “**Work Letter**”), Landlord and Tenant have entered into that certain Ground Lease dated as of _____, 20__ (the “**Lease**”) covering certain leased premises (the “**Demised Premises**”), as more particularly described in the Lease. Capitalized terms not defined in this Work Letter shall have the meaning set forth in the Lease.

B. In consideration of this Lease, Tenant agrees to construct or cause to be constructed the Initial Improvements as set forth in this Work Letter.

AGREEMENT

1. Initial Improvements.

(a) Plan Package. Tenant shall construct, or cause to be constructed, the Initial Improvements in accordance with (i) the Plan Package attached as **Exhibit 1** hereto, (ii) this Work Letter, (iii) the Development Agreement, and (iv) all applicable Legal Requirements. If Tenant wishes to modify the Plan Package in any material respect prior to Commencement of Construction, Tenant shall submit written notice (“**Tenant’s Approval Notice**”) to Landlord along with the planned revisions (the “**Revisions**”) for review and approval prior to any submittal of such Revisions to the joint City/ASU Review Commission (“**JRC**”); provided, however, such obligation to submit written notice to Landlord shall only apply with respect to Revisions that would be visible from the exterior of the Initial Improvements, and under no circumstance shall such obligation apply with respect to plans for the interior of the Initial Improvements so long as such revised plans for the interior are generally consistent with the Plan Package, do not cause the Demised Premises to violate the Permitted Use and Landlord’s rights under Sections 6(d), (e) and (f) of the Lease are not materially and adversely affected. If Landlord fails to respond in writing to Tenant’s Approval Notice within twenty (20) days following delivery of Tenant’s Approval Notice, then Tenant may give a second notice to Landlord requesting approval of the Revisions, on which the following language must appear in bold print: “**FAILURE TO RESPOND TO THIS NOTICE WITHIN TWENTY (20) DAYS FROM ITS RECEIPT SHALL RESULT IN THE REVISIONS DESCRIBED HEREIN BEING DEEMED APPROVED BY LANDLORD.**” If Landlord fails to respond in writing (in the manner described above)

to such a second request for approval of the Revisions within five (5) business days following delivery of such second notice, the Revisions shall be deemed to have been approved by Landlord. If Landlord reasonably disapproves any aspect of the Revisions in writing within the time frames set forth herein, it shall specify the reasons for such disapproval, and Tenant shall submit an appropriately revised Plan Package to Landlord for further review and approval.

(b) Construction Requirements. Tenant will cause any general contractor engaged by Tenant to construct Initial Improvements to provide (i) customary construction warranties on the Initial Improvements, fixtures and equipment (which shall, at the request of Landlord, be assigned to Landlord on a non-exclusive basis), (ii) customary indemnities (which shall include provisions indemnifying the Landlord Parties), and (iii) builder's risk insurance (which may be carried by Tenant, rather than Tenant's general contractor) and liability insurance as provided in Section 11(e) of the Lease, which will name Tenant and the Landlord Parties as additional insureds and will have limits of liability commensurate with those set forth in Section 11(e) of the Lease with respect to Tenant.

(c) Completion Security. On or prior to the Effective Date, Tenant shall have delivered to Landlord the fully executed Initial Improvements Guaranty, pursuant to which Landlord shall have the unconditional, direct and unilateral right to draw upon or use for the Completion of Construction of the Initial Improvements following Commencement of Construction of the Initial Improvements.

2. Block 22 Shared Facilities. The Block 22 Shared Facilities shall be developed and constructed by Landlord and Mirabella Developer pursuant to the Development Agreement, the provisions of which are hereby incorporated by this reference as if fully set forth herein.

3. Parking Garage. The Parking Garage shall be developed and constructed pursuant to the Parking Agreement, the provisions of which are hereby incorporated by this reference as if fully set forth herein.

4. Books and Records.

(a) Tenant shall maintain and shall cause Tenant's contractors to maintain books and records documenting costs for the Initial Improvements. Tenant's construction contracts shall include the right of Tenant to inspect Tenant's contractors' books and records.

(b) Following Completion of Construction of the Initial Improvements, Tenant shall submit to Landlord evidence of costs for construction of the Conference Center (the "**CC Invoice**"), which shall include, without limitation, (i) copies of the Initial Improvements budget; (ii) payment applications; and (iii) Tenant's determination of the total costs of construction for the Conference Center (the "**CC Costs**"). To the extent costs for the Initial Improvements are not specifically allocated to the Conference Center, the CC Invoice shall include an equitable allocation of such costs among the Initial Improvements elements and an explanation of Tenant's methodology for such

allocation. Within thirty (30) days after Landlord's receipt of the CC Invoice, Landlord shall pay to Tenant the CC Cost Reimbursement, by wire transfer of immediately available funds or such other method of payment as Tenant may reasonably agree.

(c) In the event Landlord disputes Tenant's determination of the CC Costs as listed on the CC Invoice, Landlord and Tenant shall meet and confer in good faith to resolve such dispute. If Landlord and Tenant are unable to resolve such dispute, determination of the CC Costs shall be resolved by arbitration pursuant to A.R.S. § 12-133 and subject to ABOR Policy 3-809. Within thirty (30) days after final agreement as to the CC Costs under this **Item 4(c)**, if applicable, Landlord shall pay to Tenant the CC Cost Reimbursement, by wire transfer of immediately available funds or such other method of payment as Tenant may reasonably agree.

5. Mutual Cooperation. The parties agree to work together in good faith and to cooperate reasonably with one another so as to facilitate the completion of the Initial Improvements, the Block 22 Shared Facilities and the Parking Garage in accordance with the terms of this Work Letter, the Development Agreement and/or the Parking Agreement, as applicable, provided that no party shall have the obligation to incur any costs associated with the completion of such improvements except as expressly provided in this Work Letter, the Development Agreement and/or the Parking Agreement.

[Signatures Appear on Following Page]

IN WITNESS WHEREOF, this Work Letter is executed this Work Letter Agreement as of the date first above written.

LANDLORD:

ARIZONA BOARD OF REGENTS, a body corporate,
for and on behalf of Arizona State University

By: _____

Printed Name: _____

Title: _____

TENANT:

OMNI TEMPE, LLC, a Delaware limited liability company

By: _____

Printed Name: _____

Title: _____

EXHIBIT 1 to
Work Letter Agreement

Plan Package

[TO COME]

To include: (i) approximately 330 hotel rooms, (ii) a conference center facility having at least 30,000-square feet, of including a main ballroom that will have at least 15,000 square feet and the capacity to seat a minimum of 1,000 persons in banquet (ten-top round table) configuration, supported by adjacent pre-function space (the “**Conference Center**”), (iii) a designated conference room in the Conference Center where Landlord retains naming rights; (iv) separate facilities for recycling and trash collection, as well as a separate compactor for recycling and trash, and (v) other amenities determined by Tenant in consultation with Landlord.

EXHIBIT 2 to
Work Letter Agreement

Offsite Improvements

[TO COME]

EXHIBIT H

Development Agreement

[To be attached.]

EXHIBIT I

Use Covenants Running with the Land

To include:

- Operating covenant to Continuously Operate the Demised Premises for the Permitted Use under **Sections 6(a)** and **6(b)**.
- Right to use Conference Center on terms set forth in **Section 6(d)**.
- Right to name ASU Boardroom on terms sets forth in **Section 6(e)**.
- Right to maintain Showcase Wall Display on terms sets forth in **Section 6(f)**.
- Minimum Operating Standards on terms set forth in **Section 8**.

EXHIBIT J

Form of Initial Improvements Guaranty

[See attached.]

COMMENCEMENT AND COMPLETION GUARANTY

In consideration of entering into that certain Ground Lease (as the same may be amended from time to time, the "Lease") dated as of _____, 20___, by and between ARIZONA BOARD OF REGENTS ("ABOR"), a body corporate, for and on behalf of ARIZONA STATE UNIVERSITY ("ASU"), as "Landlord", and OMNI TEMPE, LLC, a Delaware limited liability company ("Omni"), as "Tenant", relating to the development and operation of a hotel and convention center project (the "Project") to be located in Tempe, Maricopa County, Arizona, and as more specifically described in the Lease, OMNI HOTELS CORPORATION, a Delaware corporation (the "Guarantor"), hereby unconditionally and irrevocably guarantees to Landlord the timely commencement and completion of the Initial Improvements and payment of all of Omni's costs and monetary obligations associated with such Initial Improvements, in accordance with the requirements of the Lease and at no cost to Landlord, except as otherwise provided in the Lease (collectively, the "Guaranteed Obligations" and each a "Guaranteed Obligation"). Guarantor further promises to pay all of Landlord's costs and expenses (including reasonable attorneys' fees) incurred in endeavoring to enforce the Guaranteed Obligations or incurred in enforcing this Commencement and Completion Guaranty (this "Guaranty"), which costs and expenses are included in the term "Guaranteed Obligations". All Guaranteed Obligations will be paid and performed by Guarantor without counterclaim, deduction, defense, deferment, reduction, or set-off.

1. Capitalized terms used in this Guaranty and not otherwise defined shall have the meanings set forth in the Lease.

2. If Landlord enforces this Guaranty against Guarantor for any Guaranteed Obligation and Guarantor is timely performing such Guaranteed Obligation hereunder, then, notwithstanding any provision of the Lease to the contrary, Landlord may not terminate the Lease and may not increase the amount of any payments under the Lease on account of Omni's failure to pay or perform the Guaranteed Obligations.

3. Landlord may at any time and from time to time, without notice to or consent by Guarantor, take any or all of the following actions without affecting or impairing the liability and obligations of Guarantor under this Guaranty:

(a) grant an extension or extensions of time for performance of any Guaranteed Obligation or otherwise amend or modify the Lease;

(b) compromise, delay enforcement, fail to enforce, release, settle, or waive any rights and remedies of Landlord, or grant an indulgence or indulgences in the performance of any Guaranteed Obligation;

(c) accept other guarantees or guarantors to the Lease; and/or

(d) release any person primarily or secondarily liable hereunder or under the Lease or under any other guaranty.

The liability of Guarantor under this Guaranty will not be affected or impaired by any failure or delay by Landlord in enforcing the Guaranteed Obligation or this Guaranty or any security therefor or in exercising any right or power in respect thereto, or by any compromise, waiver, settlement, change, subordination, modification or disposition of the Guaranteed Obligation or of any security therefore, or by any bankruptcy, liquidation, reorganization, winding-up, or similar proceeding with respect to Omni. In order to hold Guarantor liable hereunder, there will be no obligation on the part of Landlord at any time, to resort to Omni or to any other guaranty or to any security or other rights and remedies for performance, and Landlord will have the right to enforce this Guaranty irrespective of whether or not other proceedings or actions are pending or being taken seeking resort to or realization upon or from any of the foregoing. Omni's and Guarantor's liability for the Guaranteed Obligations is joint and several.

4. This Guaranty is a guaranty of performance and payment, not collection. Guarantor hereby waives the following: (a) any defense based upon any legal disability or other defense of Omni; Omni's partners, members, officers, directors, employees or agents; or any other guarantor of the Guaranteed Obligations or by reason of the cessation or limitation of the liability of Omni from any cause other than full performance of all of the Guaranteed Obligations; (b) any defense based upon any lack of authority of the officers, directors, partners, members or agents acting or purporting to act on behalf of Omni or any defect in the formation of Omni; (c) any defense based upon Landlord's election of any remedy against Guarantor or Omni, or both; (d) any defense based upon Landlord's failure to disclose to Guarantor any information concerning Omni's financial condition or any other circumstances bearing on Omni's ability to completely perform all of the Guaranteed Obligations; (e) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other respects more burdensome than that of a principal; (f) any right that Guarantor may have now or in the future to participate in any amount of Omni now or hereafter held by Landlord as security for the performance of the obligations; (g) any right of subrogation, any right to enforce any remedy which Landlord may have against Omni and any right to seek recourse against any other guarantor of the obligations; (h) presentment, demand (including demands for performance), protest and notice (including notices of adverse change in the financial status of Omni or other facts which increase the risk to Guarantor, notices of non-performance and notices of acceptance of this Guaranty) of any kind; (i) any benefits of any statute of limitations affecting the liability of Omni or Guarantor hereunder or the enforcement hereof; (j) any defenses relating to any assignment by Omni of its interest under the Lease or any sublease by Omni of all or any portion of the Demised Premises; (k) any defenses relating to any amendment or modification to or any restatement of the Lease; (l) any right to require Landlord to proceed against Omni or any other person or entity or pursue any other remedy in Landlord's power; (m) any right to complain of delay in the enforcement of Landlord's rights under the Lease; (n) any right to require Landlord to proceed against or exhaust any security held by Landlord for the Guaranteed Obligations; and (o) the benefits of any statutory provision or procedural rule limiting the liability of a surety, including without limitation ARS § 12-1641 through 12-1646 and any requirement to join Omni in a suit against Guarantor (including by reason of the application of Rule 17(e) of the Arizona Rules of Civil Procedure).

5. Guarantor hereby acknowledges full and complete notice and knowledge of all the terms, conditions, covenants, obligations and agreements relating to the construction of the Initial Improvements as set forth in the Lease and the Project Documents.

6. This Guaranty will be continuing, absolute and unconditional and will remain in full force and effect until the earlier of (i) the time all Guaranteed Obligations are paid and performed and all obligations under this Guaranty are fulfilled or (ii) termination of the Lease, and shall extend to any assignment or other transfer of Omni's interest under the Lease, whether or not Guarantor consented thereto.

7. This Guaranty will be governed by and construed according to the laws of the State of Arizona. The situs for the resolution (including any judicial proceedings) of any disputes arising under or relating to this Guaranty will be the jurisdiction where the Project is located.

8. Guarantor believes that each provision of this Guaranty comports with all applicable law. However, if any provision of this Guaranty is found by a court to be invalid for any reason, the remainder of this Guaranty will continue in full force and effect and the invalid provision will be construed as if it were not contained herein, and if such a finding reduces or eliminates any benefit to Landlord hereunder, Guarantor will work together in good faith with Landlord to amend this Guaranty promptly so that the full intended benefit to Landlord provided hereunder is restored.

9. This Guaranty and Guarantor's liability hereunder is only related to the Guaranteed Obligations and nothing set forth herein shall be deemed to impose on Guarantor any liability or obligation to guaranty the performance of any other obligations or covenants of Omni under the Lease or under any other agreement entered into between Landlord and Omni.

10. This Guaranty will terminate, and Guarantor will be released from all liability hereunder relating thereto, when the Project's hotel and conference center are open for business to the public and all Guaranteed Obligations have been performed, paid in full, or otherwise extinguished and released.

11. Guarantor acknowledges that its undertakings hereunder are given in consideration of Landlord's execution and delivery of the Lease and that Landlord would not have executed the Lease without the concurrent execution and delivery of this Guaranty.

12. Guarantor represents and warrants that Guarantor's current financial statement (which Guarantor has delivered to Landlord concurrently with this Guaranty) is true, correct and complete in all respects.

13. Following a Commencement Failure and upon termination of the Lease pursuant to **Section 7(b)** of the Lease, Guarantor shall enter into an instrument providing that (a) Guarantor shall not own, directly or indirectly, any interest in any hotel or conference center within five (5) miles of the Project (the "Restricted Area"), and (b) Guarantor shall not license or use or permit the licensing or use of the name "Omni" to any location within the Restricted Area; provided that if a court of competent jurisdiction determines that five (5) miles is greater than necessary to protect ASU's legitimate interests, then three (3) miles; except that if a court of competent jurisdiction determines that three (3) miles is greater than necessary to protect Purchaser's legitimate interests, than one (1) mile. Such restrictions shall commence on the date the Lease is terminated and expire on the second (2nd) anniversary of such termination; provided that if a court of competent jurisdiction determines that two (2) years is longer than necessary to

protect ASU's legitimate interests, then one (1) year. Notwithstanding the foregoing or anything herein to the contrary, the restrictions in this **Section 13** shall not apply to any existing hotel, conference center or other building located within the Restricted Area and owned or operated by Omni or an Affiliate of Omni as of the Effective Date of the Lease.

14. If from time to time Omni shall have liabilities or obligations to Guarantor, such liabilities and obligations shall at all times be fully subordinate with respect to payment and performance in full of the Guaranteed Obligations. Omni shall not pay, and Guarantor shall not receive, payments of any or all liabilities or obligations of Omni to Guarantor until after payment and performance of the Guaranteed Obligations in full.

15. This Guaranty shall be binding upon Guarantor, its successors and assigns and shall inure to the benefit of and shall be enforceable by Landlord, its successors, endorsees and assigns.

16. This Guaranty contains the entire agreement of Guarantor with respect to the subject matter hereof and all prior oral and written discussions and all contemporaneous oral discussions and agreements with respect to the subject matter hereof are hereby superseded and replaced by this Guaranty, and this Guaranty may not be changed, modified, discharged or terminated orally or in any manner other than by an agreement in writing signed by Guarantor and Landlord.

[Signature page follows]

IN WITNESS WHEREOF, Guarantor has executed and delivered this Guaranty this
_____ day of _____, 2017.

GUARANTOR:

OMNI HOTELS CORPORATION,
a Delaware corporation

By: _____
Name: _____
Title: _____

GUARANTOR'S ADDRESS:

c/o TRT Holdings, Inc.
4001 Maple Avenue
Suite 600
Dallas, Texas 75219
Attention: President

SCHEDULE 5(f)

Additional Base Rent Schedule

Lease Year	Additional Base Rent (\$/Lease Year)	Increase
1	\$1,090,000.00	
2	\$1,117,250.00	2.5%
3	\$1,145,181.25	2.5%
4	\$1,173,810.78	2.5%
5	\$1,203,156.05	2.5%
6	\$1,233,234.95	2.5%
7	\$1,264,065.83	2.5%
8	\$1,295,667.47	2.5%
9	\$1,328,059.16	2.5%
10	\$1,361,260.64	2.5%
11	\$1,395,292.15	2.5%
12	\$1,395,292.15	0.0%
13	\$1,395,292.15	0.0%
14	\$1,395,292.15	0.0%
15	\$1,395,292.15	0.0%
16	\$1,520,868.45	9.0%
17	\$1,520,868.45	0.0%
18	\$1,520,868.45	0.0%
19	\$1,520,868.45	0.0%
20	\$1,520,868.45	0.0%
21	\$1,657,746.61	9.0%
22	\$1,657,746.61	0.0%
23	\$1,657,746.61	0.0%
24	\$1,657,746.61	0.0%
25	\$1,657,746.61	0.0%
26	\$1,806,943.80	9.0%
27	\$1,806,943.80	0.0%
28	\$1,806,943.80	0.0%
29	\$1,806,943.80	0.0%
30	\$1,806,943.80	0.0%
31	\$1,969,568.74	9.0%
32	\$1,969,568.74	0.0%
33	\$1,969,568.74	0.0%
34	\$1,969,568.74	0.0%
35	\$1,969,568.74	0.0%
36	\$2,146,829.93	9.0%

Lease Year	Additional Base Rent (\$/Lease Year)	Increase
37	\$2,146,829.93	0.0%
38	\$2,146,829.93	0.0%
39	\$2,146,829.93	0.0%
40	\$2,146,829.93	0.0%
41	\$2,340,044.62	9.0%
42	\$2,340,044.62	0.0%
43	\$2,340,044.62	0.0%
44	\$2,340,044.62	0.0%
45	\$2,340,044.62	0.0%
46	\$2,550,648.64	9.0%
47	\$2,550,648.64	0.0%
48	\$2,550,648.64	0.0%
49	\$2,550,648.64	0.0%
50	\$2,550,648.64	0.0%
51	\$2,780,207.02	9.0%
52	\$2,780,207.02	0.0%
53	\$2,780,207.02	0.0%
54	\$2,780,207.02	0.0%
55	\$2,780,207.02	0.0%
56	\$3,030,425.65	9.0%
57	\$3,030,425.65	0.0%
58	\$3,030,425.65	0.0%
59	\$3,030,425.65	0.0%
60	\$3,030,425.65	0.0%
Extended Term, if applicable		
61	\$3,303,163.96	9.0%
62	\$3,303,163.96	0.0%
63	\$3,303,163.96	0.0%
64	\$3,303,163.96	0.0%
65	\$3,303,163.96	0.0%
66+*		

*Note: The initial Term is scheduled to expire at the end of Lease Year 60. If the Lease is extended into the Extended Term, the Additional Base Rent for Lease Years 61 and beyond shall increase in accordance with **Section 5(f)(4)** of the Lease.

FAC Exhibit 4

First Amendment to Option to Lease and Escrow
Instructions

**FIRST AMENDMENT TO
OPTION TO LEASE AND ESCROW INSTRUCTIONS
FOR A PORTION OF BLOCK 22**

THIS FIRST AMENDMENT TO OPTION TO LEASE AND ESCROW INSTRUCTIONS FOR A PORTION OF BLOCK 22 (this “**Amendment**”) is dated effective as of May 29, 2018 (the “**Amendment Date**”), by and between ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University (“**ASU**”) and OMNI TEMPE, LLC, a Delaware limited liability company (“**Omni**”). ASU and Omni are collectively referred to as the “**Parties**” and individually as a “**Party**”.

RECITALS

A. ASU and Omni are parties to that certain Option to Lease and Escrow Instructions for a Portion of Block 22 dated as of February 28, 2018 (the “**Agreement**”). Pursuant to the Agreement, ASU has granted Omni the option to execute a lease for a portion of Block 22 consisting of approximately 1.6 acres and generally located on the southeast corner of Block 22.

B. ASU and Omni have agreed upon the final form of the Transaction Documents and the Parties desire to memorialize such forms in this Amendment.

C. Capitalized terms not otherwise defined in this Amendment will have the meaning set forth in the Agreement.

In consideration of the mutual covenants and agreements contained herein, ASU and Omni agree as follows:

1. Transaction Documents. Pursuant to Section 5.2(a) of the Agreement, Omni and ASU have agreed upon the form of Transaction Documents. The Parking Agreement shall be in the form attached hereto as Schedule 1. The Construction License shall be in the form attached hereto as Schedule 2.

2. No Modification; Inconsistencies. Except as otherwise expressly modified in this Amendment, the terms and conditions of the Agreement shall remain in full force and effect.

3. Counterparts. This Agreement may be executed in counterparts, and transmitted by .pdf, facsimile or similar electronic means, each of which will be deemed an original but all of which together will constitute one and the same agreement.

[Signatures appear on next page]

IN WITNESS WHEREOF, each Party has executed this Amendment effective as of the Amendment Date.

OMNI TEMPE, LLC, a Delaware limited liability company

By: 
Name: Paul A. Jorge
Title: Vice President + Assistant Secretary

ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University

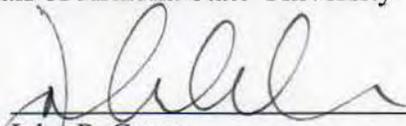
By: _____
Name: John P. Creer
Title: Assistant Vice President for University Real Estate Development

IN WITNESS WHEREOF, each Party has executed this Amendment effective as of the Amendment Date.

OMNI TEMPE, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University

By:  _____
Name: John P. Creer
Title: Assistant Vice President for University Real Estate Development

Schedule 1

**GRANT OF EASEMENT
AND DECLARATION OF TERMS, CONDITIONS AND AGREEMENTS
FOR BLOCK 27 PARKING
TEMPE, ARIZONA**

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- Exhibit A = Legal Description of the Hotel Parcel
- Exhibit B = Legal Description of Parking Parcel
- Exhibit C = Parking Site Plan
- Exhibit D = Parking Plans

GRANT OF EASEMENT AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BLOCK 27 PARKING

BY THIS GRANT OF EASEMENT AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BLOCK 27 PARKING (the “**Parking Agreement**”) effective as of this ___ day of _____, 201__, the Arizona Board of Regents (“**ABOR**”) a body corporate for and on behalf of Arizona State University (“**ASU**”) and Omni Tempe, LLC, a Delaware limited liability company (“**Hotel Owner**”) hereby declare, state, confirm and agree as follows:

RECITALS

A. Pursuant to the terms of that Ground Lease, dated of even date herewith between ASU, as landlord, and Hotel Owner, as tenant (the “**Hotel Lease**”), ASU has leased to Hotel Owner a portion of “**Block 22**” in the City of Tempe and more described on Exhibit A (the “**Hotel Parcel**”). Hotel Owner intends to redevelop the Hotel Parcel to include a hotel and convention and conference center and related improvements (the “**Hotel Project**”). Hotel Owner has an option to acquire the fee interest in the Hotel Parcel in accordance with the terms of the Hotel Lease.

B. ASU owns “**Block 27**” located to the south of Block 22. ASU intends to construct, repair, maintain and operate a parking structure (the “**Parking Facility**”) on a portion of Block 27 more particularly described on Exhibit B attached hereto (the “**Parking Parcel**”) to provide parking for the Hotel Project, for ASU and, at ASU’s option, for its students, employees, invitees, other owners and occupants of Block 22 and Block 27, and the general public.

NOW, THEREFORE, ASU, as grantor, desires and intends hereby to grant to Hotel Owner, as grantee, and Hotel Owner, as grantee, desires and intends to accept from ASU, as grantor, an easement, for the purposes of constructing, maintaining, repairing, managing and operating the Parking Facility subject to the declarations, restrictions, conditions, reservations and covenants set forth herein.

ARTICLE 1 DEFINITIONS

The following words, phrases or terms used in this Parking Agreement shall have the following meanings.

“**Adjoining Streets**” shall mean 9th Street, 10th Street, Mill Avenue and Myrtle Avenue.

“**Affiliate**” as applied to any entity other than ASU, shall mean any other entity that immediately prior to a transfer, is directly or indirectly controlling, controlled by, or under common control with, the first entity. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as applied to any entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that entity, whether through the ownership of voting securities or by contract or otherwise. “**Affiliate**” as applied to ASU, shall mean any “Component Unit Affiliate” of ABOR or Arizona State University, as defined from

time to time in accordance with the policies of ABOR or Arizona State University, and/or as listed in any financial statement of ABOR or Arizona State University, and will include affiliates that meet this definition other than for being deemed immaterial for purposes of the financial reporting by such entities.

“**Allocable Share**” shall mean the percentage of the Impositions and Charges payable by Hotel Owner and determined based on a formula, the numerator of which is the number of parking spaces available for use by the Hotel Parking Permittees in the Hotel Parking Area, but in no event less than 275, and the denominator of which is the total number of parking spaces in the Parking Facility (including the parking spaces in the Hotel Parking Area).

“**Alternative Parking Rights**” shall mean parking spaces located (y) on ASU’s main campus in Tempe, Arizona (“**Campus**”) and within a one and one-half (1.5) mile radius of the Hotel Project or (z) outside the Campus within a one-half (.5) mile radius of the Hotel Project, in each case, in a sufficient number to meet the then current needs of the Hotel Project, but not to exceed 275 (the “**Alternative Parking Area**”).

“**Appurtenant Improvements**” shall mean those improvements that may be appurtenant to the Parking Facility Improvements from time to time, but which are not intended for use as part of the Parking Facility. Without limitation, Appurtenant Improvements may include, without limitation, any space designated for retail or residential use wrapping all or portions of the Parking Facility.

“**A.R.S.**” shall mean Arizona Revised Statutes as amended from time to time.

“**ASU Designee**” shall mean any other Person designated by ASU from time to time who shall be permitted to use the portions of the Parking Facility designated by ASU other than the Hotel Parking Facility.

“**ASU Parking Area**” shall mean the portion of the Parking Facility designated for parking spaces, no parking zones, traffic lanes, charging stations or other fueling stations or devices, ramps providing access to and from separate levels and the surface for access to the Adjoining Streets, but excluding the Hotel Parking Area.

“**ASU Parking Entries**” shall mean any entries providing access to and from the Parking Facility, but excluding therefrom the Hotel Parking Entry.

“**ASU Parking Permittees**” shall mean to the extent designated by ASU from time to time, (i) those students, employees, invitee of ASU, (ii) the general public, and (iii) any ASU Designee from time to time and its invitees.

“**ASU Parties**” shall mean ASU, the State of Arizona, ABOR and their respective regents, officers, employees, contractors or agents.

“**Business Day**” shall mean a day other than a Saturday, Sunday or day which is a legal holiday in the State of Arizona.

“**City**” or “**City of Tempe**” shall mean the City of Tempe, an Arizona municipal corporation.

“**Claims**” shall mean liabilities, obligations, claims, suits, damages, penalties, causes of action, costs and expenses (including reasonable attorneys’ fees and expenses).

“**Commencement of Construction**” shall mean the date on which both of the following have occurred: (a) any building permit necessary to undertake the construction of the Parking Facility (exclusive of interim permits, e.g. “hauling” permit, issued in the ordinary course of construction) has been issued and (b) Parking Owner has entered into a binding construction contract with a qualified and licensed contractor to construct the Parking Facility authorized by the building permit, and such contractor has either (i) commenced preliminary grading of the Parking Parcel, (ii) placed any construction materials, supplies, equipment on the Property, (iii) placed construction offices (including trailers and temporary offices) on the Parking Parcel and erected necessary fencing, or (iv) otherwise mobilized construction on the Parking Parcel for the Parking Facility as authorized by the building permit.

“**Completion of Construction**” or “**Completion**” shall mean the date on which a certificate of occupancy or other appropriate approval has been issued by the applicable authority for the Parking Facility enabling the use thereof for the purposes set forth herein.

“**Construction Completion Date**” shall mean that date on which Completion of Construction of the Parking Facility would have occurred and the entire Parking Facility would be available for parking by the Parking Permittees if construction were pursued in the exercise of reasonable diligence, subject only to Force Majeure Events.

“**CPI**” shall mean the Consumer Price Index for all Urban Consumers – All Items (1982-84=100). If (a) the Bureau of Labor Statistics of the United States Department of Labor (the “**Bureau**”) ceases to use the 1982-4 average of 100 as the basis of calculation, or (b) a substantial change is made in the number or character of “market basket” items used in determining the CPI, or (c) the CPI shall be discontinued for any reason, the Bureau shall be requested to furnish a new index comparable to the CPI, together with information which will make possible the conversion to the new index in computing the CPI rate. If for any reason the Bureau does not furnish such an index and such information, the parties shall thereafter accept and use such other index or comparable statistics on the cost of living for the United States of America as shall be computed and published by an agency of the United States of America or by a responsible financial periodical of recognized authority then selected by Parking Owner.

“**Default Rate**” shall mean an annual rate equal to the lesser of (a) two (2) percentage points above the prime annual interest rate published from time to time by The Wall Street Journal under the masthead “Money Rates” as the prime rate in effect at the due date (and thereafter adjusted quarterly) or (b) the maximum rate permissible by law. If for any reason The Wall Street Journal does not publish a prime rate, the prime rate shall be the prime rate announced by a reasonably equivalent responsible financial periodical reasonably selected by Parking Owner.

“Demolish” or **“Demolished”** or **“Demolition”** shall mean the demolition and removal of any Improvements together with all rubble and debris related thereto, and grading the portion of the Parking Parcel underlying the demolished Improvements to the level of the adjoining property and in compliance with applicable Legal Requirements.

“Environmental Law” shall mean any applicable federal, state, or local law, statute, ordinance, rule, regulation, policy, guidance, order, judgment, or decision of any governmental authority relating to the protection of the environment or to any emission, discharge, generation, processing, storage, use, holding, abatement, existence, Release, threatened or potential Release, or transportation of any Hazardous Substance, including any disclosure or reporting obligation thereof, whether to be disclosed or reported to any governmental authority or whether a report or record is required to be maintained internally, including (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300h et seq.; the Clean Water Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Arizona Water Quality Assurance Revolving Fund, A.R.S. §49-281 et seq.; the Arizona Water Quality Control Program, A.R.S. §49-201 et seq.; and the Arizona Underground Storage Tank Law, A.R.S. §49-101 et seq., as amended now and as may be amended in the future; and (b) all other Legal Requirements pertaining to reporting, licensing, permitting, approving, investigation, or remediation of emissions, discharges, Releases, or threatened or potential Releases of Hazardous Substances into, onto, or beneath the air, surface water, ground water, or land, or relating to the manufacture, processing, distribution, sale, use, treatment, receipt, storage, disposal, transport, or handling of Hazardous Substances.

“Exclusive Parking Areas” shall mean areas of the Parking Facility that are available for the use of less than all the Owners (e.g., the Hotel Parking Area). Exclusive Parking Areas shall not include the structural components of the Parking Facility or other portions of the Parking Area that serve the Parking Facility as a whole and not a specific portion of the Parking Facility devoted exclusively to an Owner and its Parking Permittees.

“Force Majeure Event” shall mean (a) acts of God, (b) strikes, (c) work stoppages, (d) unavailability of or delay in receiving labor or materials, (e) defaults by contractors or subcontractors, (f) inclement weather conditions, (g) governmental moratoria on building permits or other approvals required for compliance with such deadline, (h) delays caused by the City for reasons (1) that do not relate to failure of any party to meet any requirement or provide any information to the City and (2) that otherwise are not within the control of any party, or other person acting on behalf of such party, (i) acts of war or domestic terrorism, (j) acts or omissions of the other party or failure of a party to give its consent, approval, permission or agreement as required herein, (k) the presence of Hazardous Substances, historical, archeological burial sites and funerary objects or site conditions, (l) any modifications of, or additions to, the Legal Requirements, (m) interruption or impairment of utility services, or (n) other cause without fault and beyond the direct control of the party obligated (financial inability excepted).

“Hazardous Substances” shall mean any substance that (a) is or contains asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum or petroleum-derived substances or wastes, radon gas, or related materials, (b) requires investigation, removal or

remediation or for which there are restrictions, regulations or rules pursuant to any Environmental Law regarding its use, handling or disposal, under any Environmental Law, or is defined, listed, or identified as a “hazardous waste,” “Hazardous Substance,” “contaminant,” “toxic substance,” “toxic material,” “pollutant,” or “hazardous substance,” thereunder, or (c) is toxic, explosive, corrosive, flammable, infectious, radiologically contaminated, carcinogenic, mutagenic, or otherwise hazardous and is regulated by any governmental authority or Environmental Law. Hazardous Substance does not include de minimus amounts customary for the construction, maintenance, management, repair and operation of the Parking Facility Improvements.

“**Hotel Lease**” shall mean the lease described in Recital A.

“**Hotel Parcel**” shall mean that real property described on **Exhibit A** attached hereto within which the Hotel Project is to be constructed as contemplated by Recital A above, together with all rights, privileges, benefits, running with or appurtenant thereto.

“**Hotel Parking Area**” shall mean that portion of the Parking Facility designated for exclusive use by Hotel Owner and its Parking Permittees as shown on the Parking Site Plan. The Hotel Parking Area will accommodate at least 275 parking spaces.

“**Hotel Parking Entry**” shall mean the separate, exterior entry providing access to and from the Hotel Parking Area and designated for exclusive use by Hotel Owner and its Parking Permittees as shown on the Parking Site Plan.

“**Hotel Parking Facility**” shall mean the portion of the Parking Facility comprised of the (i) Hotel Parking Entry, (ii) the Hotel Parking Area and (iii) other portions of the Parking Parcel and the Parking Facility to the extent necessary to access the Hotel Parking Area, which portions of the Parking Parcel and Parking Facility will be available to Hotel Owner on a non-exclusive basis.

“**Hotel Parking Facility Improvements**” shall mean (i) striping the spaces to be located within the Hotel Parking Area, (ii) any ticket booths, security gates, and various and similar Improvements to operate the Hotel Parking Entry, (iii) bollards, barriers and other Improvements for the exclusive use of the Hotel Parking Facility, (iv) signage related to or within the Hotel Parking Area, such as wayfinding signs, handicapped signs, etc., and (v) any improvements in, additions to, or enhanced from, the Parking Facility Improvements installed in the Hotel Parking Facility by ASU, such as additional lighting facilities.

“**Hotel Parking Permittees**” shall mean the guests and employees of, and visitors to, the Hotel Project who shall be permitted to use solely the Hotel Parking Facility.

“**Hotel Project**” shall mean the hotel and convention and conference center and related improvements to be developed as described in Recital A.

“**Impositions and Charges**” subject to the limitations hereof, shall mean all costs of owning, operating, maintaining, insuring, repairing and replacing the Parking Facility and the Parking Parcel under this Declaration, including without limitation (i) all Real Property Taxes, personal property taxes, transaction privilege taxes and possessory interest taxes (if any); (ii) any

assessments (including assessments hereinafter imposed pursuant to covenants, conditions and restrictions to which Parking Owner is a party or has consented as well as assessments hereinafter imposed in accordance with applicable Legal Requirements for public improvements or benefits including, if applicable, improvement districts and community facilities districts; (iii) water, sewer, electrical, natural gas, telephone, television, communication and other similar fees, rates and charges incurred by ASU or the Parking Operator, whether foreseen or unforeseen, together with any interest or penalties imposed upon the late payment thereof (the “**Utility Charges**”), provided, however, that if any Utility Charges relate solely to an Exclusive Parking Area and are separately metered such Utility Charges shall not be included in Impositions and Charges, but rather shall be paid by ASU or the Hotel Owner, as applicable; (iv) all other charges which at any time may be assessed, levied, confirmed or imposed upon or in respect of, or be a lien upon the Parking Parcel and the Parking Facility Improvements located within the Parking Parcel or the possession or use of the Parking Parcel unless they relate solely to an Exclusive Parking Area; (v) premiums for insurance maintained by Parking Owner; (vi) costs to repave and reseal the Parking Facility, but excluding costs to repave and reseal an Exclusive Parking Area, which areas will be repaved and resealed at the expense of ASU or the Hotel Owner, as applicable; (vii) costs to maintain and repair the Parking Facility, excluding equipment, signage or fixtures relating exclusively to an Exclusive Parking Area, which equipment, signage or fixtures will be repaired, maintained and replaced at the expense of such Owner; (viii) reasonable reserves established by Parking Owner from time to time; (ix) a management fee payable to Parking Owner equal to three (3) percent (3%) of the assessments for Impositions and Charges (other than taxes and insurance premiums); and (x) all charges, levies, assessments, and fees incurred or otherwise charged by third-parties for the operation or maintenance of the Parking Facility and the Parking Parcel and incurred or assumed by Parking Owner excluding charges, levies, assessments, and fees attributable solely to Exclusive Parking Areas, which will be paid by such ASU or the Hotel Owner, as applicable.

“**Improvements**” shall mean all future elements and improvements constructed, or to be constructed, on the Parking Parcel.

“**Legal Requirements**” shall mean all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, of all federal, state, county, municipal, and other governments, departments, commissions, boards, courts, authorities, officials and officers, including without limitation ABOR, which may be applicable to the Parking Parcel or any part thereof, or any of the streets, alleys, passageways, sidewalks, curbs or gutters adjoining the Parking Parcel or any part thereof, or any use, manner of use or conditions of the Parking Parcel or any part thereof.

“**Owner**” shall mean either (i) Hotel Owner or (ii) ASU and/or any ASU Designee, as applicable, and “**Owners**” shall mean both (i) Hotel Owner and (ii) ASU and/or any ASU Designee, as applicable.

“**Parcel**” shall mean either the Hotel Parcel or the Parking Parcel, as applicable.

“**Parking Agreement**” shall mean this Parking Agreement as it may from time to time be amended or supplemented.

“Parking Facility” shall mean the parking facility as contemplated by Recital B above, including, without limitation, all Parking Facility Improvements.

“Parking Facility Improvements” shall mean all structural and nonstructural components necessary or desirable to construct, repair, maintain, renovate or restructure and manage and operate the Parking Facility, including, without limitation, all structural and nonstructural columns, caissons, foundation and support facilities and the floor slabs and ceiling slab over each level, ventilation shafts, electrical, water, cable, sewer and other utilities and the lines, pipes and conduits thereof, elevator shafts, elevators, pump rooms, storage areas, service entrance section rooms, primary switch rooms, conduit systems, utility meter vaults, and any and all mechanical, electrical and plumbing facilities, together with all support systems, shoring and footings, ticket booths, security gates, and various and similar Improvements, bearing walls, paving in the Parking Facility and ramps therefor and bollards and other Improvements for the exclusive use of the Parking Facility.

“Parking Operator” shall initially mean Parking Owner, but may include any other parking operator having expertise and experience operating comparable parking facilities as Parking Owner may from time to time designate.

“Parking Owner” shall mean the fee owner of the Parking Facility, which initially shall be ASU.

“Parking Parcel” shall mean that real property described on **Exhibit B** attached hereto within which the Parking Facility is to be constructed as contemplated by Recital B above, together with all rights, privileges, benefits, running with or appurtenant thereto and all Parking Facility Improvements.

“Parking Plans” shall mean those plans for the construction of the Parking Facility identified on **Exhibit D** attached hereto as modified from time to time in accordance with this Parking Agreement.

“Parking Permittees” shall mean the Hotel Parking Permittees as to the Hotel Parking Facility and the ASU Parking Permittees as to the balance of the Parking Facility.

“Parking Rates” shall mean those rates, charges and fees charged or levied by (i) Hotel Owner for use by the Hotel Parking Permittees of the Hotel Parking Area in such amounts as Hotel Owner, from time to time, deems appropriate and (ii) ASU and/or an ASU Designee for use by any ASU Permittee of the balance of the Parking Facility in such amounts as ASU and/or an ASU Designee, from time to time, deems appropriate. No Owner is required to establish uniform Parking Rates for the portion of Parking Facility operated by such Owner.

“Parking Rules” shall mean the reasonable rules and regulations adopted by Parking Owner for the use of the Parking Facility as may from time to time be amended or supplemented; provided that any such rules and regulations shall be uniformly and non-discriminately applied to all Owners. The Parking Rules adopted by the Parking Owner and in effect as of the date of this Parking Agreement have been agreed to between Parking Owner and Hotel Owner.

“**Parking Site Plan**” shall mean the parking site plan attached hereto as **Exhibit C** and all amendments and modifications thereto subject to required approvals, which Parking Site Plan shows the Hotel Parking Area and the Hotel Parking Entry.

“**Person**” shall mean a natural individual, corporation, partnership, limited liability company, trustee or other legal entity capable of holding title to real property.

“**Real Property Taxes**” shall mean real property and ad valorem taxes and assessments, both general and special, if any, imposed against the Parking Parcel and Parking Facilities.

“**Recording**” or “**Recordation**” shall mean placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona and “**Recorded**” and “**of Record**” shall mean having been so placed of public record.

“**Release**” shall mean any releasing, disposing, discharging, injecting, spilling, leaking, leaching, pumping, dumping, emitting, escaping, emptying, seeping, dispersal, migration, transporting, placing and the like, including the moving of any materials through, into or upon, any land, soil, surface water, ground water, or air, or otherwise entering into the environment.

ARTICLE 2 GRANT OF EASEMENTS TO HOTEL OWNER

2.1 Grant of Easements. On and subject to the terms hereof and further subject to all rights and reservations of ASU to the use of the Parking Facility, ASU hereby grants to Hotel Owner, for the benefit of the Hotel Parking Permittees, a perpetual easement for the exclusive use of the Hotel Parking Facility for the following purposes:

(a) to park licensed and unlicensed motorized and non-motorized vehicles, including, without limitation, cars, pick-ups, trucks, motorcycles, pedaled means of transportation (e.g. bicycles, carts and carriages) and other means of transportation and related purposes thereto within the Hotel Parking Area; provided, however, that the Hotel Parking Area may only be used by the Hotel Parking Permittees;

(b) to repair, maintain, or renovate, the Hotel Parking Facility Improvements and all activities incident thereto;

(c) to operate the Hotel Parking Area and the Hotel Parking Entry as a parking facility, with the ability, among other things, to control all ingress, egress and access thereto, control and direct traffic flow thereon, install revenue collection booths, gates, validation, authentication and remote sensing devices, signs and identify parking spaces and no parking zones and create traffic lanes, install electrical charging stations or other fueling stations or devices, install ramps providing access to and from separate levels and the surface for access to the Adjoining Streets and as otherwise necessary therefor;

(d) to set and charge all Parking Rates for the Hotel Parking Area and collect and retain the parking revenues; provided, however, that revenue may only be charged to and collected from the Hotel Parking Permittees;

(e) to store construction equipment, tools, supplies and materials as necessary or desirable for repair, and maintenance of the Hotel Parking Area and the Hotel Parking Entry;

(f) to use all walkways, escalators, stairways, elevators and any other means intended or designed for pedestrian access at any time located on the Hotel Parking Facility for pedestrian ingress and egress to the Hotel Parking Facility and Adjoining Streets; and

(g) for such other uses reasonably necessary to accomplish the purposes set forth above.

2.2 Hotel Owner's Use of Hotel Parking Facility. ASU and Hotel Owner shall endeavor to meet at least every two (2) years to discuss Hotel Owner's use of the Hotel Parking Facility. If portions of the Hotel Parking Area are no longer necessary for the efficient operation of the Hotel and ASU is willing to assume responsibility for the same, Hotel Owner shall have the right, in its sole, but reasonable, discretion, to reduce the size of the Hotel Parking Area subject to the following: (i) ASU shall have no obligation to pay Hotel Owner for the relinquished space or the use thereof, but following any relinquishment, ASU shall be responsible for the pro rata share of costs related to the relinquished space, (ii) ASU shall be responsible for any costs associated with converting the space for ASU's use, such as revised signage, and (iii) if the size of the Hotel Parking Area is reduced, then ASU agrees that Hotel Owner shall still have the right to use extra spaces in the Parking Facility on a limited, as-needed basis for special events, and Parking Owner will use commercially reasonable efforts to accommodate such requests by the Hotel Owner.

ARTICLE 3

RESERVATION OF ASU RIGHTS AND GRANT OF PARKING LICENSES

3.1 Reservation of Rights. ASU reserves the following rights with respect to the Parking Parcel and the Parking Facility:

(a) to park licensed and unlicensed motorized and non-motorized vehicles, including, without limitation, cars, pick-ups, trucks, motorcycles, pedaled means of transportation (e.g. bicycles, carts and carriages) and other means of transportation and related purposes thereto in the Parking Facility other than the Hotel Parking Area;

(b) to construct, repair, maintain, renovate, reconstruct, relocate, enlarge or construct other enhancements, of the Parking Facility Improvements and any Appurtenant Improvements and all activities incident thereto;

(c) to operate the Parking Facility as a parking facility (exclusive of the Hotel Parking Facility), with the ability, among other things, to control all ingress, egress and access thereto, control and direct traffic flow thereon, install revenue collection booths, gates, validation, authentication and remote sensing devices, signs and identify parking spaces and no parking zones and create traffic lanes, install electrical charging stations or other fueling stations or devices, install ramps providing access to and from separate levels and the surface for access to the Adjoining Streets and as otherwise necessary therefor;

(d) to set and charge all Parking Rates for the Parking Facility (excluding the Hotel Parking Area) and collect and retain the parking revenues;

(e) to store construction equipment, tools, supplies and materials as necessary or desirable for repair, and maintenance of the Parking Facility;

(f) to restore, repair, replace, rebuild, alter and/or Demolish the Parking Facility following the occurrence of damage to or destruction thereof as a result of fire or other casualty, such restoration, repair, replacement, rebuilding, alteration or Demolition;

(g) to use all walkways, escalators, stairways, elevators and any other means intended or designed for pedestrian access at any time located on the Parking Parcel for pedestrian ingress and egress to the Parking Facility, the Parking Parcel and Adjoining Streets; and

(h) for such other uses reasonably necessary to accomplish the purposes set forth above.

ARTICLE 4 DESIGN AND CONSTRUCTION OF THE PARKING FACILITY

4.1 Design of Parking Facility Improvements. Parking Owner shall have the right to modify the Parking Plans from time to time so long as the Parking Facility includes (a) a Hotel Parking Area that will accommodate at least 275 parking spaces; and (2) a separate Hotel Parking Entry. Parking Owner shall provide Hotel Owner with copies of any modifications to the Parking Plans.

4.2 Completion of Construction.

(a) Subject to any delays for Force Majeure Events, Parking Owner shall, promptly after Recordation hereof and at its sole cost and expense, undertake Commencement of Construction of the Parking Facility Improvements (exclusive of the Hotel Parking Facility Improvements) and pursue such construction in the exercise of reasonable diligence to Completion on or before the Construction Completion Date in accordance with the Parking Plans and Legal Requirements.

(b) The Parking Facility Improvements shall be constructed by qualified and licensed contractors selected by Parking Owner.

(c) If, despite Parking Owner's exercise of reasonable diligence to achieve Completion on or before the Construction Completion Date in accordance with the Parking Plans and Legal Requirements, the Parking Facility Improvements are not complete by the date that is sixty (60) days prior to the date the Hotel Project will open for business to the general public, then Parking Owner, at its cost, shall (as exclusive remedy) provide the Alternative Parking Rights until construction of the Parking Facility Improvements is completed to the point that the Hotel Parking Permittees are permitted to occupy the Hotel Parking Facility upon completion by Hotel Owner of the Hotel Parking Facility Improvements ("**Hotel Parking Completion**"); provided, that if Parking Owner fails to commence construction of the Parking Facility Improvements by the date that is sixty (60) days prior to the date the Hotel Project will open for

business to the general public, Parking Owner shall provide Hotel owner surface parking lot in the same location as the Parking Facility was intended to occupy that contains adequate space for at least 275 parking spaces until such time as construction of the Parking Facility is commenced, at which time ASU shall provide Alternative Parking Rights until construction of the Parking Facility Improvements is completed. During the time Alternative Parking Rights are being utilized under this Section, Hotel Owner will be entitled to a reduction of the Additional Rent (as defined in the Hotel Lease) payable under the Hotel Lease in an amount equal to all reasonable, out-of-pocket incremental expenses incurred by or on behalf of Hotel Owner related to the parking and valet operations of the Hotel as a result of utilizing the Alternative Parking Area (“**Excess Parking Costs**”). At any time when Hotel Owner is entitled to offset Excess Parking Costs against Additional Rent, Hotel Owner shall provide Parking Owner with notices not more often than monthly evidencing the amount of Excess Parking Costs incurred together with invoices or other evidence of payment (each an “**EPC Invoice**”). If Parking Owner disputes Hotel Owner’s determination of the Excess Parking Costs as listed on an EPC Invoice it shall notify Hotel Owner within thirty (30) days following receipt of such invoice, and Parking Owner and Hotel Owner shall meet and confer in good faith to resolve such dispute. If Parking Owner and Hotel Owner are unable to resolve such dispute, determination of the Excess Parking Costs shall be resolved by arbitration pursuant to A.R.S. § 12-133 and subject to ABOR Policy 3-809. After final agreement as to the Excess Parking Costs under this **Section 4.2(c)**, Hotel Owner may, if applicable, deduct the Excess Parking Costs determined to be due and owing from the next installment of Additional Rent.

(d) During the construction of the Parking Facility Improvements, Parking Owner shall (a) keep, or cause to be kept to the extent consistent with the nature of the construction, the Parking Parcel in a neat, orderly and clean condition, reasonably free of weeds and other debris; (b) employ effective dust control procedures; (c) comply with all Legal Requirements pertaining to construction and safety.

4.3 **Hotel Parking Facility Improvements.** Notwithstanding anything contained herein to the contrary, Hotel Owner shall, at its expense, install the Hotel Parking Facility Improvements. During construction of the Parking Facility Improvements, Parking Owner shall permit Hotel Owner to install the Hotel Parking Facility Improvements so long as such installation does not unreasonably interfere with construction of the Parking Facility Improvements. The Hotel Parking Facility Improvements shall be constructed by qualified and licensed contractors selected by Hotel Owner and approved by Parking Owner, such approval not to be unreasonably withheld, conditioned or delayed. During the construction of the Hotel Parking Facility Improvements, Hotel Owner shall comply with all Legal Requirements pertaining to construction and safety.

4.4 **Title to Improvements.** Title to the Parking Facility Improvements (including the Hotel Parking Facility Improvements) shall automatically vest in ASU and become a part of the Parking Parcel, subject to the terms and conditions of this Parking Agreement.

ARTICLE 5
MANAGEMENT AND OPERATION

5.1 Parking Owner Management and Operation. Except as otherwise provided herein, Parking Owner shall be responsible for maintaining, managing, operating, reconstructing, restoring, repairing and replacing all Parking Facility Improvements in good, clean, safe condition as a first-class facility consistent with the standards for the Hotel Project, and in connection therewith and subject to the terms hereof shall have complete control of the Parking Facility. In this regard, Parking Owner may, in its discretion:

(a) hire at rates and other terms and conditions deemed acceptable by Parking Owner, a Parking Operator and hire, at its option, or cause to be hired by and through the Parking Operator, security, towing and all other services necessary or desirable to operate the Parking Facility; provided, however, that to the extent any Parking Operator will also manage the Hotel Parking Area, then Hotel Owner shall also have approval rights over the designation of such Parking Operator, such approval not to be unreasonably withheld, conditioned or delayed and to be deemed given if ASU is the Parking Operator;

(b) engage Affiliates of Parking Owner or Parking Operator as vendors or contractors;

(c) adopt and promulgate commercially reasonable, uniform and non-discriminatory Parking Rules consistent with this Parking Agreement, including, but not limited to, Parking Rules regulating the use of the Parking Facility, establishing speed restrictions, and regulating parking, signage and signals within the Parking Areas. Parking Owner reserves the right to modify, suspend or waive Parking Rules in a reasonable, uniform and non-discriminatory manner; and

(d) do all such other and further acts that Parking Owner reasonably deems necessary to preserve and protect the Parking Facility in accordance with the standards and general purposes specified in this Parking Agreement.

Notwithstanding anything to the contrary contained in this Section 5.1, Parking Owner will not have the obligation to maintain, repair, manage, operate, or replace the Hotel Parking Facility Improvements including the equipment, fixtures or signage in the Hotel Parking Area, which shall be maintained, repaired, managed, and operated by the Hotel Owner in good, clean, safe condition as a first-class facility consistent with the standards for the Hotel Project. If any actions of Parking Owner result in Hotel Owner losing access to the Hotel Parking Facility (e.g., renovations to the Parking Facility), then Parking Owner shall provide the Alternative Parking Rights until such time as Hotel Owner's access to the Hotel Parking Facility is restored in its entirety. During the time Alternative Parking Rights are being utilized under this Section, Hotel Owner will be entitled to a reduction of the Additional Rent payable under the Hotel Lease in an amount equal to all Excess Parking Costs. At any time when Hotel Owner is entitled to offset Excess Parking Costs against Additional Rent, Hotel Owner shall provide Parking Owner with EPC Invoices. If Parking Owner disputes Hotel Owner's determination of the Excess Parking Costs as listed on an EPC Invoice such dispute shall be resolved in accordance with the process set forth in **Section 4.2(c)**.

5.2 Exclusive Ingress and Egress. Parking Owner may designate certain entrance or exit ramps for the sole use of fewer than all of the Parking Permittees, provided that all other Parking Permittees have adequate access to the Parking Facility. Notwithstanding the foregoing, the Hotel Parking Entry shall be for the exclusive use of Hotel Owner and the Hotel Parking Permittees unless otherwise agreed to in writing by Hotel Owner.

5.3 Parking Rates. Hotel Owner shall set the Parking Rates for the Hotel Parking Area and Parking Owner shall set the Parking Rates for the balance of the Parking Facility.

5.4 Impositions and Charges. Parking Owner shall timely pay all Impositions and Charges. Hotel Owner shall reimburse Parking Owner for its Allocable Share of the Impositions and Charges. For each fiscal year, Parking Owner shall provide a written estimate to Hotel Owner, on or before the first day of June, setting forth in reasonable detail the estimated Impositions and Charges and Hotel Owner's estimated Allocable Share for the following calendar year. Hotel Owner's Allocable Share shall be payable annually on the first day of July, unless otherwise directed by Parking Owner. On or before the first day of October of each fiscal year, Parking Owner shall provide a reconciliation statement to Hotel Owner setting forth in reasonable detail the Impositions and Charges actually incurred by Parking Owner for the immediately preceding calendar year, and the actual Allocable Share for Hotel Owner. If the amounts paid by Hotel Owner are less than the amount of Hotel Owner's actual Allocable Share as shown on the reconciliation statement, Hotel Owner shall pay the deficiency within thirty (30) days of receipt of the reconciliation statement. If the reconciliation statement shows that Hotel Owner has paid more than its actual Allocable Share for the preceding year, Hotel Owner will receive a credit for such overage applicable to the next installment(s) of Hotel Owner's Allocable Share of Impositions and Charges. Failure to deliver either the estimate or reconciliation by the dates set forth above shall not constitute a default by Parking Owner nor preclude Parking Owner from collecting any Impositions and Charges or adjusting the same at a later date, but until such estimate or reconciliation is delivered, Hotel Owner shall continue to pay its Allocable Share of Impositions and Charges at the rate for the preceding year, and if the estimate is delivered later than June 1 of any year, any increase in Impositions and Charges reflected in the budget shall not be payable until thirty (30) days following the estimate.

5.5 Audit Rights. Hotel Owner shall have the right, at Hotel Owner's expense, to audit the Impositions and Charges for any calendar year for a period of one hundred eighty (180) days following the receipt of the reconciliation statement for any calendar year period or partial calendar year period. Parking Owner shall provide reasonable access to all books and records relating to the Impositions and Charges upon notice to Parking Owner at least fifteen (15) days in advance, during ordinary business hours. Parking Owner shall retain copies of all records related to the Impositions and Charges for three (3) years. Unless Hotel Owner objects to any Impositions and Charges within such three (3) year period, Hotel Owner shall be deemed to have approved all Impositions and Charges for such period. If as a result of its audit, Hotel Owner determines that the actual Impositions and Charges for the period covered by any statement are less than the amount shown on the statement, Hotel Owner shall promptly notify Parking Owner of such determination, which notice shall be accompanied by a copy of the results of Hotel Owner's audit. Upon receipt of such notice and accompanying information, Parking Owner may object to Hotel Owner's determination by providing Hotel Owner with written notice of such objection within sixty (60) days following receipt by Parking Owner of Hotel Owner's notice

and accompanying information. Unless Parking Owner so objects, Parking Owner shall credit (or refund, if no further amounts are due under this Parking Agreement) to Hotel Owner the excess as determined by the results of Hotel Owner's audit within 60 days following receipt of Hotel Owner's notice and accompanying information. If, however, Parking Owner timely objects, the parties shall negotiate for a 30-day period to attempt to reach agreement concerning the dispute, following which they shall appoint, by mutual agreement, a neutral independent certified public accountant who shall promptly make a written determination of the Impositions and Charges for the period in question and shall provide such determination to the parties. The neutral independent certified public accountant's determination shall be binding upon Parking Owner and Hotel Owner for all purposes.

5.6 Parking Controls. The determination of what parking spaces are shared, reserved, unreserved, visitor, valet, event, public, or "overbooked" in the Hotel Parking Area shall be determined by Hotel Owner. The determination of what parking spaces are shared, reserved, unreserved, visitor, valet, event, public, or "overbooked" in the balance of the Parking Facility shall be determined by Parking Owner. Except as may be reasonably necessary in connection with the expansion, maintenance, repair, replacement or renovation of all or any portion of the Parking Facility, the Parking Facility shall not be closed; however, Parking Owner may install gates or other devices as may be necessary to limit or control access to the Parking Facility or portions thereof or any parking spaces therein consistent with this Parking Agreement.

5.7 Hotel Parking Area Operator. Hotel Owner may, with the consent of Parking Owner (not to be unreasonably withheld, conditioned or delayed), hire at rates and other terms and conditions deemed acceptable by Hotel Owner, an operator of the Hotel Parking Area and hire, at its option, or cause to be hired by and through such operator, security, towing and all other services necessary or desirable to operate the Hotel Parking Facility.

ARTICLE 6 DAMAGE OR DESTRUCTION

6.1 Restoration. If, at any time during the term of this Parking Agreement, the Parking Facility Improvements or any part thereof, are damaged or destroyed by fire or any other occurrence of any kind or nature (a "**Casualty Event**"), Parking Owner shall, at its option, elect within six (6) months of a Casualty Event (provided that ASU may extend such period to nine (9) months after a Casualty Event if ASU believes in good faith such extension is necessary for it to make a decision, the "**Decision Period**"), to either (i) restore the Parking Facility Improvements (the "**Restoration Work**"), and Parking Owner may modify the Parking Plans so long as the restored Parking Facility complies with Section 4.1 or (ii) not perform the Restoration Work, in which case Parking Owner shall provide to Hotel Owner either (x) a replacement surface parking lot in the same location as the Parking Facility that contains adequate space for at least 275 parking spaces or (y) an alternative parking arrangement approved by Hotel Owner in its reasonable discretion. If Parking Owner elects to perform the Restoration Work, then after the Decision Period, (a) Parking Owner shall diligently pursue the Restoration Work to completion as soon as possible, in no event shall such completion be later than the one (1) year anniversary of the end of Decision Period (subject to any delays for Force Majeure Events) and (b) if all or any portion of the Hotel Parking Facility is not useable as a result of such Casualty Event, Parking Owner shall provide the Alternative Parking Rights as the portion that is not

useable until the Restoration Work is completed. If Parking Owner elects not to perform the Restoration Work, Parking Owner shall provide to Hotel Owner the Alternative Parking Rights until the surface parking lot is completed or such alternative parking arrangement is provided. The use of the Alternative Parking Area shall be subject to the terms of this Parking Agreement to the extent applicable.

6.2 Insurance Proceeds. All insurance proceeds on account of such damage or destruction under the policies of insurance maintained by Parking Owner as provided for herein and any other amounts payable in connection with such Casualty Event or the Restoration Work shall be retained by Parking Owner.

ARTICLE 7 EMINENT DOMAIN

7.1 Taking. If the whole of the Parking Facility or such portion thereof that is no longer useable shall be taken or condemned under the right of eminent domain (a “**Taking**”) and such Taking includes the Hotel Parking Facility, Parking Owner shall provide the Alternative Parking Rights until such time as the Restoration Work is completed (if applicable). The use of the Alternative Parking Area shall be subject to the terms of this Parking Agreement to the extent applicable. If only a part of the Parking Facility shall be so Taken and the balance can continue to be used as a Parking Facility, this Parking Agreement shall remain in full force and effect; provided that (i) if the Hotel Parking Area is included in the property Taken, then Parking Owner shall propose a reconfigured Hotel Parking Area so that Hotel Owner continues to have an area sufficient to accommodate 275 parking spaces, but Hotel Owner shall pay any costs for work necessary for such reconfiguration, and (ii) if the Hotel Parking Entry is included in the property Taken, Parking Owner shall provide an alternate, separate entry for exclusive use by Hotel Owner and its Hotel Parking Permittees, which Parking Owner shall use commercially reasonable efforts to ensure complies with the provisions related to the Hotel Parking Entry contained in this Parking Agreement.

7.2 Condemnation Proceeds. The net awards or payments on account of any Taking shall be paid to Parking Owner.

ARTICLE 8 MECHANIC’S LIENS

8.1 Lien. Hotel Owner shall keep the Parking Facility free and clear of all mechanics’ liens and other liens and encumbrances on account of work done by or for or authorized by Hotel Owner pursuant to this Parking Agreement. Hotel Owner shall indemnify, defend and hold Parking Owner harmless for, from and against any and all Claims on account of such claims of lien or other encumbrances of laborers or materialman or others for work performed or materials or supplies furnished for or authorized by Hotel Owner or Persons claiming under it.

8.2 Cure. If, because of any act or omission (or alleged act or omission) of Hotel Owner or Persons claiming through Hotel Owner, any mechanics’, materialmen’s or other lien, charge or order for the payment of money shall be filed or Recorded against ASU’s estate in the

Parking Facility or against ASU (whether or not such lien, charge or order is valid or enforceable as such), Hotel Owner shall, at its own expense, cause the same to be released and discharged of Record within sixty (60) days after Hotel Owner shall have received notice of the filing or Recording thereof, or Hotel Owner may, within said period, record a surety bond pursuant to A.R.S. §33-1004 (or any successor statute), in the case of mechanics' or materialmen's liens, or furnish to ASU a bond, letter of credit or other instrument reasonably satisfactory to ASU against any other lien, charge or order, in which case Hotel Owner shall have the right in good faith to contest the validity or amount thereof, provided that:

- (a) the fee estate of ASU shall not be thereby encumbered;
- (b) such proceedings shall operate to suspend the collection of the claim from ASU and the Parking Facility; and
- (c) ASU shall not thereby become subject to any civil or criminal liability for ASU and Hotel Owner's failure to comply.

8.3 Notice. If any claims of lien or other encumbrances shall be filed against the Parking Facility, the party receiving notice of such lien or action shall promptly give the other party or parties written notice thereof.

ARTICLE 9 INSURANCE

9.1 Liability Insurance. Hotel Owner shall at all times during the term of this Parking Agreement self-insure (in conformance with Section 9.10) or purchase, maintain and keep in effect insurance against claims for personal injuries (including death) or property damage, under a policy of commercial general liability insurance (on an occurrence form), such that the total available limits will not be less than Two Million and No/100 Dollars (\$2,000,000) per occurrence, which may be satisfied by any combination of primary, secondary, and other coverages, naming the Parking Owner, State of Arizona, ABOR, ASU, and their respective regents, officers, officials, agents, employees and volunteers (the "Parking Owner Insurance Parties") as additional insureds. The coverage afforded the insured and each additional insured shall be primary and shall apply to loss prior to any coverage carried by Parking Owner. Any insurance or self-insurance maintained by the Parking Owner Insurance Parties shall be on an occurrence basis and shall be in excess of Hotel Owner's commercial general liability insurance coverage and shall not contribute with it. Hotel Owner's insurance policy must be endorsed, as required by this Parking Agreement, to include the Parking Owner Insurance Parties as additional insureds with respect to liability arising out of the activities performed by or on behalf of Hotel Owner under this Parking Agreement. Hotel Owner's insurance policy shall include coverage for:

- Bodily injury
- Blanket broad form property damage (including completed operations)
Personal and advertising injury
- Blanket broad form contractual liability
- Fire and legal liability coverage

- Medical expense coverage

At least One Million Dollars (\$1,000,000.00) of such liability insurance coverage shall be primary coverage and the remainder of such coverage may be pursuant to an umbrella or excess liability policy.

9.2 Workers' Compensation Insurance. At all times while this Parking Agreement is in effect, when Hotel Owner has employees, Hotel Owner shall purchase and maintain and keep in effect workers' compensation and employers liability insurance as required by the State of Arizona Workers' Compensation statutes as follows:

Workers' Compensation Employers Liability	Statutory Arizona benefits
\$1,000,000 each accident	
\$1,000,000 each employee/disease	
\$1,000,000 policy limit/disease	

This policy shall include endorsement for All State coverage for state of hire.

9.3 Automobile Liability Insurance. During all periods of the term of this Parking Agreement when Hotel Owner has employees, Hotel Owner shall purchase and maintain and keep in effect business automobile liability insurance, with minimum limits of Two Million Dollars (\$2,000,000) per occurrence combined single limit. Declarations to include owned, non-owned and hired motor vehicles, applicable to claims arising from bodily injury, death or property damage arising out of the ownership, maintenance or use of any automobile. The policy shall be endorsed to add the Parking Owner Insurance Parties as additional insureds and shall stipulate that the insurance shall be primary, and that any self-insurance or other insurance carried by the Parking Owner Insurance Parties shall be excess and not contributory to the insurance provided by Hotel Owner.

9.4 Evidence of Insurance. If not self-insured in conformance with Section 9.10 Hotel Owner shall provide and maintain all insurance required under this Parking Agreement with responsible, reputable and financially sound companies with a Best Policyholders Rating of "A-" or better and with a financial size rating of Class VII or larger, permitted to transact the business of insurance in the State of Arizona for the applicable lines of insurance. Upon the Effective Date, and no less than annually thereafter, Hotel Owner shall deliver to Parking Owner certificates of insurance (unless self-insured in conformance with Section 9.10 and any additional documentation reasonably requested by Parking Owner to assure compliance with this Article 9, which shall name the Parking Owner Insurance Parties as additional insureds for general liability coverage and auto liability coverage. All liability coverages shall stipulate that Hotel Owner's insurance shall be primary and that any self-insurance or other insurance carried by the Parking Owner Insurance Parties shall be excess and not contributory to the insurance provided by Hotel Owner. If any of the insurance policies required by this Article 9 are cancelled prior to the stated expiration date, notice thereof will be given in accordance with the policy provisions, and further notice thereof promptly will be given by Hotel Owner to Parking Owner. All coverages, conditions, limits and endorsements shall remain in full force and effect as required in this Parking Agreement.

9.5 Copies and Additional Information. The State of Arizona, ABOR and ASU shall be provided upon request certified copies of all policies and endorsements. In addition, Hotel Owner agrees to reasonably cooperate with ASU in obtaining any and all information demonstrating Hotel Owner is in compliance with the insurance requirements of this Article. The foregoing shall not affect a party's rights under law or court order with respect to the disclosure of such policy during the course of litigation.

9.6 ASU Procurement; Availability of Insurance Coverage. Failure on the part of Hotel Owner to meet the requirements concerning insurance in this Article 9 within ninety (90) days of Parking Owner's written notice to Hotel Owner of such failure (or such shorter period as may be necessary to avoid a cancellation or lapse of any insurance) shall constitute a default under this Parking Agreement, or, in Parking Owner's discretion, Parking Owner may procure or renew such insurance and pay any and all premiums in connection therewith if Hotel Owner does not cure such failure within thirty (30) days of written notice from Parking Owner to Hotel Owner (or such shorter period as may be necessary to avoid a cancellation or lapse of any insurance) specifying such failure, and all monies so paid by Parking Owner shall be repaid by Hotel Owner upon demand.

9.7 Claims Reporting. Any failure to comply with the Claims reporting provisions of the policies or any breach of policy warranty shall not affect coverage afforded under the policy to protect the State of Arizona, ABOR, ASU, and their regents, officers, officials, agents, employees and volunteers.

9.8 Modification of Insurance Requirements. The insurance requirements herein are minimum requirements for this Parking Agreement and in no way limit the indemnity covenants contained in this Parking Agreement. Parking Owner in no way warrants that the minimum limits contained herein are sufficient to protect Hotel Owner from liabilities that arise out of the performance of its obligations under this Parking Agreement, and Hotel Owner is free to purchase additional insurance. From time to time while this Parking Agreement is in effect, but not more often than once in any ten (10) year period thereafter, Parking Owner may require that the insurance coverages specified in Sections 9.1 be modified, subject to Hotel Owner's written agreement, to the amounts then reasonable and customary for similar properties within the Greater Phoenix Metropolitan Area and Hotel Owner shall be entitled to a period of one hundred eighty (180) days to obtain such insurance, if not self-insured in conformance with Section 9.10.

9.9 Waiver of Subrogation. Hotel Owner hereby waives and, to the extent available on commercially reasonable terms, shall cause its insurers to waive, any claims, causes of action or other rights of any nature that Hotel Owner may have against Parking Owner or ASU arising out of property damage to the Parking Facility to the extent that Hotel Owner actually carries or is required hereby to carry insurance on the damaged real or personal property. Without limitation on the generality of the foregoing, the foregoing is intended, among other matters, to act as a waiver by the property insurer of each Owner providing property insurance of such insurer's subrogation rights against such parties. There is no parallel waiver by ASU or Parking Owner or any of Landlord's insurance providers.

9.10 Self-Insurance.

(a) So long as Omni Tempe, LLC or its Affiliate is the Hotel Owner under this Lease, Hotel Owner shall have the right to self-insure under this Article 9; provided that if Hotel Owner's self-insured retention exceeds \$2,000,000 (which amount shall be increased annually by the percentage increase in the CPI) per claim, Hotel Owner shall inform Parking Owner of such increase and provide evidence reasonably satisfactory to Parking Owner that such retention remains reasonable under Hotel Owner's self-insurance program.

(b) Upon an assignment of this Parking Agreement in accordance with Section 13.6, Hotel Owner's right to self-insure under this Article 9 is subject to Parking Owner's written consent (which shall not be unreasonably withheld). Without limiting the grounds for withholding consent which may be reasonable, it shall be reasonable for Parking Owner to withhold consent if Parking Owner reasonably believes that the proposed self-insurance is not financially prudent with respect to any of the following: (i) funding of losses; (ii) methodology used to determine funding level; (iii) which coverages are self-insured; (iv) the existence of a stop loss policy above any self-insured retention; (v) alternative risk transfer or (vi) administration of claims

(c) Hotel Owner shall, upon Parking Owner's written request from time to time, provide current evidence concerning Hotel Owner's self-insurance program.

(d) Nothing herein limits or diminishes the waiver of subrogation rights and obligations as provided for in this Parking Agreement or the rights that Parking Owner's insurance carriers would have had under "other insurance" or similar clauses in Parking Owner's insurance policies had Hotel Owner not exercised Hotel Owner's self-insurance rights under this Section 9.10.

ARTICLE 10 REGULATORY REQUIREMENTS.

10.1 Legal Requirements. The Owners shall observe and comply in all material respects with all Legal Requirements applicable to the Parking Parcel and their use, operation, maintenance, repair, and replacement of the Parking Facility. Parking Owner shall procure such permits, licenses, certificates and/or governmental approvals required in connection with the construction and operation of any Parking Facility Improvements (other than the Hotel Parking Facility Improvements, which shall be the responsibility of Hotel Owner) and any Appurtenant Improvements. Each Owner shall pay all costs, expenses, liabilities, losses, fines, penalties, Claims and demands including attorneys' fees that may in any way arise out of or be imposed because of the failure of such Owner to comply with such Legal Requirements.

10.2 Hazardous Substances. Neither Owner will dispose of, generate, manufacture, process, produce, Release, store, transport, treat, or use, nor will it permit the disposal, generation, manufacture, presence, processing, production, Release, storage, transportation, treatment, or use of Hazardous Substances on, under, or about the Parking Parcel in violation of Environmental Laws. Each Owner agrees that it will comply and cause all of its agents, employees, and contractors to (a) comply with all Environmental Laws; (b) obtain and maintain or cause to be obtained and maintained all permits, licenses, and approvals required under

Environmental Laws or otherwise relating to Hazardous Substances; and (c) comply with all conditions and requirements of such permits, licenses, and approvals.

10.3 Environmental Indemnity. Hotel Owner hereby indemnifies, holds harmless and agrees to defend each of the ASU Parties for, from and against any and all Claims with respect to the Parking Parcel accruing on account of or in connection with:

(a) The violation of any Environmental Law by Hotel Owner or its agents, employees, or contractors;

(b) The presence, use, generation, storage or Release of Hazardous Substances occurring while this Parking Agreement is in effect caused or resulting from the acts of Hotel Owner or its employees, agents, or contractors; or

(c) The breach by Hotel Owner of any of its obligations under this Article.

Without limiting the foregoing, the indemnification set forth herein shall include any and all costs and expenses incurred in connection with any investigations of all or any portion of the Parking Parcel or any cleanup, removal, repair, remediation, detoxification or restoration and the preparation of any closure or other plans required or permitted by any governmental authority. Hotel Owner's indemnification and defense obligations shall not extend to the violation of any Environmental Law by any ASU Party or the presence, use, generation, storage, or Release of Hazardous Substances in, on, under or above the Parking Parcel prior to the Effective Date or any migration or Release of Hazardous Substances from any other property owned by ASU.

10.4 Survival. The Owners' indemnifications and obligations under this Article shall survive the termination of this Parking Agreement as to events occurring or liability arising prior to the termination of this Parking Agreement.

ARTICLE 11 INDEMNIFICATION

11.1 Indemnification. Except to the extent caused by the negligence or willful misconduct of the ASU, the State of Arizona, ABOR and their respective regents, officers, employees (the "**ASU Indemnified Parties**") or a breach by any of the ASU Indemnified Parties of the terms or conditions of this Parking Agreement, Hotel Owner shall save, hold harmless and indemnify the ASU Indemnified Parties for, from and against all Claims that accrued during any period when Hotel Owner occupies or uses the Parking Facility, which are imposed upon or asserted against an ASU Indemnified Party by reason of (a) any accident, injury to or death of persons (including workmen) or loss of or damage to property occurring on the Parking Parcel or any part thereof on account of the use by the Hotel Owner or the Hotel Parking Permittees, or (b) performance of any labor or services or the furnishing of any materials or other property in respect of the Parking Parcel or any part thereof by, on behalf of or at the request of Hotel Owner. Notwithstanding anything contained in this Section to the contrary, Hotel Owner shall not be obligated to indemnify the ASU Indemnified Parties from any claims to the extent resulting from the negligence or willful misconduct, or breach of this Parking Agreement of or by ASU or any ASU Indemnified Party.

11.2 Process. In the event any of the ASU Indemnified Parties should be made a defendant in any action, suit or proceeding brought by reason of any act or omission of Hotel Owner, Hotel Owner shall, at its own expense resist and defend such action, suit or proceeding by counsel reasonably approved by the ASU. If any such action, suit or proceeding should result in any non-appealable final judgment against an ASU Indemnified Party, the indemnifying party shall promptly satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged.

11.3 Survival. The indemnity obligations in this Article shall survive the termination of this Parking Agreement as to events occurring or liability accruing during any other period when Hotel Owner occupies or uses the Parking Parcel or Parking Facility.

ARTICLE 12 DEFAULT AND REMEDIES

12.1 Default.

(a) If either Owner fails to make a payment required hereunder when due and owing, it shall not be deemed in default hereunder unless it fails to make such payment within thirty (30) days after receipt of written notice thereof.

(b) If either Owner fails to perform any other obligation hereunder as and when required and the nature of the default is such that it cannot reasonably be cured within sixty (60) days, it shall not be deemed in default hereunder or subject to any remedies provided herein unless it fails to commence such cure within such sixty (60) day period and pursue such cure to completion in the exercise of reasonable diligence.

12.2 Remedies. In the event of a default as set forth above, the non-defaulting Owner shall have all rights and remedies available at law or in equity, provided, in no event shall:

(a) the Hotel Parcel be subject to a reduction of the Hotel Parking Area; or

(b) an Owner have the right to terminate this Parking Agreement except as specifically set forth herein, provided that such limitation shall not affect in any manner any other rights or remedies which an Owner may have under this Parking Agreement by reason of any breach of this Parking Agreement.

12.3 Delinquent Payments. All payments due hereunder that are not paid by the fifth (5th) day after due shall bear interest at the Default Rate until paid.

ARTICLE 13 MISCELLANEOUS

13.1 Severability. Any determination by any court of competent jurisdiction that any provision of this Parking Agreement is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions of this Parking Agreement.

13.2 Change of Circumstances. Except as otherwise expressly provided in this Parking Agreement, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Parking Agreement.

13.3 Gender and Number. Wherever the context of this Parking Agreement so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

13.4 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Parking Agreement are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions of this Parking Agreement or to be used in determining the intent or context of such provisions.

13.5 Notices. Notices may be delivered either by private messenger service (including overnight courier) or by United States mail, postage pre-paid, registered or certified mail, return receipt requested, addressed as provided below. Any notice or document required or permitted hereunder shall be in writing and shall be deemed to be given on the date received or refused. Any notice to be given by any party hereto may be given by legal counsel for such party. Counsel for the parties may give simultaneous notice hereunder to the opposing party and its counsel. Each address shall for all purposes be as set forth below unless otherwise changed by notice to the other parties as provided herein:

Hotel Owner: Omni Hotels
Attn: Mike Smith
4001 Maple Avenue, Suite 600
Dallas, Texas 75219

With copies to: Omni Hotels
Attn: Paul Jorge
4001 Maple Avenue, Suite 600
Dallas, Texas 75219

Parking Owner
and ASU: Arizona State University
Attn: Executive Vice President, Treasurer and
Chief Financial Officer

Mailing Address:

P.O. Box 877505
Tempe, AZ 85287-7505

Delivery Address:

300 East University Drive, Suite 320
Tempe, AZ 85281-2061

With a mandatory
copy to:

Arizona State University
Attn: Assistant Vice President for University
Real Estate Development

Mailing Address:

P.O. Box 873908
Tempe, AZ 85287-3908

Delivery Address:

300 E. University Drive, Suite 320
Tempe, AZ 85281-2061

With a mandatory
copy to:

Arizona State University
Attn: Senior Vice President and General Counsel

Mailing Address:

P.O. Box 877405
Tempe, AZ 85287-7405

Delivery Address:

300 East University Drive, Suite 335
Tempe, AZ 85281-2061

or to such other address as ASU or the Owners may from time to time designate pursuant hereto. Notices, consents, approvals and communications given by mail shall be deemed given twenty-four (24) hours after deposit thereof in the United States mail.

13.6 Successors and Assigns. Each easement, restriction and covenant contained in this Parking Agreement shall be appurtenant to and for the benefit of all portions of the Hotel Parcel and shall be a burden thereon, for the benefit of all portions of the Parking Parcel, and shall run with the land. This Parking Agreement and the restrictions, easements, covenants, benefits and obligations granted hereby shall inure to the benefit of and be binding upon the Owners and their successors, transferees and assigns; provided, however, that, if any Owner transfers all of its interest in a Parcel, the transferee thereof shall automatically be deemed to have assumed and agreed to be bound by the covenants and agreements in this Parking Agreement. Hotel Owner may not transfer or assign any rights under this Parking Agreement, other than in connection with a transfer of the Hotel Parcel and an assignment of its rights under the Hotel Lease. Any reference in this Parking Agreement to Parking Owner shall include any assignees of Parking Owner's rights and powers under this Parking Agreement as reflected in a Recorded instrument reflecting such assignment.

13.7 Termination. If the Hotel Lease terminates at any time when ASU owns the Parking Parcel, ASU may, at its option, terminate this Parking Agreement by Recordation of a document evidencing such termination.

13.8 No Third Party Beneficiary. Except as specifically provided in this Parking Agreement, no rights, privileges or immunities set forth in this Parking Agreement shall inure to the benefit of any third party, including, but not limited to, any Parking Permittee of any Owner,

nor shall any third party be deemed to be a third party beneficiary of any of the provisions contained in this Parking Agreement.

13.9 Estoppel Certificates. Each Owner shall deliver to the other Owner(s), within twenty (20) days after request, a written statement setting forth that, to the knowledge of such Owner, the requesting party is not in default in the performance of any of its obligations under this Parking Agreement (or, if in default, setting forth the nature of such default), and such other information as the requesting party may reasonably request. The party from whom such statement is requested may require the payment of a reasonable charge in connection with any such certificate as described.

13.10 Jurisdiction. Any matter arising between the Owners shall be governed by and determined in accordance with the laws of the State of Arizona. Any legal action or proceeding with respect to this Parking Agreement may be brought in the courts of the State of Arizona or, if the requisites of jurisdiction are obtained, of the United States of America for the District of Arizona and every Owner and ASU hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforementioned courts.

13.11 Incorporation of Recitals. The Recitals are hereby incorporated into this Parking Agreement and made a part hereof.

13.12 No Public Dedication. The provisions of this Parking Agreement shall not constitute nor be construed as a dedication for public use, and the rights and easements granted herein are private and sole for the benefit of ASU and the Owners.

13.13 Amendments. This Parking Agreement, including the Exhibits attached hereto, may be amended at any time upon the written consent of the Owners and ASU. Any amendment of this Parking Agreement shall become effective immediately upon the Recording of a Certificate of Amendment, duly signed and acknowledged setting forth in full the amendment adopted.

13.14 Time of Essence Time is of the essence of all obligations hereunder.

ARTICLE 14 SUPPLEMENTARY PROVISIONS

14.1 Nondiscrimination. To the extent applicable, the Owners will comply with all applicable state and federal laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. ***[NTD: If no federal funding is used for the project, can delete the balance of Section 14.1.]*** If applicable, the Owners will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

14.2 Conflict of Interest. ASU's participation in this Parking Agreement is subject to A.R.S. § 38-511, which provides that ASU may cancel this Parking Agreement within three years after the execution hereof, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Parking Agreement on behalf of ASU, is or becomes an employee or agent of Hotel Owner. Notice is also given of A.R.S. §§ 41-2517 and 41-753.

14.3 Notice of Arbitration Statutes. Pursuant to A.R.S. § 12-1518, the Owners acknowledge and agree, subject to ABOR Policy 3-809, that they will be required to make use of mandatory arbitration of any legal action that is filed in the Arizona Superior Court concerning a controversy arising out of this Parking Agreement if required by A.R.S. § 12-133.

14.4 Dispute Resolution. If a dispute arises under this Parking Agreement, the parties agree to exhaust all applicable administrative remedies provided for under ABOR Policy 3-809.

14.5 Failure of Legislature to appropriate. If ASU's performance under this Parking Agreement depends on the appropriation of funds by the Arizona Legislature, and if the Arizona Legislature fails to appropriate the funds necessary for performance or if ASU reasonably believes that the Arizona Legislature will fail to appropriate such funds, then ASU may provide written notice of this to Hotel Owner, and Hotel Owner may by written notice given no later than the tenth (10th) day following such notice, elect to either (a) waive such performance or (b) extend the deadline for such performance until the date such appropriation occurs, but not to exceed one (1) year. If ASU fails to make an election within such ten (10) day period, Hotel Owner shall be deemed to have elected to waive such performance by ASU. If Hotel Owner elects to extend the deadline and appropriation does not occur within such one (1) year period, then ASU shall no longer have the obligation to perform any obligations under this Parking Agreement that require appropriation of funds. Appropriation is a legislative act and is beyond the control of ASU.

14.6 Weapons, Explosive Devices and Fireworks. ASU prohibits the use, possession, display or storage of any weapon, explosive device or fireworks on all land and buildings owned, leased, or under the control of ASU or its Affiliates or related entities, in all ASU residential facilities (whether managed by ASU or another entity), in all ASU vehicles, and at all ASU or ASU Affiliate sponsored events and activities except as provided in A.R.S. § 12-781 or unless written permission is given by the ASU Police Department (ASU PD). Notification by Hotel Owner to all Persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of Hotel Owner ("**Hotel Owner Notification Parties**") of this policy is a condition and requirement of this Parking Agreement. Parking Owner further agrees to enforce this contractual requirement against all Hotel Owner Notification Parties. ASU's policy may be accessed through the following web page: <http://www.asu.edu/aad/manuals/pdp/pdp201-05.html>.

14.7 Confidentiality. Any other provisions of this Parking Agreement to the contrary notwithstanding, the parties acknowledge that ASU is a public institution, and as such is subject to A.R.S. Title 39, Chapter 1, Article 2 (Sections 39-121 through 39-127). Any provision regarding confidentiality is limited to the extent necessary to comply with the provisions of state law.

14.8 Indemnification. Any other provisions of this Parking Agreement to the contrary notwithstanding, the parties acknowledge that ASU is a public institution and any indemnification or hold harmless provision shall be limited as required by state law, including without limitation Article 9, Sections 5 and 7 of the Arizona Constitution and A.R.S. § 35-154 and § 41-621. Therefore, notwithstanding any other provision of this Parking Agreement, ASU's liability under any claim for indemnification is limited to Claims for property damage, personal injury, or death to the extent caused by acts or omissions of ASU.

14.9 ASU Service Marks and Trademarks. For purposes of this provision, the phrase "ASU mark" means any trade name, trademark, service mark, logo, domain name, and any other distinctive brand feature owned or used by ASU. The Owners agree to comply with ASU's trademark licensing program concerning any use or proposed use by an Owner of any ASU mark on goods, in relation to services, and in connection with advertisements or promotion of Parking Owner or its business. Without limiting the foregoing, the Owners will not use any ASU mark, for any reason including online, advertising, or promotional purposes, or represent or imply any ASU endorsement or support of any product or service in any public or private communication, without in each case, the prior written consent of ASU. Hotel Owner's use of any ASU marks must comply with ASU's requirements including using the ® indication of a registered trademark where applicable.

14.10 Tobacco-Free University. ASU is tobacco-free. For details visit www.asu.edu/tobaccofree.

IN WITNESS WHEREOF, ASU and Hotel Owner have executed and delivered this Parking Agreement as of the day and year first above written.

[SIGNATURES ON FOLLOWING PAGES]

**SIGNATURE PAGE TO
GRANT OF EASEMENT AND DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR BLOCK 27 PARKING**

ABOR:

ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__, by _____, the _____ of ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University, on behalf thereof.

Notary Public

[Notary Seal]

**SIGNATURE PAGE TO
GRANT OF EASEMENT AND DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR BLOCK 27 PARKING**

HOTEL OWNER:

OMNI TEMPE, LLC, a Delaware limited liability company

By: _____

Its: _____

STATE OF TEXAS)
) ss.
County of Dallas)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__, by _____, the _____ of OMNI TEMPE, LLC, a Delaware limited liability company, on behalf thereof.

Notary Public

[Notary Seal]

EXHIBIT A

LEGAL DESCRIPTION OF THE HOTEL PARCEL

EXHIBIT B

LEGAL DESCRIPTION OF THE PARKING PARCEL

EXHIBIT C

PARKING SITE PLAN

EXHIBIT D

DESCRIPTION OF PARKING PLANS

Schedule 2

CONSTRUCTION LICENSE AGREEMENT

This Construction License Agreement (this “**Agreement**”) is entered into between the **ARIZONA BOARD OF REGENTS** for and on behalf of **ARIZONA STATE UNIVERSITY** (the “**University**” and “**Licensors**”), whose address is P.O. Box 873908, Tempe, AZ 85287-3908 (mail), and 80 East Rio Salado Parkway, Suite 513, Tempe, AZ 85281-9106 (delivery), as licensor, **OMNI TEMPE, LLC**, a Delaware limited liability company (“**Licensee**”), whose address is 4001 Maple Avenue, Suite 600, Dallas, Texas 75219, Attention: Mike Smith, for the use by Licensee of certain space or facilities owned by University, as more particularly described herein. This Agreement is entered into as of _____, 201__ (the “**Effective Date**”).

Upon execution, a complete copy of this Agreement must be sent to:

**ASU Financial Services
Debt Management Section
Campus Mail Code: 5812**

1. **SITE.**

Subject to the terms of this Agreement, University grants Licensee a license to use the property at the University graphically depicted on **Exhibit “A”** attached hereto and incorporated herein by this reference (the “**Site**”) for the purposes of constructing the “**Initial Improvements**” as defined in that Lease dated of even date herewith between University, as landlord, and Licensee, as tenant (the “**Lease**”). The Site is delivered to Licensee in an “**AS IS**”, “**WHERE IS**”, condition and location, without any representations or warranties by University. Nothing in this Agreement shall be construed as a grant of any real property right or interest.

2. **USE; MAINTENANCE AND REPAIRS; DAMAGES; SURRENDER.**

- 2.1. Licensee may use, or may allow its contractor, the contractor’s respective subcontractors and suppliers, and the License Parties (as defined in Section 2.2) to use, the Site for the following uses, and for no other purpose: (i) vehicular and construction equipment parking for Licensee and its agents, employees, subcontractors, permittees, licensees and invitees working on the Project; (ii) placement, set up and operation of construction trailers and ancillary equipment providing offices and storage for Licensee and its subcontractors working on the Project; (iii) installation of power poles for above-ground temporary electricity to the construction trailers (such installation and use of electricity to be at Licensee’s sole cost and expense); (iv) Project-related meetings; (v) operation of cranes, swing-stage scaffolding or hoisting equipment (collectively “**Cranes**”); and (vi) construction staging and materials and equipment lay down and storage for use in the construction of the “**Project**,” as more particularly described in the Lease. Notwithstanding anything contained herein to the contrary, the portions of the Site comprising 9th Street (the “**Right of Way**”) may be used solely to swing the boom of any Cranes in connection with the construction of the Project and not for any of the other purposes described in this Section. Without the prior written approval of University, Licensee will not block the Right of Way or impede traffic thereon.
- 2.2. When using the Site, Licensee will comply, and cause its affiliates, members, partners, agents, consultants, employees, officers, directors, contractors, subcontractors, permittees, licensees and invitees (the “**Licensee Parties**”) to comply, with all statutes, codes, laws, acts, ordinances, orders, judgments, rules, regulations, permits, or

requirements of all federal, state, county, municipal, and other governments, departments, commissions, boards, and authorities, which may be applicable to the Site or apply to the applicable uses of the Site, and with the policies and regulations of the University pertaining to the use, manner of use or conditions of the Site or any part thereof.

- 2.3. Licensee agrees to maintain the Site in good order and condition, and shall restore it to its original condition following completion of the Initial Improvements unless otherwise agreed to by the parties, subject to the normal wear and tear that would occur if the Site had continued to be used for its intended purpose (“**normal wear and tear**”); but expressly excluding any wear and tear that is caused by the presence of the construction vehicles and equipment on the Site or by Licensee’s use of the Site as permitted by Section 2.1 (“**extraordinary wear and tear**”).
- 2.4. Licensee agrees not to use or knowingly allow the Site to be used for any unlawful purpose. Licensee agrees not to commit or knowingly allow to be committed any waste or nuisance in or about the Site, or subject the Site to any use that would damage the Site
- 2.5. Licensee will repair damage to the Site and any improvements that may be located in, on or under the Site, including by way of example but not of limitation, restoring any asphalt and replacing any lighting poles (such real property and improvements to be maintained and not excluded being referred to herein as “**University’s Property**”) when such damage is caused by Licensee or by any of the Licensee Parties, normal wear and tear excepted. If Licensee at any time fails to commence and complete its repair obligations set forth in this Section 2.5 within thirty (30) days after University delivers written notice to Licensee requesting that such repairs be performed (such thirty (30) day period shall not be extended further by the provisions of Section 10.1 below), University shall have the right, but not the obligation, to perform the repair work on behalf of Licensee, and in such event, Licensee shall pay to University the reasonable amounts expended by University to perform such repair work, provided that if the work is performed by the University the cost to be reimbursed shall not exceed the amount that would have been charged by an unrelated third-party.
- 2.6. Within 24 hours after the expiration of the License Term or earlier termination of this Agreement, Licensee must (i) remove from the Site all materials, equipment, power poles, construction trailers, personal property and improvements placed or constructed on the Site by Licensee or its agents, employees, subcontractors, permittees, licensees, or invitees (“**Licensee’s Property**”), and (ii) pursuant to Section 2.5, repair any damage done to all or any part of University’s Property caused by such removal and (iii) pursuant to Section 2.3, restore the Site to the condition that existed immediately prior to the Effective Date, normal wear and tear excepted, but including any resealing, restriping of asphalt and patching of holes or damaged asphalt required to repair any extraordinary wear and tear. The Site will be inspected by a representative of University promptly following the end of such 24-hour period, and shall notify Licensee of any observed deficiencies. Licensee will have the option to correct any observed deficiencies within thirty (30) days after Licensee receives written notice of any observed deficiencies performed (such thirty (30) day period shall not be extended further by the provisions of Section 10.1 below). Any of Licensee’s Property remaining on the Site following the expiration of such thirty (30) day period shall be deemed abandoned. If Licensee fails to correct the deficiencies within such thirty (30) day period, University will have the option, in its sole discretion, to correct the deficiencies in a commercially reasonable manner, including, if so elected by University, the right to store, sell or destroy any or all

of Licensee's Property, and to repair any damage to the Site caused by such actions, all at Licensee's cost. Licensee shall be responsible for all reasonable expenses incurred by University in connection therewith, including, but not limited to any costs incurred by University to remove, sell, store or destroy any portion of Licensee's Property and to repair the damage caused by such actions; provided that if the work is performed by the University the expenses to be reimbursed shall not exceed the amount that would have been charged by an unrelated third-party.

- 2.7. If University incurs any costs or expenses in connection with actions taken by it pursuant to Sections 2.5 or 2.6 above, Licensee shall pay such amounts to University within twenty (20) days after Licensee's receipt of University's invoice therefor. If Licensee fails to timely pay any such invoice, the amounts expended by University shall bear interest at the rate of twelve percent (12%) per annum (the "**Default Rate**") from the date incurred by University until fully paid to University by Licensee.
- 2.8. Licensee's obligations set forth in Sections 2.5 and 2.6 shall survive the expiration of the License Term or earlier termination of this Agreement.

3. **DURATION.**

- 3.1. Subject to the terms of this Agreement and unless otherwise terminated as permitted herein, Licensee may use the Site 24 hours a day, seven days a week, for a period commencing on the Effective Date and terminating on the earlier to occur of (i) sixty (60) day after the final certificate of occupancy, or other evidence of completion and acceptance by the applicable government authorities, has been issued with respect to the construction of the Initial Improvements (the "**Final C/O**"), and (ii) December 31, 2023 (the "**License Term**"), at which time Licensee's right to use the Site under this Agreement will automatically expire.
- 3.2. Licensee may terminate this Agreement early by giving thirty (30) days written notice to the University. University may terminate this Agreement only (i) by giving thirty (30) days written notice to the Licensee solely as to any portion of the Site not included in the Right of Way if it requires use of such portion of the Site for other purposes, or (ii) as a result of a material default by Licensee in accordance with the terms hereof. Upon termination, all rights granted to Licensee under this Agreement shall terminate on the effective date of the termination and Licensee shall surrender the Site to University in the condition required by this Agreement. Notwithstanding the foregoing, if at the time of termination by University, Licensee still requires the operation of Cranes in connection with construction of the Initial Improvements, this Agreement shall continue solely for the purposes described in the last sentence of Section 2.1 until such time as Licensee has completed operations involving the Crane.
- 3.3. If the whole or any part of the property within which the Site is located is taken at any time during the License Term under the power of eminent domain and the portion of property remaining (if any) is not sufficient to allow Licensee to reasonable complete construction of the Project, the University may elect to terminate this Agreement and University and Licensee shall work in good faith to enter into a construction license on similar terms for an alternative site. If the University does not elect to terminate this License on account of a taking, this License shall remain unaffected as to the portion of the Site not taken.

4. **FEE.**

4.1. University shall not charge a license fee for use of the Site.

4.2. Any amounts owed by Licensee to University hereunder must be made payable to Arizona State University and sent to the following address:

Arizona State University
Attn: Assistant Vice-President, University Real Estate Development
300 East University Drive, Suite 320
Tempe, AZ 85281-2061

For mail delivery at:
P. O. Box 873908
Tempe, AZ 85287-3908

5. **INSURANCE.**

5.1. Licensee shall purchase and maintain and keep in effect at all times during the License Term, or cause its contractor to purchase and maintain and keep in effect at all times during the License Term, insurance against claims for personal injuries (including death) or property damage, under a policy of commercial general liability insurance, such that the total available limits will not be less than Five Million Dollars (\$5,000,000) per occurrence, which may be satisfied by any combination of primary, secondary, and other coverages, naming the State of Arizona, the Arizona Board of Regents (“**ABOR**”), University and their regents, officers, officials, agents, employees and volunteers as additional insureds. The coverage afforded each additional insured shall be primary and shall apply to loss prior to any coverage carried by University. Any insurance or self-insurance maintained by the State of Arizona, ABOR, University and their regents, officers, officials, agents and employees shall be in excess of Licensee’s (or its contractor’s) commercial general liability insurance coverage and shall not contribute with it. Certificates of insurance shall include a copy of the endorsement evidencing additional insured status. The policy shall include coverage for:

Bodily injury
Broad form property damage (including completed operations)
Personal injury
Blanket contractual liability
Pollution/Environmental, sudden and incidental release (with a sublimit coverage amount of \$100,000); provided that this coverage may be provided in a separate policy of insurance.

In the event that the liability insurance coverage is not available on a commercially reasonable basis, then with the written consent of University, not to be unreasonably withheld, conditioned or delayed, such policy may be written on a “claims made” basis, but in such event, Licensee shall obtain and maintain a “tail” policy (extended reporting endorsement) and shall continuously maintain coverage under such policy through the Term of this Agreement, and for a period of not less than three (3) years following the date of termination of the policy required by this section. The “tail” policy shall have the same policy limits as the policy it extends.

5.2. During all periods of the License Term when Licensee or its contractor has employees that work on or have access to the Site, Licensee or its contractor shall purchase and maintain and keep in effect at all times during the License Term workers' compensation and employers liability insurance as required by the State of Arizona Workers Compensation statutes as follows:

Workers Compensation (Coverage A)	Statutory Arizona benefits
Employers Liability (Coverage B)	\$1,000,000 each accident
	\$1,000,000 each employee/disease
	\$1,000,000 policy limit/disease

This policy shall include endorsement for All State coverage for state of hire.

5.3. During all periods of the License Term when Licensee or its contractor has employees that work on or have access to the Site, Licensee or its contractor shall purchase and maintain and keep in effect at all times business automobile liability insurance, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, with Declarations to include owned, non-owned and hired motor vehicles, applicable to claims arising from bodily injury, death or property damage arising out of the ownership, maintenance or use of any automobile. The policy shall be endorsed to add the State of Arizona, ABOR, University and their regents, officers, officials, agents, employees or volunteers as additional insureds and shall stipulate that the insurance shall be primary, and that any self-insurance or other insurance carried by the State of Arizona, ABOR, University or any of their regents, officers, officials, agents or employees shall be excess and not contributory to the insurance provided by Licensee.

5.4. At least ten (10) days prior to Licensee's use of the Site, and no less than annually thereafter, Licensee shall deliver to University certificates of insurance and any additional documentation reasonably requested by University (including, without limitation, policy endorsements) to assure compliance with this Section 5 reasonably acceptable to the State of Arizona, ABOR and University, which shall (i) include copies of endorsements naming the State of Arizona, ABOR, University and their regents, officers, officials, agents, employees or volunteers as additional insureds for general liability coverage and auto liability coverage, and (ii) include as loss payees as to its interest for property coverage as to acts and omissions of Licensee and others for which Licensee is responsible, and (iii) as to all liability coverages shall stipulate that Licensee's or its contractor's insurance shall be primary and that any self-insurance or other insurance carried by the State of Arizona, ABOR, University or any of their regents, officers, officials, agents, employees or volunteers shall be excess and not contributory to the insurance provided by Licensee or its contractor. If any of the insurance policies required by this Section 5 are cancelled prior to the stated expiration date, notice thereof will be given in accordance with the policy provisions, and further notice thereof promptly will be given by Licensee to University. All coverages, conditions, limits and endorsements shall remain in full force and effect as required in this Agreement.

5.5. In connection with a bona-fide dispute with an insurance carrier as to whether the State of Arizona, ABOR or University is entitled to coverage under insurance policies required under this Section 5 and upon such Party's request, Licensee or its contractor's shall make available to a representative of such party such applicable insurance policies. The foregoing shall not affect a party's rights under law or court order with respect to the disclosure of such policy during the course of litigation. If Licensee's or its contractor's

insurance carrier will not provide certified copies, each copy of a policy shall include a copy of all endorsements and shall be accompanied by a letter from Licensee's or its contractor's insurance broker or Licensee's or its contractor's authorized agent stating that Licensee's or its contractor's insurance carrier will not provide certified copies of insurance policies and endorsements and that the enclosed copy of the policy and endorsements is a true, correct and complete copy of the respective insurance policy and all endorsements to the best of the broker's or authorized agent's knowledge. In addition, Licensee agrees to reasonably cooperate with University in obtaining any and all information demonstrating Licensee and its contractors are in compliance with the insurance requirements of this Section 5

5.6. Failure on the part of Licensee to meet the requirements concerning insurance in this Section 5 within ten (10) days of University's notice to Licensee of such failure (or such shorter period as may be necessary to avoid a cancellation or lapse of any insurance) shall constitute a default under this Agreement, or, in University's discretion, University may procure or renew such insurance and pay any and all premiums in connection therewith if Licensee does not cure such failure within ten (10) days of notice from University to Licensee (or such shorter period as may be necessary to avoid a cancellation or lapse of any insurance) specifying such failure, and all monies so paid by University shall be repaid by Licensee to University upon demand together with interest at the Default Rate. If the insurance required under this Section 5 becomes unavailable at commercially reasonable costs, Licensee shall provide written notice for University of such event together with Licensee's proposal for replacement insurance coverage for University's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

5.7. Self-Insurance.

5.7.1. So long as Omni Tempe, LLC or its affiliate is the Licensee under this Agreement, Licensee shall have the right to self-insure under this Article 5; provided that if Licensee's self-insured retention exceeds \$2,000,000 (which amount shall be increased annually by the percentage increase in the Consumer Price Index for all Urban Consumers – All Items (1982-84=100) per claim, Licensee shall inform Licensor of such increase and provide evidence reasonably satisfactory to Licensor that such retention remains reasonable under Licensee's self-insurance program.

5.7.2. Licensee shall, upon Licensor's written request from time to time, provide current evidence concerning Licensee's self-insurance program.

6. LIABILITY.

6.1. Licensee agrees to conduct its activities in the Site in a careful and safe manner. As a material part of the consideration to University, Licensee agrees to assume all risk of damage to and loss or theft of Licensee's property while at the Site, damage to the Site, and injury or death to persons related to Licensee's use or occupancy of the Site, unless the claims arise from the negligence or intentional misconduct of the University or its agents, or employees. Licensee waives all claims against University unless the claims arise from the negligence or intentional misconduct of the University or its agents or employees. Neither University nor its affiliates, contractors, agents and/or employees

shall be liable for any special, incidental, indirect, consequential or any other damages, including without limitation, loss of use or loss of profit or revenue, as a result of any breach by University under this Agreement.

- 6.2. Licensee will indemnify, defend and hold harmless University, ABOR, the State of Arizona and their officers, regents, agents and employees, for, from and against all claims, suits, liabilities, losses, costs, damages and expenses (including reasonable attorneys' fees) arising out of or in connection with:
 - 6.2.1. Licensee's use or occupancy of the Site, including any activity performed by Licensee, any of the Licensee Parties, or any persons attending or participating in Licensee's activities in or about the Site; or
 - 6.2.2. Any loss, injury, death or damage to persons or the Site on or about the Site by reason of any act, omission or negligence of Licensee, or of any of the Licensee Parties; or
 - 6.2.3. Licensee's indemnity obligations will not extend to any liability to the extent caused by the negligence or intentional misconduct of University, ABOR or the State of Arizona or their officers, regents, agents, and employees.
- 6.3. Licensee's obligations set forth in Sections 6.1 and 6.2 shall survive the expiration or earlier termination of this Agreement.

7. ENVIRONMENTAL REGULATIONS.

- 7.1. Subject to Section 7.4, Licensee will not permit any Hazardous Substance to be used, stored, generated, released or disposed of on, in or about, or transported to or from, the Site, by Licensee or by any of the Licensee Parties without first obtaining University's written consent, which University may give or withhold in its sole discretion, or revoke at any time. If University consents, all Hazardous Substances must be handled at Licensee's sole cost and expense, in compliance with all applicable Environmental Laws (as defined below), using all necessary and appropriate precautions. Licensee shall comply with all Environmental Laws. If Licensee breaches its obligations set forth in this Section 7, or if the presence of Hazardous Substances on, in or about the Site caused or permitted by Licensee results in contamination of any part of the Site, or if contamination by Hazardous Substances otherwise occurs in a manner for which Licensee is legally liable, then Licensee will indemnify, defend and hold harmless University, ABOR, and the State of Arizona and their respective officers, regents, agents and employees, for, from and against any and all claims, actions, damages, fines, judgments, penalties, costs, liabilities, losses and expenses (including, without limitation, any sums paid for clean-up, remediation, detoxification or restoration, settlement of claims (with Licensee's prior knowledge), court costs, attorneys' fees, consultant and expert fees) arising during or after the expiration or termination of this Agreement as a result of any breach or contamination, except to the extent caused by the negligence or intentional misconduct of University, ABOR or the State of Arizona or their officers, regents, agents, and employees. Without limitation, if Licensee or any of the Licensee Parties cause or permit the presence of any Hazardous Substance on, in or about the Site and this results in contamination of any part of the Site, Licensee will promptly, at its sole cost and expense, take all necessary actions to return the Site and any adjacent facility to the condition existing prior to the presence of any Hazardous Substance less normal wear

and tear; however, Licensee must first obtain University's approval for any such remedial action.

- 7.2. **“Environmental Laws”** means any and all federal, state and municipal statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, medical, biological, infectious, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, medical, biological, infectious, toxic or hazardous substances or wastes or the cleanup or other remediation thereof.
- 7.3. **“Hazardous Substance”** means any substance regulated by any local government, the State of Arizona or the United States Government, and shall mean and include any oils, petroleum products, asbestos, radioactive, biological, medical or infectious wastes or materials, and any other toxic or hazardous wastes, materials and substances which are defined, determined or identified as such in any Environmental Laws, or in any judicial or administrative interpretation of Environmental Laws. “Hazardous Substance” includes any material or substances which are defined as “hazardous material,” “hazardous waste,” “extremely hazardous waste” or a “hazardous substance” pursuant to any Environmental Law. “Hazardous Substance” includes but is not restricted to asbestos, polychlorobiphenyls, and petroleum.
- 7.4. Notwithstanding the foregoing, Licensee, to the extent permitted by applicable Environmental Laws, and so long as Licensee complies with all Environmental Laws applicable thereto, Licensee may use nominal quantities of Hazardous Substances that are normally or routinely used in the construction of improvements of the type that are to be constructed on the Project or that would be normally or routinely used in the operation, repair, maintenance, and use of residential and retail projects, such as fuels, solvents, cleaning materials, paint and printing materials.

8. **SECURITY.**

Licensee, at its sole expense and in compliance with all applicable laws pertaining thereto, may fence the Site (excluding the Right of Way) or take any other security measures that it reasonably deems necessary to protect the Site during the License Term. Prior to the expiration or earlier termination of this Agreement, Licensee shall remove such fence and repair any damage to the Licensor's Property caused by the installation and removal of such fence, subject to normal wear and tear. *[NTD: ASU to confirm fencing is acceptable once Site is selected.]*

9. **ASSIGNMENT.**

Licensee does not have the right to assign any rights under this Agreement except to a permitted assignee to whom its rights are assigned under the Lease or, except as permitted in Section 2.1 of this Agreement, allow any other person or entity to use or occupy any of the Site without the prior written consent of University, which consent may be granted or withheld in University's sole discretion.

10. **DEFAULT.**

- 10.1. Licensee shall be in default hereunder if (a) Licensee fails to pay when due any amounts owed hereunder, (b) Licensee fails to timely comply with or observe any other provision of this Agreement, and such failure is not cured within thirty (30) days (or reasonable steps are not being taken to cure a default which cannot be cured within thirty (30) days) after Licensee's receipt of written notice from University of such failure to perform; (c) failure on the part of Licensee to meet the requirements concerning insurance set forth in Section 5 within the cure period set forth in Section 5.6; (d) the entry of an order of relief for Licensee by a court of competent jurisdiction under any bankruptcy or insolvency laws; or (e) the entry of an order of appointment by any court or under any law of a receiver, trustee or other custodian of the property, assets or business of Licensee. If Licensee fails to pay any sum when due or fails to cure any failure to perform within the applicable cure period (or take reasonable steps to cure within the cure period), then in addition to all other remedies that are available to University, whether in law or in equity, University may terminate this Agreement, in which event the Licensee shall take the actions required pursuant to Section 2.6 herein.
- 10.2. University shall be in default hereunder if University fails to timely comply with or observe any of its obligations under this Agreement, and such failure is not cured within thirty (30) days (or reasonable steps are not being taken to cure a default which cannot be cured within thirty (30) days) after University's receipt of written notice from Licensee of such failure to perform. If University fails to cure any failure to perform within the applicable cure period, Licensee's sole remedy shall be to terminate this Agreement or obtain specific performance of University's obligation to make the Site available.

11. **INTERPRETATION; GOVERNING LAW.**

This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. No prior or contemporaneous agreement or understanding will be effective. This Agreement may not be modified or amended except by written instrument signed by both parties. This Agreement shall be governed by the laws of Arizona, the courts of which state shall have jurisdiction over its subject matter.

12. **RELATIONSHIP.**

Neither Licensee nor any of the Licensee Parties will for any purpose be considered employees or agents of University. Licensee assumes full responsibility for the actions of the Licensee Parties.

13. **NOTICES.**

Any notices or consents required under this Agreement shall be in writing and shall be hand delivered, sent by a national overnight courier or mailed by certified mail, return receipt requested, to the address of the party listed on the first page of this Agreement. Each such notice shall be deemed delivered (i) on the date delivered if by personal delivery or overnight courier, or (ii) on the date on which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

14. **SURVIVAL.**

Licensee's indemnity obligations under this Agreement shall survive the expiration or earlier termination of this Agreement.

15. MISCELLANEOUS.

This Agreement represents the entire agreement of the parties hereto and may not be amended or modified except in a writing signed by the parties hereto. This Agreement shall be binding on and inure to the benefit of the parties hereto, their successors and permitted assigns. This Agreement may be executed in a number of counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. Time is of the essence with respect to the obligations and covenants of the parties hereunder.

16. AUTHORITY.

Licensee hereby represents and warrants that the individual signing on its behalf is duly authorized to execute and deliver this Agreement on behalf of Licensee and that this Agreement is binding on Licensee in accordance with its terms. University hereby represents and warrants that the individual signing on its behalf is duly authorized to execute and deliver this Agreement on behalf of University and that this Agreement is binding on University in accordance with its terms.

17. SUPPLEMENTARY PROVISIONS

- 17.1. The parties will comply with all applicable state and federal laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. **If applicable, the parties will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**
- 17.2. If within three (3) years after the execution of this Agreement, Licensee hires as an employee or agent any University representative who was significantly involved in negotiating, securing, drafting, or creating this Agreement, then University may cancel this Agreement as provided in Arizona Revised Statutes ("**A.R.S.**") § 38-511. Notice is also given of A.R.S. §§ 41-2517 and 41-753.
- 17.3. As required by A.R.S. § 12-1518, the parties agree to make use of arbitration in disputes that are subject to mandatory arbitration pursuant to A.R.S. § 12-133.
- 17.4. If Landlord's performance under this Lease depends upon the appropriation of funds by the State Legislature of Arizona (the "**Legislature**"), and if the Legislature fails to appropriate an amount necessary for performance by Landlord, then Landlord may provide written notice to Tenant of such failure to appropriate. In such case, Landlord shall not be in default hereunder for its failure to perform any obligation hereunder dependent on such appropriation (including without limitation failure to make payments due hereunder), as appropriation is a legislative act and is beyond the control of Landlord.
- 17.5. University prohibits the use, possession, display or storage of any weapon, explosive device or fireworks on all land and buildings owned, leased, or under the control of University or its affiliated or related entities, in all University residential facilities

(whether managed by University or another entity), in all University vehicles, and at all University or University affiliate sponsored events and activities, except as provided in A.R.S. § 12-781, or unless written permission is given by the Chief of the University Police Department or a designated representative. Notification by Licensee to all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of Licensee ("**Licensee Notification Parties**") of this policy is a condition and requirement of this Agreement. Licensee further agrees to enforce this contractual requirement against all Licensee Notification Parties. University's policy may be accessed at: www.asu.edu/aad/manuals/pdp/pdp201-05.html.

- 17.6. To the extent required by A.R.S. § 35-214, Licensee will retain all records relating to this Agreement. Licensee will make those records available at all reasonable times for inspection and audit by University or the Auditor General of the State of Arizona during the License Term and for a period of five (5) years after the completion of this Agreement. The records will be provided at Arizona State University, Tempe, Arizona, or another location designated by University on reasonable notice to Licensee.
- 17.7. As required by A.R.S. § 35-393.01, Licensee certifies it is not currently engaged in a boycott of Israel and will not engage in a boycott of Israel during the License Term.

[SEE SIGNATURES ON FOLLOWING PAGE]

By signing this CONSTRUCTION LICENSE AGREEMENT below, the parties confirm that they have read, understood, and agree to all the conditions as outlined in this Agreement.

UNIVERSITY:

ARIZONA BOARD OF REGENTS for and on behalf of **ARIZONA STATE UNIVERSITY**

LICENSEE:

OMNI TEMPE, LLC, a Delaware limited liability company

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date Signed: _____, 201__

Date Signed: _____, 201__

EXHIBIT "A"

Graphic Depiction of the Site

FAC Exhibit 5

Second Amendment to Option to Lease and Escrow
Instructions

**SECOND AMENDMENT TO
OPTION TO LEASE AND ESCROW INSTRUCTIONS
FOR A PORTION OF BLOCK 22**

THIS SECOND AMENDMENT TO OPTION TO LEASE AND ESCROW INSTRUCTIONS FOR A PORTION OF BLOCK 22 (this “**Amendment**”) is dated effective as of August 29, 2018 (the “**Amendment Date**”), by and between ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University (“**ASU**”) and OMNI TEMPE, LLC, a Delaware limited liability company (“**Omni**”). ASU and Omni are collectively referred to as the “**Parties**” and individually as a “**Party**”.

RECITALS

A. ASU and Omni are parties to that certain Option to Lease and Escrow Instructions for a Portion of Block 22 dated as of February 28, 2018, as amended by that First Amendment to Option to Lease and Escrow Instructions for a Portion of Block 22, dated May 29, 2018 (collectively, the “**Agreement**”). Pursuant to the Agreement, ASU has granted Omni the option to execute a lease for a portion of Block 22 consisting of approximately 1.6 acres and generally located on the southeast corner of Block 22.

B. ASU and Omni have agreed to certain changes in the document and desire to memorialize such changes in this Amendment.

C. Capitalized terms not otherwise defined in this Amendment will have the meaning set forth in the Agreement.

In consideration of the mutual covenants and agreements contained herein, ASU and Omni agree as follows:

1. Amendments.

a. Recital B of the Agreement is hereby amended by replacing “1.6 Acres” with “2.2 Acres.”

b. Section 1.5 of the Agreement is hereby replaced in its entirety as follows:

“Prior to September 30, 2018, Buyer may propose to Seller an adjustment to the southern boundary of the Property in order to reduce the size of the Property. Any proposed adjustment to the Property boundary shall be in writing and shall be accompanied by the proposed Property description and a site plan depicting the proposed Property boundary and the portion of Block 22 described on **Exhibit A-2** to this Agreement that would no longer be included in the Property if the boundary is adjusted (the “**Excluded Parcel**”). Any adjustment to the Property boundary shall be subject to ASU’s prior written approval, which approval shall not be unreasonably withheld.

Without limiting the foregoing, ASU may withhold its approval if the Excluded Parcel is not of a size or configuration that is useable by ASU. If ASU approves an adjustment to the Property boundary, (a) the parties shall execute an amendment to this Agreement replacing **Exhibit A-2** with the new Property description, and (b) certain of the Block 22 Documents may need to be amended to reflect that Block 22 will include three (3) parcels, which amendments will require the approval of MAT. If the parties have not agreed on an adjustment to the Property boundary by September 30, 2018, the Property shall be the property described on **Exhibit A-2** to this Agreement.”

2. No Modification; Inconsistencies. Except as otherwise expressly modified in this Amendment, the terms and conditions of the Agreement shall remain in full force and effect.

3. Counterparts. This Agreement may be executed in counterparts, and transmitted by .pdf, facsimile or similar electronic means, each of which will be deemed an original but all of which together will constitute one and the same agreement.

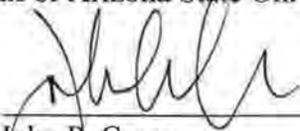
[Signatures appear on next page]

IN WITNESS WHEREOF, each Party has executed this Amendment effective as of the Amendment Date.

OMNI TEMPE, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University

By:  _____
Name: John P. Creer
Title: Assistant Vice President for University Real Estate Development

IN WITNESS WHEREOF, each Party has executed this Amendment effective as of the Amendment Date.

OMNI TEMPE, LLC, a Delaware limited liability company

By: 
Name: Kurt Alexander
Title: Chief Financial Officer, Vice President, Treasurer and Secretary

ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University

By: _____
Name: John P. Creer
Title: Assistant Vice President for University Real Estate Development

FAC Exhibit 6

Third Amendment to Option to Lease and Escrow
Instructions

**THIRD AMENDMENT TO
OPTION TO LEASE AND ESCROW INSTRUCTIONS
FOR A PORTION OF BLOCK 22**

THIS THIRD AMENDMENT TO OPTION TO LEASE AND ESCROW INSTRUCTIONS FOR A PORTION OF BLOCK 22 (this “**Amendment**”) is dated effective as of December 27, 2018 (the “**Amendment Date**”), by and between ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University (“**ASU**”) and OMNI TEMPE, LLC, a Delaware limited liability company (“**Omni**”). ASU and Omni are collectively referred to as the “**Parties**” and individually as a “**Party**”.

RECITALS

A. ASU and Omni are parties to that certain Option to Lease and Escrow Instructions for a Portion of Block 22 dated as of February 28, 2018, as amended by that First Amendment to Option to Lease and Escrow Instructions for a Portion of Block 22, dated May 29, 2018 and Second Amendment to Option to Lease and Escrow Instructions for a Portion of Block 22, dated August 29, 2018 (as amended, the “**Agreement**”). Pursuant to the Agreement, ASU has granted Omni the option to execute a lease for a portion of Block 22 consisting of approximately 2.2 acres and generally located on the southeast corner of Block 22.

B. ASU and Omni have agreed upon certain changes in the Agreement and desire to memorialize such changes in this Amendment.

C. Capitalized terms not otherwise defined in this Amendment will have the meaning set forth in the Agreement.

In consideration of the mutual covenants and agreements contained herein, ASU and Omni agree as follows:

1. ABOR Approval of the Parking Area. The first sentence of Section 5.2(d) of the Agreement is hereby replaced in its entirety as follows:

“On or before April 30, 2019, (the “**Parking Approval Deadline**”), ASU shall have obtained ABOR approval for construction of the Parking Structure (the “**Parking Approval**”) to the extent it includes parking for other than the Hotel/CC.

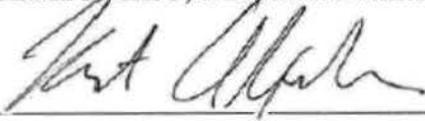
2. No Modification; Inconsistencies. Except as otherwise expressly modified in this Amendment, the terms and conditions of the Agreement shall remain in full force and effect.

3. Counterparts. This Agreement may be executed in counterparts, and transmitted by .pdf, facsimile or similar electronic means, each of which will be deemed an original but all of which together will constitute one and the same agreement.

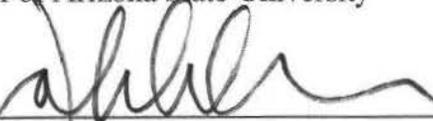
[Signatures appear on next page]

IN WITNESS WHEREOF, each Party has executed this Amendment effective as of the Amendment Date.

OMNI TEMPE LLC, a Delaware limited liability company

By: 
Name: Kurt Alexander
Title: Chief Financial Officer and Vice President

ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University

By: 
Name: John P. Creer
Title: Assistant Vice President for University Real Estate Development

FAC Exhibit 7

Fourth Amendment to Option to Lease and Escrow
Instructions

**FOURTH AMENDMENT TO
OPTION TO LEASE AND ESCROW INSTRUCTIONS
FOR A PORTION OF BLOCK 22**

THIS FOURTH AMENDMENT TO OPTION TO LEASE AND ESCROW INSTRUCTIONS FOR A PORTION OF BLOCK 22 (this “**Amendment**”) is dated effective as of February 18, 2019 (the “**Amendment Date**”), by and between ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University (“**ASU**”) and OMNI TEMPE, LLC, a Delaware limited liability company (“**Omni**”). ASU and Omni are collectively referred to as the “**Parties**” and individually as a “**Party**”.

RECITALS

A. ASU and Omni are parties to that certain Option to Lease and Escrow Instructions for a Portion of Block 22 dated as of February 28, 2018, as amended by that First Amendment to Option to Lease and Escrow Instructions for a Portion of Block 22, dated May 29, 2018, Second Amendment to Option to Lease and Escrow Instructions for a Portion of Block 22, dated August 29, 2018, and Third Amendment to Option to Lease and Escrow Instructions for a Portion of Block 22, dated December 27, 2019 (as amended, the “**Agreement**”). Pursuant to the Agreement, ASU granted Omni the option to execute a lease for a portion of Block 22 consisting of approximately 2.2 acres and generally located on the southeast corner of Block 22.

B. On or about January 10, 2019, the State of Arizona, acting through its Attorney General, filed a Civil Complaint against the Arizona Board of Regents (“**ABOR**”) in the Superior Court of the State of Arizona Tax Court Case No. TX2019-000011 seeking certain declaratory, injunctive, special action and quo warranto relief related to the property (the “**AG Action**”). The AG Action specifically identifies the Omni transaction and seeks (i) to enjoin ABOR and ASU from leasing the Property to Omni or (ii) to require that if the Closing occurs, Omni be required to pay Real Property Taxes with respect to the Property and improvements thereon.

C. ASU and Omni have agreed upon certain changes in the Agreement and desire to memorialize such changes in this Amendment.

D. Capitalized terms not otherwise defined in this Amendment will have the meaning set forth in the Agreement.

In consideration of the mutual covenants and agreements contained herein, ASU and Omni agree as follows:

1. AG Action. ASU and Omni agree that the AG Action is a Legal Challenge as defined in Section 5.5 of the Agreement. ASU has directed Omni to continue preparation of the Plan Packages and pursuit of JRC approval of the DPR Application. ASU retains the right to issue a Stop Design Notice or to terminate the Agreement pursuant to Section 5.5(a) of the Agreement. Further, ASU acknowledges and agrees that Omni shall not be required to pursue any work to obtain the entitlements and approvals required for the City to issue permits for commencement of construction of the Hotel/CC Improvements until the earlier to occur of (i) the

Design Costs Cap (as defined below) being increased by ASU to an amount reasonably satisfactory to Omni to cover all costs to obtain such entitlements and approvals and (ii) the parties mutually agreeing that Omni should pursue such work.

2. Design Costs Cap. Pursuant to Section 5.5(b) of the Agreement, ASU has agreed to reimburse Omni for all Design Costs it incurs as of the date of termination, if the termination is solely pursuant to Section 5.5(a). The amount of that reimbursement is capped at \$2,000,000 (the “**Design Costs Cap**”). The Design Costs Cap is hereby increased to \$2,500,000. To date, Omni has incurred approximately \$1,864,000 in Design Costs. The Parties anticipate that the increased Design Costs Cap will cover Design Costs through JRC approval of the DPR Application. From time to time at ASU’s request, Omni will provide ASU with updates on the Design Costs expended by Omni and will notify ASU if it believes the Design Costs Cap is not adequate, in which case ASU shall determine whether to approve a further increase in the Design Costs Cap in its sole discretion.

3. Outside Exercise Date. The second sentence of Section 1.2 of the Agreement is hereby replaced in its entirety as follows:

“Omni must exercise the Option to lease the Property, if at all, no later than September 30, 2019, as may be extended pursuant to the terms hereof (the “**Outside Exercise Date**”).”

For the avoidance of doubt, this change is intended to similarly extend the Entitlement Deadline.

4. ABOR Approval of the Parking Area. The first sentence of Section 5.2(d) of the Agreement is hereby replaced in its entirety as follows:

“On or before September 23, 2019, (the “**Parking Approval Deadline**”), ASU shall have obtained ABOR approval for construction of the Parking Structure (the “**Parking Approval**”) to the extent it includes parking for other than the Hotel/CC.

5. No Modification; Inconsistencies. Except as otherwise expressly modified in this Amendment, the terms and conditions of the Agreement shall remain in full force and effect.

6. Counterparts. This Agreement may be executed in counterparts, and transmitted by .pdf, facsimile or similar electronic means, each of which will be deemed an original but all of which together will constitute one and the same agreement.

[Signatures appear on next page]

IN WITNESS WHEREOF, each Party has executed this Amendment effective as of the Amendment Date.

OMNI TEMPE, LLC, a Delaware limited liability company

DocuSigned by:
Peter Strebel
By: B81782F6AAB74AB...
Name: Peter Strebel
Title: President

ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University

DocuSigned by:
John P. Creer
By: 9979312AB04B4B5...
Name: John P. Creer
Title: Assistant Vice President for University Real Estate Development, Arizona State University

FAC Exhibit 8

Term Sheet

Term Sheet
Omni Hotel and Conference Center
March 14, 2017

This Term Sheet, which supercedes and replaces the Terms Sheet dated November 10, 2016, sets forth an outline of general terms and conditions between an affiliate of Omni Hotels Corporation ("Omni"), the Arizona Board of Regents ("ABOR"), a body corporate, for and on behalf of Arizona State University ("ASU") and the City of Tempe, an Arizona municipal corporation ("Tempe"), whereby Omni would develop and operate a first class full-service Omni Hotel (the "Hotel") and conference center (the "Conference Center") on approximately 1.6 acres of Block 22, which is located on the southeast corner of University Avenue and Mill Ave in Tempe (the "Hotel/CC Parcel"). This Term Sheet is intended only to facilitate discussions and does not create any binding obligations among the parties unless and until more definitive agreements are mutually agreed to and executed by the parties, the terms of which shall control.

Omni has generated a preliminary budget and pro forma for the development and operation of the Hotel and Conference Center. Omni anticipates internally funding the development and operations of the Hotel and Conference Center. The preliminary development budget for the Hotel and Conference Center is approximately \$123M based on the preliminary pro forma. As such, there is a need for economic incentives of a NPV of approximately \$49M to achieve Omni's required return to make the development and operations economically viable.

1. **Hotel.** Omni shall develop and pay for a full service, first-class hotel that meets Omni Hotels brand standards. The Hotel shall include, without limitation:
 - at least 330 rooms;
 - a conference center facility with at least 30,000 square feet, including a main ballroom containing at least 15,000 square feet, with the capacity to seat a minimum of 1,000 persons in banquet (ten-top round table) configuration, and adjacent pre-function space;
 - separate facilities for recycling and trash collection, as well as a separate compactor for recycling and trash, with the Hotel Operator agreeing in this regard to participate in local recycling programs during the term of this Agreement; and
 - other amenities determined by Omni in consultation with ASU.

Omni shall consult with the event planning staff at ASU and the Tempe Tourism Office to determine size and configuration of the facilities in the Conference Center. ASU and

Tempe will have the right to approve plans and specifications for the Hotel and Conference Center, which approval shall not be unreasonably withheld.

2. Process.

- a. Omni shall enter into an Option to Lease with ASU for an approximately twelve-month period (the "**Exclusive Negotiating Period**"). During the Exclusive Negotiating Period, Omni shall (i) design and develop the necessary plans to arrive at a mutually agreed-upon project design and related development and construction cost estimates, (ii) reconcile the terms and conditions of the economic incentives with ASU and Tempe, (iii) obtain the necessary entitlements and approvals from ABOR, ASU and the Tempe Joint Review Commission, (iv) negotiate the necessary development, reciprocal easements, construction, operating and lease agreements with ASU (collectively, the "**ASU Agreements**"), and (v) negotiate the necessary development agreement with Tempe (the "**City Development Agreement**").
- b. Provided ASU and Omni (and Tempe to the extent of the required City Development Agreement or other agreements to be signed by Tempe) enter into mutually agreed-upon Agreements on or before the expiration of the Exclusive Negotiating Period, Omni shall have 24 months after the expiration of the Exclusive Negotiating Period to develop, construct and open the Hotel and Conference Center.

3. Ground Lease. ASU and Omni will enter into a ground lease whereby Omni shall lease the Hotel/CC Parcel from ASU (the "**Ground Lease**") for a term of sixty (60) years following the completion of construction and receipt of a certificate of occupancy. The terms of the Ground Lease shall be agreed upon during the Exclusive Negotiating Period, but shall include, without limitation, the following:

- a. Rent for the entire 60-year term will be paid in advance (the "**Prepaid Rent**"). The Prepaid Rent will be equal to \$85 per square foot of the Hotel/CC Parcel, representing the fair market value of the Hotel/CC Parcel, and shall be payable upon execution of the Ground Lease.
- b. In consideration for the incentives to be provided by ASU, following completion of the Hotel and Conference Center (which is estimated to take approximately 2 years), Omni will pay to ASU on a semi-annual basis an in lieu payment in the form of additional rent ("**Additional Rent**"). The Additional Rent for the initial year shall equal \$1,090,000 and such amount shall increase by 2-½% per annum

for the payments in the 2nd through 11th year of the term and by 9% for each 5 year period thereafter until the end of the term. One of the provisions to be negotiated as part of the Ground Lease is the impact of force majeure events on the Additional Rent.

- c. The Ground Lease will be a triple net lease, and Omni will pay its share of maintenance, repair, replacement and operation of the common areas of Block 22 and the Parking Area.
 - d. At the expiration of the term of the Ground Lease, Omni shall have the option to purchase the Hotel and Conference Center from ASU for a nominal amount.
 - e. The Ground Lease will provide for a completion bond from a third party surety or guaranty from an entity approved by ASU, assuring timely completion of the Hotel and Conference Center. Upon their completion, the Hotel and Conference Center improvements will be owned by ASU and ground leased to Omni.
 - f. ASU and Omni intend that while owned by ABOR the Hotel, Conference Center and Hotel/CC Parcel will be exempt from ad valorem property taxes.
 - g. Landlord's remedy for tenant default shall be limited to monetary damages and Injunctive relief, including without limitation, specific performance (but not termination of lease).
4. **ASU and Tempe Economic Incentives.** ASU and Tempe have agreed in concept to provide total economic incentives in an amount not-to-exceed the NPV of \$49M (the "**Economic Incentives**"), which represent incentives approximately equal to the NPV of \$28M from ASU and the NPV of \$21M from Tempe. The Economic Incentives may include a combination of some or all of the following:
- a. **ASU.**
 - i. ASU shall develop, at its expense, a shared-use parking area located on a portion of Block 22 and/or Block 27 (the "**Parking Area**") for use by ASU, Omni and other owners and occupants of Block 22 and Block 27. ASU shall grant to Omni an easement for the exclusive use of a mutually agreed upon area within the Parking Area equal to 275 parking spaces. ASU shall deliver the parking easement area in "shell" condition and Omni shall pay (a) to improve the same (i.e., security devices, striping, lighting, etc.), and (b) the reasonable costs of operating and maintaining such Parking Area. Omni shall be entitled to all parking and related

revenues from such 275 parking spaces; provided that Omni may not permit such spaces to be used by parties other than guests and employees of, and visitors to, the Hotel and Conference Center.

- ii. Upon final completion of the Conference Center, ASU shall pay to Omni an amount equal to the actual cost to construct the Conference Center, not to exceed \$19.5M.

b. Tempe.

- i. For a period of 30 years following the date the Hotel and Conference Center Improvements are completed as evidenced by a temporary or final certificate of occupancy allowing all or substantially all of the Improvements to be used by the public (the "Payment Period"), Tempe will rebate portions of the unrestricted portion of the transaction privilege tax on construction contracting, hotels and restaurants levied pursuant to Sections 16-415, 16-444, 16-445 and 16-455 of the Tempe City Code ("TPT") with respect to the Hotel and Conference Center and actually collected by Tempe as follows: (a) during the first 10 years of the Payment Period Tempe will rebate 100% of the Unrestricted Portion of TPT, and (b) for the balance of the Payment Period Tempe will rebate 90% of the Unrestricted Portion of TPT. Currently the Unrestricted Portion of TPT is 1.2%.
- ii. During the Payment Period, Tempe will rebate portions of the additional tax on transient lodging levied pursuant to Section 16-447 of the Tempe City Code (the "Additional Tax") with respect to the Hotel and Conference Center and actually collected by Tempe as follows: (a) during the first 10 years of the Payment Period Tempe will rebate 100% of the Additional Tax, and (b) during the balance of the Payment Period Tempe will rebate 90% of the Additional Tax. Currently the Additional Tax is 5%. In no event will the payments under Sections 4.b.i and 4.b.ii exceed the net present value of \$21M, calculated using a discount rate of 8%.
- iii. Tempe may construct at its cost certain mutually agreed upon off-site public improvements. The value and timing of said improvements will be determined by ordinary and customary design and bidding processes.

In consideration for such Economic Incentives, ASU and Tempe will receive direct benefits to be enumerated in the ASU Agreements and the City Development

Agreement, including, without limitation, Omni's agreement to (i) develop, construct and operate the Hotel and Conference Center for 60 years in accordance with standards specified in the Ground Lease, (ii) name the Hotel a variant of "Omni Tempe Hotel and Conference Center at ASU" or a similar name including "Tempe" and, if requested by ASU, "ASU", (iii) expend a marketing amount promoting tourism in Tempe equivalent to \$400K annually for 60 years, (iv) pay to ASU the Additional Rent described above, (v) allow ASU and Tempe the right to use the Conference Center or portions thereof for an agreed upon number of days, (vi) if the Hotel has a gift shop Omni will allow ASU to sell ASU merchandise, (vii) allow ASU to maintain a display wall in the Conference Center highlighting ASU achievements and research in its various academic disciplines including sustainability, technology, architecture, design, art, business, or other similar themes, and (viii) an ASU named conference room.

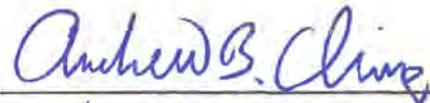
This Term Sheet is simply an overview of certain terms and conditions under discussion between the parties, and does not represent a binding agreement, nor shall it be enforceable as such. In addition to the terms outlined above, there are many other terms and conditions that need to be addressed in the transaction documents to be executed by the parties, and various approvals of the transactions that must be obtained by the governing bodies of the parties. Only definitive written documents incorporating all of the terms of the contemplated transactions duly executed and delivered by the applicable parties thereto shall create binding and enforceable agreements. By signing this Terms Sheet the parties are simply acknowledging their preliminary discussions, and unless the parties execute such documents they will have no obligation to one another.

[SEE NEXT PAGE FOR SIGNATURES]

ARIZONA BOARD OF REGENTS, a body corporate,
for and on behalf of Arizona State University

By: 
John P. Creer
Its: Assistant Vice President for University Real Estate Development

CITY OF TEMPE, an Arizona municipal corporation

By: 
Its: City Manager

OMNI HOTELS CORPORATION, a Delaware corporation

By: 
Its: EVP

FAC Exhibit 9

Recorded Development Agreement

C2018_06-47-2-1--
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WHEN RECORDED, RETURN TO:

City of Tempe basket

**CONVENTION AND CONFERENCE CENTER
DEVELOPMENT AGREEMENT**

C2018-06

THIS CONVENTION AND CONFERENCE CENTER DEVELOPMENT AGREEMENT (the "**Agreement**") is executed as of this 11 day of January, 2018 (the "**Effective Date**") by the CITY OF TEMPE, a municipal corporation ("**City**"), and Omni Tempe, LLC, a Delaware limited liability company ("**Omni**").

RECITALS

A. The Arizona Board of Regents ("**ABOR**"), a body corporate, for and on behalf of Arizona State University ("**ASU**") is the Owner of certain real property (the "**Property**") consisting of approximately 2.25 acres located at the southeast corner of University Drive and Mill Avenue in the City of Tempe. ASU and City desire that all or a substantial portion of the Property to be redeveloped to include, among other things a hotel, convention and conference center and other commercial enterprises and other improvements (the "**Project**").

B. ASU and City have, after consultation with numerous hotel developers and operators, selected Omni and Omni Hotels Management Corporation, a Delaware corporation, to develop a hotel and convention and conference center on the Property (individually, the "**Hotel Improvements**", the "**Conference Center Improvements**", and collectively, the "**Improvements**").

C. Simultaneous to and contingent upon the execution of this Agreement, ASU and Omni will enter into an Option to Lease and Escrow Instructions, dated as of the date hereof ("**Option to Lease**"), whereby ASU will grant Omni, an option to lease that portion of the Property described on Exhibit A attached hereto (the "**Project Parcel**"). Pursuant to the Option to Lease, if Omni exercises its option, ASU, as landlord, and Omni, as tenant will enter into a Ground Lease (the "**Hotel Lease**"), whereby ASU leases the Project Parcel to Omni, and Omni agrees to construct the Improvements in accordance with Hotel Lease.

D. City considers a convention and conference center to be of such significance to City that City has conducted studies regarding the viability and probable cost of building a conference center utilizing public funds or public debts, as has been done in neighboring communities, such as Phoenix, Glendale, and Scottsdale. After such review and study, City has concluded that a public-private partnership between City, ASU and Omni through the

development, redevelopment, operation and expansion of the Project is the most prudent solution to develop the Project and would be in the best interest of the City and its taxpayers.

E. The parties understand and acknowledge that this Agreement is a “Development Agreement” within the meaning of, and entered into pursuant to the terms of, Arizona Revised Statutes (“A.R.S.”) § 9-500.05 to facilitate the redevelopment of the Property by providing for, among other things: (i) permitted uses of portions of the Property; and (ii) other matters related to the development, redevelopment, operation, and expansion of portions of the Property. The parties further agree that the terms of this Agreement shall constitute covenants running with the leasehold interest in the Property as more fully described in this Agreement.

F. The parties also understand and acknowledge that this Agreement is authorized and entered into in accordance with the provisions of A.R.S. § 9-500.11. The actions taken by City pursuant to this Agreement relating to retail development tax incentives are for economic development purposes as that term is used in A.R.S. § 9-500.11, are expected to assist in the creation and retention of jobs, and are expected to, in other ways, improve and enhance the economic welfare of the residents of Tempe. Pursuant to A.R.S. §9-500.11, City has previously adopted a notice of intent to enter into this Agreement and its Council has made the findings required by A.R.S. §9-500.11, such findings having been verified by an independent third party before City entered into this Agreement. Such findings are, by this reference, incorporated into this Agreement as though set forth in their entirety herein.

G. In addition to the creation and retention of jobs within Tempe, construction of the Improvements will foster increased tourism within Tempe, all of which will redound to the economic benefit of the residents of Tempe. To evidence its support for these tourism-related operations, City has agreed pursuant to Section 9-500.06 of the Arizona Revised Statutes, as amended, to allocate and pay the “City Payments” (as hereafter defined) from a portion of the Project Tax Revenue (as hereafter defined) collected by City as a result of the operation of the Project.

H. The parties wish to set forth certain terms and conditions relating to the use, operation, repair, replacement and maintenance of the Project.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Construction of the Project. Following execution of the Hotel Lease, Omni agrees to construct the Improvements in accordance with, and as described in, Exhibit B hereto (the “**Construction Covenant**”).

2. Operation of Conference Center Improvements.

2.1 Operating Standard. Assuming execution of the Hotel Lease, Omni or any successor approved pursuant to Section 2.2 below (the “**Hotel Operator**”) shall operate the Conference Center Improvements as a convention and conference center and ancillary uses as set forth in Exhibit B or such other standard as agreed between Hotel Operator and City (the

“**Operating Standard**”) for a minimum of sixty (60) years after the Completion Date (the “**Restriction Period**”).

2.2 Hotel Operator. If Omni wishes to designate a replacement Hotel Operator following completion of the Improvements and prior to the expiration of the Restriction Period, such replacement Hotel Operator shall be subject to City’s prior approval, which approval will not be withheld, conditioned or delayed unreasonably; provided, however, that Omni may designate a replacement Hotel Operator without the City’s prior approval if such replacement Hotel Operator is operating under the brand standards of any of Marriot, Westin, Hyatt, InterContinental or Fairmount. Without limiting the foregoing, in assessing whether to approve a potential replacement, City shall have the right to consider, without limitation, whether the proposed operator is adequately capitalized, the branding of the Hotel Improvements and specifically the adequacy of the flag under which the Improvements will be operated, and whether the replacement operator has at least ten (10) years’ experience operating similar facilities. Any successor Hotel Operator shall be subject to and bound by the terms of this Agreement, and shall execute such documents as City may request to evidence and confirm the same.

2.3 Operating Costs. Hotel Operator shall pay all costs and expenses associated with the use, operation, maintenance, repair and replacement of the Improvements until the expiration or prior termination of the term of the Hotel Lease.

3. Economic Incentives. City has determined that the construction of the Improvements and operation of the Project within City’s corporate limits, accompanied by the satisfaction of the Construction Covenant by Omni and the Operating Standard by the Hotel Operator, among other things, (i) is expected to enhance the economic health of Tempe; (ii) is expected to result in a net increase of jobs in Tempe; (iii) is expected to increase Tempe’s construction and transaction privilege taxes; (iv) is expected to otherwise improve or enhance the economic welfare of Tempe residents; and (v) demonstrates the potential to generate tax revenues and other benefits (both tangible and intangible) to City that outweigh or are not disproportionate to the costs associated with these incentives. Omni has confirmed to City that without the incentives provided by City in this Agreement, the incentive provided by ASU in the Option to Lease and the general support by City and ASU of the Project, Omni would not be able to develop the Project in the same time, place or manner, and would not undertake this development.

Accordingly, in consideration for compliance with the Construction Covenant, the Use Restriction, the Operating Standard, and for the other direct public benefits described in Section 5 below and elsewhere in this Agreement, City has agreed to provide the following economic incentives (the “**Economic Incentives**”) to Omni, expressly conditioned upon compliance with and satisfaction of the Construction Covenant by Omni and of the Operating Standard by the Hotel Operator, and the absence of any default by Omni or the Hotel Operator of any term, condition or provision of this Agreement beyond the expiration of any notice and cure period, including any cure period granted to any Mortgagee (as hereafter defined) under Section 7.1.3 hereof.

3.1 During each of the first ten (10) years of the Payment Period (defined in Section 3.3), City shall pay to Omni (i) fifty percent (50%) of the Unrestricted Portion of the transaction privilege tax on construction contracting, hotels, and restaurants pursuant to Sections 16-415, 16-444, 16-445 and 16-455 of the Tempe City Code (collectively, the “**Transaction Privilege Tax**”) of such taxes paid by Omni and only as actually collected by City with respect to the Project, and fifty percent (50%) of the additional tax on transient lodging levied by City pursuant to Section 16-447 of the Tempe City Code (the “**Transient Lodging Tax**”) of such taxes paid by Omni in excess of \$1,238,000 (which amount shall be adjusted annually starting after the fourth year of the Payment Period by the greater of three percent 3% or in accordance with the Consumer Price Index for All Urban Consumers, All Items, for the market area that includes the Project, as published by the Bureau of Labor Statistics of the United States Department of Labor, using the years 1982-84 as a base of one hundred 100, or if such index is discontinued, the most comparable index published by any federal governmental agency, (the “**Threshold Amount**”) and (ii) one hundred percent (100%) of the Unrestricted Portion of the combined Transaction Privilege Tax and Transient Lodging Tax paid by Omni below the Threshold Amount, in each case, only as actually collected by City with respect to the Project for such expenses that are incurred by the Developer on or after the Effective Date subject to reimbursement pursuant to this Section 3. Reimbursements from construction sales tax do not apply to the Threshold Amount.

During each year of the balance of the Payment Period, City shall pay to Omni (i) fifty percent (50%) of the Unrestricted Portion of the combined Transaction Privilege Tax and Transient Lodging Tax paid by Omni in excess of the Threshold Amount and (ii) ninety percent (90%) of the Unrestricted Portion of the combined Transaction Privilege Tax and Transient Lodging Tax paid by Omni below the Threshold Amount, in each case, only as actually collected by City with respect to the Project.

The amounts paid by City to Omni pursuant to this Section 3.1 are referred to herein as the “**City Payments.**” As of the date hereof, the Unrestricted Portion of the transaction privilege tax is one point two percent (1.2%) and the additional tax on transient lodging is five percent (5%). For purposes hereof, “**Unrestricted Portion**” means the transaction privilege taxes on construction contracting, hotels, and restaurants levied by City pursuant to Sections 16-415, 16-444, 16-445 and 16-455 of the Tempe City Code, and the additional tax on transient lodging levied by City pursuant to Section 16-447 of the Tempe City Code, adopted or approved by the City Council of City of Tempe and, to the extent required by the Tempe City Charter, approved by the electorate, in either case without restriction as to effectiveness, use or application. Examples of the restricted portion of such taxes include those levied pursuant to City of Tempe Ordinance numbers 96.41, 2000.73 and 2010.20.

3.2 In no event shall the City Payments exceed the Maximum City Contribution (as defined below). For purposes hereof, “**Maximum City Contribution**” means a cumulative amount equal to a net present value of Twenty-One Million Dollars (\$21,000,000) as of the Completion Date. The Maximum City Contribution shall be calculated by aggregating the City Payments made to the date of calculation and determining the net present value of such payments as of the Completion Date, using a discount rate of eight percent (8%) per annum.

Calculations shall commence on the fifth (5th) anniversary of the Completion Date and continue at such intervals thereafter as City deems appropriate until such time as the City Payments have reached the Maximum City Contribution. City shall provide Developer with a courtesy copy of its calculations; however, City's calculations shall be binding in the absence of manifest error.

3.3 City shall begin the City Payments no sooner than the ninetieth (90th) day after the Completion Date (as hereafter defined) (the "**Commencement Date**"). The City Payments shall continue within ninety (90) days after the end of each calendar quarter thereafter during which funds from the Unrestricted Portion are or become available until the earlier of (y) such time as the Maximum City Contribution has been paid in full or (z) the ninetieth (90th) day following the thirtieth (30th) anniversary of the Commencement Date (such time period being referred to herein as the "**Payment Period**"). No interest shall accrue on the unpaid balance of the Maximum City Contribution. In this respect, Omni acknowledges that the City Payments will be spread over a number of years, and the date on which the Maximum City Contribution will have been paid and the length of the Payment Period will depend entirely on the success of the operations of the Project, generation of funds constituting part of the Unrestricted Portion, and actual receipt of such funds by City. In no event shall City be required to pay to Omni the unpaid balance of the Maximum City Contribution if the amount of the Unrestricted Portion generated over the Payment Period is less than the Maximum City Contribution.

3.4 Nothing in this Section 3 shall be construed to require City to make any payment to Developer until the Unrestricted Portion is actually generated and received by City. Further, in no event shall the City Payments exceed the Maximum City Contribution; if City subsequently determines that there has been an overpayment, Omni shall reimburse same to City within thirty (30) days after written request. City Payments may be delayed if the responsible taxable party fails to file the applicable tax returns and make the applicable tax payments for the period to which the City Payment relates. If such a failure occurs, City shall make the required payment of the City Payment within ninety (90) days after the applicable taxable party files the applicable tax return and/or makes the applicable tax payment. If the Project tax revenues are reported on tax returns filed by different entities, City will make the City Payments from each applicable return, as described above.

3.5 Unless otherwise directed by Omni and any successor Hotel Operator approved by City, the City Payments under this Section 3 shall be paid to the party that is the Hotel Operator at the time such City Payment is made.

4. Term. This Agreement shall commence on the Effective Date and shall continue until the later of (i) the sixtieth (60th) anniversary of the Effective Date, or (ii) the expiration or earlier termination of the Hotel Lease (the "**Expiration Date**"). Notwithstanding anything contained herein to the contrary, this Agreement shall terminate if (a) Omni's option to lease the Project Parcel terminates either because (I) Omni does not exercise it by the applicable deadline under the Option to Lease, (II) the Option to Lease is terminated pursuant to its terms or (III) following its exercise, Omni fails to close on its lease of the Project Parcel by the applicable deadline under the Option to Lease, or (b) the Hotel Lease is terminated for any reason prior to the Completion Date, (c) if there is an uncured material default by Omni as provided in Section

7.2 unless the default has been cured by Omni within any applicable notice and cure period or by a Mortgagee (as defined in and pursuant to Section 7.1.3).

5. Direct Public Benefits. City and Omni hereby acknowledge that the Construction Covenant, the Operating Standard and the covenants contained in this Section 5 constitute direct public benefits and constitute consideration for, and would not have otherwise been agreed to or provided but for, the Economic Incentives agreed to by City hereunder, the incentives provided by ASU under the Option to Lease and the general support of City and ASU of the Project.

5.1 Minimum Amenities Level. Following execution of the Hotel Lease, Omni agrees to construct the Improvements in accordance with, and as described below and in, Exhibit B, at its sole cost and expense. The Hotel Improvements and Conference Center Improvements shall include, without limitation:

- (a) a hotel containing at least 330 rooms;
- (b) a conference center facility with at least 30,000 square feet, including a main ballroom containing at least 15,000 square feet, with the capacity to seat a minimum of 1,000 persons in banquet (ten-top round table) configuration, and adjacent pre-function space;
- (c) separate facilities for recycling and trash collection, as well as a separate compactor for recycling and trash, with the Hotel Operator agreeing in this regard to participate in local recycling programs during the term of this Agreement; and
- (d) such other amenities determined by Omni in consultation with ASU and City.

Omni shall consult with the Tempe Tourism Office and City to determine size and configuration of the facilities in the Conference Center Improvements. City shall have the right to approve plans and specifications for the Hotel Improvements and Conference Center Improvements, which approval shall not be unreasonably withheld. If Omni has submitted plans and specifications for the Hotel Improvement and Conference Center Improvements to City and has not received a response from City within thirty (30) days following submittal of such plans and specifications, such plans and specifications shall be deemed approved by City. The approval shall be in addition to any regulatory action that would be customarily exercised by City.

5.2 Preference to Local Businesses; First Consideration to Small, Minority-Owned and Women-Owned Business Enterprises. In order to effectuate the creation of expanded employment opportunities in Tempe, especially for small, minority-owned and women-owned business enterprises, Hotel Operator agrees to use commercially reasonable efforts to utilize local and regional business enterprises (meaning businesses with a significant business presence where employees are regularly based and that such place of business has a substantial role in the business' performance of a commercially useful function in the Tempe area) and to afford them the opportunity to participate in trade agreements and/or subcontracts it

awards, to the full extent consistent with the efficient performance of the work, provided that such local and regional business enterprises offer competitive pricing, quality, work and service. Additionally, Hotel Operator agrees to provide first consideration to local small, minority-owned, and women-owned business enterprises with respect to their doing business with the Project. Hotel Operator further agrees to participate in local workforce development career and job fairs at least one (1) time per year for no less than three (3) years, including those that promote trade and job skill career training programs, for the benefit of Tempe youth, including high school and junior high school aged persons.

5.3 Local Supply and Service Expenditures. In order to support the local economy of Tempe, beginning with the calendar year in which completion of the Project occurs, and each subsequent year of the Restriction Period, Hotel Operator agrees that at least Twenty-Five Thousand Dollars (\$25,000) in supply and service expenditures (the “**Minimum Supply and Service Expenditures**”) shall be made with local Tempe companies or the Tempe branch of any company with multiple locations; provided, however, that if the completion of the Project occurs on a date other than January 1, then only for the calendar year in which the completion occurs, this commitment shall be reduced to an amount equal to the product of Twenty-Five Thousand Dollars (\$25,000) and a fraction, the numerator of which is the number of days remaining in the year after the completion of the Project and the denominator of which is three hundred sixty-five (365). If Hotel Operator fails to satisfy the Minimum Supply and Service Expenditures in any year during the Restriction Period, City shall be permitted to reduce the City Payments in the subsequent year by the amount of the shortfall between the actual supply and service expenditures and the Minimum Supply and Service Expenditures. Hotel Operator shall certify, on an annual basis, that the Minimum Supply and Service Expenditures have been spent with Tempe companies. Upon request by City, Hotel Operator shall provide City with the documentation necessary to confirm the Minimum Supply and Service Expenditures.

5.4 Naming Rights. During the Restriction Period, (i) the name of the Improvements shall be a variant of Omni Tempe Hotel and Conference Center at ASU or other similar moniker which includes the words “Tempe” and “ASU”, (ii) the name of the Conference Center Improvements shall not be changed without the prior written consent of City, which consent may be granted or withheld in its unfettered discretion, provided that if Omni ceases to be the Hotel Operator, the name may be changed to reflect such change in the identity of the Hotel Operator but not the reference to “Tempe” or “ASU.” In no event shall the name of the Project include the name of any other municipality or geographic area or any colloquial expression used to describe the Phoenix Metropolitan Area. During the Restriction Period, whenever referring to the Project in marketing materials including, but not limited to, all forms of media advertising (including television, radio, print, billboard, brochure and internet), direct mail, direct marketing, and sponsorship marketing (“**Marketing Materials**”), Omni shall use, and shall require the Hotel Operator to use, the name of the Conference Center Improvements in full; provided that building signage may refer only to the “Omni (or the name of the Hotel Operator) Hotel.” Omni and City agree that the value of such naming rights is Five Hundred Thousand Dollars (\$500,000) based upon local, customary, market-rate estimates.

5.5 Tourism Promotion Expenditures. So long as the Hotel Lease is in effect, the Hotel Operator covenants and agrees to expend a minimum of Four Hundred Thousand Dollars (\$400,000) annually during the term of this Agreement on the promotion of tourism in Tempe, which activities may, at the discretion of the Hotel Operator, include, but are not limited to, any and all forms of Marketing Materials and related promotional activities, marketing through trade associations, including, without limitation, targeted marketing trips to association meetings, conventions and related events; complimentary trips to familiarize convention or trade show organizers with Tempe, unique local experiences, and the Project; other travel to promote Tempe and the Project; and other advertising and promotional activities developed as part of an overall advertising and marketing strategy to promote Tempe and the Project (“**Tourism Promotion Expenditures**”). Such Tourism Promotion Expenditures shall include City of Tempe name, a description of major local events or amenities, as reasonably determined and identified in a timely fashion by City, and the promotion of Tempe and the Project as a unique place to visit, shop and conduct business meetings and conferences. On or before April 1 of each year, the Hotel Operator shall provide City and the Tempe Tourism Office with a summary of all material proposed Tourism Promotion Expenditures for the following calendar year. City and the Tempe Tourism Office shall have the right to review and comment on the proposed for use as Tourism Promotion Expenditures for the following year. On or before April 1 of each year, the Hotel Operator shall provide City and the Tempe Tourism Office with a summary of all of the Tourism Promotion Expenditures for the preceding year.

5.6 Use Restriction. Omni agrees to devote a portion of the Project Property to use as a hotel, convention and conference center and ancillary purposes during the Restriction Period, which will be evidenced by the recordation in the Official Records of Maricopa County (contemporaneously with the execution of the Hotel Lease), by ASU of a restrictive covenant (the “**Use Restriction**”) for the benefit of City. The Use Restriction shall be in the form attached hereto as Exhibit C, shall remain in effect throughout the Restriction Period and shall not be amended without City’s prior written consent; provided that the Use Restriction may be amended to reflect any minor boundary adjustments between the Project Parcel and adjoining property owned by ASU. Notwithstanding anything contained herein to the contrary, the Use Restriction shall terminate if the Hotel Lease is terminated for any reason prior to the date the Improvements are completed (i.e., prior to issuance of a temporary or final certificate of occupancy allowing all or substantially all of the Improvements to be used by the public) (the “**Completion Date**”).

5.7 Use of Hotel Improvements and Conference Center Improvements. City shall have use of the Conference Center Improvements for a combined seven (7) days each year at no cost on a space available basis to be booked in accordance with procedures to be agreed to. During such periods of use, event set up and tear down and equipment to be furnished at no cost to City and will include tables, chair, pipe and drape, audio visual equipment (owned by Hotel operator) and any other equipment typically provided to Conference Center Improvements patrons. The cost of food and beverage services, or other services, will be paid for by City.

5.8 Support of Local Artists. In order to foster and support the local art community, Omni agrees to include in the Project artwork from local Tempe artists to the extent

practicable and in conformity with the design guidelines of Project and pursuant to City's Art in Private Development requirements.

5.9 Creation of Jobs. Hotel Operator agrees that (i) sixty percent (60%) of the managerial jobs created by the use of Hotel Improvements and Conference Center Improvements shall pay wages equal or in excess of the City's average median income, which is Forty-Nine Thousand Twelve Dollars (\$49,012) as of the Effective Date and (ii) that all hourly jobs created by the use of Hotel Improvements and Conference Center Improvements shall pay wages equal or in excess of the average wages for such position as provided by Wage Watch for the hotel industry in the Tempe/Phoenix area. Hotel Operator further agrees that it shall create no less than Three Hundred (300) jobs in the construction and/or hospitality industries within three (3) years of the date of execution of this Agreement. Hotel Operator shall provide City with an annual report beginning on the first anniversary of the date of this Agreement setting forth all jobs created pursuant to this Section 5.9 with a running total of all jobs created pursuant to this section since the date of this Agreement.

5.10 Contribution to Streetcar. Hotel Operator agrees to make contributions to offset the city contribution to the Tempe streetcar project as stated in Exhibit D to this Agreement. Such Exhibit D shall be incorporated herein by this reference as though fully set forth herein.

6. Records. Within thirty (30) days following a request from City, but no more often than twice in any calendar year, the Hotel Operator will make available to City all books and records related to the Minimum Supply and Service Expenditures and the Tourism Promotion Expenditures. Such books and records will be made available at the Project or at another location agreed to by City and the Hotel Operator.

7. Default and Remedies.

7.1 Events Constituting Default.

7.1.1 A party hereunder shall be deemed to be in default under this Agreement if such party breaches any obligation required to be performed by the respective party hereunder, and such breach or default continues for a period of twenty (20) days after written notice of the default, in the event of a monetary default, or one hundred twenty (120) days after written notice of the default, in the event of non-monetary default, from the non-defaulting party (or, if a non-monetary default cannot reasonably be cured within one hundred twenty (120) days, then the party shall be in default if it fails to commence the cure of such breach within the one hundred twenty (120)-day period and diligently pursue the same to completion); provided, however, that said one hundred twenty (120)-day period shall be extended for reasons of a Force Majeure Event as set forth below.

7.1.2 Subject to the rights of a Mortgagee to avoid a termination, as defined and set forth in Section 7.1.3, the Hotel Operator also shall be deemed to be in default under this Agreement if (a) any petition or application for a custodian, as defined by Title 11, United States Code, as amended from time to time (the "**Bankruptcy Code**") or for any form of

relief under any provision of the Bankruptcy Code or any other law pertaining to reorganization, insolvency or readjustment of debts is filed by or against the Hotel Operator or any entity that owns or controls the Hotel Operator, and such petition or application is not dismissed within one hundred twenty (120) days of such filing; (b) the Hotel Operator makes an assignment for the benefit of creditors, is not paying material debts as they become due unless such debts are disputed, or is granted an order for relief under any chapter of the Bankruptcy Code; (c) a custodian, as defined by the Bankruptcy Code, takes charge of any property of the Hotel Operator that would render the Hotel Operator unable to perform its obligations hereunder; (d) garnishment, attachment, levy or execution in an amount that would render the Hotel Operator insolvent or incapable of performing the Construction Covenants and meeting the Operating Standard (but in no event less than ten percent (10%) of its net worth) is issued against any of the property or effects of the Hotel Operator, and such issuance is not discharged or bonded against within one hundred twenty (120) days; or (e) the dissolution or termination of existence of the Hotel Operator unless its successor by transfer or operation of law is continuing the business of operating the Project.

7.1.3 City, upon providing the Hotel Operator any notice of a default under this Agreement shall at the same time provide a true copy of such notice to the holder of a leasehold mortgage, deed of trust, or security instrument encumbering the Hotel Operator's leasehold interest in the Project Parcel (a "**Mortgagee**") which has delivered to City, in the manner provided herein for the giving of notice under this Agreement, a request for notification and the address of the Mortgagee to which notices shall be sent. As between City and any Mortgagee which has complied with the foregoing delivery requirement, no such notice by City to the Hotel Operator shall be deemed to have been duly given unless and until a copy thereof has been provided to the Mortgagee. From and after such notice has been given to a Mortgagee, such Mortgagee shall have sixty (60) days, after the giving of such notice upon it, for remedying any default which is the subject matter of such notice or causing the same to be remedied. If the Hotel Operator or the Mortgagee fails to remedy the default that is the subject matter of such notice within such cure period, City may exercise the remedies set forth in this Agreement; provided, however, that the exercise of such remedies shall be extended by any additional time period granted to the Mortgagee under the Hotel Lease to cure the default and take possession of the Improvements as necessary to effect a cure, and during any such time period City shall continue making the City Payments, respectively, to the Mortgagee so long as the Hotel Operator or Mortgagee is diligently exercising its rights to cure.

7.2 Damages. Notwithstanding any provision of this Agreement to the contrary, in the event that a party is in default under this Agreement and fails to cure such default within the applicable period of cure set forth in Section 7.1 above, the parties hereby agree in any action hereunder to seek recovery only of actual damages incurred, and each party waives any right to recover punitive and/or consequential damages as a result of any event of default hereunder by the other parties under this Agreement. For the avoidance of doubt, the sole remedy for breaches of this Agreement shall be the monetary damages set forth in this Section 7.2 and neither party hereto shall have the right to terminate this Agreement for breach hereof.

31 East Fifth Street
Tempe, AZ 85281

With a mandatory copy to:

City of Tempe
Attn: City Attorney
21 East Sixth Street, Suite 201
Tempe, AZ 85281

To Hotel Operator: c/o Omni Hotels
Attn: Mike Smith
4001 Maple Avenue, Suite 600
Dallas, Texas 75219

With a mandatory copy to:

c/o Omni Hotels
Attn: Paul Jorge
4001 Maple Avenue, Suite 600
Dallas, Texas 75219

and:

Winstead PC
Attn: T. Andrew Dow
500 Winstead Building
2728 N. Harwood Street
Dallas, TX 75201

9.3 Construction. Time is of the essence with respect to each provision of this Agreement; provided, however, that either party hereto shall be entitled to a fifteen (15) day cure period (or such longer time period agreed to by the parties hereto) for failure to meet any deadline set forth in this Agreement. The language in all parts of this Agreement shall in all cases be construed as a whole and simply according to its plain meaning and not strictly for nor against any of the parties, and the construction of this Agreement and any of its various provisions shall be unaffected by any claims, whether or not justified, that it has been prepared, wholly or in substantial part, by or on behalf of any of the parties. The parties do not intend to become, and nothing contained in this Agreement shall be interpreted to deem that City, and/or Omni are, partners or joint venturers in any way or that Omni is an agent or representative of City for any purpose or in any manner whatsoever. A male or female person may be referred to in this Agreement by a neuter or masculine pronoun. The singular includes the plural, and the plural includes the singular. A provision of this Agreement which prohibits a party from performing an action shall be construed so as to prohibit the party from performing the action or

from permitting others to perform the action. Except to the extent, if any, to which this Agreement specifies otherwise, each party shall be deemed to be required to perform its obligations under this Agreement at its own expense, and each party shall be permitted to exercise its rights and privileges only at its own expense. "Including" means "including and not limited to." "Include" means "includes and is not limited to." "Any" means "any and all." Except to the extent context requires otherwise, "may" means "may but shall not be obligated to." "At any time" means "at any time and from time to time." An expense incurred on behalf of a party shall be deemed to have been incurred by the party. An obligation performed on a party's behalf and pursuant to its request or consent shall be deemed to have been performed by the party.

9.4 Force Majeure. If any party hereto shall be delayed or prevented from the exercise of any right or the performance of any obligation of such party under this Agreement by reason of (a) acts of God, (b) strikes, (c) work stoppages, (d) unavailability of or delay in receiving labor or materials, (e) defaults by contractors or subcontractors, (f) weather conditions, (g) governmental moratoria on building permits or other approvals required for compliance with such deadline, (h) casualty event, (i) delays caused by acts of war or terrorism, (j) acts or omissions of the other party as required or prohibited herein, (k) the failure by another party to perform its obligations under this Agreement within the time period required hereunder, (l) unforeseen environmental contamination or other unforeseen site conditions, (m) the presence of historic or archeological site, burial grounds or funerary objects or (n) other cause without fault and beyond the reasonable control of the party obligated (financial inability excepted) (collectively, the "**Force Majeure Events**"), the timely exercise of such right or performance of such act shall be excused for the period of the delay, and the period for the exercise of such right or performance of any such obligation shall be extended for a period equivalent to the period of such delay, provided that if any of such Force Majeure Events occurs, the affected party(ies) shall give written notice to the other party(ies) within sixty (60) days after the party has actual knowledge of the occurrence of the Force Majeure Event, such notice to describe the Force Majeure Event, and the affected party shall use commercially reasonable efforts to minimize the impact of the Force Majeure Event. Lack of financial capacity shall not be a Force Majeure Event.

9.5 No Third Party Rights. Except as otherwise provided herein, nothing in this Agreement shall be construed to permit anyone other than City, Hotel Operator and Omni and their respective successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third party beneficiary or otherwise) on account of any nonperformance hereunder.

9.6 Cooperation. The parties hereto hereby acknowledge and agree that they shall cooperate in good faith with each other and use reasonable best efforts to pursue the economic development of the Property as contemplated by this Agreement.

9.7 Dispute Resolution. If there is a dispute hereunder which the parties cannot resolve between themselves, the parties may agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. If the parties agree to mediation, the matter in dispute shall be submitted to a mediator mutually selected by the parties to the

dispute. In the event that the parties cannot agree upon the selection of a mediator within ten (10) days, then within five (5) days thereafter, the parties to the dispute shall request the presiding judge of the Superior Court in and for the County of Maricopa, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to commercial property development. The cost of any such mediation shall be divided equally between the parties to the dispute, or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation or arbitration as set forth herein upon the conclusion of mediation. Notwithstanding the foregoing, in the case of a good faith dispute and until the resolution thereof, City shall continue paying the Economic Incentives except as to any particular payment if such payment is the subject of the dispute, and Hotel Operator shall continue to provide the benefits stated in Section 5 of this Agreement.

9.8 Captions. The captions used herein are for convenience only and not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

9.9 Estoppel Certificates. Within fifteen (15) days after receipt of request therefor from a party, the other parties shall furnish to the requesting party an estoppel certificate ("**Estoppel Certificate**") stating that this Agreement has not been amended or, if amended, specifying the amendments and that the requesting party has, to the date of the issuance of such Estoppel Certificate, satisfied the requesting party's contractual obligations or, if the requesting party has not satisfied its contractual obligations, stating those obligations which the requesting party has not satisfied and such other matters as the requesting party may reasonably require. Upon issuance of an Estoppel Certificate, the issuing party shall be estopped to deny the truth of any statement made in such Estoppel Certificate.

9.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona without giving effect to conflicts of law principles. This Agreement has been made and entered into in Maricopa County, Arizona.

9.11 Successors and Assigns. Except as set forth in Section 9.1, this Agreement shall run with the land and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

9.12 Waiver. No waiver by any party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

9.13 Attorneys' Fees. In the event of any actual litigation between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury and included within the judgment.

9.14 Severability. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against

public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law.

9.15 Exhibits. All exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

9.16 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written are hereby superseded and merged herein.

9.17 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original but all of which together shall constitute one and the same instrument. Signature and acknowledgement pages may be removed from one counterpart and inserted into another counterpart to form a single document.

9.18 Recordation of Agreement. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after its approval and execution by City.

9.19 Consents and Approvals. Except as may be otherwise set forth in this Agreement, the parties hereto shall at all times act reasonably with respect to any and all matters which require any party to review, consent or approve of any act or matter hereunder. City hereby acknowledges and agrees that any unnecessary delay hereunder would adversely affect the development of the Project, and hereby authorizes and empowers the City Manager to consent to any and all requests of Omni, such consent not to be unreasonably withheld, delayed or conditioned, requiring the consent of City hereunder without further action of City Council, except for any actions requiring City Council approval as a matter of law, including, without limitation, any further amendment or modification of this Agreement.

9.20 Reviews and Approvals; Project Coordinators. City acknowledges and agrees that development of the Project by Omni will, as a result of the size of the Project and other economic factors, occur over a period of time and will require City's ongoing participation in the review and approval of preliminary and final site plans, infrastructure plans, drainage plans, design plans, building plans, special use permits, grading permits, building permits and other plans, permit applications and inspections which are part of City's current building and development requirements (hereinafter collectively referred to as "**Approval Requests**"). City and Omni agree that, in connection with all such Approval Requests relating to the development of the Project or the construction of any Improvements thereon, they shall cooperate with each other in good faith to expedite the processing and approval of any such Approval Requests and otherwise accelerate the review and response to all such Approval Requests to the greatest extent possible.

Without limiting the foregoing, City shall designate a project coordinator who shall work together to meet Omni's project timelines in accordance with a customized plan review schedule

to be mutually agreed upon by City and Omni. Project coordinators may be changed upon written notice to the other party. Any project coordinator shall have the right to request a meeting of the project coordinators upon five (5) business days' written notice. In the event that any design, development or construction issues arise which cannot be timely resolved through ordinary City processes and procedures, the project coordinators and, if requested by Omni, City's review coordinators meet and work together in good faith to expeditiously address and resolve all pending issues. The parties hereby designate the following individuals as their initial project coordinators:

City: Alex Smith

Omni: Mike Smith

9.21 Omni's Representations. Omni represents and warrants to City as follows:

(a) Omni has the power and authority to execute, deliver and perform its obligations under this Agreement and has obtained all necessary consents, authorizations and approvals required as a condition to the execution and delivery thereof.

(b) The execution of this Agreement will not violate or constitute a default on the part of Omni under any agreement to which Omni is a party or by which it is bound.

(c) The representatives of Omni who have executed this Agreement have the power and the authority to have done so.

(d) Omni is a limited liability company duly organized and validly existing under the laws of the State of Arizona and is qualified to do business in Arizona.

(e) To Omni's knowledge, no conflict of interest exists, or if one exists, it has been fully and properly disclosed and waived by persons or entities duly empowered and authorized to grant such waiver, between or among any of the following entities or individuals: (i) Omni, (ii) any Omni Affiliate, (iii) any entity or individual who has a direct or indirect financial interest (including by way of example, but not of limitation, employment, consultancies, stock ownership, or other equity interest) or a direct or indirect non-financial interest (including by way of example, but not of limitation, personal or professional relationships or affiliations or committee memberships) in (1) Omni or any Omni Affiliate, (2) the rights granted to Omni pursuant to this Agreement or pursuant to any agreements arising out of this Agreement, or (3) any entity or individual who will be granted rights to use or occupy space in the Project Parcel (an "**Interested Party**") that would provide a basis to challenge any Interested Party's authority to enter into or perform its obligations under this Agreement or under any agreements arising out of this Agreement to which Omni or an Interested Party is a party (each a "**Project Related Agreement**") or the validity of this Agreement or any Project Related Agreement. Omni will require all Interested Parties to make this same representation and warranty in all Project Related Agreements, and ASU shall be a third party beneficiary of all such representations and warranties. For purposes of this Agreement, "Affiliate"

means any entity that directly or indirectly controls, is controlled by, or is under common control with, such entity. As used in this definition of “Affiliate”, the term “control” means either (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract, through the appointment of a majority of the members of a governing body, by being the sole member of a nonprofit entity or otherwise, or (ii) a direct or indirect equity interest of fifty percent (50%) or more in the entity.

9.22 City’s Representations. City represents and warrants to Omni as follows:

(a) It has the power and authority to execute, deliver and perform its obligations under this Agreement and has obtained all necessary consents, authorizations and approvals required as a condition to the execution and delivery thereof.

(b) The execution of this Agreement will not violate or constitute a default on the part of City under any agreement to which it is a party or by which it is bound.

(c) The representatives of City who have executed this Agreement have the power and the authority to have done so.

(d) City has not, to its knowledge, received service of process regarding, and City knows of no, litigation, proceeding or investigation, nor threat thereof, contesting the powers of City or its officials with respect to the Project or this Agreement, as applicable, or that could materially impact City’s ability to enter into this Agreement or consummate the transactions contemplated by this Agreement.

9.23 Approvals. Except as otherwise set forth herein, if a party’s consent, approval, agreement or waiver is required or requested hereunder (an “**Approving Party**”), the Approving Party shall not unreasonably withhold, delay or condition such consent, approval, agreement or waiver. If the Approving Party fails to respond in writing to any request for consent, approval, agreement or waiver (by granting or withholding consent, approval, agreement or waiver or requesting a meeting or further information) within fifteen (15) days following delivery of such notice, then the requesting party may give a second notice to the Approving Party requesting consent, approval, agreement or waiver on which the following language must appear in bold print: “**FAILURE TO RESPOND TO THIS NOTICE WITHIN FIVE BUSINESS DAYS FROM ITS RECEIPT SHALL RESULT IN THE ACTION OR MATTER DESCRIBED HEREIN BEING DEEMED APPROVED.**” If the Approving Party fails to respond in writing (in the manner described above) to any matter in such second notice within five (5) business days following delivery of such notice, that matter shall be deemed to have been approved by the Approving Party.

9.24 Requests for Action. To facilitate Omni’s ability to expeditiously pursue the development of the Project as contemplated hereunder, City shall designate at least two (2) individuals, each acting alone and without the necessity of the approval of the other, to serve as a liaison for and with the authority to act on behalf of City, including the power and authority to grant any consents, approvals, agreements or waivers. Until City revokes such designation by

written notice to Omni given pursuant hereto and designates another individual in lieu thereof, City hereby designates the City Manager and the City Attorney to act on its behalf as contemplated herein. Notwithstanding the foregoing, Omni shall still be required to submit all notices required hereunder to the parties designated in Section 9.2.

9.25 Liability and Indemnification. Each party (as “**indemnitor**”) agrees to indemnify, defend, and hold harmless the other party (as “**indemnitee**”) from and against any and all claims, losses, liability, costs, or expenses, including reasonable attorney's fees (hereinafter collectively referred to as “**claims**”), arising out of bodily injury of any person, including death or property damage, but only to the extent that such claims which result in vicarious or derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officer, officials, agents, employees, or volunteers, as established by a court of competent jurisdiction.

9.26 Manager’s Power to Consent. City hereby acknowledges and agrees that any unnecessary delay hereunder would adversely affect Hotel Operator and/or the development of the Property, and hereby authorizes and empowers the City Manager to consent to any and all requests of Hotel Operator requiring the consent of the City hereunder without further action of the City Council, except for any actions requiring City Council approval as a matter of law, including, without limitation, any amendments or modification of this Agreement.

[Signatures appear on following pages]

C2018-06

CITY:

CITY OF TEMPE, an Arizona municipal corporation

By Mark W. Mitchell
Mark W. Mitchell
Mayor

ATTEST:

Brigitta M. Kuiper
Brigitta M. Kuiper
City Clerk

APPROVED AS TO FORM:

Judith R. Baumann
Judith R. Baumann
City Attorney

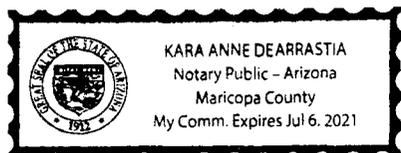
STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this 11th day of January, 2018, before me, the undersigned officer, personally appeared Mark W. Mitchell, who acknowledged himself to be Mayor of THE CITY OF TEMPE, an Arizona municipal corporation, whom I know personally and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Kara Anne Dearrastia
Notary Public

NOTARY SEAL:



OMNI:



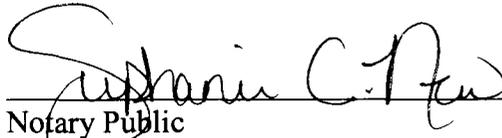
By: Michael G. Smith

Its: Vice President

STATE OF Texas)
)ss.
County of Dallas)

This instrument was acknowledged before me this 11th day of January, 2018
by Michael G. Smith, as Vice President of Omni, a ~~corp~~
Delaware Limited Liability Company, as on behalf of the _____.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public

Notary Seal:

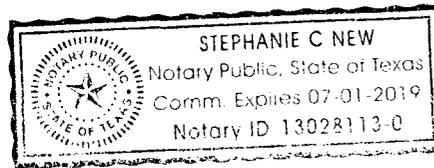


EXHIBIT A TO CC AGREEMENT

PROJECT PARCEL

Wood, Patel & Associates, Inc.
 (480) 834-3300
 www.woodpatel.com

October 30, 2017
 WP# 1645550.01
 Page 1 of 2

PARCEL DESCRIPTION
ASU Blocks 22/27
Parcel B

A portion of Block 22 of Gage Addition to Tempe, Arizona as shown on the Final Plat recorded in Book 3, page 58, Maricopa County Records (M.C.R.), and Amended Plat recorded in Book 8, page 41, M.C.R., lying within Section 22, Township 1 North, Range 4 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the intersection of Mill Avenue and University Drive (8th Street) as shown on said Final Plat, a 3-inch City of Tempe brass cap in handhole, from which the intersection of University Drive (8th Street) and Myrtle Avenue, a 3-inch City of Tempe brass cap in handhole, bears North 89°48'20" East (basis of bearing), a distance of 561.84 feet;

THENCE along the centerline of said University Drive (8th Street), North 89°48'20" East, a distance of 323.05 feet;
THENCE leaving said centerline, South 00°11'40" East, a distance of 33.00 feet, to the south right-of-way line of said University Drive (8th Street) and the **POINT OF BEGINNING**;

THENCE leaving said south right-of-way line, South 00°32'39" East, a distance of 371.34 feet, to the beginning of a curve;

THENCE southwesterly along said curve to the right, having a radius of 93.50 feet, concave northwest, through a central angle of 62°23'57", a distance of 101.83 feet, to a point of intersection with a non-tangent line;

THENCE South 89°37'34" West, a distance of 167.79 feet, to the east right-of-way line of Mill Avenue;

THENCE along said east right-of-way line, North 00°35'54" West, a distance of 440.03 feet;

THENCE North 44°36'13" East, a distance of 21.14 feet, to said south right-of-way line;

THENCE leaving said east right-of-way line, along said south right-of-way line, North 89°48'20" East, a distance of 203.40 feet, to the **POINT OF BEGINNING**.

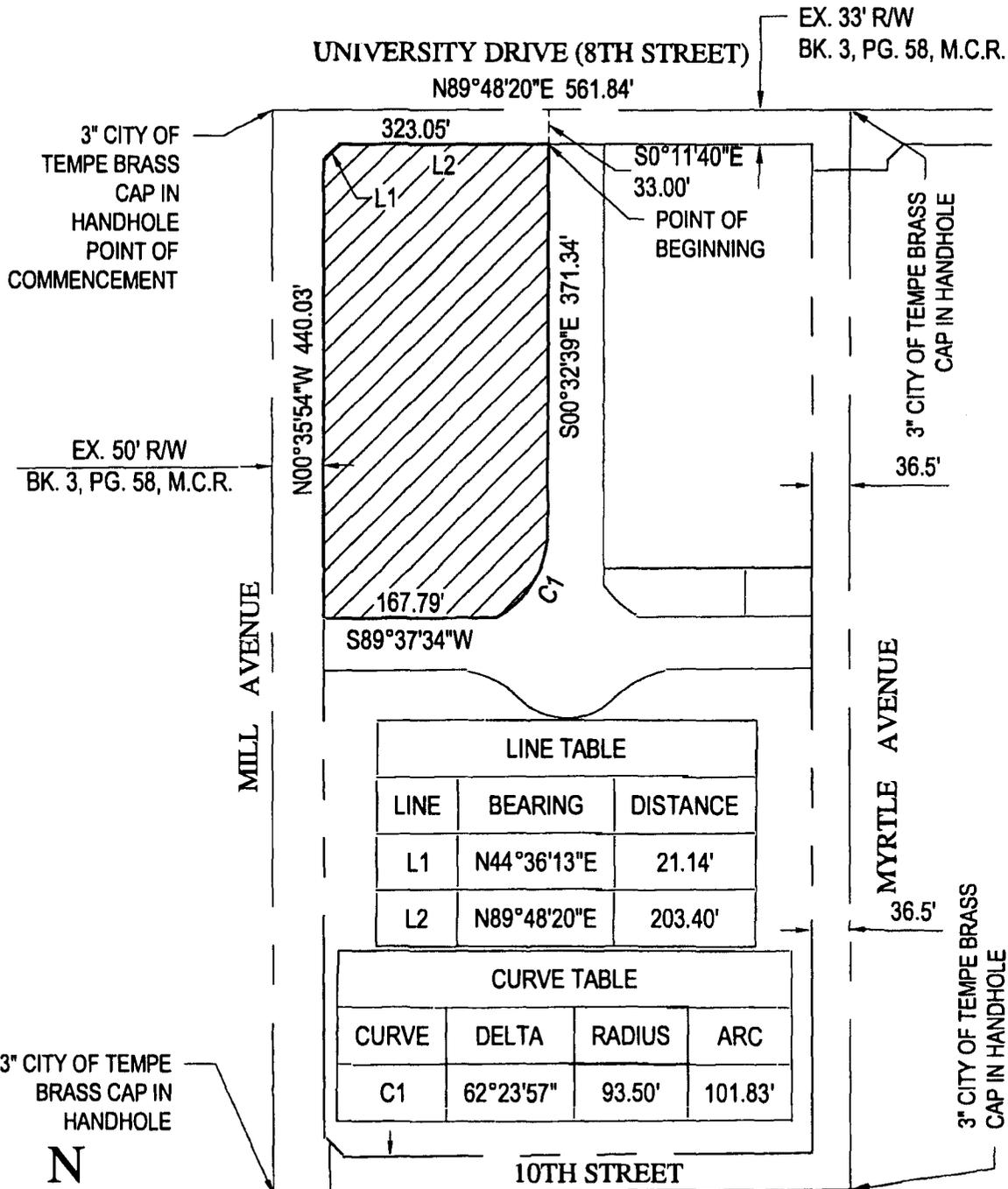
Containing 97,897 square feet or 2.2474 acres, more or less.

Subject to existing rights-of-way and easements.

This parcel description is based on the Final Plat of Gage Addition to Tempe, Arizona, recorded in Book 3, page 58, M.C.R. and Amended Plat recorded in Book 8, page 41, M.C.R., and other client provided information. This parcel description is located within an area surveyed by Wood, Patel and Associates, Inc. during the month of July, 2013. Any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey

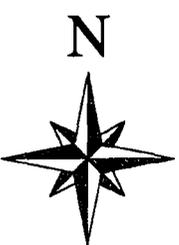
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LINE TABLE		
LINE	BEARING	DISTANCE
L1	N44°36'13"E	21.14'
L2	N89°48'20"E	203.40'

CURVE TABLE			
CURVE	DELTA	RADIUS	ARC
C1	62°23'57"	93.50'	101.83'



WOOD/PATEL
 MISSION: CLIENT SERVICE •
 (480) 834-3300
 WWW.WOODPATEL.COM



ASU BLOCKS 22/27
 PARCEL B
 10/30/2017
 WP# 164555.01
 PAGE 2 OF 2
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EXHIBIT B TO CC AGREEMENT**CONSTRUCTION COVENANT
AND
OPERATING STANDARD****A. Construction Covenant**

Following the execution of the Hotel Lease, the Lessee shall commence and pursue to completion the Improvements. The Conference Center Improvements will consist of not less than 30,000 net square feet of public floor area containing flexible indoor meeting space, and pre-function area located on the second floor of the Hotel Improvements and designed for the use of corporate and group-related business.

The Conference Center Improvements will include meeting space containing a main ballroom of not less than 15,000 square-feet. If the main ballroom is 15,000 square-feet, then a junior ballroom of 5,000 square-feet will also be required. In any event, the main ballroom will have the capacity to seat a minimum of 1,000 persons in banquet (ten-top round table) configuration, supported by adjacent pre-function space, smaller meeting rooms, plus food service and back-of-the-house facilities consistent with the Operating Standard.

B. Operating Standard

The Hotel Improvements, into which the Conference Center Improvements will be integrated, will be a multi-story structure with a minimum of 330 guest rooms, together with all services and amenities set forth below, necessary to meet the Operating Standard.

Throughout the Term, the Improvements shall be operated at a level consistent with the current operating criteria necessary for a hotel property to receive the American Automobile Association's designation for Four-Diamond hotels as of the Effective Date, as further described below, and in accordance with the Omni Brand Standards. Lessee shall at no time be required to demonstrate receipt or maintenance of such Four-Diamond rating. The parties recognize that hotel operating practices may change during the Term and the parties shall work in good faith to agree to changes to the Operating Standard if the market and business practices dictate such changes.

C. AAA Four-Diamond Rating Information

EXHIBIT C TO CC AGREEMENT**USE RESTRICTION**

When Recorded Return To:
 ASU Box 877405
 Tempe AZ 85287-7405
 Attn: Office of General Counsel

**DECLARATION OF HOTEL AND CONVENTION AND CONFERENCE CENTER
 USE RESTRICTION**

THIS DECLARATION OF HOTEL AND CONVENTION AND CONFERENCE CENTER USE RESTRICTION (the "**Declaration**") is made as of _____, 2018, by ARIZONA BOARD OF REGENTS, a body corporate, for an on behalf of Arizona State University ("**Declarant**").

RECITALS

A. Declarant owns fee title to that certain real property located in the City of Tempe, Arizona ("**City**"), described on Exhibit A attached hereto (as now or hereafter improved, the "**Project Parcel**").

B. Declarant and Omni Tempe, LLC, a Delaware limited liability company ("**Omni**"), entered into that certain Lease dated _____, _____ (the "**Hotel Lease**"), as evidenced by that certain Memorandum of Lease dated and recorded of even date herewith, pursuant to which ASU leased to Omni the Project Parcel, and to develop, operate and/or sublease various improvements thereon.

C. Pursuant to the Hotel Lease Omni agreed to construct certain improvements on the Project Parcel that include without limitation a hotel (the "**Hotel Improvements**") and conference and convention center (the "**Conference Center Improvements**"). The Conference Center Improvements and the Hotel Improvements are collectively referred to in this Agreement as the "**Improvements**". The Conference Center Improvements, the Hotel Improvements and the Project Parcel are collectively referred to in this Agreement as the "**Project.**"

D. City and Omni have also entered into that certain Convention and Conference Center Development Agreement dated _____, 2018 (the "**Development Agreement**"), whereby the parties agreed to certain covenants related to the Conference Center Improvements.

E. Pursuant to the Development Agreement, Declarant now desires to restrict the use of the Project Parcel upon the terms and conditions set forth below.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that the use of the Project Parcel shall be subject to the following restrictions, terms and conditions:

1. Commencing on the date the Improvements are completed as evidenced by a temporary or final certificate of occupancy allowing all or substantially all of the Improvements to be used by the public (the “**Completion Date**”) and continuing for a period of sixty (60) years thereafter, the Project Parcel shall only be used as a hotel and convention and conference center and ancillary uses. The restrictions in this Section are collectively referred to herein as the “**Use Restriction**”. Notwithstanding the foregoing, the Use Restrictions shall terminate if the Hotel Lease is terminated for any reason prior to the Completion Date.

2. The Use Restriction shall run with the land and be binding on and enforceable by Declarant, its successors and assigns who control and regulate Arizona State University. The Use Restriction is for the benefit of, and shall be enforceable by, City.

3. The Use Restriction may only be amended, terminated, supplemented, or otherwise modified by a written agreement signed by Declarant and City, or their successors and assigns, which written agreement shall be recorded in the Official Records of Maricopa County, Arizona.

IN WITNESS WHEREOF, Declarant has executed this Declaration of Hotel and Convention and Conference Center Use Restriction on the date first set forth above.

[Signature appears on next page]

SIGNATURE PAGE TO DECLARATION OF HOTEL AND CONVENTION AND
CONFERENCE CENTER USE RESTRICTION

DECLARANT:

ARIZONA BOARD OF REGENTS, a Body
Corporate, for and on behalf of Arizona State
University

By: _____
Name: _____
Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

Before me, a Notary Public in and for said county and state, on the ____ day of _____, 201__, personally appeared _____, as _____ of the Arizona Board of Regents, for and on behalf of Arizona State University, who acknowledged the execution of the foregoing document for and on behalf of the University.

Notary Public

[Notary Seal]

EXHIBIT A OF EXHIBIT C

PROJECT PARCEL LEGAL DESCRIPTION

Wood, Patel & Associates, Inc.
 (480) 834-3300
 www.woodpatel.com

October 30, 2017
 WP# 1645550.01
 Page 1 of 2

PARCEL DESCRIPTION
ASU Blocks 22/27
Parcel B

A portion of Block 22 of Gage Addition to Tempe, Arizona as shown on the Final Plat recorded in Book 3, page 58, Maricopa County Records (M.C.R.), and Amended Plat recorded in Book 8, page 41, M.C.R., lying within Section 22, Township 1 North, Range 4 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the intersection of Mill Avenue and University Drive (8th Street) as shown on said Final Plat, a 3-inch City of Tempe brass cap in handhole, from which the intersection of University Drive (8th Street) and Myrtle Avenue, a 3-inch City of Tempe brass cap in handhole, bears North 89°48'20" East (basis of bearing), a distance of 561.84 feet;

THENCE along the centerline of said University Drive (8th Street), North 89°48'20" East, a distance of 323.05 feet;
THENCE leaving said centerline, South 00°11'40" East, a distance of 33.00 feet, to the south right-of-way line of said University Drive (8th Street) and the **POINT OF BEGINNING**;

THENCE leaving said south right-of-way line, South 00°32'39" East, a distance of 371.34 feet, to the beginning of a curve;

THENCE southwesterly along said curve to the right, having a radius of 93.50 feet, concave northwest, through a central angle of 62°23'57", a distance of 101.83 feet, to a point of intersection with a non-tangent line;

THENCE South 89°37'34" West, a distance of 167.79 feet, to the east right-of-way line of Mill Avenue;

THENCE along said east right-of-way line, North 00°35'54" West, a distance of 440.03 feet;

THENCE North 44°36'13" East, a distance of 21.14 feet, to said south right-of-way line;

THENCE leaving said east right-of-way line, along said south right-of-way line, North 89°48'20" East, a distance of 203.40 feet, to the **POINT OF BEGINNING**.

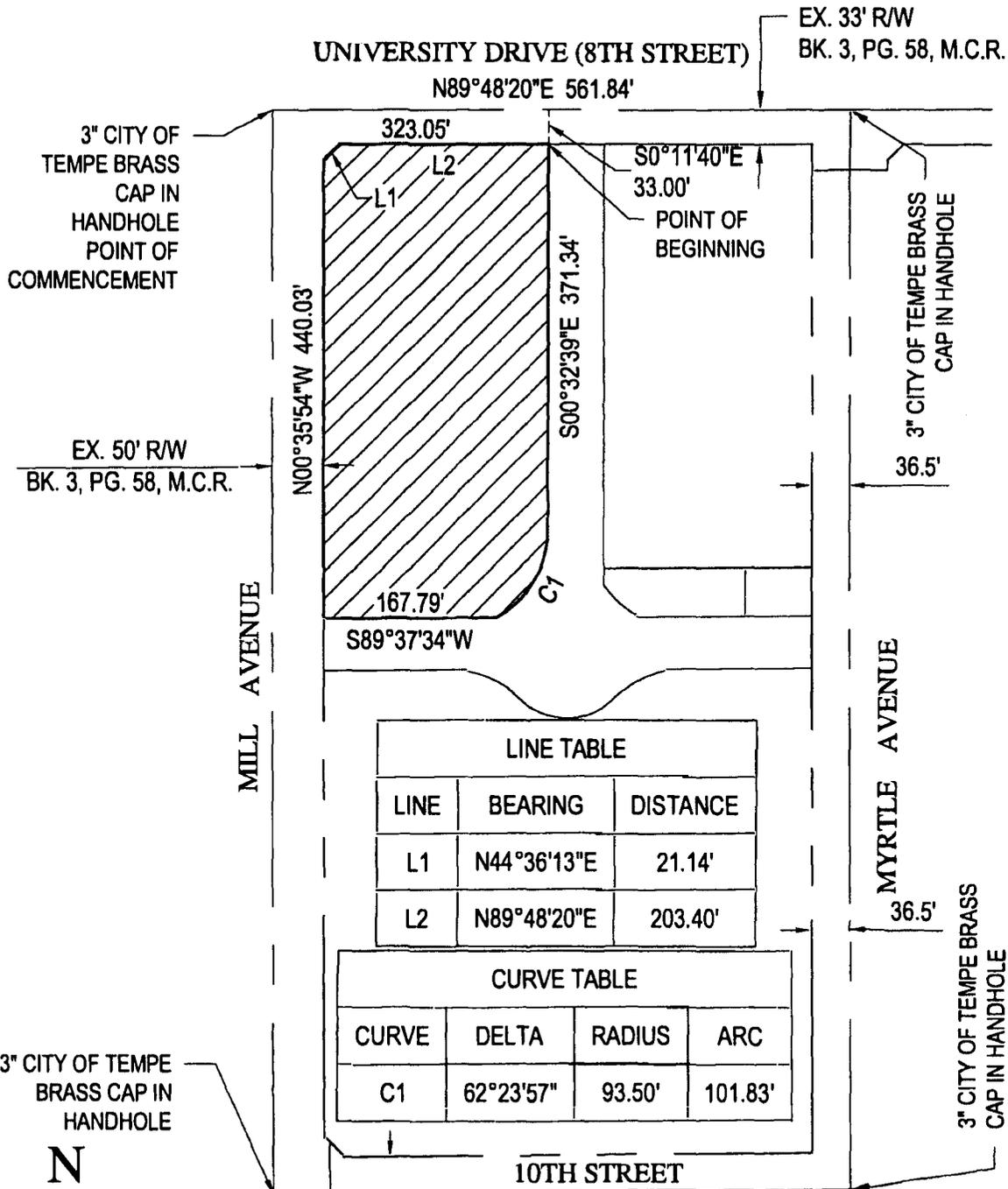
Containing 97,897 square feet or 2.2474 acres, more or less.

Subject to existing rights-of-way and easements.

This parcel description is based on the Final Plat of Gage Addition to Tempe, Arizona, recorded in Book 3, page 58, M.C.R. and Amended Plat recorded in Book 8, page 41, M.C.R., and other client provided information. This parcel description is located within an area surveyed by Wood, Patel and Associates, Inc. during the month of July, 2013. Any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey

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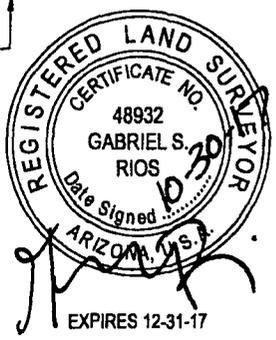


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ASU BLOCKS 22/27
PARCEL B
10/30/2017
WP# 164555.01
PAGE 2 OF 2
NOT TO SCALE
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EXHIBIT D TO CC AGREEMENT**STREETCAR AGREEMENT****WHEN RECORDED, RETURN TO:**

City of Tempe Basket

STREETCAR DEVELOPMENT AGREEMENT

[c2017-XXX]

THIS STREETCAR DEVELOPMENT AGREEMENT ("Agreement") is made as of the _____ day of January, 2018 and shall become effective as of the execution of the Ground Lease (as defined below) (the "**Effective Date**"), between the CITY OF TEMPE, an Arizona municipal corporation ("**City**"), and Omni Tempe, LLC, a Delaware limited liability company ("**Ground Lessee**"). City and Ground Lessee may be referred to herein, collectively, as the "**Parties**" and, individually, as a "**Party**", as the context may require.

RECITALS

A. The Ground Lessee is anticipated to become the tenant under a lease, by and between the Arizona Board of Regents, a body corporate, for and on behalf of Arizona State University (the "**Ground Lessor**"), as Landlord, and Ground Lessee (the "**Ground Lease**"), pursuant to which Ground Lessee will lease that real property legally described in *Exhibit "A"* attached hereto and incorporated herein by this reference (the "**Property**") from Ground Lessor for a lease term of at least sixty (60) years.

B. Valley Metro Rail, Inc., a nonprofit corporation duly organized and existing under the laws of the State of Arizona ("**Valley Metro**"), in conjunction with City and the Maricopa Association of Governments, is proceeding with the planning, design, financing and construction of a streetcar project, as generally described in *Exhibit B*.

C. City and Ground Lessee hereby acknowledge and agree that significant benefits will accrue from implementation of the Tempe Streetcar Project including, without limitation, for the City, the potential for increased tax revenues and opportunities for employment within the City and otherwise improving or enhancing the economic welfare of the inhabitants of the City, and, for the Property, facilitating the Property's development, as contemplated in the Ground Lease and certain other agreements and approvals in respect of the Property, together with the potential for increased property values.

D. This Agreement is a development agreement within the meaning of A.R.S. §9-500.05 and shall be construed as such.

AGREEMENT

NOW THEREFORE, in consideration of the above premises, the promises contained in this Agreement and for good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties hereto agree as follows:

1. DEFINITIONS

In addition to words and terms defined elsewhere herein, the following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

- 1.1. **"City"** means the City of Tempe, an Arizona municipal corporation, and any successor public body or entity.
- 1.2. **"City Contribution as an Owner of Real Property"** means as defined in Section 3.2.
- 1.3. **"City Contribution to Tempe Streetcar Project"** means as defined in Section 3.1.
- 1.4. **"City Property"** means as defined in Section 3.2.
- 1.5. **"Condition Precedent"** means as defined in Section 3.3.1.
- 1.6. **"Contribution"** means as defined in Section 3.3.
- 1.7. **"Contribution Construction Account"** means as defined in Section 3.4.
- 1.8. **"Contribution Formula"** means as defined in Section 3.2.
- 1.9. **"Default Interest Rate"** means as defined in Section 3.3.3.
- 1.10. **"Effective Date"** means as defined in the preamble to this Agreement.
- 1.11. **"Ground Lessee"** means as defined in the preamble to this Agreement and its successors and assigns.
- 1.12. **"Ground Lessor"** means as defined in Recital A and its successors and assigns.
- 1.13. **"Owners"** means as defined in Section 3.1.
- 1.14. **"Parties"** means as defined in the preamble to this Agreement.
- 1.15. **"Party"** means as defined in the preamble to this Agreement.

1.16. "**Tempe Streetcar Project**" means the planning, financing, design and construction of the streetcar project described in Recital B and *Exhibit B*.

1.17. "**Valley Metro**" means Valley Metro Rail, Inc., a nonprofit corporation duly organized and existing under the laws of the State of Arizona as described in Recital B.

2. GENERAL TERMS

2.1. **Incorporation of Recitals.** The Recitals are true and correct and are incorporated herein by reference.

2.2. **Duration of Development Agreement; Termination by Ground Lessee.** The term of this Agreement (the "**Term**") shall commence on the Effective Date and continue until the date the Contribution (as hereinafter defined) is paid in full or, if applicable, such earlier date on which this Agreement terminates as hereinafter provided. Notwithstanding anything contained in the foregoing or elsewhere in this Agreement to the contrary, in the event that, prior to the City's commencement of construction of the Tempe Streetcar Project, the Ground Lessee, for any reason, elects not to proceed with the development of the Property as contemplated pursuant to the Ground Lease, the Ground Lessee shall have the right to terminate this Agreement and its obligations hereunder for payment of the Contribution attributable to Ground Lessee by providing written notice of termination to the City, whereupon this Agreement shall terminate and be of no further force or effect and the parties shall execute and cause to be recorded such documents or instruments as may be necessary to reflect such termination.

3. GROUND LESSEE CONTRIBUTION

3.1. **City Contribution to Tempe Streetcar Project.** City anticipates that the construction phase of the Tempe Streetcar Project will commence in 2018 and consist of 3.0 miles of modern streetcar line, with the route and stops to be as generally described in *Exhibit B*. To City's knowledge, as of the Effective Date, there is no proposed or pending change in the route or proposed or pending change to or deletion of any stop as reflected in *Exhibit B*. The funding required to construct the Tempe Streetcar Project is approximately one hundred eighty-six million, one hundred thousand dollars (\$186,100,000.00). The plan of finance for the Tempe Streetcar Project is anticipated to require payment by City of approximately thirteen million dollars (\$13,000,000.00) plus financing costs not to exceed five percent (5%) per annum during the Term (the "**City Contribution to Tempe Streetcar Project**"). City shall secure and advance the monies necessary to pay the City Contribution to Tempe Streetcar Project, initially, subject to reimbursement by certain owners of the fee title and/or leasehold interests in various parcels of real property located along or in the vicinity of the planned route for the Tempe Streetcar Project, including the Ground Lessee (collectively, the "**Owners**"), who have agreed (or shall agree in the future) to make contributions to offset the City Contribution to Tempe Streetcar Project. Without limitation, City shall use commercially reasonable efforts to secure further contributions from Owners who develop projects located along or in the vicinity of the planned route for the Tempe Streetcar Project following the Effective Date.

3.2. **Contribution Formula.** The annual contribution for each participating Owner's parcel shall be an amount equal to the product of \$0.10 and the gross square footage of the

permits or certificates of occupancy (as applicable) have been issued by City, payable in equal annual installments over a twenty (20) year period ("**Contribution Formula**"). Additionally, City shall annually pay its proportionate share, pursuant to the Contribution Formula ("**City Contribution as an Owner of Real Property**"), for the real property owned by City located along or in the vicinity of the Tempe Streetcar Project route excluding the real property owned by City that is leased to other parties ("**City Property**"). City represents that as of the Effective Date of this Agreement the City Property is approximately 187,440 square feet, and that such square footage is not subject to adjustment regardless of whether portions of the City Property are hereafter leased or conveyed to other parties. The City Contribution as an Owner of Real Property is included within the City Contribution to Tempe Streetcar Project.

3.3. Ground Lessee Contribution. City and Ground Lessee acknowledge and agree that (a) the gross square footage of the enclosed areas of the building(s) intended for occupancy is expected to be as of the Effective Date, as determined pursuant to Section 3.2, 265,000 square feet, which amount shall be adjusted as necessary when building permits or certificates of occupancy (as applicable) have been issued, and (b) accordingly, the total annual contribution amount attributable to Ground Lessee pursuant to the Contribution Formula is twenty six thousand five hundred dollars (\$26,500), which amount shall be adjusted as necessary when building permits or certificates of occupancy (as applicable) have been issued, payable in twenty (20) equal annual installments, totaling five hundred and thirty thousand dollars (\$530,000), which amount shall be adjusted as necessary when building permits or certificates of occupancy (as applicable) have been issued (the "**Contribution**").

3.3.1. Payment Schedule. City is obligated to, and it shall be a condition precedent to the obligation of Ground Lessee to pay the Contribution that City shall have made payments to Valley Metro equal to seventy five percent (75%) of the City Contribution to Tempe Streetcar Project (collectively, the "**Condition Precedent**") with the City thereafter remaining obligated to fund the balance of the City Contribution to Tempe Streetcar Project on or before January 31, 2020 (the "**Funding Deadline**"). Upon written notice by City to Ground Lessee, on or before the Funding Deadline, that City has satisfied the Condition Precedent, as provided for in the preceding sentence of this Section 3.3.1, and provided evidence of the same, then and in such event Ground Lessee shall pay the initial annual installment of the Contribution on or before the date that is twenty four (24) months after the final certificate of occupancy is issued for all of the residential portions of the improvements to be constructed on the Property by Ground Lessee (the "**Payment Date**"). Thereafter Ground Lessee shall pay each subsequent annual installment on or before the Payment Date of each succeeding calendar year until the Contribution is paid in full; provided, however, that if City fails to timely pay the City Contribution as and when due pursuant to the first sentence of this Section 3.3.1, Ground Lessee shall have no obligation to pay any installment(s) following the failure until City has cured the same. If the Condition Precedent has not been satisfied and the written notice by City to Ground Lessee provided on or before the Funding Deadline, this Agreement shall automatically terminate and be of no further force or effect, without further action or notice by or on the part of City or Ground Lessee.

3.3.2. Default Interest. Any installment not timely paid hereunder shall bear interest, from the date of delinquency until paid in full, at a rate equal to the consensus prime rate of interest, as published in the Wall Street Journal from time to time (or, in the event such consensus prime rate is no longer published by the Wall Street Journal, a published consensus

prime rate or equivalent measure selected by City in its reasonable discretion), plus five percent (5%) ("**Default Interest Rate**").

3.3.3. Prepayment. Notwithstanding anything herein to the contrary, at any time, Ground Lessee may pay the unpaid balance of the Contribution amount, in full, to City, whereupon this Agreement shall automatically terminate and be of no further force or effect, without further action or notice by or on the part of City or Ground Lessee; provided, however, any reimbursement obligation to Ground Lessee thereafter arising pursuant to Section 3.4 hereof shall survive any such termination.

3.4. Contribution Construction Account. City shall cause all payments of the Contribution to be deposited in a separate account established for such purpose (the "**Contribution Construction Account**").

3.4.1. Administration of Contribution Construction Account. All amounts deposited in the Contribution Construction Account and any earnings thereon shall be used exclusively to reimburse City for monies previously disbursed by City to pay the City Contribution to Tempe Streetcar Project, except as hereinafter provided:

3.4.1.1. **Tempe Streetcar Project Discontinued.** If construction of the Tempe Streetcar Project has not commenced on or before the Funding Deadline, City shall promptly notify Ground Lessee, in which case Ground Lessee shall have no further payment obligations hereunder, and, any portion of the Contribution previously paid by Ground Lessee shall be reimbursed within sixty (60) days, whereupon this Agreement shall automatically terminate and be of no further force or effect, without further action or notice by or on the part of City or Ground Lessee. For purposes of this Section, construction of the Tempe Streetcar Project shall be deemed to have commenced when (a) construction plans have been approved by all entities having jurisdiction over the design of the Tempe Streetcar Project, (b) a contract has been executed with the party who will construct the Tempe Streetcar Project, and (c) meaningful physical construction on the Tempe Streetcar Project has commenced.

3.4.1.2. **Funding Surplus.**

(a) If, upon completion of the construction of the Tempe Streetcar Project, it is determined that the City Contribution to Tempe Streetcar Project is less than the sum total of the Owners' aggregate annual contribution obligations and the City Contribution as an Owner of Real Property ("**Funding Surplus**"), each Owner (including Ground Lessee) shall receive a credit against such Owners' outstanding contribution obligations in an amount equal to such difference, which credit shall be allocated among the Owners in proportion to their respective contribution obligations, and applied against the last remaining installment and, if applicable, the next prior installment or installments payable by each such Owner until such credit is exhausted; provided, if any Owner has paid its contribution in full or otherwise receives a credit which is in excess of the aggregate amount of the remaining unpaid contribution of such Owner, such excess shall be reimbursed to such Owner (including Ground Lessee) from any excess funds then on hand or as and when received by City, in the future, upon payment of outstanding installments by other Owners (in excess of their respective credit amounts).

(b) If the Tempe Streetcar Project is discontinued prior to completion of the construction thereof and a Funding Surplus exists, then and in such event, each Owner (including Ground Lessee) shall receive a credit against such Owners' outstanding contribution obligations in an amount equal to such Funding Surplus, which credit shall be allocated among the Owners in proportion to their respective contribution obligations, and applied against the last remaining installment and, if applicable, the next prior installment or installments payable by each such Owner until such credit is exhausted; provided, if any Owner has paid its contribution in full or is otherwise entitled to receive a credit which is in excess of the aggregate amount of the remaining unpaid contribution of such Owner, such excess shall be reimbursed to such Owner (including Ground Lessee) from any excess funds then on hand or as and when received by City in the future.

(c) For the avoidance of doubt, a Funding Surplus triggering City's obligation to make the reimbursement payments required pursuant to this Section 3.4.1.2 would only occur if and when all Owners' contributions that have and/or should have been made (including the City Contribution as an Owner of Real Property) are greater than the City Contribution to Tempe Streetcar Project.

3.4.1.3. **City Payment and Collection Obligations.** City is responsible for payment of the City Contribution to Tempe Streetcar Project if any of the Owners do not make their payments. City will exercise commercially reasonable best efforts to obtain payments from all Owners who now or hereafter are parties to agreements with City in respect of the Tempe Streetcar Project and to enter into such agreements, on substantially the same terms contained in this Agreement, with current and future commercial Owners, as and when applicable. Without limitation of the foregoing, City shall not enter into any agreement in respect of the Tempe Streetcar Project on terms which are more favorable to another Owner, in any material respect, without first offering in writing and with reasonable notice the opportunity to Ground Lessee to amend this Agreement to include such terms and, in the event City, now or hereafter, enters into an agreement with an Owner on terms which are more favorable to such Owner in any material respect than the terms of this Agreement without first offering such opportunity to Ground Lessee, then, at the election of Ground Lessee, this Agreement shall be deemed amended in applicable part to extend to Ground Lessee the full benefit of such terms (including, as applicable, Ground Lessee shall be entitled to a credit or other adjustment to account for and reconcile any prior payment or performance by Ground Lessee pursuant to less favorable terms).

4. DEFAULT; REMEDIES

4.1. Default. It shall be a default hereunder if a Party fails to perform any of its obligations hereunder and: (a) if such failure to perform is the failure to pay any amount payable hereunder as and when due, such failure continues for a period of ten (10) business days after written notice from the non-defaulting Party, provided, in the event there have been two or more prior failures to timely pay, immediately upon such failure to pay, or (b) if such failure to perform is the failure to perform a non-monetary obligation, such failure continues for a period of thirty (30) days after written notice from the non-defaulting Party specifying in reasonable detail the nature of the failure, provided, if the nature of the default is such that it cannot reasonably be cured within the thirty-day period, no default shall be deemed to exist if the

defaulting Party commences a cure within that thirty-day period and diligently and expeditiously pursues such cure to completion within ninety (90) days.

4.2. Ground Lessee Defaults. In addition to the foregoing, it shall be a default hereunder if: (a) Ground Lessee makes an assignment for the benefit of creditors; (b) a receiver takes possession of the Property; or (c) the dissolution or termination of existence of Ground Lessee occurs unless its successor by transfer or operation of law is continuing the business of operating the Property.

4.3. Remedies. If a Party is in default under this Agreement, the non-defaulting Party shall have the right to pursue all legal and equitable remedies which such Party may have at law or in equity, including, without limitation, the right to seek specific performance and, in the case of City, to collect interest at the Default Interest Rate (if applicable); provided, in no event shall any Party be liable for incidental, consequential, punitive, special, speculative or similar damages or any monetary damages other than actual damages (and each Party hereby waives the right to pursue an award of damages other than actual damages). Notwithstanding anything contained in the foregoing or elsewhere in this Agreement to the contrary, the City acknowledges and agrees that: (a) Ground Lessee, not Ground Lessor, shall be solely responsible for payment of all obligations arising under this Agreement, including but not limited to, payment of the Contribution; (b) no lien or assessment arising out of such obligations or the Contribution shall attach to the Property; (c) the provisions of this Agreement are not covenants running with or binding on the Property; and (d) the City's recourse for any breach or default by the Ground Lessee under the terms and conditions of this Agreement shall be solely against the Ground Lessee, not against the Property or Ground Lessor.

5. GENERAL PROVISIONS

5.1. No Partnership. Nothing in this Agreement is intended or shall be construed to create a joint venture, partnership, agency, or fiduciary relationship between City and Ground Lessee.

5.2. No Third Party Beneficiary. This Agreement is intended solely for the benefit of City and Ground Lessee and their respective successors and assigns, and no other party shall have any rights or interest in this Agreement or, except Valley Metro, the Contribution Construction Account.

5.3. No Personal Liability of Ground Lessee. No former, current or future member, shareholder, director, partner, manager, officer or employee of Ground Lessee shall be personally liable to City, or any successor or assignee, (a) in the event of any default or breach by the Ground Lessee, (b) for any amount which may become due to City or its successor or assign, or (c) pursuant to any obligation of Ground Lessee under the terms of this Agreement.

5.4. No Personal Liability of City. No former, current or future member, official or employee of City shall be personally liable to Ground Lessee, or any successor or assignee, (a) in the event of any default or breach by City, (b) for any amount which may become due to the

portion of the Property, the prorata share thereof based on the square footage of the improvements conveyed to the transferee). The transferee shall provide City with the name, address and designated representative of such successor transferee. Upon any such transfer, the transferor shall be released from all accrued and unaccrued obligations or liabilities arising under this Agreement with respect to the portion of the Property conveyed. This Agreement shall be binding upon and accrue to the benefit of the Parties and Ground Lessee's successors and assigns.

5.8 Waiver. No waiver by either Party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

5.9 Severability. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law, provided that the overall intent of the parties is not materially vitiated by such severability.

5.10 Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

5.11 Further Instruments. Each of the Parties hereto shall execute and deliver such documents or instruments as the other Party shall reasonably request in order to consummate the transactions contemplated by this Agreement.

5.12 Attorneys' Fees. In the event of any actual litigation between the Parties in connection with this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury and be included in the decision, order or judgment, as applicable. If both Parties are awarded relief, then the award for attorneys' fees shall be apportioned in the discretion of the court.

5.13 Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

5.14 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same agreement.

5.15 Recordation of Agreement. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after execution of this Agreement by City. At the request of Ground Lessee, City shall provide a recordable release or termination of

this Agreement upon the expiration of the Term or prior termination of the Agreement in form reasonably acceptable to Ground Lessee.

5.16 City Manager's Power to Consent. City authorizes and empowers the City Manager to consent to any and all requests of the Ground Lessee requiring the consent of City hereunder without further action of the City Council, except for any actions requiring City Council approval as a matter of law, including, without limitation, any amendment or modification of this Agreement.

5.17 Estoppel Certificate. Within thirty (30) days after receipt of written request therefor from the other Party, City or Ground Lessee, as the case may be, shall execute, acknowledge and deliver to the requesting Party and/or its lender a statement certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect), and acknowledging that there are not, to the certifying Party's knowledge, any uncured defaults on the part of the other Party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied on by any auditor of either Party, or by any prospective purchaser of the Property.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on or as of the day and year first above written.

ATTEST:

"CITY"

THE CITY OF TEMPE, an Arizona municipal corporation

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

By _____
Mark W. Mitchell, Mayor

Judith R. Baumann, City Attorney

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 201_, by _____, the Mayor of the City of Tempe.

Notary Public

My Commission Expires:

"GROUND LESSEE"

Omni Tempe, LLC, a Delaware limited liability company

By: _____
Name _____
Title _____

STATE OF DELEWARE)
)
COUNTY OF _____) ss

The foregoing instrument was acknowledged before me this ____ day of _____, 201_ by _____, _____ of Omni Tempe, LLC, a Delaware limited liability company.

Notary Public

My Commission Expires:

LIST OF EXHIBITS AND SCHEDULES

- Exhibit "A" - Legal Description of Property
- Exhibit "B" - Description of Tempe Streetcar Project

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Wood, Patel & Associates, Inc.
 (480) 834-3300
 www.woodpatel.com

October 30, 2017
 WP# 1645550.01
 Page 1 of 2

PARCEL DESCRIPTION
ASU Blocks 22/27
Parcel B

A portion of Block 22 of Gage Addition to Tempe, Arizona as shown on the Final Plat recorded in Book 3, page 58, Maricopa County Records (M.C.R.), and Amended Plat recorded in Book 8, page 41, M.C.R., lying within Section 22, Township 1 North, Range 4 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the intersection of Mill Avenue and University Drive (8th Street) as shown on said Final Plat, a 3-inch City of Tempe brass cap in handhole, from which the intersection of University Drive (8th Street) and Myrtle Avenue, a 3-inch City of Tempe brass cap in handhole, bears North 89°48'20" East (basis of bearing), a distance of 561.84 feet;

THENCE along the centerline of said University Drive (8th Street), North 89°48'20" East, a distance of 323.05 feet;

THENCE leaving said centerline, South 00°11'40" East, a distance of 33.00 feet, to the south right-of-way line of said University Drive (8th Street) and the **POINT OF BEGINNING**;

THENCE leaving said south right-of-way line, South 00°32'39" East, a distance of 371.34 feet, to the beginning of a curve;

THENCE southwesterly along said curve to the right, having a radius of 93.50 feet, concave northwest, through a central angle of 62°23'57", a distance of 101.83 feet, to a point of intersection with a non-tangent line;

THENCE South 89°37'34" West, a distance of 167.79 feet, to the east right-of-way line of Mill Avenue;

THENCE along said east right-of-way line, North 00°35'54" West, a distance of 440.03 feet;

THENCE North 44°36'13" East, a distance of 21.14 feet, to said south right-of-way line;

THENCE leaving said east right-of-way line, along said south right-of-way line, North 89°48'20" East, a distance of 203.40 feet, to the **POINT OF BEGINNING**.

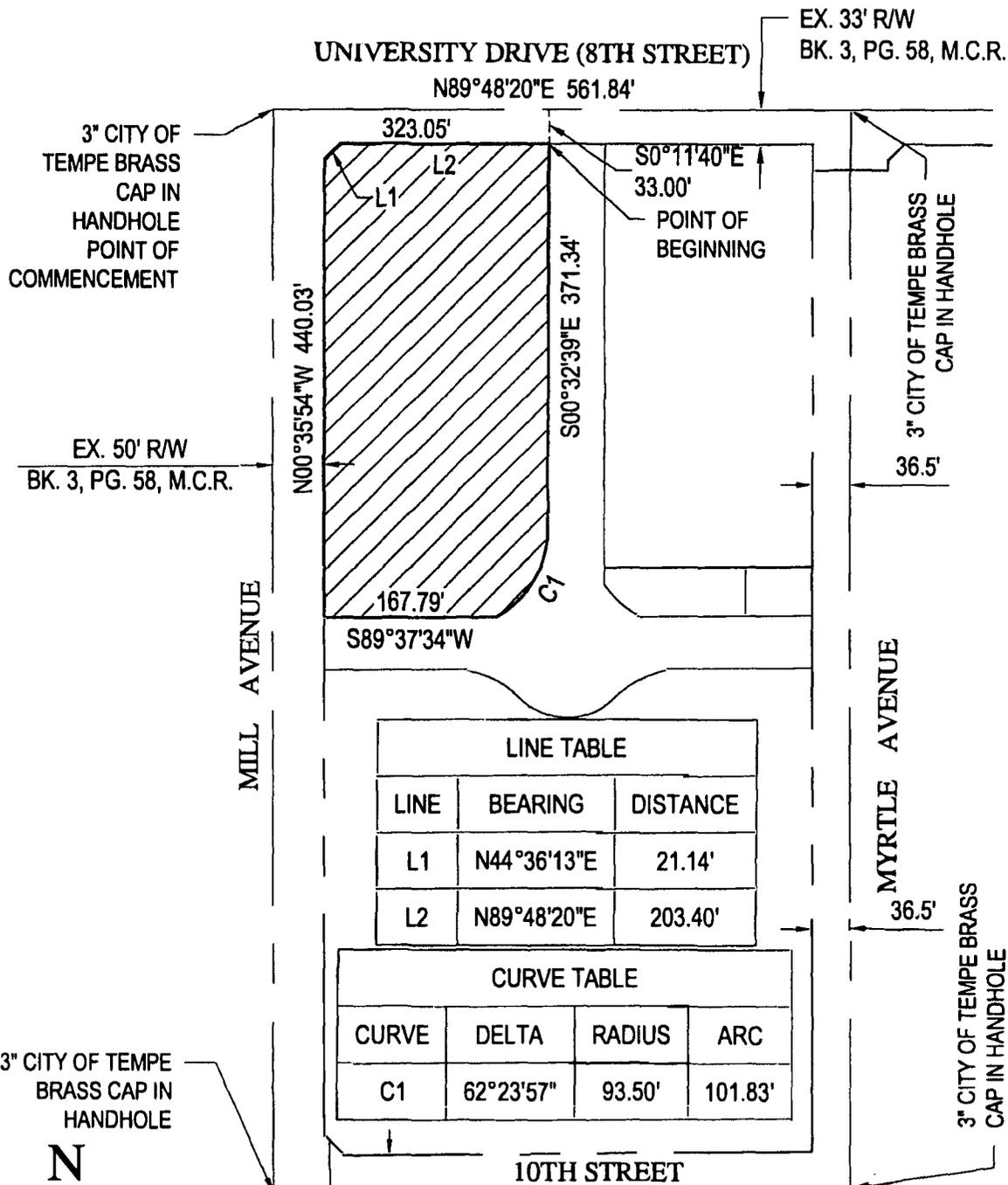
Containing 97,897 square feet or 2.2474 acres, more or less.

Subject to existing rights-of-way and easements.

This parcel description is based on the Final Plat of Gage Addition to Tempe, Arizona, recorded in Book 3, page 58, M.C.R. and Amended Plat recorded in Book 8, page 41, M.C.R., and other client provided information. This parcel description is located within an area surveyed by Wood, Patel and Associates, Inc. during the month of July, 2013. Any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey

Y:\WP\Parcel Descriptions\2016 Parcel Descriptions\164555 01 ASU Block 22-27 Parcel B L04 10-30-17 docx





EX. 50' R/W
BK. 3, PG. 58, M.C.R.

EX. 33' R/W
BK. 3, PG. 58, M.C.R.

UNIVERSITY DRIVE (8TH STREET)
N89°48'20"E 561.84'

3" CITY OF TEMPE BRASS CAP IN HANDHOLE POINT OF COMMENCEMENT

3" CITY OF TEMPE BRASS CAP IN HANDHOLE
36.5'

MILL AVENUE

MYRTLE AVENUE

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N44°36'13"E	21.14'
L2	N89°48'20"E	203.40'

CURVE TABLE			
CURVE	DELTA	RADIUS	ARC
C1	62°23'57"	93.50'	101.83'

3" CITY OF TEMPE BRASS CAP IN HANDHOLE

3" CITY OF TEMPE BRASS CAP IN HANDHOLE

10TH STREET



WOOD/PATEL
MISSION: CLIENT SERVICE •
(480) 834-3300
WWW.WOODPATEL.COM



ASU BLOCKS 22/27
PARCEL B
10/30/2017
WP# 164555.01
PAGE 2 OF 2
NOT TO SCALE

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Exhibit B, entitled "Description of Tempe Streetcar Project", has been removed for recording. A true and correct copy is on file with, and can be obtained from, the Tempe City Clerk, 31 East Fifth Street, Tempe, AZ 85281.