

LAND AND IMPROVEMENTS LEASE

C2007-212E

THIS LAND AND IMPROVEMENTS LEASE ("Lease") is made and entered into as of the 5th day of September, 2013 by and between the CITY OF TEMPE, a municipal corporation ("Landlord"), and TEMPE RI, LLC, a Delaware limited liability company ("Tenant").

RECITALS

- A. Landlord has title of record to the real property as described in *Exhibit A* hereto (the "Land"), together with all rights and privileges appurtenant thereto and all improvements and future additions thereto or alterations thereof (collectively, the "Premises").
- B. The Premises are located in a single central business district in a redevelopment area established pursuant to Title 36, Chapter 12, Article 3 of Arizona Revised Statutes (A.R.S. §§36-1471 et seq.). Tenant's construction of the Premises resulted in an increase in property value of at least one hundred percent.
- C. The Premises will be subject to the Government Property Lease Excise Tax as provided for under A.R.S. §42-6201 et. seq. (the "Tax"). By Resolution No. 2008.107, dated January 8th 2009, Landlord abated the Tax upon the Premises for the period beginning upon the issuance of the certificate of occupancy for the Premises and ending eight (8) years thereafter, as provided in A.R.S. §42-6209 (A) ("Abatement") and reduced the rate of the Tax applicable to the Premises for the period of seven (7) years following the Abatement period, as provided in A.R.S. §42-6203 (the "Rate Reduction"). But for the Abatement, Tenant would not have caused the Premises to be constructed.

AGREEMENT

For and in consideration of the rental and of the covenants and agreements hereinafter set forth to be kept and performed by Tenant, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises for the term, at the rental and subject to and upon all of the terms, covenants and agreements hereinafter set forth.

1. Quiet Enjoyment. Landlord covenants and agrees with Tenant that conditioned upon Tenant paying the rent and Tenant not being in default beyond any applicable notice or cure period of any of the covenants, agreements, conditions and

provisions of this Lease or any then surviving terms of that certain Development and Disposition Agreement [c2007-212] dated December 13, 2007, and recorded as Instrument No. 2008-0093738, Official Records of Maricopa County, Arizona, between Landlord and Tenant and that certain First Amendment to Development and Disposition Agreement (c2007-212d) dated January 8, 2009, and recorded as instrument No. 2009-0091924, Official Records of Maricopa County, Arizona (as amended), Tenant may at all times during the term hereof peaceably, quietly and exclusively have, hold and enjoy the Premises.

2. Term. The term of this Lease shall be for fifteen (15) years, commencing on the date a Certificate of Occupancy is issued for the building (the "**Commencement Date**"), and ending at midnight on the fifteenth anniversary of the Commencement Date, subject to earlier termination at Tenant's option, as provided herein.

3. Administrative Fee; Acceleration on Termination. Tenant covenants to pay to Landlord as base rental for the Premises the sum of \$359,764.00 per annum ("Base Rent"), commencing on the day which is six (6) months following the day the Commencement Date occurs (the "**Rent Commencement Date**") and continuing on each anniversary of the Rent Commencement Date until Tenant has paid the sum of \$5,396,466 in full. In addition to the foregoing amounts, during the property tax abatement period under A.R.S. §§ 42-6201 through 42-6209 Tenant shall pay on the Rent Commencement Date and each anniversary thereof an annual in-lieu payment to Landlord of \$50,000.00 per year during each year in which the Abatement is in place, but not during the period when the Rate Reduction is effective. The consideration for this Lease includes, without limitation: Tenant's payment of the entire cost of construction of the improvements constituting the Premises, Tenant's performance of all of the covenants and obligations under this Lease and Tenant's contribution toward fulfillment of Landlord's policy and desire to promote development within a redevelopment area, to encourage the creation of jobs within the City of Tempe, and to enhance tax revenues resulting from the operation of businesses on the Premises, including transaction privilege taxes and the government property lease excise tax. Tenant, at its option and without prejudice to its irrevocable right to terminate this Lease as provided herein, shall have the right to prepay the rental for the entire lease term, provided that notwithstanding any such prepayment, Landlord shall not be obligated to refund any portion of the prepaid rental in the event of any early termination of this Lease. Concurrently with each rent payment, Tenant shall pay to Landlord all federal, state and local excise, sales, privilege, gross receipts and other similar taxes lawfully imposed on or paid by Landlord as a result of any rent received by Landlord under this Lease, if any. If this Lease is terminated before the expiration of the term stated in Section 2, the unpaid balance of the Base Rent shall become immediately due and payable in full without deduction or offset of any kind and shall be prepaid in whole or in part without premium or penalty of any kind; provided that the future Base Rent payments shall be discounted to their present value utilizing a discount rate of four percent (4%). All Base Rent accruing from and after the date of any termination of this Lease discounted to then present value utilizing a four percent (4%) discount factor shall herein be referred to as the "Early Termination Rent Obligation."

4. Leasehold mortgage of premises; Management Agreement with respect to Premises.

4.1 Subject to the applicable provisions of this Lease, Tenant is hereby given the absolute right without Landlord's consent to create a security interest in tenant's leasehold interest under this Lease (and in any subleases and the rents, income and profits therefrom) by mortgage, deed of trust or collateral assignment or otherwise. Any such security interest shall be referred to herein as a "leasehold mortgage," and the holder of a leasehold mortgage shall be referred to herein as a "**Leasehold Mortgagee.**" Prior to the execution of this Lease, Tenant has obtained a construction loan in the amount of Twenty-two Million Five Hundred Thousand Dollars (\$22,500,000.00) from APF – Tempe, LLC ("**Initial Leasehold Mortgagee**") which loan is secured by a deed of trust upon Tenant's interest in the Lease. The Construction Loan is in part secured by a Credit Enhancement Agreement from Marriott International Capital Corporation ("**MICC**"). Tenant and MICC have also executed that certain Reimbursement Agreement pursuant to which Tenant has agreed to reimburse MICC for any sums advanced by MICC to Initial Leasehold Mortgagee under the Credit Enhancement Agreement. Such reimbursement obligation is secured by a pledge of all membership interests in Tenant to MICC. Landlord expressly acknowledges and agrees that MICC shall be considered a Leasehold Mortgagee for all purposes of this Lease.

4.2 No liability for the performance of Tenant's covenants and agreements hereunder shall attach to or be imposed upon any Leasehold Mortgagee, unless such Leasehold Mortgagee forecloses its interest and becomes the tenant hereunder, following which the liability (subject to the limitations on liability set forth herein, including without limitation those contained in Section 37) shall attach only to obligations accruing during the term of ownership of the leasehold estate by said Leasehold Mortgagee and/or required hereby for Leasehold Mortgagee to obtain such rights.

4.3 Landlord acknowledges that Tenant has entered into that certain Management Agreement dated as of December 31, 2007 (as amended, the "Management Agreement") with Residence Inn by Marriott, LLC ("**Manager**"). Manager serves as the manager of the Premises pursuant to the terms of the Management Agreement.

5. Taxes; Lease Obligations.

5.1 Payment. Subject to the Abatement, which relieves Tenant's obligation to pay the Tax for the eight (8) year period following the issuance of the Certificate of Occupancy, and subject to the Rate Reduction applicable during the subsequent seven year period, Tenant shall pay and discharge all general and special real estate and/or personal property taxes and assessments levied or assessed against or with respect to the Premises during the term hereof and all charges, assessments or other fees payable with respect to or arising out of this Lease and all recorded deed restrictions affecting or relating to the Premises. Any sales, use, excise or transaction privilege tax consequence incurred by

Landlord because of this Lease or in relation to the Premises or improvements included therein may be passed on to the Tenant either directly if applicable or as "additional rent."

5.2 Enhanced Services District Assessments. Tenant acknowledges that the Premises is located with an Enhanced Services District and that the Premises would otherwise be subject to an assessment that would normally be collected along with property taxes. In addition to all other amounts that Tenant is required to pay hereunder, Tenant shall pay to Landlord all amounts that would have been assessed against the Premises by reason of its inclusion in the Enhanced Service District, semiannually, within thirty (30) days after Landlord delivers to Tenant a written request payment of such amounts.

5.3 Protest. Tenant may, at its own cost and expense protest and contest, by legal proceedings or otherwise, the validity or amount of any such tax or assessment herein agreed to be paid by Tenant and shall first pay said tax or assessment under protest or provide a bond or other surety with respect to such tax if legally required as a condition to such protest and contest, and the Tenant shall not in the event of and during the bona fide prosecution of such protest or proceedings be considered as in default with respect to the payment of such taxes or assessments in accordance with the terms of this Lease.

5.4 Procedure. Landlord agrees that any proceedings contesting the amount or validity of taxes or assessments levied against the Premises or against the rentals payable hereunder may be filed or instituted in the name of Landlord or Tenant, as the case may require or permit, and the Landlord does hereby appoint the Tenant as its agent and attorney-in-fact, during the term of this Lease, to execute and deliver in the name of Landlord any document, instrument or pleading as may be reasonably necessary or required in order to carry on any contest, protest or proceeding contemplated in this Section. Tenant shall hold the Landlord harmless from any liability, damage or expense incurred or suffered in connection with such proceedings.

5.5 Allocation. All payments contemplated by this Section 5 shall be prorated for partial years at the Commencement Date and at the end of the Lease term.

6. Use. Subject to the applicable provisions of this Lease and A.R.S. §42-6201(2), the Premises may be used and occupied by Tenant for any lawful purpose, including without limitation the sale of alcoholic beverages, subject to Tenant obtaining all required permits, licenses, and approvals from the Arizona Department of Liquor Licenses and Control.

7. Landlord Non-Responsibility. Landlord shall have no responsibility, obligation or liability under this Lease whatsoever with respect to any of the following:

7.1 Utilities, including gas, heat, water, light, power, telephone, sewage, and any other utilities supplied to the Premises;

- A. DISRUPTION IN THE SUPPLY OF SERVICES OR UTILITIES TO THE PREMISES;
- B. MAINTENANCE, REPAIR OR RESTORATION OF THE PREMISES;
- C. ANY OTHER COST, EXPENSE, DUTY, OBLIGATION, SERVICE OR FUNCTION RELATED TO THE PREMISES.

8. Entry by Landlord. Landlord and Landlord's agents shall have the right at reasonable times and upon reasonable notice to enter upon the Premises for inspection, except that Landlord shall have no right to enter portions of any building on the Premises without consent of the occupant or as provided by law.

9. Alterations. Subject to the applicable provisions of this Lease, Tenant shall have the right to construct additional improvements and to make subsequent alterations, additions or other changes to any improvements or fixtures existing from time to time, and the Premises shall constitute all such improvements as they exist from time to time. In connection with any action which Tenant may take with respect to Tenant's rights pursuant hereto, Landlord shall not be responsible for and Tenant shall pay all costs, expenses and liabilities arising out of or in any way connected with such improvements, alterations, additions or other changes made by Tenant, including without limitation materialmen's and mechanic's liens. If any lien or encumbrance (other than those permitted hereunder or liens otherwise authorized by Landlord in writing) is filed against the Premises, within thirty (30) days of the date that Landlord or Tenant receives notice or otherwise becomes aware of the same, whichever occurs first, Tenant shall have such lien released or bonded. Tenant covenants and agrees that Landlord shall not be called upon or be obligated to make any improvements, alterations or repairs whatsoever in or about the Premises, and Landlord shall not be liable or accountable for any damages to the Premises or any property located thereon. Tenant shall have the right at any time to demolish or substantially demolish improvements located upon the Premises. No such alteration or demolition shall have any impact on Tenant's obligation to pay the Base Rent or and other sums required to be paid to Landlord under this Lease. In making improvements and alterations, Tenant shall not be deemed Landlord's agent and shall hold Landlord harmless from any expense or damage Landlord may incur or suffer. During the term of this Lease, title to all improvements shall at all times be vested in Landlord.

10. Easements, Dedications and Other Matters. At the request of Tenant, and provided that no Event of Default shall have then occurred and be continuing, Landlord shall dedicate or initiate a request for dedication to public use of the improvements owned by Landlord within any roads, alleys or easements and convey any portion so dedicated to the appropriate governmental authority, execute (or participate in a request for initiation by the appropriate commission or department of) petitions seeking annexation or change in zoning for all or a portion of the Premises, consent to the making and recording, or either, of any map, plat, condominium documents, or declaration of covenants, conditions and restrictions

of or relating to the Premises or any part thereof, join in granting any easements on the Premises, and execute and deliver (in recordable form where appropriate) all other instruments and perform all other acts reasonably necessary or appropriate to the development, construction, demolition, redevelopment or reconstruction of the Premises.

11. Insurance. During the term of this Lease, Tenant shall, at Tenant's expense, maintain general public liability insurance against claims for personal injury, death or property damage occurring in, upon or about the Premises. The limitation of liability of such insurance during the term shall not be less than \$5,000,000.00 combined single limit. All of Tenant's policies of liability insurance shall name Landlord and all Leasehold Mortgagees as additional insureds, and, at the written request of Landlord, certificates with respect to all policies of insurance or copies thereof required to be carried by Tenant under this Section 11 shall be delivered to Landlord. Each policy shall contain an endorsement prohibiting cancellation or non-renewal without at least thirty (30) days prior notice to Landlord (ten (10) days for nonpayment). Tenant may self-insure the coverages required by this Section with the prior approval of Landlord, which will not be unreasonably withheld, and may maintain such reasonable deductibles and retention amounts as Tenant may determine. If evidence of continuing coverage is not timely delivered to Landlord and such failure continues for ten (10) days following written notice to Tenant, Landlord shall have the right to obtain such coverage for Tenant at Tenant's sole cost and expense. Any sums so paid by Landlord may be repaid by Tenant within ten (10) days following written demand therefor from Landlord.

12. Liability; Indemnity. Tenant covenants and agrees that Landlord is to be free from liability and claim for damages by reason of any injury to any person or persons, including Tenant, or property of any kind whatsoever and to whomsoever while in, upon or in any way connected with the Premises during the term of this Lease or any extension hereof, or any occupancy hereunder, Tenant hereby covenanting and agreeing to indemnify, defend and save harmless Landlord from all liability, loss, costs and obligations on account of or arising out of any such injuries or losses, however occurring, unless caused by the sole and gross negligence or willful misconduct of Landlord, its agents, employees, or invitees. Landlord agrees that Tenant shall have the right to contest the validity of any and all such claims and defend, settle and compromise any and all such claims of any kind or character and by whomsoever claimed, in the name of Landlord, as Tenant may deem necessary, provided that the expenses thereof shall be paid by Tenant. The provisions of this Section shall survive the expiration or other termination of this Lease for a period of two years.

13. Fire and Other Casualty. If all or any improvements or fixtures within the Premises shall be totally or partially destroyed or damaged by fire or other insurable casualty, then, at Tenant's election, either: (i) this Lease shall continue in full force and effect, and, subject to the applicable provisions of this Lease, Tenant, at Tenant's sole cost and expense, may, but shall not be obligated to, rebuild or repair the same; or (ii) this Lease shall terminate with respect to all of the Premises or to such portions of the Premises as Tenant may elect, in which event Tenant shall pay to Landlord the Early Termination Rent Obligation. Landlord and Tenant agree that the provisions of A.R.S. § 33-343 shall not

apply to this Lease. If, subject to the applicable provisions of this Lease, Tenant elects to repair or rebuild the improvements, any such repair or rebuilding shall be performed at the sole cost and expense of Tenant. If there are insurance proceeds resulting from such damage or destruction, Tenant shall be entitled to such proceeds, whether or not Tenant rebuilds or repairs the improvements or fixtures, subject to the applicable provisions of any Leasehold Mortgage. Tenant's obligation to pay Base Rent and other amounts payable to Landlord under this Lease shall not be abated as a result of any fire or other casualty loss to the Premises.

14. Condemnation.

14.1 Entire or Partial Condemnation. If the whole or any part of the Premises shall be taken or condemned by any competent authority for any public use or purposes during the term of this Lease, this Lease shall terminate with respect to the part of the Premises so taken and any other portion of the Premises as may be specified by tenant, and, subject to the applicable provisions of this Lease, Tenant reserves unto itself the right to claim and prosecute its claim in all appropriate courts and agencies for any award or damages based upon loss, damage or injury to its leasehold interest (as well as relocation and moving costs). In consideration of Tenant's payment for all of the cost of construction of the improvements constituting the Premises, Landlord hereby assigns to Tenant all claims, awards and entitlements relating to the Premises arising from the exercise of the power of condemnation or eminent domain; provided that Landlord shall be entitled to be paid the amount due on the full or partial termination of this Lease pursuant to Section 3.

14.2 Continuation of Lease. In the event of a taking of less than all of the Premises, this Lease shall continue in effect with respect to the portion of the Premises not so taken or specified by Tenant to be removed from this Lease. If Tenant has made a partial payment to Landlord from the condemnation proceeds of an amount allocable to future rent, then the rent payable during the remaining term of the Lease shall be equitably adjusted to reflect the value of the payment so received.

14.3 Temporary Taking. If the temporary use of the whole or any part of the Premises or the appurtenances thereto shall be taken, neither the term of this Lease nor the rent payable hereunder shall be reduced or affected in any way. The entire award of such taking (whether paid by way of damages, rent, or otherwise) shall be payable to Tenant, subject to the applicable provisions of this Lease and of any Leasehold Mortgage.

14.4 Notice of Condemnation. If any action is filed to condemn the Premises or Tenant's leasehold estate or any part thereof by any public or quasi-public authority under the power of eminent domain or if an action is filed to acquire the temporary use of the Premises or Tenant's leasehold estate or any part thereto, or in the event that action is threatened or any public or quasi-public authority communicates to Landlord or Tenant its desire to acquire the temporary use thereof, by a voluntary conveyance or transfer in lieu of condemnation, either Landlord or Tenant shall give prompt notice thereof to the other and to any Leasehold Mortgagee. Landlord, Tenant and each Leasehold Mortgagee shall each have

the right, at its own cost and expense, to represent its respective interest in each proceeding, negotiation or settlement with respect to any taking or threatened taking. No agreement, settlement, conveyance or transfer to or with the condemning authority affecting Tenant's leasehold interest shall be made without the consent of Tenant and each Leasehold Mortgagee.

15. Termination Option.

15.1 Grant of Option. In the event changes in applicable law nullify, remove, or vitiate the economic benefit to Tenant provided by this Lease or if any person or entity succeeds to Tenant's interest hereunder by foreclosure sale, trustee's sale, or deed in lieu of foreclosure (collectively, "Foreclosure"), or if Tenant, in its sole and absolute discretion, so elects, at any time, Tenant or Tenant's successor by Foreclosure shall have the "Option", exercisable by written notice to Landlord, and payment of the Early Termination Rent Obligation, to terminate this Lease as to the entire Premises or as to such portions of the Premises as Tenant may specify effective thirty (30) days after the date of the notice so long as the unpaid rent has been paid by said date. Upon default under the Leasehold Mortgage (after giving effect to all applicable notice and cure rights), Leasehold Mortgagee shall have the option, exercisable by written notice to Landlord, to terminate this Lease effective thirty (30) days after the date of the notice. If the Early Termination Rent Obligation has been paid in full within such 30-day period, then Landlord shall execute and deliver to the person entitled thereto, a deed reconveying title to the Premises (including all improvements constituting a part thereof) to Tenant, the Leasehold Mortgagee or Tenant's successor by Foreclosure, as applicable, and Landlord shall comply with the obligations under Article 31. In accordance with Section 3 hereof, the rent for the remaining term of the Lease shall be immediately due and payable on any early termination of the Lease, and Landlord shall not be required to effect any such early termination or reconveyance unless and until it has received payment in full; provided that any future rent obligations shall be discounted to their present value utilizing a discount rate of four percent (4%).

15.2 Leasehold Mortgagees and Tenant. If there are any Leasehold Mortgagees as defined in Section 4.1, Tenant may not terminate, modify or waive its Option under this section without the written approval of the Leasehold Mortgagees, and Landlord will not recognize or consent thereto without such approval.

16. Assignment; Subletting.

16.1 Transfers by Tenant. At any time and from time to time when no default exists hereunder which has continued beyond any applicable notice or cure period, Tenant shall have the right to assign the Lease and Tenant's leasehold interest or to sublease all of or any part of the Premises to any person or persons for any use permitted under this Lease, provided that Landlord has received prior written notice of such transfer from Tenant and Landlord has not objected to such transfer within five (5) business days following receipt of written notice from Tenant of such transfer which notice shall include the name of the

assignee and be accompanied by financial statements or other evidence that the subsequently-described conditions have been satisfied; provided that Landlord may only object if (i) the Premises will no longer be operated as a Residence Inn by Marriott or a reasonably comparable or superior hotel brand, (ii) the transferee would engage in activities at the Premises which in Landlord's reasonable opinion, would be offensive to community standards or (iii) Manager or a substitute manager reasonably acceptable to Landlord would no longer manage the Premises. If Landlord fails to object in writing to a proposed assignment specifying one of the foregoing matters as the grounds of such objection, Landlord shall be deemed to have waived its right to object to the proposed transfer. Tenant may sublease those portions of the Premises which are intended to be occupied by retail tenants on such terms and conditions as it may desire without Landlord's consent.

16.2 Liability. Each assignee hereby assumes all of the obligations of the Tenant under the Lease (but not for liabilities or obligations arising prior to such assignment becoming effective). So long as Manager or a substitute manager reasonably acceptable to Landlord will continue to manage the Premises, such assignment shall serve to automatically release the assignor from any personal liability in respect of any obligations or liabilities arising under the Lease from and after the date of assignment, and Landlord shall not seek recourse for any such liability against any assignor. Landlord agrees that performance by a subtenant or assignee of Tenant's obligations under this Lease shall satisfy Tenant's obligations hereunder and Landlord shall accept performance by any such subtenant, but Tenant shall not be released of any obligation until Landlord has been paid the full amount of the rent due under Section 3, except as otherwise provided above.

17. Default Remedies; Protection of Manager, Leasehold Mortgagee and Subtenants.

17.1 Default. The failure by Tenant to observe and perform any (i) covenant under this Lease to make a monetary payment to Landlord, where such failure continues for fifteen (15) days following written notice from Landlord to Tenant and any Leasehold Mortgagee of which Landlord has been given notice or (ii) other material provision of this Lease to be observed or performed by Tenant and Leasehold Mortgagee where such failure continues for ninety (90) days after written notice thereof by Landlord to Tenant (provided, however, that if the nature of any non-monetary default is such that the same cannot reasonably be cured within such ninety (90) day period, no Event of Default shall be deemed to have occurred if Tenant commences a cure within thirty (30) days following receipt of notice of such default and thereafter diligently prosecute the same to completion), shall constitute an "Event of Default".

17.2 Remedies. On the occurrence of an Event of Default, Landlord may at any time thereafter, without further notice or demand, Landlord may exercise any right or remedy available at law or in equity, including without limitation, but subject to the further provisions of this Lease, the right to terminate this Lease, in which case Tenant shall immediately surrender possession of the Premises to Landlord; re-enter the Premises, without terminating this Lease or Tenant's right to possession, and enforce all of its rights and

remedies under this Lease, including the right to recover the rent and all other amounts due hereunder as they become due (provided that no re-entry or taking possession of the Premises or other action on Landlord's part shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction). All remedies provided for herein shall be deemed cumulative and not exclusive, and may be exercised concurrently.

Upon the occurrence of an Event of Default, Landlord agrees not to terminate the Lease or Tenant's right of possession if and so long as Manager is not in default of its obligations under the Management Agreement and Manager exercises its right to cure the Event of Default pursuant to Section 20 and thereafter performs all obligations of Tenant hereunder. If Landlord elects to terminate this Lease, then Landlord shall be entitled solely to recover from Tenant the Early Termination Rent Obligation, plus interest on any past due rent or other monetary payments past due hereunder at the rate of 10% per annum, plus any other direct damages incurred by Landlord that are proximately caused by Tenant's failure to perform its obligations under this Lease;. Landlord agrees to accept payment of all such sums as a cure of all outstanding monetary Events of Default entitling Tenant to reinstatement of the Lease.

This section constitutes the provision required under A.R.S. §42-6206(2) that failure by the prime lessee to pay the Tax after notice and an opportunity to cure is an event of default that could result in divesting the prime lessee of any interest or right or occupancy of the government property improvement.

17.3 Leasehold Mortgagee Default Protections. If any Leasehold Mortgagee shall give written notice to Landlord of its Leasehold Mortgage, together with the name and address of the Leasehold Mortgagee, then, notwithstanding anything to the contrary in this Lease, until the time, if any, that the Leasehold Mortgage shall be satisfied and released of record or the Leasehold Mortgagee shall give to Landlord written notice that said Leasehold Mortgage has been satisfied, Landlord shall provide written notice of any default under this Lease to Leasehold Mortgagee and Leasehold Mortgagee shall have the rights described in Section 20 of this Lease.

18. No act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender, amend, or modify this Lease or Tenant's right to possession shall be binding upon or effective as against the Leasehold Mortgagee without its prior written consent.

19. If Landlord shall give any notice, demand, election or other communication required hereunder (hereafter collectively, "Notices") to Tenant hereunder, Landlord shall concurrently give a copy of each such Notice to the Leasehold Mortgagee at the address designated by the Leasehold Mortgagee and to Manager at the address specified by Manager. Such copies of Notices shall be sent by registered or certified mail, return receipt requested, and shall be deemed given seventy-two hours after the time such copy is deposited in a United States Post Office with postage charges prepaid, addressed to the Leasehold

Mortgagee. No Notice given by Landlord to Tenant shall be binding upon or affect Tenant or the Leasehold Mortgagee unless a copy of the Notice shall be given to the Leasehold Mortgagee pursuant to this subsection. In the case of an assignment of the Leasehold Mortgage or change in address of the Leasehold Mortgagee, the assignee or Leasehold Mortgagee, by written notice to Landlord, may change the address to which such copies of Notices are to be sent.

20. The Manager shall have the right for a period of thirty (30) days after the expiration of any grace period afforded Tenant hereunder to perform any term, covenant, or condition and to remedy any Event of Default by Tenant hereunder. Each Leasehold Mortgagee shall have the right for a period of sixty days after the expiration of any grace period afforded Tenant hereunder to perform any term, covenant, or condition and to remedy any Event of Default by Tenant hereunder or such longer period as the Leasehold Mortgagee may reasonably require to affect a cure. Landlord shall accept performance by the Manager or Leasehold Mortgagee with the same force and effect as if furnished by Tenant, and the Leasehold Mortgagee or Manager, as applicable, shall thereby and hereby be subrogated to the rights of Landlord. The Leasehold Mortgagee shall have the right to enter upon the Premises to give such performance.

21. In case of an Event of Default by Tenant in the performance or observance of any nonmonetary term, covenant or condition to be performed by it hereunder, if such default cannot practicably be cured by the Leasehold Mortgagee without taking possession of the Premises, in such Leasehold Mortgagee's reasonable opinion, or if such default is not susceptible of being cured by the Leasehold Mortgagee, then Landlord shall not serve a notice of lease termination pursuant to Section 17.2, if and so long as:

(i) the Leasehold Mortgagee shall proceed diligently to obtain possession of the Premises as mortgagee (including possession by a receiver), and, upon obtaining such possession, shall proceed diligently to cure Events of Default reasonably susceptible of cure (subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession); or

(ii) the Leasehold Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire Tenant's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure and subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession).

22. The Leasehold Mortgagee shall not be required to obtain possession or to continue in possession as mortgagee of the Premises pursuant to Clause 21(i) above, or to continue to prosecute foreclosure proceedings pursuant to Clause 21 (ii) above, if and when such Event of Default shall be cured. If a Leasehold Mortgagee, its nominee, or a purchaser at a foreclosure sale shall acquire title to Tenant's leasehold estate hereunder, an Event of

Default that is not reasonably susceptible to cure by the person succeeding to the leasehold interest shall no longer be deemed an Event of Default hereunder.

23. If any Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant, the times specified in subparagraphs 21 (i) and (ii) above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

24. No option of Tenant hereunder may be exercised, and no consent of Tenant allowed or required hereunder shall be effective without the prior written consent of any Leasehold Mortgagee.

24.1 Protection of Subtenant. Landlord covenants that notwithstanding any default under or termination of this Lease or of Tenant's possessory rights, Landlord: (i) so long as a subtenant within the Premises complies with the terms and conditions of its sublease, shall not disturb the peaceful possession of the subtenant under its sublease, and in the event of a default by a subtenant, Landlord may only disturb the possession or other rights of the subtenant as provided in the tenant's sublease, (ii) shall recognize the continued existence of the sublease, (iii) shall accept the subtenant's attornment, as subtenant under the sublease, to Landlord, as landlord under the sublease, and (iv) shall be bound by the provisions of the sublease, including all options, and shall execute documents as may be reasonably required by such subtenants to evidence these agreements. Notwithstanding anything to the contrary in this Lease, no act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender or modify this Lease or Tenant's right to possession shall be binding upon or effective as against any subtenant without its prior written consent.

24.2 Protection of Manager. Landlord covenants that notwithstanding any default under or termination of this Lease or of Tenant's possessory rights, Landlord: (i) so long as Manager complies with the terms and conditions of the Management Agreement, shall not disturb the peaceful possession of Manager under the Management Agreement, and in the event of a default by Manager, Landlord may only disturb the possession or other rights of Manager as provided in the Management Agreement, (ii) shall recognize the continued existence of the Management Agreement but shall not become a party to or become obligated to perform any obligation thereunder, (iii) shall accept the Manager's attornment, under the Management Agreement, to Landlord, as Owner under the Management Agreement, and (iv) shall be bound by the provisions of the Management Agreement, including all options, and shall execute documents as may be reasonably acceptable to Landlord and the Manager to evidence these agreements. Notwithstanding anything to the contrary in this Lease, no act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender or modify this Lease or Tenant's right to possession shall be binding upon or effective as against the Manager without its prior written consent.

25. New Lease.

25.1 Right to Lease. Landlord agrees that, in the event of termination of this Lease for any reason (including but not limited to a termination following any default by Tenant which has continued beyond any applicable notice or cure period) and in lieu of pursuing recovery of any sums pursuant to Section 17.2 from Leasehold Mortgagee, Landlord, if requested by any Leasehold Mortgagee, will enter into a new lease of the Premises with the most junior Leasehold Mortgagee requesting a new lease (or such other Leasehold Mortgagee as may be designated by written agreement between or among such Leasehold Mortgagees), which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of the original term of this Lease, at the rent and upon the terms, covenants and conditions herein contained, provided:

a. Such Leasehold Mortgagee shall make written request upon Landlord for the new lease within sixty (60) days after the date such Leasehold Mortgagee receives written notice from Landlord that the Lease has been terminated;

b. Such Leasehold Mortgagee shall pay to Landlord at the time of the execution and delivery of the new lease any and all sums which would, at that time, be due and unpaid pursuant to this Lease but for its termination (including past due rent), and in addition thereto all reasonable expenses, including reasonable attorneys' fees, which Landlord shall have incurred by reason of such termination; and

c. Such Leasehold Mortgagee shall perform and observe all covenants in this Lease to be performed and observed by Tenant which are of a continuing nature and can be performed by Leasehold Mortgagee (i.e., excluding any covenants that are personal to Tenant and therefore cannot be performed by Leasehold Mortgagee), and shall further remedy any other conditions which Tenant under the Lease was obligated to perform under its terms, to the extent the same are reasonably susceptible of being cured by the Leasehold Mortgagee. Any payment of future rentals following Landlord's exercise of remedies pursuant to Section 17.2 shall be credited against future rental obligations hereunder.

25.2 The tenant under the new lease shall have the same right of occupancy to the buildings and improvements on the Premises as Tenant had under this Lease immediately prior to its termination.

25.3 Notwithstanding anything to the contrary expressed or implied in this Lease, any new lease made pursuant to this Section 25 shall have the same priority as this Lease with respect to any mortgage, deed of trust, or other lien, charge, or encumbrance on

the fee of the Premises, and any sublease under this Lease shall be a sublease under the new Lease and shall not be deemed to have been terminated by their termination of this Lease.

26. No Obligation. Nothing herein contained shall require any Leasehold Mortgagee to enter into a new lease pursuant to Section 25 or to cure any default of Tenant referred to above.

27. Possession. If any Leasehold Mortgagee shall demand a new lease as provided in Section 25, Landlord agrees, at the request of, on behalf of and at the expense of the Leasehold Mortgagee, upon a guaranty from it reasonably satisfactory to Landlord, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove the original Tenant from the Premises, but not the Manager and/or any subtenants actually occupying the Premises or any part thereof.

28. Grace Period. Unless and until Landlord has received notice from each Leasehold Mortgagee that the Leasehold Mortgagee elects not to demand a new lease as provided in Section 25, or until the period therefore has expired, Landlord shall not cancel or agree to the termination or surrender of the Management Agreement or any existing subleases nor enter into any new management agreements, leases or subleases with respect to the Premises without the prior written consent of each Leasehold Mortgagee.

29. Effect of Transfer. Neither the foreclosure of any Leasehold Mortgage (whether by judicial proceedings or by virtue of any power of sale contained in the Leasehold Mortgage), nor any conveyance of the leasehold estate created by this Lease by Tenant to any Leasehold Mortgagee or its designee by an assignment or by a deed in lieu of foreclosure or other similar instrument shall require the consent of Landlord under, or constitute a default under, this Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize the purchaser or other transferee in connection therewith as the Tenant under this Lease.

30. No Merger. In no event shall the leasehold interest, estate or rights of Tenant hereunder, or of any Leasehold Mortgagee, merge with any interest, estate or rights of Landlord in or to the premises. Such leasehold interest, estate and rights of Tenant hereunder, and of any Leasehold Mortgagee, shall be deemed to be separate and distinct from Landlord's interest, estate and rights in or to the Premises, notwithstanding that any such interests, estates or rights shall at any time be held by or vested in the same person, corporation or other entity.

31. Surrender, Reconveyance.

31.1 Reconveyance Upon Termination or Expiration. Any contrary provisions of this Lease notwithstanding, on the last day of the term of this Lease or upon any termination of this Lease, whether under Article 15 above or otherwise, if the Early Termination Rent Obligation has been paid, then Landlord shall reconvey title to the

Premises (including all improvements constituting a part thereof) to Tenant or Tenant's successor by Foreclosure as set forth in Section 33 below.

31.2 Reconveyance Documents. Without limiting the foregoing, Landlord shall upon any such termination execute and deliver: (i) a deed and bill of sale reconveying all of Landlord's right title and interest in the Premises to Tenant or Tenant's successor by Foreclosure; (ii) a memorandum in recordable form reflecting the termination of this Lease; (iii) an assignment of Landlord's right, title and interest in and to all licenses, permits, guaranties and warranties relating to the ownership or operation of the Premises to which Landlord is a party and which are assignable by Landlord, and (iv) such other reasonable and customary documents as may be required by Tenant or Tenant's successor by Foreclosure or its title insurer including, without limitation, FIRPTA and mechanic's lien affidavits, to confirm the termination of this Lease and the revesting of title to the Premises in all respects in Tenant or Tenant's successor by Foreclosure.

32. Title and Warranties. Notwithstanding anything to the contrary in this section, Landlord shall convey the Premises subject only to: (i) matters affecting title as of the date of this Lease, and (ii) matters created by or with the written consent of Tenant. The Premises shall be conveyed "AS IS" without representation or warranty whatsoever. Notwithstanding the prohibition on the creation of any liens by or through Landlord set forth in this Section, upon any reconveyance, Landlord shall satisfy all liens and monetary encumbrances on the Premises created by Landlord.

33. Expenses. All costs of title insurance, escrow fees, recording fees and other expenses of the reconveyance, except Landlord's own attorneys' fees and any commissions payable to any broker retained by Landlord, shall be paid by Tenant.

34. Trade Fixtures, Machinery and Equipment. Landlord agrees that all trade fixtures, machinery, equipment, furniture or other personal property of whatever kind and nature kept or installed on the Premises by Tenant, Manager or Tenant's subtenants may be removed by Tenant, Manager or Tenant's subtenants, or their agents and employees, in their discretion, at any time and from time to time during the entire term or upon the expiration of this Lease. Tenant agrees that in the event of damage to the Premises due to such removal it will repair or restore the same. Upon request of Tenant or Tenant's assignees or any subtenant, Landlord shall execute and deliver any consent or waiver forms submitted by any vendors, landlords, chattel mortgagees or holders or owners of any trade fixtures, machinery, equipment, furniture or other personal property of any kind and description kept or installed on the Premises by any subtenant setting forth the fact that Landlord waives, in favor of such vendor, Landlord, chattel mortgagee or any holder or owner, any lien, claim, interest or other right therein superior to that of such vendor, Landlord, chattel mortgagee, owner or holder. Landlord shall further acknowledge that property covered by such consent or waiver forms is personal property and is not to become a part of the realty no matter how affixed thereto and that such property may be removed from the Premises by the vendor, Landlord, chattel mortgagee, owner or holder at any time upon default by the Tenant or the subtenant in the

terms of such chattel mortgage or other similar documents, free and clear of any claim or lien of Landlord.

35. Estoppel Certificate. Landlord shall at any time and from time to time upon not less than ten (10) days' prior written notice from Tenant, Manager or any Leasehold Mortgagee execute, acknowledge and deliver to Tenant or the Leasehold Mortgagee a statement 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 rental and other charges are paid in advance, if any; (ii) acknowledging that there are not, to Landlord's knowledge, any uncured defaults on the part of Tenant hereunder, or specifying such defaults if they are claimed; and (iii) certifying such other matters relating to this Lease as Tenant or the Leasehold Mortgagee may reasonably request. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the leasehold estate and/or the improvements.

Landlord's failure to deliver a statement within the time prescribed shall be conclusive upon Landlord (i) that this Lease is in full force and effect, without modification except as may be represented by Tenant; (ii) that there are no uncured defaults in Tenant's performance; and (iii) the accuracy of such other matters relating to this Lease as Tenant as may have been set forth in the request.

36. General Provisions.

36.1 Attorneys' Fees. In the event of any suit instituted by either party against the other in any way connected with this Lease or for the recovery of possession of the Premises, the parties respectively agree that the successful party to any such action shall recover from the other party a reasonable sum for its attorneys' fees and costs in connection with said suit, such attorneys' fees and costs to be fixed by the court.

36.2 Transfer or Encumbrance of Landlord's Interest. Landlord may not transfer or convey its interest in this Lease or in the Premises during the term of this Lease without the prior written consent of Tenant, which consent may be given or withheld in Tenant's sole and absolute discretion. In the event of permitted sale or conveyance by Landlord of Landlord's interest in the Premises, other than a transfer for security purposes only, Landlord shall be relieved, from and after the date specified in such notice of transfer, of all obligations and liabilities accruing thereafter on the part of the Landlord, provided that any funds in the hands of Landlord at the time of transfer in which Tenant has an interest, shall be delivered to the successor of Landlord. This Lease shall not be affected by any such sale and Tenant agrees to attorn to the purchaser or assignee provided all of Landlord's obligations hereunder are assumed in writing by the transferee. Landlord shall not grant or create mortgages, deeds of trust or other encumbrances of any kind against the Premises or rights of Landlord hereunder, and, without limiting the generality of the foregoing, Landlord shall have no right or power to grant or create mortgages, deeds of trust or other

encumbrances against the Premises or this Lease without the consent of Tenant in its sole and absolute discretion.

36.3 Captions; Attachments; Defined Terms.

a. The captions of the sections of this Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Lease.

b. Exhibits attached hereto, and addendums and schedules initialed by the parties, are deemed by attachment to constitute part of this Lease and are incorporated herein.

c. The words "Landlord" and "Tenant", as used herein, shall include the plural as well as the singular. The obligations contained in this Lease to be performed by Tenant and Landlord shall be binding on Tenant's and Landlord's successors and assigns only during their respective periods of ownership.

36.4. Entire Agreement. This Lease along with any addenda, exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant relative to the Premises and this Lease and the addenda, exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by the party to be bound thereby. Landlord and Tenant agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing of the Premises are merged in or revoked by this Lease, except as set forth in any addenda hereto.

36.5 Severability. If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

36.6 Binding Effect; Choice of Law. The parties hereto agree that all the provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate paragraph hereof. All of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall be governed by the laws of the State of Arizona.

36.7 Memorandum of Land and Improvements Lease. The parties shall, concurrently with the execution of this Lease, complete, execute, acknowledge and record (at Tenant's expense) a Memorandum of Land and Improvements lease, a form of which is attached hereto as Exhibit B.

36.8 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or seventy-two hours after being deposited in the mail, if mailed by United States certified or registered mail, return receipt requested, postage prepaid, as follows:

If to Landlord:

City of Tempe
City Manager' s Office
31 East 5th Street
Tempe, Arizona 85281

With a copy to:

City of Tempe
City Attorney's Office
31 East 5th Street
Tempe, Arizona 85281

If to Tenant:

Ronald J. Finvarb, Manager
Tempe RI, LLC
c/o Finvarb Group
1065 Kane Concourse, Suite 201
Bay Harbor Islands, Florida 33154

With copies to:

Golden Steves Cohen & Gordon, LLP
300 Convent Street, Suite 2600
San Antonio, Texas 78205
Attention: Andrew S. Cohen

Richard I. Finvarb, Manager
Tempe RI, LLC
c/o Finvarb Group
9425 Harding Avenue
Surfside, Florida 33154

or at such other place or to such other persons as any party shall from time to time notify the other in writing as provided herein. The date of service of any communication hereunder shall be the date of personal delivery or seventy-two hours after the postmark on the certified or registered mail, as the case may be.

36.9 WAIVER. 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, AND ANY WAIVER OR THE BREACH OF ANY COVENANT, TERM OR CONDITION SHALL NOT BE DEEMED TO BE A WAIVER OF ANY PRECEDING OR SUCCEEDING BREACH OF THE SAME OR ANY OTHER COVENANT, TERM OR CONDITION.

36.10 Negation of Partnership. Landlord shall not become or be deemed a partner or a joint venturer with Tenant by reason of the provisions of this Lease.

36.11 Leasehold Mortgagee Further Assurances. Landlord and Tenant shall cooperate in including in this Lease by suitable amendment from time to time any provision which may be reasonably requested by any proposed Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Lease, of allowing that Leasehold Mortgagee reasonable means to protect or preserve the lien of its Leasehold Mortgage upon the occurrence of a default under the terms of this Lease and of confirming the elimination of the ability of Tenant to modify, terminate or waive this Lease or any of its provisions without the prior written approval of the Leasehold Mortgagee. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the term or rent under this Lease nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

37. Nonrecourse. Landlord's sole recourse for collection or enforcement of any judgment as against Tenant shall be solely against the leasehold interest under this Lease and the Buildings and other improvements on the Premises and may not be enforced against or collected out of any other assets of Tenant nor of its beneficiaries, joint venturers, owners, partners, shareholders, members or other related parties.

38. Counterparts. This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

[Signatures Appear on Following Page. Remainder of Page is Blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date and year first written above.

ATTEST:

"CITY"

Brigitta M. Kuiper
Brigitta Kuiper, City Clerk

THE CITY OF TEMPE, an Arizona municipal corporation

APPROVED AS TO FORM:

By Mark W. Mitchell
Mark W. Mitchell, Mayor

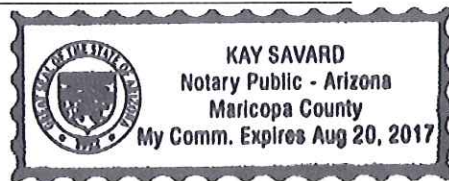
Judi R. Baumann
Judi R. Baumann, City Attorney

STATE OF ARIZONA)
)
COUNTY OF MARICOPA) ss

The foregoing instrument was acknowledged before me this 12th day of September, 2013, by Mark W. Mitchell, the Mayor of the City of Tempe.

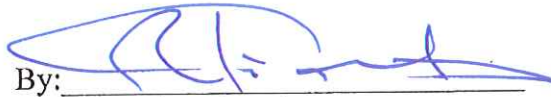
Kay Savard
Notary Public

My Commission Expires:



"TENANT"

TEMPE RI, LLC, a Delaware limited liability company



By: _____
Richard I. Finvarb
Manager

Florida
STATE OF ~~ARIZONA~~)
Miami-Dade) SS
COUNTY OF ~~MARICOPA~~)

The foregoing instrument was acknowledged before me this 12th day of September, 2013, by Richard I. Finvarb, as Manager of TEMPE RI, LLC, a Delaware limited liability company, on behalf of said limited liability company.



Notary Public

My Commission Expires:
Feb 17, 2017

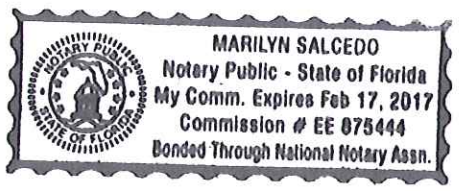


EXHIBIT "A"

Land

The East 95.75 feet of the North 159.5 feet of Block 2, of Tempe, according to Book 2 of Maps, Page 26, records of Maricopa County, Arizona. Also known as the East 95.75 feet of the north 159.5 feet of Lot 1, Block 2 of Map of West Tempe, according to Book 2 of Maps, Page 79, Records of Maricopa County, Arizona.

EXHIBIT "B"

Form of Memorandum of Lease

WHEN RECORDED, RETURN TO:

City of Tempe Basket

MEMORANDUM OF LAND AND IMPROVEMENTS LEASE

THIS MEMORANDUM OF LAND AND IMPROVEMENTS LEASE ("Memorandum") is made and entered into as of the 5th day of September, 2013, by and between the CITY OF TEMPE, an Arizona municipal corporation ("City"), and TEMPE RI, LLC, a Delaware limited liability company ("Tenant")

1. The City and Tenant have entered into that certain Land and Improvements Lease, dated of even date herewith ("Lease"), whereby the City leases to Tenant that real property and improvements more particularly described in Exhibit "A" attached hereto and by this reference incorporated herein ("Property").

2. This Memorandum is being recorded to give constructive notice to all persons dealing with the Property that the City leases to Tenant the Property, and that the City and Tenant consider the Lease to be a binding agreement between the City and Tenant regarding the Property.

3. The Lease contains certain protections in favor of leasehold mortgagees, including without limitation, the following provision:

25.1 Right to Lease. Landlord agrees that, in the event of termination of this Lease for any reason (including but not limited to any default by Tenant) and in lieu of pursuing any damages pursuant to Section 17.2 from Leasehold Mortgagee, Landlord, if requested by any Leasehold Mortgagee, will enter into a new lease of the Premises with the most junior Leasehold Mortgagee requesting a new lease (or such other Leasehold Mortgagee as may be designated by written agreement between or among such Leasehold Mortgagees), which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of the original term of this Lease, at the rent

and upon the terms, covenants and conditions herein contained, provided:

a. Such Leasehold Mortgagee shall make written request upon Landlord for the new lease within sixty (60) days after the date such Leasehold Mortgagee receives written notice from Landlord that the Lease has been terminated;

b. Such Leasehold Mortgagee shall pay to Landlord at the time of the execution and delivery of the new lease any and all sums which would, at that time, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto all reasonable expenses, including reasonable attorneys' fees, which Landlord shall have incurred by reason of such termination; and

c. Such Leasehold Mortgagee shall perform and observe all covenants in this Lease to be performed and observed by Tenant which are of a continuing nature and can be performed by Leasehold Mortgagee (i.e., excluding any covenants that are personal to Tenant and therefore cannot be performed by Leasehold Mortgagee), and shall further remedy any other conditions which Tenant under the Lease was obligated to perform under its terms, to the extent the same are reasonably susceptible of being cured by the Leasehold Mortgagee.

25.2 The tenant under the new lease shall have the same right of occupancy to the buildings and improvements on the Premises as Tenant had under this Lease immediately prior to its termination.

4. This Memorandum is not a complete summary of the Lease. The provisions of this Memorandum shall not be used in interpreting the Lease. In the event of any conflict between the terms and provisions of this Memorandum and the Lease, the terms and provisions of the Lease shall govern and control. This

IN WITNESS WHEREOF, this Memorandum has been executed as of the day and year first set forth above.

ATTEST:

"CITY"

THE CITY OF TEMPE, an Arizona municipal corporation

Brigitta Kuiper, City Clerk

APPROVED AS TO FORM:

By _____
Mark W. Mitchell, Mayor

Judi R. Baumann, City Attorney

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of September, 2013, by Mark W. Mitchell, the Mayor of the City of Tempe.

Notary Public

My Commission Expires:

"TENANT"

TEMPE RI, LLC, a Delaware limited liability company

By: _____
Ronald J. Finvarb
Manager

STATE OF ARIZONA)
)
COUNTY OF MARICOPA) ss

The foregoing instrument was acknowledged before me this ____ day of September, 2013, by Ronald J. Finvarb, Manager TEMPE RI, LLC, a Delaware limited liability company.

Notary Public

My Commission Expires:

EXHIBIT "A"
the "Property"

The East 95.75 feet of the North 159.5 feet of Block 2, of Tempe, according to Book 2 of Maps, Page 26, records of Maricopa County, Arizona. Also known as the East 95.75 feet of the north 159.5 feet of Lot 1, Block 2 of Map of West Tempe, according to Book 2 of Maps, Page 79, Records of Maricopa County, Arizona.

