

WHEN RECORDED, RETURN TO:

Bruce B. May
Jennings Strouss & Salmon
One E. Washington St., Suite 1900
Phoenix, AZ 85004-2554

CONVENTION AND CONFERENCE CENTER DEVELOPMENT AGREEMENT

THIS CONVENTION AND CONFERENCE CENTER DEVELOPMENT AGREEMENT (the “**Agreement**”) is executed as of this ___ day of _____, 2014 (the “**Effective Date**”) by and between the ARIZONA BOARD OF REGENTS (“**ABOR**”), a body corporate, for and on behalf of Arizona State University (“**ASU**”), and the CITY OF TEMPE, a municipal corporation (the “**City**”), and USA PLACE HOTEL MANAGEMENT, LLC, an Arizona limited liability company (the “**HCC Lessee**”).

RECITALS

A. ASU is the Owner of certain real property (the “**Property**”) consisting of approximately 10.47 acres located at the southeast corner of University Avenue and Mill Avenue in the City of Tempe. The Property was formerly a shopping center and is currently leased to a restaurant tenant and used for classrooms and related academic uses. ASU wants the Property to be redeveloped to include, among other things a hotel, convention and conference center and other commercial enterprises and other improvements.

B. On October 22, 2012 ASU issued RFQ No. 91302 seeking qualified firms or individuals to submit their qualifications for the development of a hotel and convention and conference center on the Property. After a review of the submittals by ASU and the City, the development team comprised of the HCC Lessee and Omni Hotels Operating Corporation, a Delaware corporation (the “**Omni**”), were selected to develop a hotel convention and conference center on the Property.

C. Pursuant to that certain Option to Lease and Escrow Instructions dated January __, 2014 (“**Option to Lease**”), ASU granted to USA Place, LLC, an Arizona limited liability company (“**USAP**”) the option to lease the Property pursuant to a series of take downs and closings. USAP has designated the HCC Lessee as the party who has the right to lease that portion of the Property described on Exhibit A attached hereto (the “**HCC Parcel**”). Pursuant to the Option to Lease, if the HCC Lessee exercises its option, ASU, as landlord, and the HCC Lessee, as tenant will enter into a Ground Lease (the “**HCC Lease**”), whereby ASU leases the HCC Parcel to the HCC Lessee, and the HCC Lessee agrees to construct certain improvements on the HCC Parcel that include without limitation a hotel (the “**Hotel Improvements**”) and conference and convention center (the “**Conference Center Improvements**”) on the HCC

Parcel. 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 HCC Parcel are collectively referred to in this Agreement as the “**Project**.”

D. Pursuant to that certain Operating Agreement dated as of _____, 2014 between Omni and the HCC Lessee (the “**HCC Operating Agreement**”), following the HCC Completion Date (defined below), Omni has agreed to operate the Improvements on the terms set forth in the HCC Operating Agreement.

E. The development, redevelopment, operation, and expansion of uses on the Property within the corporate limits of the City are of such significance that the City desires to encourage and facilitate such development, redevelopment, operation and expansion.

F. 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 Property as more fully described in this Agreement.

G. 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 the City pursuant to this Agreement are for economic development purposes as that term is used in A.R.S. § 9-500.11, will assist in the creation and retention of jobs, and will, in other ways, improve and enhance the economic welfare of the residents of the City. Pursuant to A.R.S. §9-500.11, the City has previously adopted a notice of intent to enter into this Agreement and to make the findings required by A.R.S. §9-500.11, such findings having been verified by an independent third party before the City entered into this Agreement. Such findings are, by this reference, incorporated into this Agreement as though set forth in their entirety herein.

H. In addition to the creation and retention of jobs within the City, construction of the Improvements will foster increased tourism within the City, all of which will redound to the economic benefit of the residents of the City. 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 CC Payments” (as hereafter defined) from a portion of the Project Tax Revenue collected by City as a result of the operation of the Project.

I. The parties wish to set forth certain terms and conditions relating to the use, operation, repair, replacement and maintenance of the Conference Center Improvements.

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 Conference Center Improvements. Following execution of the HCC Lease, the HCC Lessee agrees to construct the Improvements in accordance with, and described in, Exhibit B (the “**Construction Covenant**”).

2. Operation of Conference Center Improvements.

2.1 Operating Standard. The Operating Agreement shall provide that Omni or any successor and assign approved pursuant to Section 2.2 below (the “**HCC Operator**”) shall operate the Conference Center Improvements as a convention and conference center and ancillary uses as set forth in Exhibit B (the “**Operating Standard**”) until thirty-five (35) years after the HCC Completion Date (the “**Restriction Period**”). Contemporaneously with the execution of this Agreement by all parties, ASU shall execute and record in the records of Maricopa County, Arizona a restriction (the “**Use Restriction**”) for the benefit of the City, limiting the HCC Parcel to use as a hotel and convention and conference center and ancillary uses during the Restriction Period. The Use Restriction shall be in the form attached hereto as Exhibit C, and shall not be amended without City’s prior written consent. Notwithstanding anything contained herein to the contrary, the Use Restriction shall terminate if (a) the HCC Lessee’s option to lease the HCC Parcel terminates either because (i) the HCC Lessee does not exercise its option to acquire the HCC Parcel by the applicable deadline under the Option to Lease, or (ii) following its exercise, the HCC Lessee fails to close on its lease of the HCC Parcel by the applicable deadline under the Option to Lease or (b) the HCC Lease is terminated for any reason prior to HCC Completion Date.

2.2 Termination of HCC Operating Agreement. If the HCC Operating Agreement is terminated for any reason prior to the expiration of the Restriction Period, HCC Lessee’s right to designate a replacement operator of the Improvements shall be subject to the approval of ASU and City, such approval not to be unreasonably withheld, conditioned or delayed. Without limiting the foregoing, ASU and 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 HCC Lessee has at least ten (10) years’ experience operating similar facilities. Nothing contained therein or otherwise in this Agreement shall prevent the HCC Lessee from terminating the HCC Operating Agreement or substituting another operator or otherwise exercising any other right or remedy therein in the event of the Hotel Operator’s failure to meet required conditions for performance of, or default of its obligations under, the Operating Agreement. In the event of a designation of a new operator meeting the standards set forth above or termination of the Operating Agreement, ASU and City, as may be necessary, shall cooperate with the HCC Lessee to timely approve another operator to assure that the operation of the Improvements continues in accordance with the Operating Standard. The term “HCC Operator”, as used herein, shall refer to any new operator as approved.

2.3 Operating Costs. The HCC Lessee shall pay, or require the HCC Operator to pay, all costs and expenses associated with the use, operation, maintenance, repair and replacement of the Conference Center Improvements until the expiration or prior termination of the term of the HCC Lease.

3. Economic Incentives. The City has determined that the construction of the Improvements and operation of the Project within the City's corporate limits, accompanied by the satisfaction by the HCC Lessee and the HCC Operator (and their respective permitted successors and/or assigns) of the Construction Covenant, Operating Standard and Use Restriction, (i) will enhance the economic health of the City; (ii) will result in a net increase of jobs in the City; (iii) will increase the City's construction and transaction privilege taxes; (iv) will increase the public parking available in downtown Tempe, Arizona, (v) will otherwise improve or enhance the economic welfare of the residents of the City; (vi) is not likely to occur (or to occur at this time and/or in this manner and/or at this location) without the incentives provided in this Agreement; and (vii) demonstrates the potential to generate revenues and other benefits (both tangible and intangible) to the City that outweigh or are not disproportionate to the costs associated with these incentives. ASU has determined that the redevelopment of the Property will benefit ASU as the owner of the Property and compliment and benefit the operations of ASU's Tempe campus. Accordingly, the City and ASU have agreed to provide to the HCC Lessee, but solely and expressly upon compliance with and satisfaction by the HCC Lessee (or its permitted successors and/or assigns) of the Construction Covenant, Operating Standard and the Use Restriction, and so long as there is no default by the HCC Lessee 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 under Section 7.1.3 hereof, the economic incentives described in this Section 3 (the "**Economic Incentives**").

3.1 Source of Payments. The ASU CC Payments (defined below) shall be paid solely from the payments in lieu of tax received by ASU under the HCC Lease (the "**PILOT**"). If the PILOT received in any year is less than the ASU CC Payment payable for such year, then the ASU CC Payment for such year shall be reduced as set forth in Section 3.2.1. The City CC Payments shall be paid solely from the Project Tax Revenue. For purposes of this Agreement, "**Project Tax Revenue**" means one-hundred percent (100%) of the Unrestricted Portion (defined below) of the transaction privilege (sales) tax on hotels and restaurants, and one-hundred percent (100%) of the additional tax on transient lodging levied by City pursuant to Sections 16-444, 16-445 and 16-447 of the Tempe City Code, respectively, and actually collected by the City with respect to the Project. As of the date hereof, the Unrestricted Portion of the transaction privilege (sales) tax is 1.2% and the additional tax on transient lodging is 5.0%. For purposes hereof, "**Unrestricted Portion**" means the transaction privilege (sales) taxes on hotels and restaurants levied by City pursuant to Sections 16-444 and 16-445, respectively, of the Tempe City Code, and the additional taxes on transient lodging levied by City pursuant to Section 16-447 of the Tempe City Code, adopted or approved by the City Council of the 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. If the Project Tax Revenue received in any year is less than the City CC Payment payable for such year, then the City CC Payment for such year shall be reduced as set forth in Section 3.2.2.

3.2 Contribution to Conference Center Improvements. In consideration for the Construction Covenant, Operating Standard, Use Restriction and the other direct public

benefits described in Section 5 below and elsewhere in this Agreement, ASU and the City agree as follows:

3.2.1 ASU shall pay to the HCC Lessee an amount equal to \$800,000 per annum (each an “**ASU CC Payment**” and collectively the “**ASU CC Payments**”) for the first (1st) through twentieth (20th) anniversaries of 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 “**HCC Completion Date**”); provided, however, that in any year when the ASU CC Payment is more than the PILOT received by ASU, then the ASU CC Payment shall be an amount equal to the PILOT paid to ASU for such year. Until such time as each construction lender, permanent lender and/or bond holder or other entity providing debt financing (each a “**Conference Center Lender/Funding Entity**”) has been fully repaid for its loan to the HCC Lessee for the initial construction of the Improvements or investment in the Conference Center Improvements (as evidenced by written notice from the Conference Center Lender/Funding Entity), all ASU CC Payments shall be paid into an account established with The Bank of New York Mellon Trust Company, N.A. or bank, savings and loan institution or similar financial institution located in Phoenix, Arizona designated by the HCC Lessee and the Conference Center Lender/Funding Entities (the “**CC Funding Account**”), and shall be applied to repay all loans, bonds and other debt financing. From time to time, the HCC Lessee will notify ASU of all Conference Center Lender/Funding Entities. After ASU has received written notice from the Conference Center Lender/Funding Entities that all loans, bonds and other debt financing have been repaid, the ASU CC Payments shall be paid directly to the HCC Lessee. ASU shall make the ASU CC Payment in two equal semi-annual installments payable on the tenth (10th) business day following receipt of each PILOT payment under the HCC Lease. Nothing in this Section 3.2.1 shall be construed to require ASU to make any ASU CC Payment to the HCC Lessee until the PILOT payment on which such ASU CC Payment is based is actually received by ASU.

3.2.2 The City shall pay to the HCC Lessee an amount equal to \$800,000 per annum (each a “**City CC Payment**” and collectively the “**City CC Payments**”) for the first (1st) through twentieth (20th) anniversaries of the HCC Completion Date; provided, however, that in any year when the City CC Payment is more than the Project Tax Revenue received by the City, then the City CC Payment shall be reduced to an amount equal to the Project Tax Revenue paid to the City for such year. Until such time as each Conference Center Lender/Funding Entity has been fully repaid for its loan to the HCC Lessee for the initial construction of the Improvements or investment in the Conference Center (as evidenced by written notice from the Conference Center Lender/Funding Entity), all City CC Payments shall be paid directly into the CC Funding Account and shall be applied to repay all loans, bonds and other debt financing. From time to time, the HCC Lessee will notify City of all Conference Center Lender/Funding Entities. After the City has received written notice from the Conference Center Lender/Funding Entities that all loans, bonds and other debt financing have been repaid, the City CC Payments shall be paid directly to the HCC Lessee. The City shall make the City CC Payment semi-annually, with the first such payment to be made within thirty (30) days after the end of the sixth (6th) month following the HCC Completion Date, and continuing within thirty (30) days after the end of every sixth (6th) month thereafter for a period

of twenty (20) years; provided that any such payment may be delayed by the City if the responsible taxable party fails to file the applicable tax returns and make the applicable sales tax payments for the period to which the City's payment relates. If such a failure occurs, the City shall make the required payment of the City CC Payment within ninety (90) days after the applicable taxable party files the applicable tax return and/or makes the applicable sales tax payment. If the Project Tax Revenues are reported on tax returns filed by different entities, City will make the City CC Payments from each applicable return, as described above; provided that in no event shall the aggregate payments to be made by City exceed the amount of the City CC Payments or the Project Tax Revenue, as applicable. Nothing in this Section 3.2.2 shall be construed to require the City to make any payment to the HCC Lessee until the Project Tax Revenue is actually generated and received by the City, the HCC Lessee acknowledges that the semi-annual payments may not be in equal amounts.

3.2.3 ASU shall have no further obligation to make ASU CC Payments following payment of the amounts due and payable for the period through and including the 20th anniversary of the HCC Completion Date. The City shall have no further obligation to make City CC Payments following payment of the amounts due and payable for the period through and including the 20th anniversary of the HCC Completion Date.

4. Term.

4.1 Term. This Agreement shall commence on the Effective Date and shall continue until the later of (i) the thirty-fifth (35th) anniversary of the Effective Date or (ii) the expiration or earlier termination of the HCC Lease (the "**Expiration Date**"). Notwithstanding anything contained herein to the contrary, this Agreement shall terminate if (a) the HCC Lessee's option to lease the HCC Parcel terminates either because (i) the HCC Lessee does not exercise its option to acquire the HCC Parcel by the applicable deadline under the Option to Lease or (ii) following its exercise, the HCC Lessee fails to close on its lease of the HCC Parcel by the applicable deadline under the Option to Lease or (b) the HCC Lease is terminated for any reason prior to the HCC Completion Date or (c) if there is an uncured material default by the HCC Lessee as provided in Section 7.2 unless the default has been cured by the HCC Lessee within any applicable notice and cure period or by a Mortgagee (as defined in and pursuant to Section 7.1.3). If this Agreement is terminated on account of a default by ASU under the HCC Lease or by ASU or the City under this Agreement in accordance with Section 7.2, nothing in this Agreement shall limit the HCC Lessee's remedies against the defaulting party on account of such default.

5. Direct Public Benefits. ASU, the City and the HCC Lessee hereby acknowledge that the Construction Covenant, Operating Standard and Use Restriction and the covenants contained in this Section 5 constitute direct public benefits and constitute consideration for the Economic Incentives agreed to by ASU and City:

5.1 Naming Rights. During the Restriction Period, (i) the name of the Conference Center Improvements shall be a variant of Omni Tempe Hotel and Conference Center or other similar moniker which includes the word "Tempe", (ii) the name of the Conference Center Improvements shall not be changed without the prior written consent of ASU

and City, which consent may be granted or withheld in their unfettered discretion, provided that if Omni ceases to be the HCC Operator, the name may be changed to reflect such change in the identity of the HCC Operator but not the reference to Tempe. In no event shall the name of the Project include the name of any other municipality or geographic 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**”), the HCC Lessee shall use, and shall require the HCC 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 then Hotel Operator) Hotel.”

5.2 Tourism Promotion Expenditures. Until the twentieth (20th) anniversary of the HCC Completion Date, the HCC Lessee covenants and agrees to expend, and/or to require the HCC Operator to expend, a minimum of \$495,000 annually during the term of this Agreement on the promotion of tourism in Tempe, which activities may, at the discretion of the HCC Lessee, 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 the Project, other travel to promote the Project, and other advertising and promotional activities developed as part of an overall advertising and marketing strategy to promote the Project (“**Tourism Promotion Expenditures**”). Such Tourism Promotion Expenditures shall include the City of Tempe name, a description of major local events or amenities, as reasonably determined and identified in a timely fashion by the City, and the promotion of the Project as a unique place to visit, shop and conduct business meetings and conferences. On or before April 1 of each year, the HCC Lessee shall provide, or cause the HCC Operator to provide, the City and ASU with a summary of all Tourism Promotion Expenditures for the preceding calendar year.

5.3 ASU Boardroom. The Conference Center Improvements constructed by the HCC Lessee pursuant to the Construction Covenant, at its expense, will include a boardroom of not less than 1,000 square feet (the “**ASU Boardroom**”). The furniture, fixtures, equipment and other improvements (“**Boardroom Improvements**”) initially installed therein and all replacements of or refurbishments to the Boardroom Improvements, will be subject to ASU’s prior written approval, which shall not be unreasonably withheld so long as the Boardroom Improvements are of a level of quality and finish equal to or better than comparable meeting rooms for general use in the Convention Center Improvements. ASU shall be entitled to upgrade the Boardroom to reflect its affiliation with ASU, at ASU’s expense, subject to HCC Lessee’s approval not to be unreasonably withheld or delayed. The name of the ASU Boardroom will be selected by ASU, subject to HCC Lessee’s approval, not to be unreasonably withheld or delayed. The ASU Boardroom and pre-function areas will be available for use by ASU and its designees at any time and from time to time during the term of the HCC Lease. There shall be no charge to ASU or its designees for use of the ASU Boardroom and pre-function areas, but the HCC Operator may charge ASU and its designees for any food and or beverage, audiovisual (unless supplied by ASU) and other associated costs and services requested by ASU for which HCC Operator charges third party users of space in the Conference Center Improvements, at rates

consistent with retail charges to such users. At any time when the ASU Boardroom is not being used by ASU, the HCC Operator may allow the use of the ASU Boardroom by third party users and retain any revenue from such use. ASU and the HCC Operator (at the direction of the HCC Lessee) will establish a procedure for providing the HCC Operator with reasonable notice of when the ASU Boardroom will be in use by ASU or available for use by other parties. In no event shall ASU be entitled to license or otherwise authorize the use of the ASU Boardroom to third-parties except in affiliation with ASU and the consent of HCC Lessee not to be unreasonably delayed or withheld. ASU will designate a single individual on whom the HCC Lessee can rely to manage its responsibilities in coordinating use of the ASU Boardroom.

5.4 Showcase Wall Display. ASU will have the right, but not the obligation, to install a “**Showcase Wall Display**” area in the Conference Center Improvements consisting of a changeable wall-mounted exhibit of approximately thirty (30) linear feet to be located within close proximity of the ASU Boardroom. The Showcase Wall Display will only highlight ASU achievements and research in its various academic disciplines including sustainability, technology, architecture, design, art, business, or other similar themes. The Showcase Wall Display shall not include sports related themes, business or product brands, or third party sponsors or similar themes unless approved by the HCC Lessee, in its sole discretion. The design of the overall display itself as well as the showcased items within the Showcase Wall Display will be of a museum design quality system, developed, coordinated and maintained by ASU, at ASU’s expense, and subject to the HCC Lessee approval not to be unreasonably withheld or delayed. The Showcase Wall Display exhibits shall be temporary in nature and will be removed and replaced periodically by ASU not fewer than six (6) times in any calendar year, with no single exhibit displayed for more than forty-five (45) days. ASU will designate a single individual on whom the HCC Lessee can rely to manage its responsibilities in coordinating and maintaining the Showcase Wall Display. ASU 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 Improvements resulting from such removal.

5.5 PILOT. Except for that portion of the PILOT paid by ASU to the Conference Center Lender/Funding Entity as ASU CC Payments under Section 3.2.1, ASU will have the right to receive and retain the PILOT payable by the HCC Lessee pursuant to the HCC Lease.

6. Records. Within thirty (30) days following a request from ASU or City, but no more often than twice in any calendar year (or once in the case of a partial lease year containing less than three (3) months), the HCC Lessee will make available, and cause the HCC Operator to make available, to ASU and the City all books and records related to the maintenance of the Convention Center Improvements and the Tourism Promotion Expenditures. Such books and records will be made available at the Project or at another location agreed to by the ASU and /or the City and the HCC Lessee.

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 120-day period and diligently pursue the same to completion); provided, however, that said 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 HCC Lessee 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 HCC Lessee or any entity that owns or controls the HCC Lessee, and such petition or application is not dismissed within one hundred twenty (120) days of such filing; (b) the HCC Lessee 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 HCC Lessee that would render HCC Lessee unable to perform its obligations hereunder; (d) garnishment, attachment, levy or execution in an amount that would render the HCC Lessee 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 HCC Property or effects of the HCC Lessee, 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 HCC Lessee unless its successor by transfer or operation of law is continuing the business of operating the Project.

7.1.3 ASU and the City, upon providing the HCC Lessee 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 HCC leasehold interest in the HCC Parcel (a “**Mortgagee**”) which has delivered to ASU and the 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 ASU and/or the City and any Mortgagee which has complied with the foregoing delivery requirement, no such notice by ASU and/or the City to the HCC Lessee 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 the same period, 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, as is given the HCC Lessee after the giving of such notice to the HCC Lessee to remedy, commence remedying or cause to be remedied the default

that is the subject matter of such notice (i.e., the Mortgagee's remedy period runs from the giving of notice to the Mortgagee and thus may run concurrently with the HCC Lessee's remedy period). If the HCC Lessee or the Mortgagee fails to remedy the default that is the subject matter of such notice within such cure period, ASU and/or the City may exercise the remedies set forth in this Lease; provided, however, that the exercise of such remedies shall be extended by any additional time period granted to the Mortgagee under the HCC Lease to cure the default and take possession of the Improvements as necessary to effect a cure, and during any such time period ASU and the City shall continue making the ASU CC Payments and City CC Payments, respectively, to the Conference Center Lender/Funding Entity so long as the HCC Lessee or Mortgagee is diligently exercising its rights to cure.

7.2 Remedies. 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 party or parties not in default shall have all rights and remedies available at law or in equity; provided, however, that this Agreement may only be terminated by a non-defaulting party in the event of a material default of any obligation or any material breach of a representation or warranty.

8. Conflict of Interest; Representatives Not Individually Liable.

8.1 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested.

8.2 No Personal Liability. No member, official or employee of the City shall be personally liable to ASU, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to ASU or its respective successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement. In addition, no member, agent, employee or regent of ASU shall be personally liable to the City (i) in the event of any default or breach by ASU, the City, or the HCC Lessee, (ii) for any amount which may become due to the City, or (iii) pursuant to any obligation of ASU the City, or the HCC Lessee.

9. General Provisions.

9.1 Assignment. The HCC Lessee may assign its interest under this Agreement to any assignee of, or successor to, the HCC Lessee's interest in the HCC Lease without consent from, but with notice to, ASU and the City. Except as set forth in the preceding sentence, none of the parties shall assign its rights and obligations under this Agreement without the prior written consent of the other parties, each in its sole discretion, and any assignment without such consent shall be void. A transaction involving the sale, issuance or transfer of any membership or management interest in the HCC Lessee or of any voting capital stock of any corporate entity which directly or indirectly controls, is controlled by or under common control

with the HCC Lessee or otherwise, shall also be deemed to be an assignment for purposes of this Agreement.

9.2 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 personally or by private messenger service (including overnight courier) or by mail addressed as provided below. Any Notice shall be deemed to be given or received 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. Any copy noted below as mandatory shall be sent simultaneously with the notice to the Party. 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
80 E. Rio Salado Parkway, Suite 513
Tempe, AZ 85281-9106

For mail delivery at:

P. O. Box 873908
Tempe, AZ 85287-3908

With a mandatory copy to:

Arizona State University
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 85787-7405

To City: City of Tempe
Attn: City Manager
31 East Fifth Street
Tempe, AZ 85281

With a mandatory copy to:

City of Tempe
Attn: City Attorney

31 East Fifth Street
Tempe, AZ 85281

To HCC Lessee: Susan H. Eastridge
Chief Executive Officer
Concord Eastridge
5685 N. Scottsdale Road, #150
Scottsdale, AZ 85250

With a mandatory copy to:

Bruce B. May
Jennings Strouss & Salmon
One E. Washington St., Suite 1900
Phoenix, AZ 85004-2554

9.3 Construction. Time is of the essence with respect to each provision of 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 ASU, the City, and/or the HCC Lessee are, partners or joint venturers in any way or that the HCC Lessee is an agent or representative of ASU or the 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 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." 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. Nothing in this Agreement shall be construed to permit anyone other than ASU, the City, and/or the HCC Lessee and their respective successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party, including the Hotel Operator, 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 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 agree that there shall be a ninety (90) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. 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 or ninety (90) days after the date the parties first reached an impasse on the subject matter of the dispute, whichever occurs later. Notwithstanding the foregoing, in the case of a good faith dispute and until the resolution thereof, the City and ASU shall continue paying the Economic Incentives except as to any particular payment if such payment is the subject of the dispute.

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 the 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. The 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 ASU or the HCC Lessee, such consent not to be unreasonably withheld, delayed or conditioned, 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 further amendment or modification of this Agreement.

9.20 Reviews and Approvals; Project Coordinators. The City acknowledges and agrees that development of the Project by the HCC Lessee will, as a result of the size of the Project and other economic factors, occur over a period of time and will require the 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 the City's current building and development requirements (hereinafter collectively referred to as "**Approval Requests**"). The City and the HCC Lessee 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, the City shall designate a project coordinator who shall work together to meet the HCC Lessee's project timelines in accordance with a customized plan review schedule to be mutually agreed upon by the City and the HCC Lessee. 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 the HCC Lessee, the 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

HCC Lessee: Michael Hallmark

9.21 HCC Lessee's Representations. The HCC Lessee represents and warrants to ASU and the City as follows:

(a) The HCC Lessee 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 the HCC Lessee under any agreement to which the HCC Lessee is a party or by which it is bound.

(c) The representatives of the HCC Lessee who have executed this Agreement have the power and the authority to have done so.

(d) The HCC Lessee 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 the best of the HCC Lessee's knowledge (after inquiry of all parties deemed appropriate by the HCC Lessee), 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) the HCC Lessee, (ii) any HCC Lessee 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) the HCC Lessee or any HCC Lessee Affiliate, (2) the rights granted to the HCC Lessee 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 HCC Parcel (an "**Interested Party**") that would provide a basis to challenge the HCC Lessee's or 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 the HCC Lessee or an Interested Party is a party (each a "**Project Related Agreement**") or the validity of this Agreement or any Project Related Agreement. The HCC Lessee 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 ASU's Representations. ASU represents and warrants to the HCC Lessee and the City as follows:

(a) ASU 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 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 have the power and the authority to have done so.

9.23 City's Representations. The City represents and warrants to the HCC Lessee and ASU as follows:

(a) The City 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 the City under any agreement to which the City is a party or by which it is bound.

(c) The representatives of the City who have executed this Agreement have the power and the authority to have done so.

10. ASU Provisions.

10.1 Nondiscrimination. The parties agree to 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.

10.2 Conflict of Interest. Participation in this Agreement by the City and ASU is subject to Section 38-511 of the Arizona Revised Statutes which provides that this Agreement may be cancelled if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or ASU is, at any time while this Agreement or any extension thereof is in effect, an employee or agent of the other party to this Agreement in any capacity or a consultant to any other party with respect to the subject matter of this Agreement.

10.3 Notice of Arbitration Statutes. Pursuant to Section 12-1518 of the Arizona Revised Statutes, the parties acknowledge and agree, subject to the Arizona Board of Regents 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 Agreement if required by Section 12-133 of the Arizona Revised Statutes.

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

10.5 Failure of Legislature to appropriate. If ASU's performance under this Agreement depends upon 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 the HCC Lessee, and the HCC Lessee 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 and the term of this Agreement 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, the HCC Lessee shall be deemed to have elected to waive such performance by ASU. If the HCC Lessee elects to extend the deadline and appropriation does not occur within such one (1) year period, then this Agreement shall automatically terminate unless prior to such date the HCC Lessee elects to waive such performance. Appropriation is a legislative act and is beyond the control of ASU.

10.6 Service Marks and Trademarks.

10.6.1 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. Lessee agrees to comply and to cause the HCC Operator to comply with ASU's trademark licensing program concerning any use or proposed use by the HCC Lessee or the HCC Operator of any of ASU mark on goods, in relation to services, and in connection with advertisements or promotion of the HCC Lessee or the HCC Operator or the operation of the Conference Center Improvements. Prior to any use of an ASU mark by the HCC Lessee or the HCC Operator or their Affiliates or successors or assigns, the HCC Lessee will comply with ASU Policy PUR 701: *Trademark Licensing* and submit the proposed use of the ASU mark (together with a sample or specimen of the intended use) to ASU's Trademark Licensing Coordinator for approval. Except as expressly authorized in this Agreement, neither the HCC Lessee nor the HCC Operator are permitted to use any ASU mark without prior written approval of ASU's Trademark Licensing Coordinator. Contractor's use of any ASU mark must comply with ASU's requirements, including using the "circle R" (®) indication of a registered trademark.

10.6.2 The HCC Lessee reserves all rights to any trade name, trademark, service mark, logo, domain name and any other distinctive brand feature owned by the HCC Lessee ("**HCC mark**") and neither ASU nor the City shall use such HCC mark without the HCC Lessee's prior written consent. The HCC Lessee, the City and ASU shall not use any trade name, trademark, service mark, logo, domain name and any other distinctive brand feature owned by Omni or any lender, investor, equity member or Affiliate of the HCC Lessee or any tenant in any Improvements except as permitted by the owner thereof. Nothing in this section shall limit ASU's right to use any trade name when identifying the Project or the tenants or occupants thereof.

10.7 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 §12-781 of the Arizona Revised Statutes or unless written permission is given by the ASU Police Department (ASU PD). Notification by the HCC Lessee to all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of the HCC Lessee (“**CC Parties**”) of this policy is a condition and requirement of this Agreement. the HCC Lessee further agrees to enforce this contractual requirement against all CC Parties. ASU’s policy may be accessed through the following web page: <http://www.asu.edu/aad/manuals/pdp/pdp201-05.html>.

10.8 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.

10.9 Requests for Action. To facilitate the HCC Lessee’s ability to expeditiously pursue the development of the Project as contemplated hereunder, the City and ASU shall designate at least two 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 the City and ASU, including the power and authority to grant any consents, approvals, agreements or waivers. Until ASU revokes such designation by written notice to the HCC Lessee given pursuant hereto and designates another individual in lieu thereof, ASU hereby designates ASU Assistant Vice President, University Real Estate Development and ASU Senior Vice President and University Planner to act on its behalf as contemplated herein. Until the City revokes such designation by written notice to the HCC Lessee given pursuant hereto and designates another individual in lieu thereof, the City hereby designates the City Manager and the City Attorney to act on its behalf as contemplated herein. Notwithstanding the foregoing, the HCC Lessee shall still be required to submit all notices required hereunder to the parties designated in Section 9.2.

[Signatures appear on following pages]

ASU:

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

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of January, 2014, by John P. Creer, the Assistant Vice President for University Real Estate Development 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

Notary Seal:

EXHIBIT A TO CC AGREEMENT

HCC PARCEL

Wood, Patel & Associates, Inc.
(480) 834-3300
www.woodpatel.com

Revised January 8, 2014
Revised November 14, 2013
November 4, 2013
WP #134063.01
Page 1 of 2
See Exhibit "A"

PARCEL DESCRIPTION
USA Place
Parcel 22A

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 165.32 feet;

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

THENCE along said right-of-way line, North 89°48'20" East, a distance of 260.01 feet;

THENCE leaving said right-of-way line, South 00°35'54" East, a distance of 222.24 feet;

THENCE South 89°24'06" East, a distance of 260.00 feet;

THENCE North 00°35'54" West, a distance of 224.07 feet to the **POINT OF BEGINNING**.

Containing 1.33 acres, or 58,021 square feet of land, 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 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\2013 Parcel Descriptions\134063.01 USA Place Parcel 22A L05R02 01-08-14.doc



EXPIRES 06-30-14

UNIVERSITY DRIVE (8TH STREET)

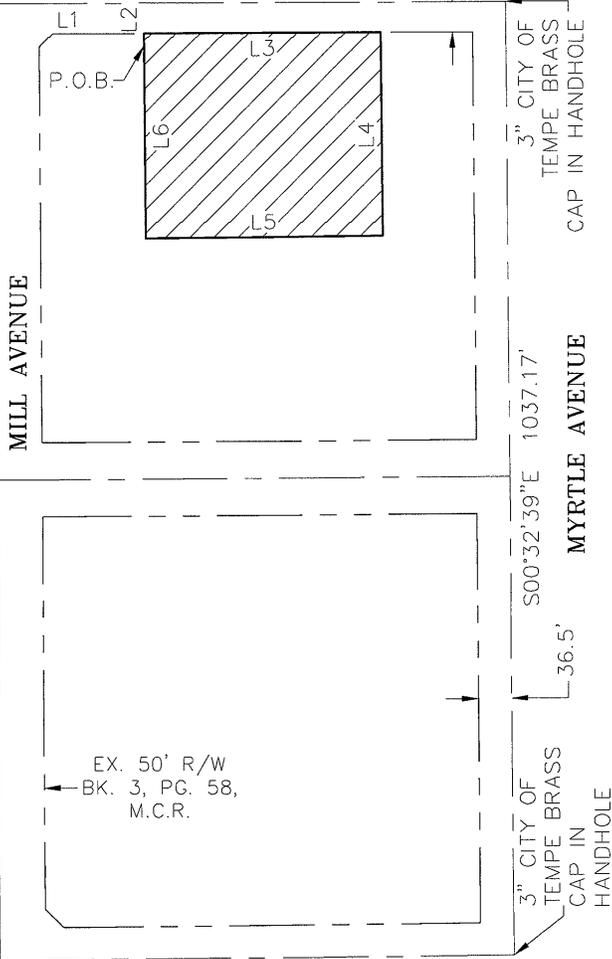
EX. 33' R/W BK.
3, PG. 58, M.C.R.

N89°48'20"E 561.84'

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



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N89°48'20"E	165.32'
L2	S00°11'40"E	33.00'
L3	S89°48'20"W	260.01'
L4	N00°35'54"W	222.24'
L5	N89°24'06"E	260.00'
L6	S00°35'54"E	224.07'



3" CITY OF
TEMPE BRASS
CAP IN HANDHOLE

10TH STREET

EXHIBIT "A"

USA PLACE
PARCEL 22A
REVISED: 01/08/14
WP#134063.01
PAGE 2 OF 2
NOT TO SCALE

WOOD/PATEL
2220 S. COUNTRY CLUB DR.
MESA, AZ 85210
Phone: (480) 834-3300
Fax: (602) 335-8580
PHOENIX • MESA • TUCSON

N: \2013\134063\SURVEY\LEGAL\4063L05R02

EXHIBIT B TO CC AGREEMENT

CONSTRUCTION COVENANT AND OPERATING STANDARD

A. Construction Covenant

Following the execution of the HCC 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 up to 18,000 square-feet but 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, 5,616 square-feet of 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.

The Improvements shall be operated to meet standards greater than generally set forth for a "Recommended" rating Forbes Travel Guide or a successor or other rating system establishing a similar degree of excellence for a comparable hotel and conference center located in California, Texas or Arizona or such other location as may provide an appropriate standard.

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 _____, 2013, 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 “**HCC Parcel**”).

B. Declarant and USA Place LLC, an Arizona limited liability company (“**USAP**”), entered into that certain Option to Lease and Escrow Instructions dated _____, 2013 (the “**Option to Lease**”), as evidenced by that certain Memorandum of Option to Lease and Escrow Instructions dated _____, 2013 and recorded _____, 2013 as Instrument No. ____ - _____, official records of Maricopa County, Arizona, pursuant to which ASU granted to USAP the option to lease certain real property located at the southeast corner of Mill Avenue and University Drive in Tempe, Arizona (the “**Property**”) and to develop, operate and/or sublease various improvements thereon.

C. USAP has designated the USA Place Hotel Management, LLC, an Arizona limited liability company (the “**HCC Lessee**”) as the party who has the right to lease that portion of the Property described on Exhibit A attached hereto (the “**HCC Parcel**”). Pursuant to the Option to Lease, if the HCC Lessee exercises its option, ASU, as landlord, and the HCC Lessee, as tenant will enter into a [Ground Lease] (the “**HCC Lease**”), whereby ASU leases the HCC Parcel to the HCC Lessee, and the HCC Lessee agrees to construct certain improvements on the HCC Parcel that include without limitation a hotel (the “**Hotel Improvements**”) and conference and convention center (the “**Conference Center Improvements**”) on the HCC Parcel. 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 HCC Parcel are collectively referred to in this Agreement as the “**Project**.”

D. Declarant, the City and HCC Lessee have also entered into that certain Convention and Conference Center Development Agreement dated _____, 2013 (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 HCC Parcel upon the terms and conditions set forth below.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that the use of the HCC 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 “**HCC Completion Date**”) and continuing for a period of thirty-five (35) years thereafter, the HCC 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 upon the occurrence of any of the following:

(a) if the HCC Lessee’s option to lease the HCC Parcel terminates either because (i) the HCC Lessee does not exercise its option to acquire the HCC Parcel by the applicable deadline under the Option to Lease or (ii) following its exercise, the HCC Lessee fails to close on its lease of the HCC Parcel by the applicable deadline under the Option to Lease; or

(b) if the HCC Lease is terminated for any reason prior to the HCC 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, the City.

3. The Use Restriction may only be amended, terminated, supplemented, or otherwise modified by a written agreement signed by Declarant and the 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 _____, 2013, 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

HCC PARCEL LEGAL DESCRIPTION

Wood, Patel & Associates, Inc.
(480) 834-3300
www.woodpatel.com

Revised January 8, 2014
Revised November 14, 2013
November 4, 2013
WP #134063.01
Page 1 of 2
See Exhibit "A"

PARCEL DESCRIPTION
USA Place
Parcel 22A

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 165.32 feet;

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

THENCE along said right-of-way line, North 89°48'20" East, a distance of 260.01 feet;

THENCE leaving said right-of-way line, South 00°35'54" East, a distance of 222.24 feet;

THENCE South 89°24'06" East, a distance of 260.00 feet;

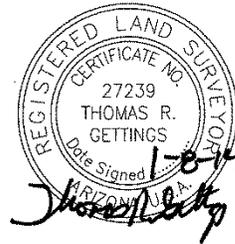
THENCE North 00°35'54" West, a distance of 224.07 feet to the **POINT OF BEGINNING**.

Containing 1.33 acres, or 58,021 square feet of land, 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 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\2013 Parcel Descriptions\134063.01 USA Place Parcel 22A L05R02 01-08-14.doc



EXPIRES 06-30-14

UNIVERSITY DRIVE (8TH STREET)

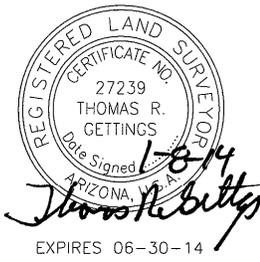
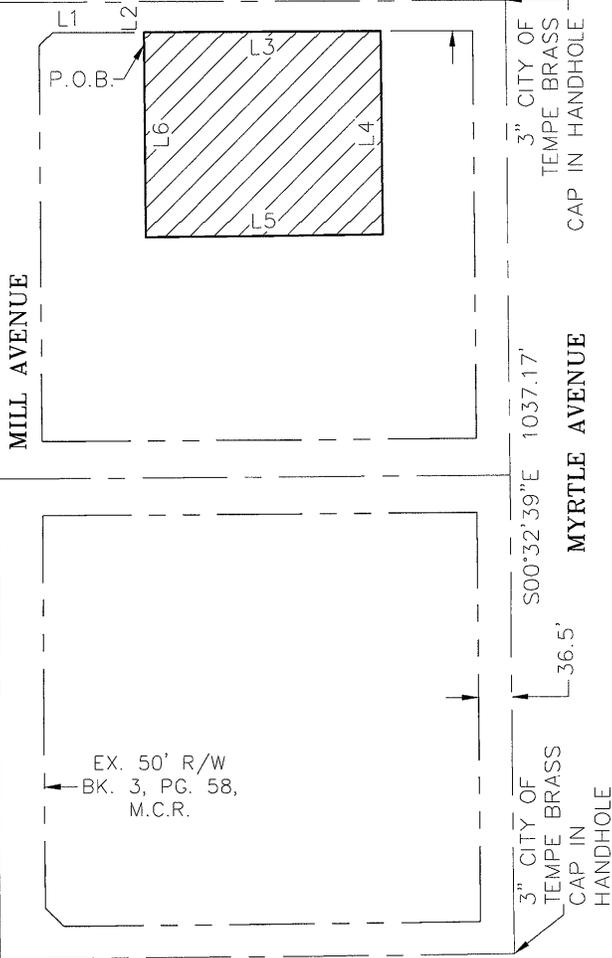
EX. 33' R/W BK.
3, PG. 58, M.C.R.

N89°48'20"E 561.84'

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



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N89°48'20"E	165.32'
L2	S00°11'40"E	33.00'
L3	S89°48'20"W	260.01'
L4	N00°35'54"W	222.24'
L5	N89°24'06"E	260.00'
L6	S00°35'54"E	224.07'



3" CITY OF
TEMPE BRASS
CAP IN HANDHOLE

10TH STREET

EXHIBIT "A"

USA PLACE
PARCEL 22A
REVISED: 01/08/14
WP#134063.01
PAGE 2 OF 2
NOT TO SCALE

WOOD/PATEL
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MESA, AZ 85210
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