

## LAND AND IMPROVEMENTS LEASE

THIS LAND AND IMPROVEMENTS LEASE ("Lease") is made and entered as of the \_\_\_ day of \_\_\_\_\_, 2016, by and between THE CITY OF TEMPE, an Arizona municipal corporation ("Landlord"), and MILL AVENUE APARTMENTS LIMITED PARTNERSHIP, a Delaware limited partnership ("Tenant").

### RECITALS

A. Pursuant to that certain Amended and Restated Development Agreement for Lots 2 and 3 of Centerpoint Plaza Three [c2004-128I Centerpoint Land], dated as of May 30, 2013, between Landlord and Tenant (the "Development Agreement"), Landlord holds title of record to certain land described in **Exhibit "A"** hereto (the "Land"), and certain buildings and other improvements constructed on the Land, together with all rights and privileges appurtenant thereto and all future additions thereto or alterations thereof (collectively, the "Premises"). The Premises consists of 341 residential apartment units, garage improvements dedicated for residential use and other related improvements within a six (6) story (above grade) building located on the Land. A certificate of occupancy for the Premises has been issued.

B. The Premises are "Government Property Improvements" under A.R.S. §426201(2), Landlord is a "Government Lessor" under A.R.S. §42-6201(1), and Tenant is a "Prime Lessee" under A.R.S. §42-6201(4).

C. The Premises are located within the corporate limits of Landlord in a single central business district (the "CBD") in a redevelopment area established pursuant to Title 36, Chapter 12, Article 3 of Arizona Revised Statutes (A.R.S. §§36-1471 et seq.). More than one year has lapsed from Landlord's designation of the CBD.

D. The Premises will be subject to the Government Property Lease Excise Tax as provided for under A.R.S. §42-6202 (the "Tax"). By resolution dated, Landlord has agreed to abate the Tax for the period beginning upon the issuance of the certificate of occupancy ( the "Commencement Date") for the Premises as provided in A.R.S. §42-6209.A. The Landlord acknowledges that construction of the Premises is a redevelopment of the Land and will result in improvements to and new uses of such property, in that the Landlord and the general public will directly and indirectly realize substantial tangible and intangible benefits from the redevelopment of the Land and the construction of the Premises described herein, including, without limitation, the redevelopment of a key commercial area within the corporate boundaries of the City of Tempe, the facilitation of the expansion of the employment base within the City of Tempe, incentivizing the redevelopment of adjacent properties, and other benefits. 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's paying the Total Rent herein provided and performing and fulfilling all the covenants, agreements, conditions and provisions herein to be kept, observed or performed by Tenant, Tenant may at all times during the term hereof peaceably, quietly and exclusively have, hold and enjoy the Premises.

2. Term; Termination When Development Cap Reached. The term of this Lease shall be for two (2) years, commencing on the Commencement Date and ending at midnight on the day immediately prior to the second (2<sup>nd</sup>) anniversary of the Commencement Date, subject to earlier termination at Tenant's option, as provided herein; provided, however, that at such time as Tenant has received total Economic Incentives under the Development Agreement equal to the "Development Cap" (as defined in the Development Agreement), the term of this Lease shall automatically terminate and Landlord shall comply with its obligations under **Section 20** as a result thereof.

3. Rent, GPLET Provisions.

3.1 Rental. During the term of this Lease, Tenant shall pay to Landlord as rental for the Premises the sum of One Dollar (\$1.00) per year, commencing on the Commencement Date and continuing on every subsequent anniversary thereof. 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 right to terminate this Lease as provided herein, may prepay the rental for the entire lease term, but upon any early termination of this Lease, Landlord shall not be obligated to refund any portion of the prepaid rental.

3.2 Government Property Lease Excise Tax. As required under A.R.S. § 42-6206, Tenant is hereby notified of its potential tax liability under the Government Property Lease Excise Tax ("GPLET") provisions of A.R.S. § 42-6201 through 42-6209, as now or hereafter amended. Failure by Tenant to pay the tax after notice and an opportunity to cure could result in divesting Tenant of any interest in or occupancy of the government property improvements to which this Lease applies. However, Landlord hereby abates Tenant's obligation for the GPLET for the Premises pursuant to A.R.S. § 42-6209 for a period beginning on the Commencement Date and ending on the earlier of (i) two (2) years thereafter, or (ii) the date on which the "Development Cap" (as defined in the Development Agreement) is reached, and City

waives the requirement that Tenant apply for such abatement. Landlord agrees to take any additional action as necessary for Tenant to qualify for GPLET tax treatment so that (i) the period of abatement for the Premises will run for a period of two (2) years from the Commencement Date or until the term of this Lease terminates whichever occurs first, and (ii) the Premises will be taxed as "government property improvements" in accordance with A.R.S. § 42-6201 through 42-6209, as now or hereafter amended from the expiration of the eight (8) year abatement period through the end of the Term, if applicable.

3.3 Enhanced Services District Assessments. Tenant acknowledges that the Premises is located within 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 Services District, semiannually, within thirty (30) days after Landlord delivers to Tenant a written request for payment of such amounts.

3.5 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 if legally required as a condition to such protest and contest. Tenant shall not, in the event of and during the bona fide prosecution of such protest or proceedings, be considered in default with respect to the payment of such taxes or assessments in accordance with the terms of this Lease.

3.6 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. Tenant shall hold the Landlord harmless from any liability, damage or expense incurred or suffered in connection with such proceedings.

3.7 Allocation. All payments contemplated by this Article 3 shall be prorated for partial calendar years at the Commencement Date and at the end of the term of this Lease,

#### 4. Mortgage of Premises.

4.1. Tenant is hereby given the absolute right without the 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".

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 shall attach only during the term of ownership of the leasehold estate by said Leasehold Mortgagee.

5. Use. Subject to A.R.S. §42-6201(2) and any restrictions expressly set forth in the Development Agreement, the Premises may be used and occupied by Tenant for any lawful purpose; provided, however that any change in use over that existing on the Commencement Date shall only be approved after compliance with A.R.S. §42-6209.C(3).

6. Landlord Nonresponsibility. Landlord shall have no responsibility, obligation or liability under this Lease whatsoever with respect to any of the following:

- (a) utilities, including gas, heat, water, light, power, telephone, sewage, and any other utilities supplied to the Premises;
- (b) disruption in the supply of services or utilities of the Premises;
- (c) maintenance, repair or restoration of the Premises;
- (d) any other cost, expense, duty, obligation, service or function related to the Premises.

Nothing set forth herein waives or otherwise modifies the City of Tempe's obligations as a municipality to provide municipal services and municipal utilities to the Premises in accordance with the requirements applicable to the provision of such services.

7. Tenant's Responsibility. Since this Lease is entered into pursuant to A.R.S. §426201, et seq. to enable Tenant to receive tax abatement upon the Premises, Tenant shall have the responsibility, obligation, and liability for any and all expenses set forth in paragraph 6 above. In addition, Tenant shall pay upon demand by Landlord, all charges related to any improvement district liens together with any interest or late charges connected therewith which exist against the Premises or which are imposed upon the Premises during the existence of this Lease. If Landlord, during the term of this Lease, is required to pay any costs or expenses in connection with the ownership of the Premises, Tenant shall indemnify, hold harmless, and immediately reimburse Landlord for any costs or expenses. Landlord during the term of this Lease shall not encumber or cause any lien to be imposed upon the Premises except for any cost or expense that is imposed upon the Premises during the normal course of government actions or is imposed by law.

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 the prior written consent of the occupant (including without limitation, the subtenant of that portion of the building) or as provided by law.

9. Alterations. Tenant shall have the right, without Landlord's consent, 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 include 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 mechanics' liens. 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 as a result of Landlord's status as the owner of the Premises and Landlord under this Lease. Tenant shall have the right at any time to demolish or substantially demolish improvements located upon the Premises. 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, when not in default hereunder, 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 a 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 requested by Tenant with respect to Landlord's status as fee title owner of the Premises and perform all other acts reasonably necessary or appropriate to the development, construction, razing, redevelopment or reconstruction of the Premises.

11. Insurance. During the term of this Lease, the Tenant shall, at Tenant's expense, maintain commercial general liability insurance against claims for personal injury, death or property damage occurring in, upon or about the Premises, with limits of liability not 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 certificates with respect to all policies of insurance or copies thereof required to be carried by Tenant under this Article 11 shall be delivered to Landlord. Each policy shall contain an endorsement prohibiting cancellation or nonrenewal without at least thirty (30) days prior notice to Landlord (ten (10) days for nonpayment), provided however, that if Tenant's insurance carrier refuses to provide such an endorsement, Tenant shall immediately notify Landlord of any notices received by Tenant relating to any potential event of cancellation or non-renewal, and the failure to obtain such endorsement shall not be an Event of Default hereunder. In the event that any such policy of insurance required to be maintained by Tenant hereunder is terminated, canceled or not renewed by the carrier thereof, and Tenant fails to immediately cause such insurance policy to be reinstated or secure a new policy as of the effective date of cancellation, termination or nonrenewal, then, in that event, in addition to all other rights and remedies available to Landlord hereunder, Landlord shall have the right (without first being required to provide any notice or opportunity to cure to Tenant) to immediately obtain all such required insurance, whereupon the premiums paid therefor by Landlord shall be due and payable by Tenant to Landlord immediately upon Tenant's receipt of written notice from Landlord. Tenant may self-insure the coverages required by this Article 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 subject to Landlord's reasonable approval.

12. Liability: Indemnity. Tenant covenants and agrees that Landlord is to be free from liability and claims 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, and Tenant hereby covenants and agrees to indemnify 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, and except for any claims or liabilities which could have been asserted against Landlord if Landlord were not the Owner of the Premises or if Landlord were not a party to this Lease. 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 Article shall survive the expiration or other termination of this Lease for a period of one (1) year.

13. Fire and Other Casualty. In the event that all or any portion of the Premises shall be totally or partially destroyed or damaged by fire or other insurable casualty, then, subject to Tenant's rights to terminate this Lease, this Lease shall continue in full force and effect, and, Tenant, at Tenant's sole cost and expense (subject only to the provisions of any Leasehold Mortgage), may, but shall not be obligated to, rebuild or repair the same. Landlord and Tenant agree that the provisions of A.R.S. § 33-343 shall not apply to this Lease. In the event that 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 (subject only to the provisions of any Leasehold Mortgage), whether or not Tenant rebuilds or repairs the improvements or fixtures.

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 the 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 only to the provisions of any Leasehold Mortgage, 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, including, without limitation, any claims for loss of fee title interest in the Premises.

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.

14.3. Temporary Taking. If the temporary use of the whole or any part of the Premises or the appurtenances thereto shall be taken, the term of this Lease shall not 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 any Leasehold Mortgage.

14.4. Notice of Condemnation. In the event 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 in the event that an action is filed to acquire the temporary use of the Premises or Tenant's leasehold estate or any part thereof, 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 Premises, or Tenant's leasehold estate or any part thereof, or 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. Tenant or its successor, including any successor to Tenant's interest hereunder by foreclosure sale, trustee's sale, or deed in lieu of foreclosure (collectively, "Foreclosure"), shall have the option, exercisable by written notice to Landlord, for any reason or for no reason, to terminate this Lease at any time prior to an Event of Default, whether or not a Breach then exists (the "Option") as to the entire Premises, with such termination becoming effective on the date which is fifteen (15) days after the date of the notice. Simultaneously with, and effective as of such termination, title to the Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant and Landlord shall comply with the obligations under Article 20.

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

16. Assignment; Subletting.

16.1. Transfer by Tenant. Tenant shall have the right to assign or transfer this Lease, or to sublease all or any part of the Premises.

16.2. Liability. Each assignee (but excluding all residential subtenants) shall assume in writing all of the obligations of the Tenant under the Lease (but not for liabilities or obligations arising prior to such assignment becoming effective). Each assignment shall 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 or its personal assets. 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 or assignee.

17. Default; Remedies: Protection of Leasehold Mortgagee and Subtenants.

17.1. Default. The failure by Tenant to observe and perform any material provision of this Lease to be observed or performed by Tenant (a "Breach"), where such failure continues for one hundred eighty (180) days after written notice thereof by Landlord to Tenant, shall constitute an "Event of Default" by Tenant; provided, however, that if the nature of such failure is such that the same cannot reasonably be cured within such one hundred eighty (180) day period, no Event of Default shall be deemed to have occurred if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.

17.2. Remedies. Upon an Event of Default by Tenant, subject to the rights, privileges and protections granted to the Leasehold Mortgagee pursuant to this Article 17 and Article 18 hereof, Landlord may at any time thereafter, by written notice to Tenant terminate this Lease, in which case Landlord shall comply with the obligations under *Article 20*.

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:

(a) No act or agreement between or on the part of Landlord or Tenant to amend or modify this Lease shall be binding upon or effective as against the Leasehold Mortgagee without its prior written consent. Notwithstanding anything to the contrary contained in this Lease, Tenant may exercise the Option described in Section 15.1 without the consent of any Leasehold Mortgagee.

(b) if Landlord shall give any notice, demand, election or other communication required hereunder (hereinafter 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. 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.

(c) The Leasehold Mortgagee shall have the right, for a period of sixty (60) days after the expiration of any grace period afforded Tenant 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 effect a cure, and Landlord shall accept such performance with the same force and effect as if furnished by Tenant, and the Leasehold Mortgagee 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.

(d) 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 such Events of Default as are 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).

The Leasehold Mortgagee shall not be required to obtain possession or to continue in possession as mortgagee of the Premises pursuant to Section 17.3(d)(i) above, or to continue to prosecute foreclosure proceedings pursuant to Section 17.3(d)(ii) above, if and when such Event of Default has been cured.

(e) 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 (d)(i) and (ii) above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

(f) 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.

(g) The Leasehold Mortgagee shall have the right, but not the obligation, to participate in any proceedings under this Lease in association with Tenant or on its own behalf as an interested party and no determination made in any such proceeding or settlement or agreement in connection therewith shall be binding upon Leasehold Mortgagee unless and until any such Leasehold Mortgagee has participated in such proceeding and/or consented to such settlement or agreement.

17.4. Protection of Subtenant. Landlord covenants that notwithstanding any default under or termination of this Lease or of Tenant's possessory rights, Landlord: (a) 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 sublease, (b) shall recognize the continued existence of the sublease, (c) shall accept the subtenant's attornment, as subtenant under the sublease, to Landlord, as landlord under the sublease, and (d) shall be bound by the provisions of the sublease, including all options.

17.5 Liability of Leasehold Mortgagee. The parties agree and acknowledge that any successor-in-interest to Tenant, including any Leasehold Mortgagee who becomes the Tenant hereunder, by foreclosure of the Leasehold Mortgage or under a new Lease under **Section 18** below shall not be liable or responsible for and shall not be deemed to have assumed liability for any other prior actions, omissions, defaults, breaches or other events caused by or relating to the original Tenant other than the payment of rent and other amounts due or payable hereunder. Rather, such successor-in-interest to Tenant or Leasehold Mortgagee, as the case may be, shall only be liable and responsible for acts, omissions, defaults, breaches or events occurring while it is the Tenant hereunder. Nothing in this **Section 17.5** (i) releases the Tenant from liability arising from events during Tenant's operation of the Premises, nor (ii) limits or otherwise modifies Landlord's remedy under **Section 17.2** to terminate this Lease for certain Events of Default, subject to Leasehold Mortgagee's right to cure an Event of Default in accordance with the provisions of this **Article 17**, and right to enter into a new lease in accordance with the provisions of **Article 18**.

## 18. New Lease.

18.1. Right to Lease. Landlord agrees that, in the event of termination of this Lease by reason of an Event of Default by Tenant, Landlord, if requested by any Leasehold Mortgagee, will enter into a new lease of the Premises with the most senior Leasehold

Mortgagee requesting a new lease, 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 by reason of an Event of Default by Tenant;

(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;

(c) Such Leasehold Mortgagee shall perform and observe all covenants in this Lease to be performed and observed by Tenant, 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; and

(d) The tenant under the new lease shall have the same right of occupancy to the Premises as Tenant had under the Lease immediately prior to its termination. Notwithstanding anything to the contrary expressed or implied in this Lease, any new lease made pursuant to this Article 18 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 the termination of this Lease.

18.2. No Obligation. Nothing herein contained shall require any Leasehold Mortgagee to enter into a new lease pursuant to this Article 18 or to cure any default of Tenant referred to above.

18.3. Possession. If any Leasehold Mortgagee shall demand a new lease as provided in this Article 18, 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 any subtenants actually occupying the Premises or any part thereof.

18.4. 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 this Article 18, or until the period therefor has expired, Landlord shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new leases or

subleases with respect to the Premises without the prior written consent of each Leasehold Mortgagee.

18.5. 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.

19. 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 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.

20. Surrender; Reconveyance.

20.1. Reconveyance Upon Termination or Expiration. On the last day of the term of this Lease or upon any termination of this Lease, whether under Article 15, Article 17 or otherwise, title to the Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant or Tenant's successor by Foreclosure, as the case may be, provided, however, that such automatic vesting shall not occur for any termination of this Lease if a Leasehold Mortgagee exercises its rights under Section 18.1 and enters into a new lease as described therein.

20.2. Reconveyance Documents. Without limiting the foregoing, Landlord upon request shall execute and deliver: (a) a special warranty deed reconveying all of Landlord's right, title and interest in the Premises to Tenant; (b) a memorandum in recordable form reflecting the termination of this Lease; (c) 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 (d) such other reasonable and customary documents as may be required by Tenant 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 Tenant.

20.3. Title and Warranties. Notwithstanding anything to the contrary in this Article, 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. Upon any reconveyance, Landlord shall satisfy all liens and monetary encumbrances on the Premises created by Landlord without the consent of Tenant.

20.4. 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. The provisions of this Article 20 shall survive the expiration or earlier termination of this Lease.

21. 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 or Tenant's subtenants may be removed by Tenant 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, lessors, 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, lessor, chattel mortgagee or any holder or owner, any lien, claim, interest or other right therein superior to that of such vendor, lessor, 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 accordance with the terms of such chattel mortgage or other similar documents, free and clear of any claim or lien of Landlord.

22. Estoppel Certificate.

22.1. Landlord shall at any time and from time to time upon not less than ten (10) days' prior written notice from Tenant or any Leasehold Mortgagee execute, acknowledge and deliver to Tenant or the Leasehold Mortgagee a statement in writing (a) 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; (b) 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 (c) 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.

22.2. Landlord's failure to deliver a statement within the time prescribed shall be conclusive upon Landlord (a) that this Lease is in full force and effect, without modification except as may be represented by Tenant; and (b) that there are no uncured defaults in Tenant's performance.

23. General Provisions.

23.1. 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.

23.2. 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. 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 not take any actions that would cause the Premises (including, without limitation, Landlord's fee simple interest in the Premises) to be encumbered in any manner whatsoever, nor take any action that would impair Landlord's fee simple title to the Premises without the prior written consent of Tenant, which consent may be given or withheld in Tenant's sole and absolute discretion. Any mortgage, deed of trust or other encumbrance granted or created by Landlord with Tenant's consent shall be subject to this Lease, all subleases and all their respective provisions including, without limitations, the options under this Lease and any subleases with respect to the purchase of the Premises.

23.3. Captions; Attachments; Defined Terms.

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

(b) The recitals set forth above, exhibits attached hereto, and addenda 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.

23.4. Entire Agreement. This Lease along with any addenda, exhibits and attachments hereto, together with the applicable provisions of the Development Agreement, 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 and in the applicable provisions of the Development Agreement.

23.5. 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.

23.6. 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.

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

23.8. Notices. All notices under this Lease shall be in writing and (a) delivered personally, (b) delivered by a reputable, nationally-recognized overnight courier service, (c) mailed by registered or certified mail, postage prepaid, return receipt requested, or (d) sent by a facsimile transmission (provided that any notices delivered by facsimile transmission shall be followed by a confirming hard copy delivered in any other manner for providing notice as described in the foregoing), to the parties at the following addresses:

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:

Mill Avenue Apartments Limited Partnership  
c/o Hanover R.S. Limited Partnership  
5847 San Felipe, Suite 3600  
Houston, Texas 77057  
Attn: John Nash

With a copy to:

Mill Avenue Apartments Limited Partnership  
c/o Hanover R.S. Limited Partnership  
5847 San Felipe, Suite 3600  
Houston, Texas 77057  
Attn: Tim Ellwood

or to such other street address as may be designated by the respective parties in writing from time to time.

23.9. 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.

23.10. 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.

23.11. Leasehold Mortgage; 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 an Event of Default under the terms of this Lease and of confirming the elimination of the ability of Tenant to modify 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.

23.12. Income Tax Matters. It is the intention of Landlord and Tenant that Tenant be entitled to the attributes of ownership of the Premises for federal income tax purposes.

24. 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 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, managers or other related parties, except to the extent Landlord is prevented from pursuing the Tenant's interest in the Premises due to intentional or fraudulent acts or willful misconduct of Tenant, its beneficiaries, joint venturers, owners, partners, shareholders, members, managers or other related parties.

25. A.R.S. §38-511. Notice is hereby given of the applicability of A.R.S. §38-511.

26. Counterparts. This Lease may be executed in multiple counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

*Remainder of Page intentionally left blank  
Signature page follows.*

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

LANDLORD:

CITY OF TEMPE, an Arizona municipal corporation

\_\_\_\_\_  
Mark W. Mitchell, Mayor

ATTEST:

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

APPROVED AS TO FORM:

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

TENANT:

MILL AVENUE APARTMENTS LIMITED PARTNERSHIP, a Delaware limited partnership

BY: THC TEMPE JV G.P. LLC, a Delaware limited liability company

Its: General Partner

By: \_\_\_\_\_  
Name: Kathy K. Binford  
Its: Vice President  
Date: \_\_\_\_\_

**EXHIBIT "A"**

**Land**

Lot 1 of Hanover Mill Avenue according to the plat of record in the Office of the County Recorder of Maricopa County, Arizona, recorded in Book 1172 of Maps, Page 21.

**EXHIBIT "B"**

**of Land and Improvements 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 \_\_\_ day of \_\_\_\_\_, 2016, by and between CITY OF TEMPE, an Arizona municipal corporation ("City"), and MILL AVENUE APARTMENTS LIMITED PARTNERSHIP, a Delaware limited partnership ("Tenant").

1. The City and Tenant have entered into that certain Land and Improvements Lease, dated \_\_\_\_\_, 2016 ("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. 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.

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

*(Signature on next page)*

ATTEST:

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

APPROVED AS TO FORM:

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

LANDLORD:

CITY OF TEMPE, an Arizona municipal  
corporation

\_\_\_\_\_  
Mark W. Mitchell, Mayor

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by MARK W. MITCHELL, Mayor of CITY OF TEMPE, an Arizona municipal corporation.

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

My Commission Expires:

TENANT:

MILL AVENUE APARTMENTS LIMITED PARTNERSHIP, a Delaware limited partnership

BY: THC TEMPE JV G.P. LLC, a Delaware limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Name: Kathy K. Binford  
Its: Vice President  
Date: \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by KATHY K. BINFORD, Vice President of THC TEMPE JV G.P. LLC, a Delaware limited liability company, the General Partner of MILL AVENUE APARTMENTS LIMITED PARTNERSHIP, a Delaware limited partnership:

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

My Commission Expires:

**EXHIBIT "A"**

**Property**

Lot 1 of Hanover Mill Avenue according to the plat of record in the Office of the County Recorder of Maricopa County, Arizona, recorded in Book 1172 of Maps, Page 21.