

## GROUND LEASE

THIS GROUND LEASE ("Lease") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, to be effective as of July 1, 2017 ("**Effective Date**"), by and between the City of Glendale, an Arizona municipal corporation (the "**City**"), and Glendale Westgate Lodging Investors II, LLC, a Wisconsin limited liability company that is authorized to do business in Arizona ("**GWLI**").

In consideration of the mutual covenants contained herein, GWLI and the City agree as follows:

1. **Premises.** GWLI hereby leases to the City and the City hereby leases from GWLI, subject to the provisions of this Lease, 257 parking spaces located within Westgate City Center situated in the City of Glendale, County of Maricopa, and State of Arizona, legally described on Exhibit A-1 attached hereto, and generally depicted as Lot 12B on Exhibit A-2 attached hereto, together with all rights accruing thereto including all interest of GWLI to the center of any street adjoining said tract (all of the foregoing being referred to herein as the "**Premises**").
2. **Term.**
  - 2.1 The term of this Lease is for a period of one year commencing on the Effective Date and terminating on June 30, 2018, unless earlier terminated by GWLI or the City in accordance with this Section 2.
  - 2.2 Termination.
    - a. The City may terminate this Lease at any time by providing GWLI not less than 90 days' prior written notice of the intent to terminate this Lease.
    - b. GWLI may terminate this Lease on a date that is after March 1 of any calendar year during the term of this Lease, provided notice is given not later than December 31 of the previous year.
3. **Rent.**
  - 3.1 The City will pay to GWLI rent for the Premises at the rate equal to Twenty Thousand Dollars (\$20,000.00) annually, plus all applicable state and local privilege taxes, until the earlier of the expiration of this Lease or termination of this Lease pursuant to Section 2 ("**Rent**"). Rent will be considered fully-earned when paid pursuant to Section 3.2.
  - 3.2 Rent is due and payable in advance in the following installments: \$10,000 within 30 days of the Effective Date, and \$10,000 on December 1, 2017.
  - 3.3 In addition to the Rent, the City will pay to GWLI the sum of \$1,500 per day for each daily use of the Premises that exceeds 15 days per year.
4. **Use of Premises.**
  - 4.1 The City will use the Premises only for parking for events held at the Gila River Arena or the University of Phoenix Stadium, and only for a maximum of 15 days per year unless GWLI otherwise consents in writing (the "**Permitted Use**").
  - 4.2 The City will provide to GWLI for its review and approval (which approval may not be unreasonably withheld or delayed) a traffic flow and control plan for each season of events for which the Premises will be used (a "**Season Plan**"), which Season Plan will assure convenient access at no charge to guests of the Hampton Inn & Suites and Home2 Suites Hotels located on the adjoining parcels and owned by affiliates of GWLI (the "**Adjacent Hotels**").
    - a. The City will provide its proposed Season Plan to GWLI for GWLI's approval at least 30 days prior to the earlier of (a) the City's first planned use of the Premises for

the Permitted Use for such season, or (b) the date on which such Season Plan will be disclosed to patrons who expect to use the Premises for the Permitted Use.

- b. With respect to any proposed use of the Premises for which the Season Plan approved by GWLI will not apply, the City will provide to GWLI for its review and approval (which approval may not be unreasonably withheld or delayed) a traffic flow and control plan for each such event as soon as reasonably possible prior to such event, to allow GWLI a reasonable time to review and approve such plan to assure convenient access at no charge to guests of the Adjacent Hotels.

- 4.3 Only with the prior written consent of GWLI in each instance, the City may use the Premises for any other lawful purpose subject to the terms hereof.
- 4.4 The City has no obligation to make improvements to the Premises (except as set forth in Section 6), nor will the City have any obligation to do business at the Premises, and once the City has concluded doing business at the Premises, the City will have no obligation to continue doing so.
- 4.5 The City acknowledges that the Premises are subject to various recorded covenants and restrictions, including without limitation the following: the recorded restrictions listed on Exhibit C attached hereto (the "CCRs"). The City hereby agrees to comply with all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations affecting the Premises and improvements thereon or any activity or condition on or in the Premises, and with the terms and conditions of the CCRs and all other recorded instruments affecting the Premises, in connection with its use of the Premises and the construction of any improvements pursuant to Section 6.
- 4.6 The City agrees to indemnify and hold Landlord harmless from and against all losses, damages, claims, costs, expenses (including reasonable attorneys' fees) or liabilities that Landlord may incur by reason of the City's construction or operation of the improvements and the City's failure to comply with the provisions of the CCRs or any other recorded instrument affecting the Premises.
- 4.7 GWLI reserves the right to enter upon the Premises at any time during business hours to inspect the same, and the City agrees to allow GWLI free access of the Premises for the purpose of examining or exhibiting the same at all reasonable times.

## **5. Taxes and Utility Expenses.**

- 5.1 Commencing on the Effective Date, and continuing throughout the term of this Lease, the City will pay any water or sewer rents or charges imposed with respect to the Premises or any improvements thereon and the City will pay all charges for sewer, water, and electricity or other services furnished to the Premises or the occupants thereof.
  - a. GWLI makes no representations regarding the availability of utilities at the Premises.
  - b. It shall be the City's responsibility to arrange for and connect the Premises to any utilities and/or other services that the City may wish to have serve the Premises.
- 5.2 Throughout the term of this Lease, GWLI will remain responsible for timely payment of real estate taxes and special assessments, if any, that are assessed against the Premises.
- 5.3 Any refunds or rebates of amounts paid hereunder will belong to the party obligated to pay the amounts due and the other party will aid the receiving party in obtaining any such refund or rebate.

## **6. Improvements.**

- 6.1 As permitted by the Ground Lease dated June 12, 2012 between the City and GWLI, as amended by a First Amendment to Ground Lease dated April 14, 2015 (as amended, the "Prior Lease"), the City improved the Premises at its own cost to accommodate the Permitted Use, as defined in the Prior Lease. Consistent with the Permitted Use, as defined herein, the City may, at its own cost, further improve the Premises, but only to accommodate the Permitted Use, which improvements may include parking lots, curbs, parking lot marking, lighting, and landscaping, and the City at its sole cost will maintain the Premises and all improvements.
- 6.2 Prior to commencing any such improvements on the Premises, the City will submit a complete set of designs for the same to GWLI.
- a. GWLI will have the right to review and provide comments to the City regarding such designs for a period of 30 days after receipt of the complete set of designs.
  - b. No such improvements may be made without GWLI's prior written approval, to the extent that any such improvements may have an impact on the Adjacent Hotels property or the business operations thereon.
- 6.3 Any construction by the City shall be performed by a general contractor licensed with and in good standing in the State of Arizona.
- a. All improvements shall be constructed in full compliance with any and all laws, ordinances, rules, regulations and restrictive covenants which may govern the Premises or such construction, including without limitation the CCRs.
  - b. Once it commences construction, the City will diligently and expeditiously pursue and complete such construction on the Premises, without unreasonably disturbing the Adjacent Hotels' property or the business operations thereon, and without unreasonably interfering with access to the Adjacent Hotels from adjacent public roads.
- 6.4 The City will do all things necessary to prevent the filing of any mechanics' or other liens against the Premises, the City's leasehold interest, or the interest of GWLI or any of its mortgagees covering the Premises by reason of any work, labor, services or materials performed or supplied or claimed to have been performed or supplied to the City or anyone holding the Premises, or any part thereof, through or under the City.
- a. The City will promptly discharge any lien filed against the Premises by reason of any act or omission of or on behalf of the City and GWLI consents.
  - b. Without waiving its right, to the City having the full rights to contest any lien filed against the Premises, provided that the City, at its sole cost, furnishes such security, by surety bond or otherwise as is prescribed by law, to release the same as a lien against the Premises, or to post a letter of credit with GWLI to be used to prevent any foreclosure of such lien during the pendency of such contest or to post such other collateral as GWLI shall reasonably require as a condition to contesting such lien.
- 6.5 The City will, at its own cost and expense, keep, maintain and repair the Premises, including all improvements of every kind which may be constructed thereon and all appurtenances thereto, in good working order, condition and repair during the Term, and will repair, restore and replace any such improvements which may become inoperable or be destroyed or damaged by fire, casualty, or any other cause (except as otherwise provided in Section 6.6).
- a. The City will, at its own expense, keep the Premises in sanitary, clean and neat order and keep the sidewalks and parking area free of trash.

- b. If the City shall fail, refuse or neglect to make repairs in accordance with the terms and provisions of this Lease or if GWLI is required to make any repairs by reason of any act, omission to act or negligence of the City, or its assignees, invitees, subtenants, concessionaires or licensees, or their respective employees, agents or contractors, GWLI shall have the right, at its option, after GWLI shall have given to the City a ten-day notice (except in case of an emergency), to make such repairs on behalf of and for the account of the City and to enter upon the Premises for such purposes, and add the cost and expenses thereof, to and for the next installments of the Rent due and the City agrees to pay such amount, but nothing contained in this Section shall be deemed to impose any duty upon GWLI or affect in any manner the obligations assumed by the City hereunder.
  - 6.6 In addition to the maintenance obligations set forth in Section 6.5 with respect to the Premises, the City will be responsible for a pro-rata portion of the expenses incurred by GWLI or either of the owners of the Adjacent Hotels during the term of this Lease to maintain the access points and drive aisles to and from the Premises and Maryland Avenue and/or 95<sup>th</sup> Avenue . The City's pro-rata portion will be calculated by dividing (a) the product of the number of parking spaces on the Premises and the number of days the City uses the Premises annually (which is expected to be 15); by (b) the sum of (a) and the product of the number of parking spaces at the Adjacent Hotels multiplied by 365 days of use annually). The City agrees to pay such amounts within thirty (30) days of receipt of an invoice, with such additional documentation as the City reasonably requests, for such maintenance work.
  - 6.7 Should the City's improvements be damaged in any amount exceeding \$50,000 by fire, the elements or other casualty during the term of this Lease, the City has no obligation to restore any improvements after the casualty but in such event must remove all of such damaged improvements from the Premises and restore the Premises to as nearly as practicable its condition on the Effective Date, and may at its option terminate this Lease by written notice to GWLI within 30 days after said casualty effective on the date specified in such notice (provided that removal of such damages improvements from the Premises and restoration of the Premises is a condition precedent to any such termination).
- 7. Assignment and Subletting.**
- 7.1 The City may not assign or sublease this Lease or any part of the Premises without the prior written consent of GWLI, except as set forth in Section 7.3.
  - 7.2 If the City shall be declared bankrupt, or shall have a receiver over its property, or shall make an assignment for the benefit of its creditors, or its rights hereunder shall be taken under execution, then the City shall be deemed to have made an assignment of this Lease without obtaining GWLI's consent.
  - 7.3 GWLI acknowledges that the Premises will be provided for use by third parties for parking; specifically, for parking of events in the Gila River Arena and University of Phoenix Stadium.
- 8. Indemnity and Insurance.**
- 8.1 The City, at its sole cost, will provide and keep in force during the Term general liability insurance, or comparable self-insurance retention, with respect to the Premises, naming GWLI and any lender of GWLI as additional insureds, in the amounts of \$1,000,000 in respect to injuries to any one person, \$3,000,000 in respect to any one accident, and at least a \$10,000,000 umbrella policy; \$200,000 in respect to property damage; and to deliver certificates of such insurance to GWLI.

- 8.2 In addition, the City, at its sole cost, will provide and keep in force during the Term insurance (or comparable self-insurance retention) covering all improvements that are hereafter a part of the Premises insured against loss or damage by fire, wind, storm, malicious mischief and extended coverage hazards in an amount equal to at least 100% of the full replacement value thereof.
- 8.3 GWLI shall not be liable for any loss, injury, death or damage to persons or property which at any time may be suffered or sustained by the City or by any person whosoever may at any time be using or occupying or visiting the Premises or be in, on, or about the same whether such loss, injury, death, or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of the City or of any occupant, subtenant, visitor, invitee, contractor, subcontractor or user of any portion of the Premises, or shall result from or be caused by any other matter or thing whether of the same kind as or of a different kind than the matters or things above set forth, and the City will indemnify, hold harmless and defend (with legal counsel reasonably acceptable to GWLI) GWLI and its members, managers, agents, employees, successors and assigns (the "GWLI Parties") from liability from any and all claims, liabilities, expenses and reasonable attorneys' fees and court costs which may be claimed or asserted against the GWLI Parties arising out of breach or default by the City under this Lease, the condition of the Premises during the Term, or the use of the Premises, or any portion thereof, by the City or its successors, assigns, licensees, invitees, employees, consultants, agents and/or members of the general public, including, but without limitation, claims for property damage and bodily injury and any mechanics' or materialmen's liens or claims of lien which may be asserted against the GWLI Parties. The foregoing sentence shall not apply to loss, injury, death or damage arising by reason of GWLI's breach of its covenants contained in this Lease or, the negligence, or intentional misconduct of GWLI or its agents or employees.
- 8.4 The coverage amounts set forth above may be met by a combination of self-insurance retention and underlying and umbrella policies so long as in combination the limits equal or exceed those stated.
- 8.5 In the event the City elects to self-insure as permitted herein, the City will be responsible for any claims (including the defense thereof) and losses that would have been covered by the insurance policies hereinabove required to be carried by the City, as though such policies had been issued with the types and amounts of coverages herein required.
9. **Utility Easements and Roads.** The City may grant reasonable easements to utility providers as may be required to service the improvements on the Premises, but only if the term of such easements do not extend beyond the Term, and GWLI will execute any documents necessary to evidence the same.
10. **Quiet Enjoyment and Permitted Uses.** GWLI covenants and warrants that for so long as the City fulfills the conditions and covenants required of the City under this Lease, the City will have and peaceably enjoy the sole possession of the Premises during the Term, subject to any deed of trust affecting the Premises, the CCRs, and all other recorded restrictions and covenants affecting the Premises, free from interference from GWLI or any person claiming by or through GWLI.
11. **Defaults.**
- 11.1 A party shall be deemed to be in default of this Lease if (a) default shall be made in the payment of Rent or any other charge due hereunder, and such default remains uncured for a period of ten days after the non-defaulting party provides to the defaulting party written notice of delinquency, or (b) default shall occur in the due performance or observance of any other covenant, condition or provision of this Lease on the part of the defaulting party to be performed, kept or observed, and such default remains uncured for a period of 30 days after

the non-defaulting party provides to the defaulting party written notice specifying such default, provided that if the default by its nature cannot reasonably be cured within 30 days, then such period will be extended for so long as the defaulting party is proceeding diligently to cure such default as soon as reasonably possible under the circumstances.

- 11.2 Notwithstanding the foregoing, GWLI shall not be required to send out more than two (2) default notices for late payment of Rent or any other charges during the Term and, therefore, after the second such notice, the City's failure to pay Rent or any other charges due hereunder shall be an immediate event of default if not paid within ten days of its due date (without requirement of notice of such default from GWLI).
- 11.3 In the event of a default by the City under this Lease, beyond any cure period set forth in Section 11.1, GWLI may re-enter the Premises and exercise any right or remedy provided by law or this Lease.
- 11.4 Without limitation of the foregoing, GWLI has no right to cause any rental obligation hereunder to be accelerated, and GWLI waives the benefit of any statutory or common law which may provide any such right.
- 11.5 The parties waive any claims to punitive, indirect or consequential damages.
- 11.6 The parties must use reasonable efforts to mitigate damages resulting from the other party's default hereunder.
- 11.7 In the event of any default hereunder by the City, GWLI may immediately or at any time thereafter, after having given the City the requisite notice to cure the same and the time for such correction having elapsed, cure such default for the account and at the expense of the City.
  - a. If GWLI at any time, by reason of such default, is compelled to pay, or elects to pay, any sum of money, or incur any expense, including reasonable attorneys' fees, in instituting or prosecuting any action or proceeding to enforce GWLI's rights hereunder, the sum or sums so paid or incurred by GWLI shall be deemed to be additional rent hereunder and shall be due from the City to GWLI on the first day of the month following the payment of such respective sums.
  - b. Any amounts payable by the City hereunder shall bear interest equal to the rate of 12% *per annum*.
  - c. This option given to GWLI is intended for GWLI's protection and its existence will not release the City from the obligation to perform the terms and covenants herein provided or deprive GWLI of any legal rights which it may have by reason of the City's default.
- 11.8 In addition to any and all costs to become payable by the City under Section 117 above, the City agrees that any Rent that is outstanding past the due date shall bear interest equal to the rate of 12% *per annum* from the date that the balance was first due.
- 11.9 GWLI's waiver of, or failure to collect any amounts due pursuant to this section shall not preclude GWLI from future collection of such charges.
- 11.10 Nothing in this clause shall be construed to grant the City the option to pay Rent after the due date, and all default remedies shall be available to GWLI in addition to and during the collection of the amounts set forth in this section.

**12. GWLI Representations.** GWLI represents and warrants that:

- 12.1 GWLI has a fee simple title interest in the Premises that allows for a lease of the Premises to the City, and that, in accordance with any other agreements that are or may be affected by

this Agreement, GWLI has the power and authority to execute and deliver this Lease and to comply with all the provisions hereof.

- 12.2 The Premises has vehicular access to the following public streets: Maryland Avenue and 95<sup>th</sup> Avenue.
- 12.3 GWLI has received no notice of, nor is GWLI aware of, any pending, threatened or contemplated action by any governmental authority or agency having the power of eminent domain, which might result in all or any part of the Premises being taken by condemnation or conveyed in lieu thereof, except any such action by or on behalf of the City, as to which the City is deemed to be aware.
- 12.4 There is no action, suit, or proceeding pending or, to GWLI's knowledge, threatened by or against or affecting GWLI or the Premises that does or will involve or affect the Premises or title thereto or GWLI's ability to perform its obligations under this Lease or any documents entered into pursuant to this Lease, except any such action by or on behalf of the City, as to which the City is deemed to be aware.
- 12.5 To GWLI's knowledge, no assessments have been made against any portion of the Premises which are unpaid (except ad valorem taxes for the current year or any assessments issued by or on behalf of the City, as to which the City is deemed to be aware), whether or not they have become liens; and GWLI will notify the City of any such assessments which are brought to GWLI's attention after the execution of this Lease (except any such assessments issued by or on behalf of the City, as to which the City will be deemed to be aware).
- 12.6 To GWLI's knowledge, there is no dispute involving or concerning the location of the lines and corners of the Premises; to GWLI's knowledge there are no encroachments on the Premises, no gaps or gores exist within the Premises and no portion of the Premises is located within any "Special Flood Hazard Area" designated by the United States Department of Housing and Urban Development, Federal Emergency Management Agency, or in any area similarly designated by any agency or other governmental authority; and no portion of the Premises is located within a watershed area imposing restrictions upon use of the Premises or any part thereof.
- 12.7 To GWLI's knowledge, there are no violations of state or federal law, municipal or county ordinances, or other legal requirements with respect to the Premises except as set forth in documents either listed on Exhibit C or recorded in the public records.
- 12.8 No prior options or rights of first refusal have been granted by GWLI to any third party to purchase or lease any interest in the Premises, or any part thereof, which are effective as of the Effective Date and that could be exercised during the Term.
- 12.9 Subject to any construction work performed on the Premises pursuant to the Prior Lease for the benefit of the City, GWLI is not indebted to any contractor, laborer, mechanic, materialmen, architect or engineer for work, labor or services performed or rendered, or for materials supplied or furnished, in connection with the Premises for which any person could claim a lien against the Premises and has not done any work on the Premises within 180 days prior to the Effective Date.
- 12.10 Additionally, GWLI represents and warrants to the City that:
  - a. To GWLI's knowledge, the Premises and the activities conducted thereon prior to the Effective Date do not pose any significant hazard to human health, the environment or violate any Environmental Laws. There is no evidence of a Release of any Hazardous Materials at the Premises.
  - b. To GWLI's knowledge, there has been no treatment, storage or Release of any Hazardous Materials on land adjacent or near to the Premises which may constitute

a risk of contamination of the Premises or surface water or, ground water flowing to the Premises.

- c. To GWLI's knowledge, no inspection, audit, inquiry or other investigation has been or is being conducted by any Governmental Authority or other third person with respect to the presence or discharge of Hazardous Materials at the Premises or the quality of the air, or surface or subsurface conditions at the Premises except for a Phase I environmental site assessments performed on behalf of GWLI's affiliate, a copy of which will be provided to the City promptly upon request.

- (1) GWLI has not received notice that any such inspection, audit, inquiry or investigation is pending or proposed.
- (2) Neither GWLI, nor to GWLI's knowledge, any previous owner of the Premises has received any warning, notice, notice of violation, administrative complaint, judicial complaint or other formal or informal notice or request for information alleging that Hazardous Materials have been stored or Released at the Premises or that conditions at the Premises are in violation of any Environmental Laws or requesting information regarding the use, storage, release or potential Release of any Hazardous Materials at the Premises.

- d. For purposes of this Lease:

- (1) "Environmental Laws" will mean any federal, state or local statute, regulation or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to any Hazardous Materials, drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water runoff, waste emissions or wells. Without limiting the generality of the foregoing, the term will encompass each of the following statutes, and regulations, orders, decrees, permits, licenses and deed restrictions now or hereafter promulgated thereunder, and amendments and successors to such statutes and regulations as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental Response, Compensation and Liability Act (codified in scattered sections of 26 U.S.C., 33 U.S.C., 42 U.S.C. and 42 U.S.C. Section 9601 et seq.) ("CERCLA");(ii) the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.) ("RCRA"); (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.); (iv) the Toxic Substances Control Act (15 U.S.C. Section 2061 et seq.); (v) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vi) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vii) the Safe Drinking Water Act (21 U.S.C. Section 349, 42 U.S.C. Section 201 and Section 300f et seq.); (viii) the National Environmental Policy Act (42 U.S.C. Section 4321 et seq.); (ix) the Superfund Amendments and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (x) Title III of the Superfund Amendment and Reauthorization Act (40 U.S.C. Section 1101 et seq.); (xi) the Uranium Mill Tailings Radiation Control Act (42 U.S.C. Section 7901 et seq.); (xii) the Occupational Safety and Health Act (29 U.S.C. Section 655 et seq.); (xiii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (xiv) the Noise Control Act (42 U.S.C. Section 4901 et



seq.); and (xv) the Emergency Planning and Community Right to Know Act (42 U.S.C. Section 1100 et seq.).

- (2) "Hazardous Materials" means each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law.
- (3) "Hazardous Substance(s)" as defined in CERCLA, the Superfund Amendments and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder including, but not limited to, asbestos or any substance containing asbestos, polychlorinated biphenyls, any explosives, radioactive materials, chemicals known or suspected to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions, infectious wastes, any petroleum or petroleum-derived waste or product or related materials and any items defined as hazardous, special or toxic materials, substances or waste;
- (4) "Hazardous Waste" as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;
- (5) "Materials" as defined as "Hazardous Materials" in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder; and
- (6) "Chemical Substance or Mixture" as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder.
- (7) "Governmental Authorities" means the United States, the State of Arizona and any political subdivision thereof, and any and all agencies, departments, commissions, boards, bureaus, bodies, councils, offices, authorities, or instrumentality of any of them, of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.
- (8) "Release" will mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, discarding, burying, abandoning, or disposing into the environment.

12.11 GWLI will defend, indemnify and otherwise hold the City harmless from any and all claims of any person due to, arising out of or relating to GWLI's breach of its representations made in this Lease and GWLI will, promptly upon receiving any such notice or learning of any such contemplated or threatened action, give the City notice thereof.

**13. City Representations and Covenants.** The City represents and warrants to and covenants with GWLI as follows:

- 13.1 The City has the power and authority to execute and deliver this Lease and to comply with all the provisions hereof.
- 13.2 The activities conducted on the Premises during the Term will not pose any significant hazard to human health, the environment or violate any Environmental Laws.
  - a. There will be no treatment, storage or Release of any Hazardous Materials on the Premises.
  - b. The City will promptly provide to GWLI any notice that it receives with respect to, or if it otherwise becomes aware of: (a) any inspection, audit, inquiry or other

investigation proposed or planned to be conducted by any Governmental Authority or other third person with respect to the presence or discharge of Hazardous Materials at the Premises or the quality of the air, or surface or subsurface conditions at the Premises; or (b) any warning, notice, notice of violation, administrative complaint, judicial complaint or other formal or informal notice or request for information alleging that Hazardous Materials have been stored or Released at the Premises or that conditions at the Premises are in violation of any Environmental Laws or requesting information regarding the use, storage, release or potential Release of any Hazardous Materials at the Premises.

- 13.3 The City will promptly consent to any replat, minor land division, or similar subdivision of the Premises submitted by or on behalf of GWLI during the Term into two (2) or more lots, subject only to such conditions as are generally imposed by the City in connection with such subdivisions, and the City will waive any processing, application or approval fees that otherwise would have been charged by the City or any agency thereof with respect to any such subdivision.
- 13.4 At the expiration of the Term, the City will surrender the Premises in substantially the same condition as at the commencement of the term of the Prior Lease, reasonable wear and tear excepted. Without limiting the generality of the foregoing, the City agrees that it will, at its expense upon expiration or other termination of this Lease, remove all improvements constructed by the City on the Premises, including without limitation any improvements constructed by the City pursuant to the Prior Lease, unless GWLI otherwise agrees that any of such improvements may be left on the Premises, or unless GWLI and the City agree on either an alternative schedule for removal of such improvements or payment to GWLI in compensation for non-removal of the improvements. All such alterations, additions and improvements that were constructed by or on behalf of the City on the Premises and, with the consent of GWLI, not removed shall, upon the expiration of the Term, become the property of GWLI.
- 13.5 The City will not encumber its leasehold interest in the Premises.
- 13.6 The City accepts the Premises "as is." The City acknowledges that it is fully aware of, and familiar with, the condition of the Premises, and acknowledges that it has received no representations, warranties, promises, statements or covenants from GWLI regarding the condition or suitability of the Premises, except as otherwise explicitly set forth in Section 12 of this Lease.

#### **14. Miscellaneous.**

- 14.1 Any and all notices, demands or requests required or permitted hereunder must be in writing and will be effective: (a) upon personal delivery, (b) four business days after being deposited in the U. S. Mail, registered or certified, return receipt requested, postage prepaid, (c) one business day after being deposited with any commercial air courier or express service, or (d) when sent to GWLI by facsimile (with confirmation of good transmission) or via email (in the case of facsimile or email, with follow-up delivery by any other method proscribed above); in each case addressed as follows:

If to the City:

City Manager  
City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301

If to the GWLI:

Jeff Lenz  
Glendale Westgate Lodging Investors II,  
LLC  
1600 Aspen Commons, Suite 200  
Middleton, Wisconsin 53562  
Facsimile: (608) 836-6399  
Email: jlenz@ncghotels.com

With a copy to:

City Attorney  
City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301

With a copy to:

General Counsel  
The North Central Group  
1600 Aspen Commons, Suite 200  
Middleton, Wisconsin 53562  
Facsimile: (608) 836-6399  
Email: cgillman@ncghotels.com

- 14.2 Either party will, without charge and within 30 days after any reasonable written request of the other, certify in writing to any person specified in such request, as to the existence, amendment, validity of this Lease, the existence (to the best of its knowledge) of any default or counterclaim hereunder and any other matter reasonably requested, and any such certificate may be relied upon by any party requesting it.
- 14.3 This Lease is governed by the laws of the State of Arizona and the venue of any dispute will be Maricopa County, Arizona. Each party hereby waives its rights to trial by jury in any action, proceeding or counterclaim arising out of or in any way related to this Lease.
- 14.4 The invalidity of any portion of this Lease will not affect any other portion hereof.
- 14.5 The parties will execute a Memorandum of Lease in the form set forth as Exhibit B, attached hereto, setting forth the parties, term extension options, rights of first refusal and other provisions requested by the City or GWLI. The parties will execute a document terminating the Memorandum of Lease recorded with respect to the Prior Lease.
- 14.6 This Lease may be executed in multiple counterparts each of which will be deemed an original.
- 14.7 This Lease contains the entire agreement among the parties hereto, supersedes all prior agreements and may be modified only in writing.
- 14.8 Unless otherwise expressly provided herein, the provisions of this Lease will bind and inure to the benefit of GWLI and the City and their respective successors and assigns.
- 14.9 Any commissions, brokerage fees, or any other similar fees arising as a result of, or because of the consummation of this Lease will be its sole responsibility of the party contracting with the agent, broker, or any other entity making any claim under that contract, and the party so contracting agrees to indemnify, defend, and hold the other harmless from any such claim.
- 14.10 Condemnation.
- a. Total Condemnation. In the event that the entire Premises, or such part of the Premises (including entrances, exits and parking area) as will render the remainder unsuitable for the City's use shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall terminate and expire as of the date of taking.

- b. Partial Condemnation. In the event of partial condemnation, not rendering the remainder of the Premises unsuitable for the City's use, this Lease shall remain in full force and effect, with the exception that the base rent shall be reduced to reflect the property tax assessment on the remainder of the Premises.
  - c. Condemnation Award. In the event of any condemnation, whether or not the term of this Lease shall cease and terminate, the entire award shall be the property of GWLI; provided, however, the City shall be entitled to any award as may be made by the taking authority for any improvements constructed on the Premises together with other costs of the City's relocation.
- 14.11 Conflicts. GWLI acknowledges this Lease is subject to A.R.S. §38-511, which allows for cancellation of this Lease in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Lease on the City's behalf is also an employee, agent, or consultant of any other party to this Lease.
- 14.12 The Parties agree that they are not currently engaged in, and agree that for the duration of the Lease they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.

*[Remainder of this page intentionally left blank. Signatures appear on the following pages.]*

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their duly authorized officers as of the day and year set forth below their respective signatures.

**The City:**

City of Glendale, an Arizona municipal corporation

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

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

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

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

**GWLI:**

Glendale Westgate Lodging Investors II, LLC,  
a Wisconsin limited liability company

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

Name: Jeffrey S. Lenz

Title: Sole Member of JSL Investments, LLC,  
a Managing Member

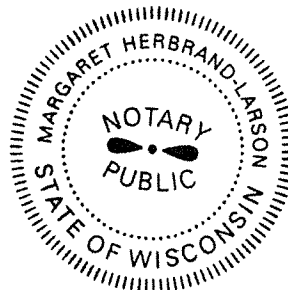
State of WISCONSIN     )  
  ) ss.  
County of DANE         )

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of June, 2017, by Jeffrey S. Lenz, the sole Member of JSL Investments, LLC, a Managing Member of Glendale Westgate Lodging Investors II, LLC, a Wisconsin limited liability company, on behalf of the company.

Margaret Herbrand-Larson  
Notary Public

My Commission Expires:

11/10/2020



## **EXHIBIT A-1**

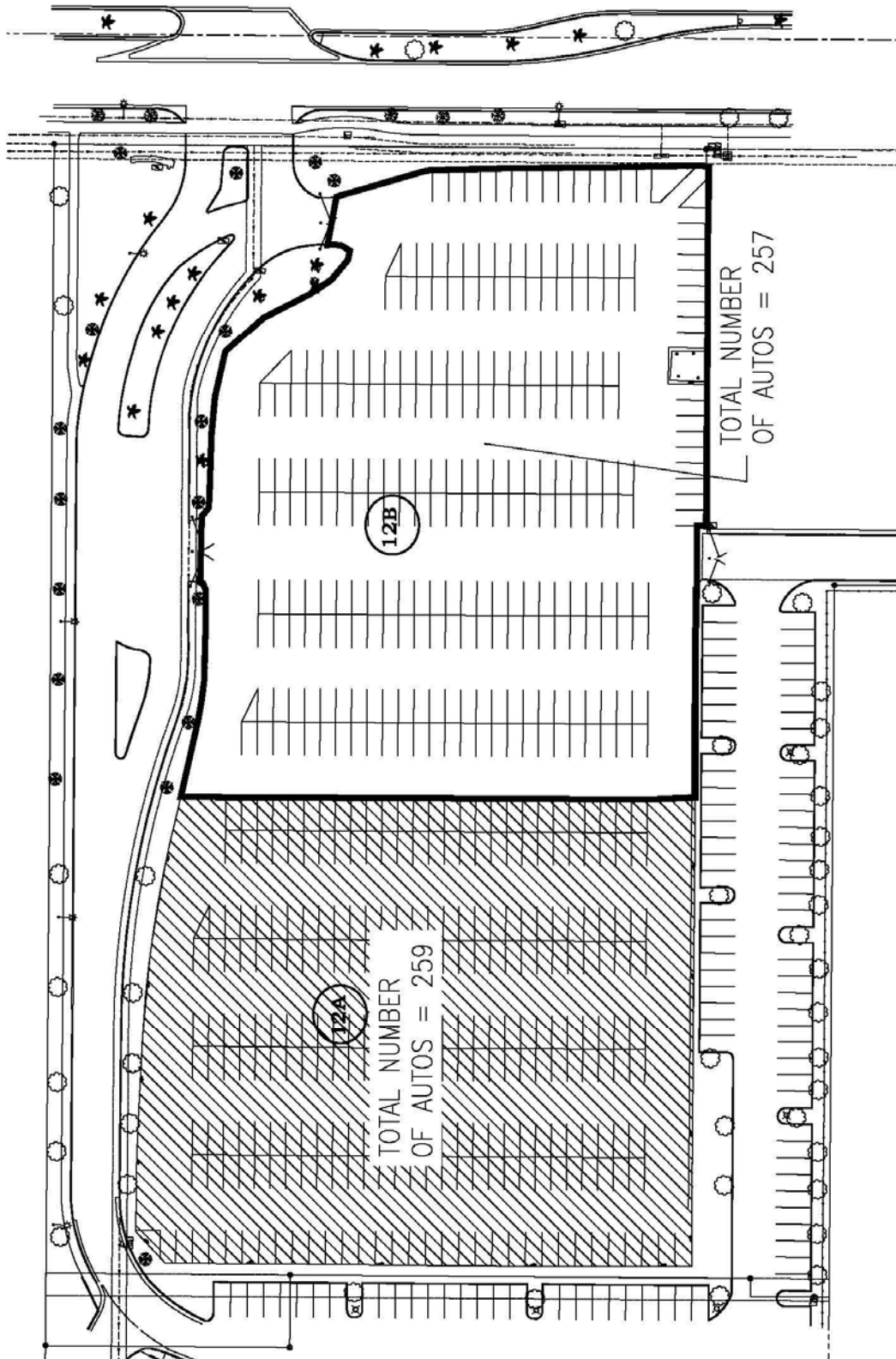
### **Legal Description of Premises**

Lot 12F-6 of Lot Split for Glendale Westgate Lodging Investors II, LLC, a Wisconsin Limited Liability Company, as shown on the Minor Land Division recorded in the office of the County Recorder for Maricopa County, Arizona, recorded in Book 1258 of Maps, Page 25 as Document Number 20160057098, recorded on January 28, 2016..

EXHIBIT A-2

Depiction of Premises

Exhibit 1 - Amend



## EXHIBIT B

### Form of Memorandum of Lease

#### MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the City of Glendale, an Arizona municipal corporation (the "City"), and Glendale Westgate Lodging Investors II, LLC, a Wisconsin limited liability company that is authorized to do business in Arizona ("GWLI").

#### Recitals

- A. The City and GWLI have executed that certain Lease Agreement dated \_\_\_\_\_, 2017, (the "Lease"), pursuant to which the City has leased from GWLI certain property located at Westgate City Center, legally described on Exhibit "A-1" attached hereto (the "**Premises**").
- B. The City and GWLI have agreed to execute this Memorandum of Lease to give notice of the existence of the Lease.

In consideration of the mutual covenants contained herein, GWLI and the City agree as follows:

#### Agreement

- 1. **Lease Term.** The term of this Lease is for a period of one year commencing on July 1, 2017 (the Effective Date as defined in the Lease) unless earlier terminated by GWLI or the City in accordance with the provisions of the Lease.
- 2. **Use of the Premises.** The City will use the Premises for parking at the Gila River Arena and the University of Phoenix Stadium for a limited number of days each calendar year (the "Permitted Use") and for any other lawful purpose that is consistent with the terms of the Lease.
- 2. **Successors and Assigns.** The terms and conditions herein contained shall inure to the benefit of and bind the parties hereto and their respective successors and permitted assigns. Nothing herein contained, whether express or implied, is intended to give or shall be constructed as giving anyone other than the parties hereto and their successors or permitted assigns any rights hereunder.
- 3. **Governing Law.** The Ground Lease and this Memorandum shall be construed and enforced in accordance with the laws of the State of Arizona.
- 4. **Amendments; Counterparts.** All amendments and supplements to this Memorandum must be in writing and executed by each party hereto, provided, however, such execution may be in counterparts and shall be deemed to be one original.
- 5. **Inconsistencies.** Should there be any inconsistency between the terms of this instrument and the terms of the Lease, the terms of the Lease shall govern and prevail.

*[Signatures appear on the following pages.]*



IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Lease as of the date first above set forth.

**The City:**

City of Glendale, an Arizona municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

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

**GWLI:**

Glendale Westgate Lodging Investors II, LLC,  
a Wisconsin limited liability company

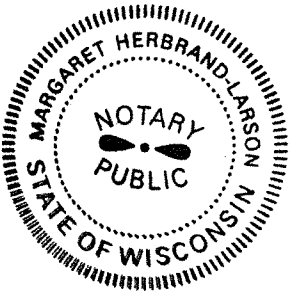
By: \_\_\_\_\_  
Name: Jeffrey S. Lenz  
Title: Sole Member of JSL Investments, LLC,  
a Managing Member

State of WISCONSIN       )  
  ) ss.  
County of DANE            )

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of June, 2017, by Jeffrey S. Lenz, the sole Member of JSL Investments, LLC, a Managing Member of Glendale Westgate Lodging Investors II, LLC, a Wisconsin limited liability company, on behalf of the company.

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

My Commission Expires:  
11/16/2020



## EXHIBIT C

### CCRs

- The liabilities and obligations imposed upon said land by reason of: (a) inclusion thereof within the boundaries of the Salt River Project Agricultural Improvement and Power District; (b) membership of the owner thereof in the Salt River Valley Water Users' Association, an Arizona corporation and (c) the terms of any Water Right Application made under the reclamation laws of the United States for the purpose of obtaining water rights for said land.
- Restrictions, dedications, conditions, reservations, easements and other matters shown on the plat of Westgate, as recorded in Plat Book 745 of Maps, Page(s) 14.
- Restrictions, dedications, conditions, reservations, easements and other matters shown on the plat of Minor Land Division, as recorded in Plat Book 888 of Maps, Page(s) 16.
- Restrictions, dedications, conditions, reservations, easements and other matters shown on the plat of Lot Split for Silver Lake Village LLC, Paw Development LLC and D. Lee Properties LLC, as recorded in Plat Book 961 of Maps, Page(s) 44.
- Restrictions, dedications, conditions, reservations, easements and other matters shown on the plat of Lot Split for Glendale Westgate Lodging Investors II, LLC, as recorded in Plat Book 1258 of Maps, Page(s) 25.
- Restrictions, dedications, conditions, reservations, easements and other matters shown on the plat of Minor Land Division – Lot Line Adjustment, as recorded in Plat Book 812 of Maps, Page(s) 41.
- Covenants, Conditions and Restrictions as set forth in document recorded in 2006-172003 of Official Records, and any recorded amendments, supplements and assignments.
- Covenants, Conditions and Restrictions as set forth in document recorded in 2006-227762 of Official Records, and any recorded amendments, supplements and assignments.
- The terms and provisions contained in the document entitled "Mixed - Use Development Agreement" recorded December 07, 2001 as 2001-1155422 of Official Records and Notice of Collateral Assignment recorded September 25, 2006 as 2006-1261688 of Official Records, and any recorded amendments, supplements and assignments, including a First Amendment to Mixed-Use Development Agreement recorded January 31, 2011 as 2011-0086619 of Official Records.
- The terms and provisions contained in the document entitled "Memorandum of Amended and Restated Parking Agreement" recorded July 01, 2008 as 2008-581273 of Official Records, and any recorded amendments, supplements and assignments.
- The terms and provisions contained in the document entitled "Recognition and Non-Disturbance Agreement" recorded November 08, 2005 as 2005-1695083 of Official Records, and any recorded amendments, supplements and assignments.
- Memorandum of Lease Amendment and Confirming Amendment to Recognition and Non-Disturbance Agreement recorded as 2005-1800408 of Official Records and recorded as 2005-1800409 of Official Records, and any recorded amendments, supplements and assignments.
- All matters as set forth in Declaration of Easements, recorded September 25, 2006 as 2006-1261681 of Official Records.
- All matters as set forth in Cross - Access Easement Agreement, recorded December 21, 2006 as 2006-1668967 of Official Records and thereafter First Amendment recorded June 13, 2008 as 2008-525564 of Official Records, and any recorded amendments, supplements and assignments.
- All matters as set forth in Declaration of Easement, recorded March 09, 2007 as 2007-285354 of Official Records and thereafter First Amendment recorded May 15, 2008 as 2008-434036 of Official Records, and any recorded amendments, supplements, and assignments.
- All matters as set forth in Conveyance of Easement, recorded December 04, 2007 as 2007-1277565 of Official Records and thereafter Affidavit of Correction recorded February 07, 2008 as 2008-108965 of Official Records, and any recorded amendments, supplements, and assignments.

- An easement for facilities and incidental purposes in the document recorded as 2003-404086 of Official Records, and any recorded amendments, supplements and assignments.
- An easement for gas pipeline and incidental purposes in the document recorded as 2006-571119 of Official Records, and any recorded amendments, supplements and assignments.
- An easement for gas pipeline and incidental purposes in the document recorded as 2008-562060 of Official Records, and any recorded amendments, supplements and assignments.
- An easement for power distribution and incidental purposes in the document recorded as 2007-1214872 of Official Records and thereafter Consent recorded November 13, 2007 as 2007-1215513 of Official Records.
- An unrecorded lease dated October 04, 2005, executed by Westgate Signage, LLC, a Delaware limited liability company as lessor and Clear Channel Spectacolor, LLC, a Delaware limited liability company as lessee, as disclosed by a Memorandum of Lease recorded October 05, 2005 as 2005-1484065 of Official Records.

Memorandum of Lease Amendment and Acceptance of Confirming Amendment to Recognition and Non-Disturbance Agreement recorded as 2005-1800409 of Official Records.

The lessee's interest under the lease has been assigned to 1567 Media, LLC, a Delaware limited liability company by assignment recorded October 30, 2008 as 2008-937337 of Official Records.

Any recorded amendment, supplements and assignments.

- An unrecorded lease dated September 30, 2005, executed by Coyote Center Development, LLC, a Delaware limited liability company as lessor and Westgate Signage, LLC, a Delaware limited liability company as lessee, as disclosed by a Memorandum of Lease re-recorded December 05, 2005 as 2005-1837216 of Official Records.

Memorandum of Lease Amendment and Acceptance of Confirming Amendment to Recognition and Non-Disturbance Agreement recorded as 2005-1800408 of Official Records.

Any recorded amendments, supplements and assignments.

- Water rights, claims or title to water, whether or not shown by the public records.
- The terms and provisions contained in the document entitled Memorandum of Sponsorship Agreement" recorded September 25, 2006 as 2006-1261682 of Official Records, and any recorded amendments, supplements and assignments.
- Consent to Subdivision recorded as 2008-0004741 of Official Records and Consent to Subdivision recorded as 2016-0070984.
- The terms and provisions contained in the document entitled Amended and Restated Agreement for the Replacement of Temporary Parking recorded January 31, 2011 as 2011-0086547 of Official Records, and any recorded amendments, supplements and assignments.