



**BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS**

Award Contract Grant

Requested Board Meeting Date: December 1, 2020

* = Mandatory, information must be provided

or Procurement Director Award

***Contractor/Vendor Name/Grantor (DBA):**

Rio Nuevo Multipurpose Facilities District

***Project Title/Description:**

75 E. Broadway - Ground Lease and Purchase Agreement

***Purpose:**

This is an amendment to an Agreement with Rio Nuevo to lease, then purchase a vacant parcel north of Broadway Boulevard between Scott and 6th Avenue to develop a high-rise, mixed-use office/retail/residential/parking facility to attract new employers paying wages greater than 150% of the US Census Bureau's American Community Survey (ACS) 5-year Estimate of Median Household Income for Pima County. The purpose of the amendment is to incorporate a new developer and adjust critical deadlines to reflect the new development schedule.

***Procurement Method:**

Exempt per Section 11.04.020

***Program Goals/Predicted Outcomes:**

Provide a path to develop office, retail and residential facilities with adequate parking to attract new high wage employers to the community.

***Public Benefit:**

It has been over 30 years since a Class-A high-rise, office building was constructed in downtown Tucson to attract new employers with high wage jobs. The addition of over 500 parking spaces will also address a shortage of parking in the downtown area.

***Metrics Available to Measure Performance:**

Specific Milestones toward completion of the building and sale of the parcel to Rio Nuevo upon completion.

***Retroactive:**

No.

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*To: COB - 11.24.20
Ver. - 2
Pgs - 34 (1)*

Allendum

Contract / Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____

Commencement Date: _____ Termination Date: _____ Prior Contract Number (Synergen/CMS): _____

Expense Amount: \$* _____ Revenue Amount: \$ _____

***Funding Source(s) required:**

Funding from General Fund? Yes No If Yes \$ _____ % _____

Contract is fully or partially funded with Federal Funds? Yes No

If Yes, is the Contract to a vendor or subrecipient?

Were insurance or indemnity clauses modified? Yes No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? Yes No

If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: CTN Department Code: CA Contract Number (i.e., 15-123): 19*109

Amendment No.: 1 AMS Version No.: 2

Commencement Date: 12-01-2020 New Termination Date: 1-07-2024

Prior Contract No. (Synergen/CMS): _____

Expense or Revenue Increase Decrease Amount This Amendment: \$ 0

Is there revenue included? Yes No If Yes \$ _____

***Funding Source(s) required:**

Funding from General Fund? Yes No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards) Award Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____

Commencement Date: _____ Termination Date: _____ Amendment Number: _____

Match Amount: \$ _____ Revenue Amount: \$ _____

***All Funding Source(s) required:**

*Match funding from General Fund? Yes No If Yes \$ _____ % _____

*Match funding from other sources? Yes No If Yes \$ _____ % _____

*Funding Source: _____

***If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?**

Contact: John Moffatt

Department: Economic Development Office Telephone: (520) 724-4444

Department Director Signature/Date: *J. Moffatt* 11/24/2020

Deputy County Administrator Signature/Date: _____

County Administrator Signature/Date: *C. Ducey* 11/24/2020
(Required for Board Agenda/Addendum Items)

FIRST AMENDMENT TO GROUND LEASE AND PURCHASE AGREEMENT

For reference, this First Amendment to Ground Lease and Purchase Agreement ("Amendment") is dated December 1, 2020. The "Parties" to this Amendment are Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona ("District") and Pima County, a political subdivision of the State of Arizona ("County").

RECITALS

A. By that certain Ground Lease and Purchase Agreement dated January 8, 2019 ("Ground Lease") the District and the County set forth the terms pursuant to which the District would initially lease and ultimately purchase from the County the property now generally referred to as "75 E Broadway."

B. The purposes of this Amendment is to reset the various deadlines and benchmarks in the Ground Lease that the passage of time have now rendered obsolete.

C. Unless otherwise stated herein, the capitalized terms used have the meanings assigned in the Ground Lease.

AGREEMENTS

1) The foregoing recitals are specifically incorporated herein and except as specifically set forth herein, the terms of the Ground Lease shall remain in full force and effect as expressed therein.

2) Recital G of the Ground Lease is hereby deleted and replaced with the following: "District intends to improve the Premises by entering into a sublease and related agreements ("**Sublease**") with Tucson Group Holdings, a Massachusetts limited liability company or its affiliate 929 Holdings, LLC, a Delaware limited liability company ("**Developer**"), to construct on the Premises a 19-story, Class-A, mixed-use high-rise building consisting of the following components (all estimates and locations approximate): 30,000 square feet of first-floor retail space; at least 150,000 square feet of office space on floors ten (10) through fourteen (14) ("**Office Component**"); over 500 parking spaces on floors three (3) through nine(9) ("**Parking Component**"); one hundred twenty (120) luxury apartments on floors fifteen (15) through eighteen (18); and a rooftop terrace with restaurant and patio, gym and conference/event space (together, the "**Project**")."

3) **Section 3 Condition of the Premises.** Subsections A and B of this Section are hereby deleted in their entirety and replaced with the following language:

A. District has performed its due diligence review of the Premises and accepts possession of the Premises in its "AS IS" condition on the date of Project Commencement (as defined below), and except for those representations and warranties of County contained in this Agreement, without representation or warranty of any kind, express or implied, including, without limitation, any warranty of income potential, future operating expenses or uses or fitness for a particular purpose. Except as otherwise expressly provided in this Agreement, District has full

responsibility for the repair, alteration, maintenance, and replacement of the Premises, and any portion thereof, and any improvements. County has no obligation whatsoever for the repair, alteration, maintenance and replacement of the Premises, Project or any portion thereof except as expressly provided in this Agreement. District expressly acknowledges and agrees that the County has not made and is not making, and District is not relying upon, any warranties or representations regarding the Premises or the Project, except as expressly set forth in this Agreement.

B. The District's due diligence inspection of the Premises has been completed.

4) **Section 6 – Cancellation.** This section is entirely deleted.

5) **Section 9 – The Project.** This section is entirely deleted and replaced with the following language:

A. **Construction.**

i. The Developer will design and construct the Project in accordance with this Section 9.

ii. The Project will be constructed in accordance with the approved Plans (as provided below) and all local development and building codes, and in compliance with Title 34 of the Arizona Revised Statutes, to the extent applicable. The Building must be designed and constructed using the U.S. Green Building Council's LEED Silver standard as a design guideline, but District is not required to obtain LEED certification.

iii. County will issue all building permits and conduct all inspections of the Project, including for any tenant improvements constructed after conveyance of the Premises to Rio Nuevo.

B. **Project Schedule.** Developer will advance the Project in accordance with the Gantt Chart Project Schedule dated November 4, 2020 a copy of which is attached as Exhibit A ("**Project Schedule**"). Notwithstanding the foregoing, on-site construction will not commence until after each of the following has occurred:

i. Plan Approvals. County has issued the first building permit for the Project.

ii. Sublease. The Sublease and has been executed and a copy delivered to the County.

iii. Insurance. District furnishes County with proof that District or the Developer has obtained the liability and worker's compensation insurance required in this Agreement.

iv. Builder's Risk Insurance. District furnishes County with proof that District, or Developer, has obtained "all risks" builder's risk insurance including vandalism and malicious mischief, in broad form and with a company reasonably acceptable to County, covering improvements in place and all material and equipment at the job site furnished under the Contract, but excluding contractor's, subcontractor's and construction manager's tools and equipment and

property owned by contractor's or subcontractor's employees, with limits of at least the full cost of the Project per loss single limit for all work at the job site. District or Developer must maintain this insurance in effect until the Project is complete and a permanent Certificate of Occupancy has been issued for the Project.

v. Payment and Performance Bonds. District or Developer delivers to County payment and performance bonds meeting the requirements of Title 34, issued by a surety company licensed to do business in the State of Arizona, running to County and the District as obligees, conditioned on the completion of the Project in accordance with the Final Plans and the provisions of this Agreement, free and clear of all mechanics' and other liens.

C. **Plans and Specifications.** Developer must obtain County's approval of plans and specifications ("Plans") for the Project. All Plans must be prepared by an architect or engineer licensed to practice in Arizona. County will not unreasonably withhold, condition or delay its approval of Developer's Plans, will communicate its approval or disapproval in writing, and will explain the grounds for any disapproval. If County disapproves of any submitted Plans, District or Developer will submit revised Plans addressing County's concerns within 30 days of County's notice of disapproval. The County Development Services Department will conduct the review and give approvals and disapprovals on behalf of County for all stages of construction and tenant improvements until all Certificates of Occupancy have been issued for the Project.

i. **The Site Development Package/Schematic Design** Developer will submit an electronic set of preliminary construction Plans for the Project (the "**Site Development Package/Schematic Design Submittal**") no later than March 1, 2021. The Site Development Package is the formal submittal that begins the site design and Infill Incentive District approval process necessary to obtain building permits. The Schematic Design Submittal documents the initial design phase and identifies the scope of the Project. The Site Development Package/Schematic Design Submittal must be sufficiently clear and detailed for the County make an informed judgment about the design and quality of the core and shell of the Project, and about the impact of the Project on adjacent and nearby properties.

ii. **Foundation Package Submittal** - No later than 3 months after the Site Development Package/Schematic Design Submittal, Developer will prepare and deliver to County an electronic Foundation Package Submittal. The Foundation Package Submittal is the initial scope of work requiring a building permit to begin construction.

iii. **Commencement of Construction.** Within ten days after the County approves the Foundation Package Submittal and issues the Foundation Permit, Developer will commence construction of the Project. Construction will be deemed to have commenced ("**Commencement of Construction**") when labor is first provided, or equipment or materials are first furnished to the Premises after issuance of the Foundation Permit.

iii. **Core and Shell Package Submittal** - No later than 3 months after County's approval of the Foundation Package, Developer will prepare and deliver to County an electronic Core and Shell Package Submittal. The Core and Shell Package Submittal includes the remaining building structure, exterior envelope, mechanical and electrical systems, fire alarm,

fire sprinklers, elevators, public restrooms and lobby, site work, and other life safety items requiring a building permit and necessary to support and allow a tenant improvement to obtain a certificate of occupancy.

iv. **Core and Shell Certificate of Completion** - No later than 26 months after County's approval of the Core and Shell Package Submittal, Developer will have completed components of the Project sufficient to qualify for the Core and Shell Certificate of Completion, which will designate the Building Official's approval of the core and shell construction phase. Issuance of the Core and Shell Certificate of Completion will constitute "Substantial Completion" of the Project. If this does not occur in a timely manner, County may cancel this Agreement by written notice to the District, subject to a period of 30 days during which the District and or the Developer may cure the failure to obtain a Core and Shell Certificate of Completion for the Project.

v. **Tenant Improvements** - Tenant improvement plans, will be submitted to County Development Services for building permits. Any tenant improvements for which plans have been approved, may be constructed concurrently with the core and shell or later and will each obtain their own Certificate of Occupancy.

vi. **Amended Plans.** If, at any time after the submission of the Site Development Package/Schematic Design, the Developer desires to modify the square footage of any major components such as retail, office, parking, or residential, the Developer shall submit amended plans to the County detailing the changes in the specific Component ("**Amended Plans**"). Such Amended Plans will address the impact that the modified space will have on the other Components of the Project, and if additional parking is required, the details of the expanded Parking Component shall be included in the Amended Plans.

D. **Cost of the Project.** District will defend and hold the County free and harmless from all costs, expenses and charges incurred in the construction of the Project including attorneys' fees relating thereto, and will require the Developer to provide such indemnity to the County.

E. **County Inspection.** Representatives of County Development Services Department will inspect and approve the Project at appropriate stages as it is being constructed, and District and Developer will provide them reasonable access to the work for that purpose.

6) **Section 10 – Force Majeure.** This section is deleted entirely and replaced with the following language:

If a Party is delayed, hindered in, or prevented from the performance of any term, covenant, or act required of it under this Agreement by reason of strikes, labor troubles, inability (on commercially reasonable terms) to procure materials or services, power failure, change in government regulation, sabotage, rebellion, war, act of nature, pandemic or other like cause ("**Force Majeure**"), any of which must be beyond the reasonable control of such Party, then the performance of that term, covenant, or act is excused for the period of the delay and any deadlines under this

Agreement affected as a result of such Force Majeure will be deemed correspondingly extended.

7) **Section 24(C) – Developer Default.** This section is deleted entirely and replaced with the following language:

The District or County may cancel this Agreement without further obligation or penalty, if Developer fails to comply timely with the Project Schedule.

8) **Section 27(K) – Approvals and Notices.** The language of this section is deleted in its entirety and replaced with the following language:

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (C) given to a recognized and reputable overnight delivery service, to the address set forth below, or (D) sent by e-mail transmission to the e-mail address(es) set forth below, with Delivery Receipt and Read Receipt requested:

If to the District: Rio Nuevo Multipurpose Facilities District
1703 E. Broadway,
Tucson, Arizona 85719
Attn: Fletcher McCusker, Chairman
fjmccusker@gmail.com

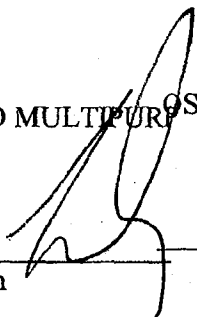
With copies to: Gust Rosenfeld, PLC
One South Church Avenue
Suite 1900
Tucson, Arizona 85701
Attn: Mark Collins, Esq.
mcollins@gustlaw.com

If to County: Director, Pima County Development Services
201 N. Stone Ave.
Tucson, Arizona 85701
Carla.blackwell@pima.gov

With a copy to: Director, Pima County Economic Development
130 W. Congress St., 10th Floor
Tucson, Arizona 85701
John.moffatt@pima.gov

DISTRICT:

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT

By: 
Its: Chairman

By: _____
Its: Secretary

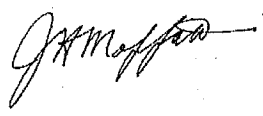
COUNTY:
PIMA COUNTY, ARIZONA

By: _____
Chairman of the Board of Supervisors

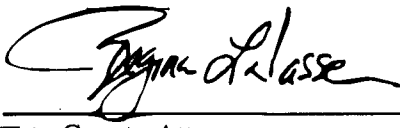
ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO CONTENT:

By: 
Director, Economic Development


APPROVED AS TO FORM:

By: 
Deputy County Attorney

DISTRICT:

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT

By: _____
Its: Chairman

By:  11/20/2020
Its: Secretary

COUNTY:

PIMA COUNTY, ARIZONA

By: _____
Chairman of the Board of Supervisors.

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO CONTENT:

By: _____
Director, Economic Development

APPROVED AS TO FORM:

By: _____
Deputy County Attorney

Exhibit A
Gantt Chart

75 E. Broadway Gantt Chart Project Schedule 11-4-2020

Task Name	Duration	Start	Finish
Task Name	Duration	Start	Finish
DUE DILIGENCE	43 days	Fri 2/14/20	Tue 4/14/20
UTILITY UPDATES	46 days	Tue 12/1/20	Tue 2/2/21
SEWER			
WATER			
TEP			
SITE DEVELOPMENT PACKAGE	59 days	Tue 12/1/20	Fri 2/19/21
CITY TRANSPORTATION - TIA MTG	1 day	Tue 12/1/20	Tue 12/1/20
TRAFFIC IMPACT ANALYSIS	27 days	Tue 12/1/20	Wed 1/6/21
TRANSPORTATION - REVIEW	7 days	Wed 1/6/21	Thu 1/7/21
WORK WITH UTILITIES	29 days	Tue 12/1/20	Fri 1/8/21
WATER	29 days	Tue 12/1/20	Fri 1/8/21
SEWER	29 days	Tue 12/1/20	Fri 1/8/21
GAS	29 days	Tue 12/1/20	Fri 1/8/21
ELECTRIC	29 days	Tue 12/1/20	Fri 1/8/21
COMMUNICATIONS	29 days	Tue 12/1/20	Fri 1/8/21
UTILITY DESIGN WORK	56 days	Tue 12/1/20	Tue 2/16/21
GRADING	123 days?	Wed 12/9/20	Fri 5/28/21
DRAINAGE REPORT	21 days	Wed 12/9/20	Wed 1/6/21
GRADING PLAN	51 days	Wed 12/9/20	Wed 2/17/21
PRELIMINARY MEETING	1 day	Thu 2/11/21	Thu 2/11/21
DEVELOPMENT PLAN	45 days	Tue 1/5/21	Mon 3/8/21
SUBMIT FOR REVIEW	1 day	Mon 3/1/21	Mon 3/1/21
REVIEW	11 days	Mon 3/1/21	Mon 3/15/21
1ST COMMENTS	1 day	Mon 3/15/21	Mon 3/15/21
DEVELOPMENT PLAN CORRECTIONS	8 days	Wed 4/21/21	Fri 4/30/21
SUBMITTAL #2	7 days	Mon 5/3/21	Tue 5/11/21
DEVELOPMENT PLAN APPROVED	1 day	Fri 5/28/21	Fri 5/28/21
INFILL INCENTIVE DISTRICT	118 days	Tue 12/1/20	Thu 5/13/21
DESIGN WORK	44 days	Tue 12/1/20	Fri 1/29/21
PRE-SUBMITTAL CONFERENCE	1 day	Thu 2/11/21	Thu 2/11/21
WARD OFFICE MEETINGS	22 days	Mon 2/22/21	Tue 3/23/21
NEIGHBORHOOD MEETINGS	12 days	Thu 3/18/21	Fri 4/2/21
DRB STUDY/MEETINGS	12 days	Thu 3/18/21	Fri 4/2/21
HISTORIC COMMITTEE STUDY	12 days	Thu 3/18/21	Fri 4/2/21
NO SUBMITTAL - REVIEW	36 days	Thu 3/25/21	Thu 5/13/21

HISTORIC OFFICIAL MEETING	1 day	Sat 4/17/21	Sat 4/17/21
ORB OFFICIAL MEETING #1	1 day	Sat 4/17/21	Sat 4/17/21
APPROVAL IID	1 day	Sat 4/17/21	Sat 4/17/21
UTILITY / EARTHWORK PACKAGE	106 days	Fri 1/1/21	Fri 5/28/21
DESIGN WORK	64 days	Fri 1/1/21	Wed 3/31/21
PUBLIC UTILITIES	64 days	Fri 1/1/21	Wed 3/31/21
REVIEWS	8 days	Wed 4/7/21	Fri 4/16/21
ISSUE PERMIT	1 day	Fri 5/28/21	Fri 5/28/21
FOUNDATION CONC. STRUCTURE PACKAGE	152 days	Mon 12/7/20	Tue 7/6/21
BUILDING CODE ANALYSIS	34 days	Mon 12/7/20	Thu 1/21/21
REVIEW WITH BUILDING	1 day	Fri 1/22/21	Fri 1/22/21
FINALIZE STRUCTURAL DESIGN	1 day	Mon 2/1/21	Mon 2/1/21
DRAWINGS	66 days	Mon 3/1/21	Mon 5/31/21
SUBMIT	1 day	Sat 6/5/21	Sat 6/5/21
REVIEW	6 days	Thu 4/1/21	Thu 4/8/21
ISSUE FOUNDATION PERMIT	23 days	Sat 6/5/21	Tue 7/6/21
CORE AND SHELL PACKAGE	220 days	Tue 12/1/20	Mon 10/4/21
SCHEMATIC DESIGN	64 days	Tue 12/1/20	Fri 2/26/21
DESIGN DEVELOPMENT	66 days	Mon 3/1/21	Mon 5/31/21
CONSTRUCTION DOCUMENTS (PHASED)	67 days	Sat 6/5/21	Mon 9/6/21
REVIEW	22 days	Sun 9/5/21	Mon 10/4/21
ISSUE PERMIT	1 day	Mon 9/27/21	Mon 9/27/21
CONSTRUCTION	566 days	Tue 7/6/21	Tue 9/5/23
SITE UTILITIES	33 days	Tue 7/6/21	Thu 8/19/21
FOUNDATIONS	66 days	Tue 7/6/21	Tue 10/5/21
CORE AND SHELL	500 days	Wed 10/6/21	Tue 9/5/23
CERTIFICATE OF COMPLETION	1 day	Tue 9/5/23	Tue 9/5/23

SUBLEASE
(75 E. BROADWAY)

THIS SUBLEASE (“*Sublease*”) is entered into as of November 23, 2020 (the “*Sublease Date*”) by and between RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT, a special taxing district of the State of Arizona (“*District*”), and 75 BROADWAY, LLC, an Arizona limited liability company (“*Developer*”). District and Developer are sometimes individually referred to as a “*Party*” and jointly referred to as the “*Parties*.”

RECITALS

A. District was formed by the City of Tucson, Arizona (the “*City*”) and the City of South Tucson, Arizona pursuant to the “*Stadium District Statutes*” that commence at A.R.S. § 48-4201 et seq. A “*district*” formed under these statutes is defined as “... any county stadium district established pursuant to A.R.S. § 48-4202, subsection A, B or C.” A.R.S. § 48-4201(3).

B. District has the authority to acquire title to property within District’s boundaries and construct commercial facilities that its board determines are necessary or beneficial to the Primary and Secondary Components of the Multipurpose Facilities District (A.R.S. §§ 48-4201(4)(b) and 48-4204(B)). It may also “[e]nter into agreements with developers, contractors, tenants and other users of all or part of such a facility.” A.R.S. § 48-4203(B)(2).

C. The voters who authorized the formation of District authorized District to receive an incremental portion of state-shared funds derived from transaction privilege taxes (*i.e.* sales tax) collected from within District’s multipurpose facilities site, which lies entirely within the City (“*TPT Funds*”). District’s right to receive TPT Funds currently ceases on July 1, 2035 (“*Sunset Date*”).

D. District and Pima County, a political subdivision of the State of Arizona (“*County*”) executed a Ground Lease Option Agreement, dated as of December 13, 2016 (the “*Ground Lease Option Agreement*”), the subject of which is an unimproved parcel of real property approximately 0.66 acres in size, which is located on the north side of Broadway Boulevard between 6th and Scott Avenue in downtown Tucson, Arizona (“*Unimproved Parcel*”), which is within District’s boundaries and more particularly described and depicted on Exhibit A (the “*Premises*”).

E. The Premises will include the “*Alley*” that abuts the northern boundary of the Unimproved Parcel if and when the Alley is acquired by County from the City prior to the Commencement of Construction (as defined below).

F. In September of 2017, District issued a Request for Proposal (“*RFP*”) seeking proposals for the development of the Premises. The RFP evaluation committee selected the proposal from a team headed by J.E. Dunn Construction Company, a Missouri corporation (“*Dunn*”) as the highest ranked proposal (“*Awardee*”). District and Dunn, in its capacity as the head of Awardee, entered into a Development Agreement dated March 20, 2018 (the “*Development Agreement*”).

G. Subsequently all of Awardee's interest in the Project (defined below) and the Premises was assigned, conveyed and transferred to Developer pursuant to that certain Membership Interest Purchase Agreement dated November 13, 2020 (the "MIPA").

H. During the time between the date that District issued its RFP and the date of this Sublease, many documents were executed or partially executed to further the commencement of the Project (as defined below). For the sake of clarity, none of those agreements are currently valid. Nevertheless, the chronology set forth above remains accurate.

I. The Phase I Environmental Site Assessment contemplated by Section 7(b) of the Development Agreement and a Phase II have been completed and provided to the Awardee. District retained Logan Simpson Design, Inc. ("*Logan Simpson*") to perform the archaeological/cultural investigation and mitigation on the Premises contemplated by Section 7(b) of the Development Agreement, which is required by BOS Policy C 3.17 ("*Archaeology Study*"). On February 25, 2019, Logan Simpson submitted an "End of Fieldwork Report" to Pima County's Office of Sustainability and Conservation ("*OSC*"). On February 28, 2019, the OSC accepted Logan Simpson's End of Fieldwork Report, and Awardee was notified of such acceptance thereby allowing the commencement of construction of the Project (as defined below).

J. District exercised its lease option under the Ground Lease Option Agreement on December 7, 2018, which notice of exercise was amended on or about January 4, 2019. As a result, District and County entered into that certain Ground Lease and Purchase Agreement, dated as of January 8, 2019, as subsequently amended (the "*Ground Lease*").

K. District and Awardee entered into the Original Sublease, pursuant to which Awardee would have leased the Premises and constructed the Project (as defined below), which was subsequently terminated pursuant to the Omnibus Termination Agreement.

L. Developer intends to continue the planned improvement of the Premises by constructing thereon a 19-story, Class-A, mixed-use high-rise building consisting of the following components (all estimates and locations approximate): 30,000 square feet of first and second floor retail space; at least 150,000 square feet of office space on floors ten (10) through fourteen (14) ("*Office Component*"); over 500 parking spaces on floors three (3) through nine (9) ("*Parking Component*"); one hundred twenty (120) luxury apartments on floors fifteen (15) through eighteen (18); and a rooftop terrace with restaurant and patio, gym and conference/event space (together, the "*Project*").

M. The value of constructing and operating the Project on the Premises will be analyzed through an economic and fiscal impact analysis to be ordered by District and paid for by Developer (the "*Economic Analysis*"). District's Board has determined that, subject to the Economic Analysis, it is in the best interests of the public to rebate a portion of the TPT Funds generated and collected from Developer's retail sales and construction sales taxes from the Project, upon terms more specifically set forth below, as an economic incentive for Developer to construct the Project on the Premises at Developer's expense.

N. Pursuant to the Ground Lease, District has agreed to purchase from County, and County has agreed to sell to District, the Premises (the "*Ground Lease Purchase Option*"). District and County have agreed to open escrow for that sale as of the date the Core and Shell Certificate of Completion (as that term is defined below) is issued for the Project, and proceed diligently to close the transaction as soon as reasonably possible thereafter.

O. Developer has requested that LordCap Green Trust, a Delaware statutory trust ("*LordCap*") provide financing for the Project pursuant to a Lease Assessment Program Agreement among District, Developer and LordCap (the "*Program Agreement*"). Subject to the mutual agreement of District, Developer and LordCap to the terms and conditions of the Program Agreement, the Developer Deed of Trust and the other Operative Documents, LordCap has indicated its intent to provide certain financial accommodations to fund the costs of a portion of the Project (the "*LordCap Contribution*").

P. To secure the repayment of the LordCap Contribution, Developer intends to grant LordCap, a first priority lien on Developer's right, title and interest under this Sublease (the "*Leasehold Deed of Trust*").

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises of the Parties in this Sublease, the Parties agree as follows:

SECTION 1. ACCURACY OF RECITALS.

The Parties hereby acknowledge the accuracy of the Recitals.

SECTION 2. SUBLEASE.

Effective upon the Sublease Date, District hereby subleases the Premises to Developer, and Developer hereby subleases the Premises from District. This Sublease, and the Parties' rights and obligations under this Sublease, are subordinate and subject to all the terms and conditions of District's Ground Lease with County.

SECTION 3. CONDITION OF PREMISES.

Developer has performed its due diligence review of the Premises and accepts possession of the Premises in its "AS IS" condition, and except for those representations and warranties of District contained in this Sublease, without representation or warranty of any kind, express or implied, including, without limitation, any warranty of income potential, future operating expenses or uses or fitness for a particular purpose. Except as otherwise expressly provided in this Sublease, Developer has full responsibility for the repair, alteration, maintenance, and replacement of the Premises, and any portion thereof, and any improvements. District has no obligation whatsoever for the repair, alteration, maintenance and replacement of the Premises, the Project or any portion thereof except as expressly provided in this Sublease. Developer expressly acknowledges and

agrees that District has not made and is not making, and Developer is not relying upon, any warranties or representations regarding the Premises or the Project, except as expressly set forth in this Sublease.

SECTION 4. TERM.

A. *TERM.* Unless earlier terminated pursuant to the terms hereof, the term of this Sublease (the "*Term*") shall commence on the Sublease Date and terminate on the Lease Conversion Date (as defined below).

B. *LEASE CONVERSION DATE.* Upon the closing of the District's acquisition of the Premises from the County, (i) this Sublease shall terminate and (ii) District and Developer shall concurrently enter into a lease (the "*GPLET Lease*"). The date that this occurs will be referred to as the "*Lease Conversion Date.*" Developer will include a provision in each non-retail sublease of any part of the office building constructed as part of the Project, that requires the subtenant to annually provide to District a report demonstrating that the subtenant's office employees working at the Premises earn an average annual wage, including benefits, of at least 150% of the US Census Bureau's American Community Survey (ACS) 5-year Estimate of Median Household Income for Pima County.

SECTION 5. BASE RENT.

A. *Base Rent.* Rent for the Premises for the Term will be \$189,000 per annum, [plus interest at the rate of 4% per annum.] payable by Developer to District, which amount may be paid monthly on the first day of each month during the Term ("*Base Rent*").

SECTION 6. POSSESSION AND ENJOYMENT.

Unless otherwise specifically provided herein, from the Commencement Deadline until the Lease Conversion Date, Developer shall be entitled to peacefully hold and enjoy the Premises without any interruption by District or any person lawfully claiming by, through or under District during the Term, except that District may enter upon and inspect the Premises by providing Developer with written notice of its intent to do so not less than twenty-four (24) hours in advance.

SECTION 7. THE PROJECT.

A. *Construction.* In accordance with this Sublease, Developer will design and construct the Project as defined in the Recitals above. The Project will be constructed in accordance with the approved Final Plans (as provided below) and all local development and building codes and, if and to the extent applicable, Title 34. The Project must be designed and constructed using the Green Building Council's LEED Silver standard as a design guideline, but Developer is not required to obtain LEED certification.

B. *Project Commencement.* "Project Commencement" shall be deemed to have occurred when labor is first provided, or equipment or materials are first furnished, to the Premises after issuance of the first building permit.

C. Project Commencement may not occur until each of the following has occurred:

(1) *Plan Approvals.* County has approved the Site Development Package/Schematic Design Plans (as provided below).

(2) *Insurance.* Developer furnishes County and District with proof that Developer has obtained the liability and worker's compensation insurance required by this Sublease.

(3) *Builder's Risk Insurance.* Developer furnishes County and District with proof that Developer has obtained "all risks" builder's risk insurance including vandalism and malicious mischief, in broad form and with a company reasonably acceptable to County and District, covering improvements in place and all material and equipment at the job site furnished under the construction contract, but excluding contractor's, subcontractor's and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees, with limits of at least the full cost of the Project per loss single limit for all work at the job site. Developer must maintain this insurance in effect until the Project is complete and a permanent Certificate of Occupancy has been issued for the Project.

(4) *Payment and Performance Bonds.* Developer delivers to County and to District payment and performance bonds issued by a surety company licensed to do business in the State of Arizona (the "State"), running to County and District as obligees, conditioned on the completion of the Project in accordance with the Final Plans and the provisions of this Sublease, free and clear of all mechanics' and other liens.

(5) Developer will cause Project Commencement to occur no later than the Commencement of Construction Deadline as defined below and will cause the Project to achieve Core and Shell Certificate of Completion no later than the timelines set forth on the Gantt Chart attached hereto as Exhibit A and incorporated herein by this reference.

D. *Plans and Specifications.* Developer must obtain County's approval of plans and specifications ("Plans") for the Project. All Plans must be prepared by an architect or engineer licensed to practice in Arizona. County will not unreasonably withhold, condition or delay its approval of Developer's Plans, will communicate its approval or disapproval in writing, and will explain the grounds for any disapproval. If County disapproves of any submitted Plans, District or Developer will submit revised Plans addressing County's concerns within 30 days of County's notice of disapproval. The County Development Services Department will conduct the review and give approvals and disapprovals on behalf of County for all stages of construction and tenant improvements until all Certificates of Occupancy have been issued for the Project.

i. *The Site Development Package/Schematic Design.* Developer will submit an electronic set of preliminary construction Plans for the Project (the “*Site Development Package/Schematic Design Submittal*”) no later than March 1, 2021. The Site Development Package is the formal submittal that begins the site design and Infill Incentive District approval process necessary to obtain building permits. The Schematic Design Submittal documents the initial design phase and identifies the scope of the Project. The Site Development Package/Schematic Design Submittal must be sufficiently clear and detailed for the County make an informed judgment about the design and quality of the core and shell of the Project, and about the impact of the Project on adjacent and nearby properties.

ii. *Foundation Package Submittal.* No later than 3 months after the Site Development Package/Schematic Design Submittal, Developer will prepare and deliver to County an electronic Foundation Package Submittal. The Foundation Package Submittal is the initial scope of work requiring a building permit to begin construction.

iii. *Commencement of Construction.* Within ten days after the County approves the Foundation Package Submittal and issues the Foundation Permit, Developer will commence construction of the Project. Construction will be deemed to have commenced (“*Commencement of Construction*”) when labor is first provided, or equipment or materials are first furnished to the Premises after issuance of the Foundation Permit.

iv. *Core and Shell Package Submittal.* No later than 3 months after County’s approval of the Foundation Package, Developer will prepare and deliver to County an electronic Core and Shell Package Submittal, the “*Final Plans.*” The Core and Shell Package Submittal includes the remaining building structure, exterior envelope, mechanical and electrical systems, fire alarm, fire sprinklers, elevators, public restrooms and lobby, site work, and other life safety items requiring a building permit and necessary to support and allow a tenant improvement to obtain a certificate of occupancy.

v. *Core and Shell Certificate of Completion – “Completion Deadline”* - No later than 26 months after County’s approval of the Core and Shell Package Submittal (“*Completion Deadline*”), Developer will have completed components of the Project sufficient to qualify for the Core and Shell Certificate of Completion (“*Substantial Completion*”), which will designate the Building Official’s approval of the core and shell construction phase. If this does not occur in a timely manner, County may cancel this Agreement by written notice to the District, subject to a period of 30 days during which the District and or the Developer may cure the failure to obtain a Core and Shell Certificate of Completion for the Project.

vi. *Tenant Improvements.* Tenant improvement plans will be submitted to County Development Services for building permits. Any tenant improvements for which plans have been approved, may be constructed concurrently with the core and shell or later and will each obtain their own Certificate of Occupancy.

vii. *Amended Plans.* If, at any time after the submission of the Site Development Package/Schematic Design, the Developer desires to modify the square footage of any

major components such as retail, office, parking, or residential, the Developer shall submit amended plans to the County detailing the changes in the specific Component ("*Amended Plans*"). Such Amended Plans will address the impact that the modified space will have on the other Components of the Project, and if additional parking is required, the details of the expanded Parking Component shall be included in the Amended Plans.

viii. *Right to Review.* Upon reasonable notice to Developer, District shall have the right to review the plans and specifications during business hours.

E. *Cost of the Project.* All costs, expenses and charges incurred in the construction of the Project will be paid by Developer. Notwithstanding the foregoing, District will reimburse Developer for up to \$200,000 of the actual costs to bring adequate utilities to the Premises. Developer will defend and hold County and District harmless and indemnify it from all such costs, expenses, and charges, including attorneys' fees relating to the construction and maintenance of the Project. Upon development of a final budget for the Project, but in no event later than the date of Project Commencement, this Sublease will be amended to attach the Project budget (the "*Budget*") as Exhibit C hereto. Thereafter, Developer will complete the Projects for the amounts set forth in the Budget, with variances of up to 10% allowed.

F. *County Inspections.* Developer will provide representatives of County Development Services reasonable access necessary for such representatives to inspect and evaluate the Project at appropriate stages of construction.

G. *Substantial Completion.* Construction of the Project shall reach Substantial Completion by the Completion Deadline, subject only to delays occasioned by Force Majeure (as defined below). If the Project has not achieved Substantial Completion by the Completion Deadline, District may require Developer to pay District \$750 each day that elapses after the Completion Deadline and before Substantial Completion. "*Substantial Completion*" of the Project will be deemed to have occurred upon issuance of the Core and Shell Certificate of Completion by County for the Project.

H. *Force Majeure.* If a Party is delayed, hindered in, or prevented from the performance of any term, covenant, or act required by it under this Sublease (other than the payment of money) by reason of acts of God, acts of public enemy, acts of the federal, state or local government, acts of the other Party, litigation or other action authorized by law concerning the validity and enforceability of this Sublease or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum), fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of national emergency or national alert, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting the Premises (whether permanent or temporary) by any public, quasi-public or private entity, or other like cause ("*Force Majeure*"), any of which must be beyond the reasonable control of such Party, then the performance of that term, covenant,

or act is excused for the period of the delay and any deadlines under this Sublease affected as a result of such Force Majeure will be deemed correspondingly extended.

I. *Parking Garage.* Prior to the Lease Conversion Date, District will enter into a lease with Developer whereby District will sublease the parking levels of the Project (the "Parking Garage") from Developer for a period of ten years from the Lease Conversion Date (the "Garage Sublease"). During the term of the Garage Sublease, District will pay "Garage Rent" to Developer in the amount of \$1,250,000 for each year of the term of the Garage Sublease. The Garage Rent shall be adjusted annually to keep up with inflation. District shall be entitled to all revenues from the Parking Garage during the term of the Garage Lease, subject to the payment of rent under the Garage Lease and any management fees contemplated by Section 7(J) below.

J. *Garage Management.* If requested by Developer, District shall hire a third party to manage and operate the portion of the Project consisting of the parking garage for the purpose of qualifying for a partial exemption of excise taxes pursuant to A.R.S. §42-6208(14).

SECTION 8. TITLE TO PROJECT.

Provided that Developer has not breached this Sublease, during the Term of the Sublease, the Project improvements will be owned by Developer, and Developer alone will be entitled to all of the tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery, and Developer shall have the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Premises.

SECTION 9. FIXTURES AND FURNISHINGS.

Subject to the rights of LordCap under the Leasehold Deed of Trust, Developer will retain ownership of all personal property, fixtures, equipment and furnishings (collectively, "Fixtures") from time to time installed in the Premises by Developer or its sublessees. Developer may remove any Fixtures at any time during the Term and will remove all Fixtures prior to the expiration of the Term, except those Fixtures that District and County agree, in writing, may be left on the Premises. Any Fixtures not removed when this Sublease terminates (other than as a result of a sale of the Premises to District) will, at the election of County, become the property of County without payment to District or Developer, or be deemed abandoned and removed by County at Developer's expense.

SECTION 10. CONSENT AND SUBORDINATION TO LENDERS.

The cost of the Project will be funded by Developer in part by loans from one or more lenders (the "Lender(s)"). *Provided* County and District have received at least ten (10) days' written notice (or such shorter period as may be agreed to by County and District) of any intended encumbrance of the Premises, each will allow the Lenders to hold a deed of trust or other security interest in District's and Developer's leasehold interests in the Premises, and the improvements thereon, only to the extent necessary to secure repayment of loans, the proceeds of which were directly used for the construction of the Project. District and County will execute such subordination agreements or similar document(s) as may be required by the Lenders, *provided* that

such documents contain terms and conditions and are in a form reasonably satisfactory to District and County. A Lender, in the event of any foreclosure or assignment in lieu of foreclosure, must cure all Developer defaults, and any reletting of the Premises by a Lender must comply with all the terms and conditions of this Sublease. District agrees to execute agreements subordinating its leasehold interest in the Premises to Lender or other document(s) as may be required by the Lender with respect to said financing, *provided* that such documents contain terms and conditions and are in a form reasonably satisfactory to District. In connection therewith, Developer may provide Lender with a collateral assignment of this Sublease, an assignment of leases and rents, and any personal property owned by Developer, in order to secure the repayment of such financing for the Project, including interest thereon, and the performance of all of the terms, covenants and agreements on Developer's part to be performed or observed under all agreements executed in connection with such financing or refinancing. Developer may have one or more leasehold mortgages at any time. Developer shall provide County and District at least thirty (30) days' prior written notice (or such shorter period as agreed to by County and District) of any intended encumbrance of the Premises as well as contact information for notices to the Lender ("*Lender Notice*"). After receipt of a Lender Notice, District and County shall give such Lender, in the manner provided by the notice provisions of this Sublease, a copy of each notice of default given by County to District or by District to Developer, at the same time that said notice is provided to Developer; *provided, however*, that the failure of either District or County to provide notice to a Lender shall not be a default hereunder, but shall serve to stay any enforcement of any default or claimed default by District or County until proper notice, and the applicable cure periods, have been provided to Lender. District and County further agree to execute, acknowledge and deliver an estoppel certificate on request from Developer or Lender certifying that this Sublease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the dates to which Rent and any other charges have been paid in advance, and such other items reasonably requested, including without limitation, the lease commencement date and expiration date, rent amounts, and that no offsets or counterclaims are present.

SECTION 11. LIENS.

Except as permitted in Section 10, Developer will keep the Premises free and clear of all other liens, claims, and encumbrances, including, but not limited to, mechanics' liens, laborers' liens and materialmen's liens; except that any such lien may remain during the period of time that Developer is diligently and continuously working to contest any such lien.

SECTION 12. SUBLEASE AND ASSIGNMENT.

Developer will not voluntarily assign or encumber this Sublease or any interest in it, except as permitted under Section 10 above, without District's prior written consent, which may be withheld in its sole and absolute discretion. To avoid any doubt, District's prior written consent will not be required for leases to sub-tenants of the Premises.

SECTION 13. MEMORANDUM OF SUBLEASE.

Upon the execution of this Sublease, the Parties will also execute a "Memorandum of Sublease" to be recorded in the official records of the Pima County, Arizona Recorder in substantially the form attached hereto as Exhibit D.

SECTION 14. PAYMENT OF ADDITIONAL AMOUNTS.

Other than District's payment of rent to County pursuant to the terms of the Ground Lease and District's payment of any taxes to County for taxes on the Ground Lease Rent payable by County (the "*Ground Lease Rent*"), this Sublease is a completely net lease. As such, except as specifically provided herein, Developer is solely responsible for any and all capital, operating, maintenance, and replacement costs and any other costs and expenses that result from Developer's development and use of the Premises, including, but not limited to, the construction of the Project. Other than the Ground Lease Rent, Developer's payment of insurance, taxes, utilities and any other charges, costs or fees charged and prorated to Developer under the terms of this Sublease (collectively "*Developer's Obligations*") will accrue and be payable by Developer from and after the Sublease Date throughout the Term. District will promptly forward to Developer any invoices, bills, or other charges representing Developer's Obligations ("*Developer Bills*") that are received by District. Developer will promptly pay all Developer Bills on or before the date such payment becomes due or if no due date is provided, then within thirty (30) days of receipt of any such Developer Bills. Developer's failure to pay Developer Bills within ten (10) calendar days after notice from District that such payment is past due will constitute a breach of this Sublease unless Developer is actively contesting the Developer Bill in question.

SECTION 15. UTILITIES.

Developer will promptly pay when due all charges for sewer, water, gas, electricity, telephone, garbage, and any other utilities or services delivered in connection with Developer's use and operation of the Premises during the Term, including connection and disconnection charges, if any.

SECTION 16. TAXES.

Developer will pay and discharge as and when the same become due, and prior to delinquency, all real and personal property, Government Property Lease Excise Tax ("*GPLET*"), and *ad valorem* taxes, assessments, levies, and other charges, general and special, which are or may be during the Term levied, assessed, imposed or charged against the Project. This obligation to pay such real and personal property and *ad valorem* taxes, GPLET taxes, assessments, levies, and other charges will begin with respect to amounts first accruing from and after the Sublease Date. District will pay any taxes that County, now or hereafter, is required to pay on the Ground Lease Rent.

Developer understands that only the City can abate excise taxes. Developer has agreed that it will not see an abatement of excise taxes on any portion of the Project.

SECTION 17. INSURANCE.

A. *Types of Insurance Required.* Developer, and any contractors, subcontractors, and subtenants of Developer will procure, prior to beginning any activities on the Premises, and maintain throughout the Term of this Sublease, the following insurance from an insurance company or companies reasonably acceptable to County:

(i) *Commercial General Liability (CGL):* Occurrence Form covering liability arising from premises, independent contractors, personal injury, bodily injury, broad form contractual liability and products-completed operations with minimum limits not less than \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate.

(ii) *Business Automobile Liability:* Coverage for any owned, leased, hired, and/or non-owned autos assigned to or used in connection with the Premises, with minimum limits not less than \$1,000,000 Each Accident.

(iii) *Workers' Compensation (WC) and Employers' Liability:* Workers' Compensation with Employers Liability limits of \$1,000,000 each accident and \$1,000,000 each employee – disease. Workers' Compensation statutory coverage is compulsory for employers of one or more employees.

(iv) *Property:* Commercial Property, Boiler and Machinery insurance with coverage at least as broad as ISO forms CP 00 01 and BM 00 20, covering the full replacement cost of all improvements on the Premises.

B. *Additional Coverage Requirements.*

(i) *Claims Made Coverage:* If any part of the required insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Sublease, and Developer must maintain such coverage for a period of not less than three (3) years following expiration or termination of this Sublease.

(ii) *Insurer Financial Ratings:* Coverage must be placed with insurers acceptable to District with A.M. Best rating of not less than A-VII, unless otherwise approved by District.

(iii) *Additional Insured:* The General Liability policies must be endorsed to include County and District, and all of their respective related special districts, elected officials, officers, agents, employees and volunteers (collectively "*County, District and their Agents*") as additional insureds with respect to liability arising out of the activities performed by or on behalf of Developer. The full policy limits and scope of protection must apply to County, District and their Agents as additional insureds; even if they exceed the limits required by this Sublease.

(iv) *Waiver of Subrogation:* Commercial General Liability and Workers' Compensation coverages must each contain a waiver of subrogation in favor of County, District and their Agents for losses arising from work performed by or on behalf of Developer.

(v) *Primary Insurance:* The required insurance policies, with respect to any claims related to this Sublease or the Premises, must be primary and must treat any insurance carried by District or County as excess and not contributory insurance. The required insurance policies may not obligate County or District to pay any portion of Developer's deductible or Self Insurance Retention.

C. *Verification of Coverage.*

(i) *Certificates.* Developer's insurer or broker must evidence compliance with the insurance requirements by furnishing certificates of insurance executed by a duly authorized representative of each insurer. Each certificate must include a notation of policy deductibles or self-insured retentions relating to the specific policy and must specify that the policy is endorsed to include additional insured and subrogation waiver endorsements for County, District and their Agents.

(ii) *Renewal Certificate.* A renewal certificate must be provided to County and District not less than fifteen (15) days prior to the policy's expiration date, along with actual copies of the additional-insured and waiver-of-subrogation endorsements.

(iii) *Policies.* District and County reserve the right to, at any time, require complete copies of any or all required insurance policies.

(iv) *Cancellation Notice.* Developer will ensure that the insurer notifies County and District in advance, in writing, if a required insurance policy will expire, be cancelled, be suspended, or be materially changed. The notice must be provided to County and District by the earlier of (a) thirty (30) days before the change will take effect, and (b) two (2) Business Days after Developer receives notice of the change from its insurer. For cancellation for non-payment, insurer must provide County and District with written notice ten (10) days prior to cancellation of policy.

D. *Approval and Modifications.* The Pima County Risk Manager may approve a modification of the above insurance requirements without the necessity of a formal contract amendment, but the approval must be in writing. Neither County's nor District's failure to receive a required insurance certificate or endorsement, County's or District's failure to object to a non-complying insurance certificate or endorsement, or County's or District's receipt of any other information from Developer, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

SECTION 18. REPAIRS AND MAINTENANCE.

Developer will, at its sole cost and expense, keep and maintain, and replace where necessary, the Project, including without limitation, buildings, sidewalks, fencing, paving, landscaping, wiring, heating, air conditioning, ventilating, plumbing, parking areas, ingress and egress, and other installations in good condition and repair in all material respects (normal wear and tear excepted). Developer agrees to maintain, and replace where necessary, all underground and unexposed service facilities of the Premises.

SECTION 19. PERMITS, LAWS AND ORDINANCES.

Developer will, at its sole cost and expense, comply, and will require its contractors and subcontractors and subtenants to comply, in all material respects with all laws of all applicable governmental authorities which may now or hereafter, from time to time, be established and which are or will be applicable to the Premises and any operations on the Premises, and will take all actions necessary to cause the Premises to comply in all material respects with all provisions of the Final Plans and this Sublease.

SECTION 20. ENVIRONMENTAL COMPLIANCE.

A. *Hazardous Materials Prohibited; Clean Air Act.* Developer and its contractor will not cause or permit any Hazardous Material (as defined below) to be brought upon, kept, or used in or about the Premises without the prior written consent of County, other than such Hazardous Materials as are customarily necessary or useful to the type of operations permitted under this Sublease and actually being carried out by Developer or its contractors on the Premises which will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Materials. Developer's operations on the Premises will comply with applicable provisions of the Clean Air Act, 42 U.S.C. 7401 *et seq.* and Arizona Revised Statutes, Title 49, Chapter 3 and any other applicable environmental laws or regulations.

B. *Hazardous Material.* As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) defined as a "hazardous waste" under NRS 459.400 *et seq.*, (ii) petroleum, (iii) asbestos, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.* (42 U.S.C. 6903), (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* (42 U.S.C. 9601) or (vii) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. 6991 *et seq.*

C. *Clean-Up.* If the presence of any Hazardous Material on or in the Premises, or the soil or ground water under or adjacent to the Premises caused or permitted by Developer, its sublessee(s) or their agents, employees, contractors or invitees results in any suspected

contamination of the Premises, the soil or ground water under or adjacent to the Premises, Developer will promptly notify District in writing and take all actions at its sole expense as are necessary to return the Premises, or such soil or ground water to the condition existing prior to the introduction of any such Hazardous Material to the Premises, or to such soil or ground water; *provided* that District's approval of such actions will first be obtained, which approval will not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises.

D. *Pre-existing Contamination.* District agrees that any Hazardous Materials contaminating the Premises prior to possession of the Premises by Developer will not result in liability for Developer under this Paragraph, 42 U.S.C. § 9607(b)(3) or A.R.S. § 49-283(D), except to the extent such contamination is aggravated by the action or inaction of Developer.

E. *Notices Regarding Environmental Conditions.* Developer will, within ten (10) Business Days following receipt thereof, provide District with a copy of (i) any notice from any local, state or federal governmental authority of any violation or administrative or judicial order or complaint having been filed or about to be filed against Developer or its contractors, or the Premises alleging any violation of any local, state or federal environmental law or regulation or requiring Developer to take any action with respect to any release on or in the Premises or the soil or ground water under or adjacent to the Premises of Hazardous Material, or (ii) any notices from a federal, state or local governmental agency or private party alleging that Developer may be liable or responsible for cleanup, remedial, removal, restoration or other response costs in connection with Hazardous Material on or in the Premises or the soil or ground water under or adjacent to the Premises or any damages caused by such release.

F. *Indemnification.* Developer will, to the fullest extent permitted by law, indemnify, defend, and hold harmless County, District, their respective officers, employees and agents ("*Indemnified Parties*") from and against any and all losses, costs, or expenses (including reasonable attorney fees) incurred or suffered by the Indemnified Parties as a result of any damages to property or injuries to persons (including death), or any suits, actions, legal or administrative proceedings, claims or demands and costs attendant thereto, to the extent caused by any act, omission, fault or negligence by Developer, its agents, employees, invitees, contractors, subtenants, or anyone under its direction or control or acting on its behalf, or anyone permitted by Developer to conduct any activity on the Premises, or in connection with any use or occupancy of the Premises under the terms of this Sublease. Developer's indemnity obligations under this paragraph shall not extend to any claims for damages arising out of or directly related to any act, omission, fault or negligence of any of the Indemnified Parties, or any other persons or entities unrelated to Developer.

SECTION 21. DEFAULT.

As provided herein, either party may present written notice of default or non-performance to the other party.

A. *Developer Default.* The occurrence of any one or more of the following events will constitute a default and breach of this Sublease by Developer for which District may terminate this Sublease:

(i) *Operation of Premises.* The vacating or abandonment of the Premises, or cessation of activities thereon, where such abandonment continues for a period of thirty (30) calendar days after notice of such default is sent by District to Developer.

(ii) *Monetary Obligations.* The failure by Developer to make any payment required to be made by Developer hereunder, as and when due, where such failure will continue for a period of ten (10) calendar days after notice from District that such payment is due.

(iii) *Insurance.* The failure by Developer to maintain insurance policies as set forth above for any period of time, in which event Developer must immediately cease all operations at the Premises until such insurance is obtained. In the event of such a default, District may, in District's sole discretion, obtain necessary insurance coverage in which event Developer will, within ten (10) Business Days of demand, reimburse and pay to District the full amount of any costs and premiums expended by District to obtain such coverage.

(iv) *Violation of Law.* A final determination, as evidenced by a non-appealable order from a court of competent jurisdiction over the Project, that Developer has violated any law related to its ownership or operation of the Project.

(v) *Health and Safety Violation.* Any action or omission by Developer that, in District's reasonable judgment, causes a threat to the health or safety of the general public that remains uncured thirty (30) days after written notice describing such threat by District to Developer *provided, however,* that if the nature of the threat is such that more than thirty (30) days are reasonably required for its cure, then Developer will not be deemed to be in default if Developer commences such cure within said 30-day period and thereafter diligently prosecutes such cure to completion.

(vi) *Other Covenants.* The failure by Developer to observe or perform any other of the covenants, conditions or provisions of this Sublease to be observed or performed by Developer, where such failure continues for a period of thirty (30) days after written notice thereof by District to Developer: *provided, however,* that if the nature of Developer's default is such that more than thirty (30) days are reasonably required for its cure, then Developer will not be deemed to be in default

if Developer commences such cure within said 30-day period and thereafter diligently prosecutes such cure to completion.

B. *District Default.* District will be in default if it fails to comply with any material obligation under this Sublease and fails to cure that failure within ten (10) days after receiving a written default notice from Developer detailing the nature of the obligation. If, however, the nature of District's default is such that more than ten (10) days are reasonably required for its cure, then District will not be deemed to be in default if District commences such cure within that period and thereafter diligently prosecutes such cure to completion.

SECTION 22. REMEDIES.

A. *Pursuit of Remedies.* Either party may pursue any remedies provided by law and in equity for the breach of this Sublease. No right or remedy is intended to be exclusive of any other right or remedy and each will be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this Sublease.

B. *Late Charges; Default Interest.* In the event that any payment required to be made by Developer to District under the terms of this Sublease is not received within ten (10) days after written notice of delinquency, a late charge shall become immediately due and payable in an amount equal to [2.5%] of the late payment. In the event of Developer's failure to pay Rent on the date when due, Developer shall pay District interest on any such overdue payments and associated late charges at the rate of [2%] per month, but in no event an amount greater than permitted by law, but this shall in no way limit any claim for damages for District for any breach or default by Developer.

SECTION 23. DEVELOPER'S LENDER.

District will provide written notice to LordCap and any other of Developer's lenders simultaneously with its notice to Developer. District agrees to accept the cure of any Developer default from LordCap or Developer's other lender during the same cure periods given to Developer hereunder.

SECTION 24. REPRESENTATIONS AND WARRANTIES.

A. *Developers Representations and Warranties.* As of the Sublease Date, Project Commencement and on the Lease Conversion Date, if any, Developer hereby represents and warrants to District as follows:

- (i) Developer is lawfully authorized to conduct business in the State.
- (ii) Developer has the full right, power and authority to make, execute, deliver and perform this Sublease.

(iii) Developer's execution and delivery of this Sublease has been authorized by all requisite action on the part of Developer, and the execution and delivery of this Sublease by Developer and the performance of its obligations hereunder will not violate or contravene any agreement or obligation to which Developer is a party or by which it is bound.

(iv) There is no action, suit, litigation or proceeding pending or, to Developer's knowledge, threatened against Developer that could prevent or impair Developer's entry into this Sublease and/or performance of its obligations hereunder.

(v) The persons signing this Sublease on behalf of Developer are duly and validly authorized to do so.

(vi) As of Project Commencement, Developer has the financial capability to complete the Project.

B. *District's Representations and Warranties.* As of the Sublease Date and on the Lease Conversion Date, if any, District hereby represents and warrants to District that, to the best of the District's Board Chairman's knowledge.

(i) District has full right, power and authority to make, execute, deliver and perform its obligations under this Sublease. District has obtained and received all required and necessary consents and approvals to enter into this Sublease with District. The entry by District into this Sublease with Developer and the performance of all of the terms, provisions and conditions contained herein does not and will not violate or cause a breach of or default under any agreement or obligation to which District is a party or by which it is bound.

(ii) As of the Sublease Date, there are no tenants, lessees or other occupants of the Premises having any right or claim to possession or use of the Premises or a claimed preference for occupancy in the Premises.

(iii) District is not obligated under any other option, contract, lease or agreement, oral or written, with respect to the ownership, use, operation, management, maintenance, lease, sale or financing of the Premises except as previously disclosed to Developer.

(iv) There is no action, suit, litigation or proceeding pending or, to District's knowledge, threatened against District and/or the Premises which could prevent or impair District's entry into this Sublease and/or performance of its or any of District's obligations hereunder or materially and adversely impact District's rights hereunder.

(v) The persons signing this Sublease on behalf of District are duly and validly authorized to do so.

SECTION 25. GENERAL PROVISIONS.

A. *Waivers.* No waiver of any of the provisions of this Sublease will constitute a waiver of any other provision, whether or not similar, nor will any waiver be a continuing waiver. Unless expressly provided for in this Sublease, no waiver will be binding unless executed in writing by the Party making the waiver. Any Party may waive any provision of this Sublease intended for its sole benefit; however, unless otherwise provided for herein, such waiver will in no way excuse the other Party from the performance of any of its other obligations under this Sublease.

B. *Construction, Governing Law and Venue.* This Sublease will be interpreted according to Arizona law, and will be construed as a whole and in accordance with its fair meaning and without regard to, or taking into account, any presumption or other rule of law requiring construction against the Party preparing this Sublease or any part hereof. Any dispute or controversy relating to this Sublease, including the breach and enforcement thereof, will take place in the Superior Court of Pima County, Arizona.

C. *Time.* Time is strictly of the essence of each and every provision of this Sublease.

D. *Attorneys' Fees.* If any action is brought by any Party in respect to its rights under this Sublease, the prevailing Party will be entitled to reasonable attorneys' fees and court costs as determined by the court, including attorneys' fees incurred prior to any court or enforcement action that relate to the enforcement hereof.

E. *Binding Effect.* This Sublease and all instruments or documents entered into pursuant hereto are binding upon and will inure to the benefit of the Parties and their respective successors and assigns.

F. *Further Assurances and Documentation.* Each Party agrees in good faith to take such further actions and execute such further documents as may be necessary or appropriate to fully carry out the intent and purpose of this Sublease.

G. *Time Periods.* If the time for the performance of any obligation under this Sublease expires on a Saturday, Sunday or legal holiday, the time for performance will be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.

H. *Headings.* The headings of this Sublease are for purposes of reference only and will not limit or define the meaning of any provision of this Sublease.

I. *Entire Agreement.* This Sublease, together with all exhibits referred to herein, which are incorporated herein and made a part hereof by this reference, constitute the entire agreement between the parties pertaining to the subject matter contained in this Sublease. Except as expressly provided herein, no supplement, modification or amendment of this Sublease will be binding unless in writing and executed by the Parties.

J. *Counterparts.* This Sublease may be executed by the exchange of faxed or electronic signatures and in any number of counterparts.

K. *Approvals and Notices.* Any objection, approval, disapproval, demand, document or other notice ("*Notice*") that any Party may desire or may be obligated to give to any other Party will be in writing and may be given by personal delivery, registered or certified mail (return receipt requested), email transmission (with delivery receipt) or by commercial courier to the party or its successors or assigns to whom the Notice is intended at the address of the party set forth below or at any other address as the parties may later designate. Change of address by a party will be given by Notice as follows:

If to District:

Rio Nuevo Multipurpose Facilities District
1703 E. Broadway Blvd.
Tucson, Arizona 85719
Attn: Fletcher McCusker
Telephone: 520-400-9934
Email: fjmccusker@gmail.com

with a copy to:

Mark Collins, Esq.
Gust Rosenfeld P.L.C.
One South Church Avenue, Suite 1900
Tucson, Arizona 85701
Telephone: 520-388-4780
Facsimile: 520-624-3849
Email: mcollins@gustlaw.com

with copies to:

Director
Pima County Facilities Management Department
150 W. Congress Street, 5th Floor
Tucson, Arizona 85701

And

Director
Pima County Development Services
201 N. Stone Ave.
Tucson, Arizona 85701

If to Developer:

75 Broadway, LLC
Attention Marcel Dabdoub
45 N. Tucson Blvd.
Tucson, Arizona 85716
Telephone: 520-631-7788
Email: marcel@cidholdings.com

With a copies to:

Lawrence M. Hecker, Esq.
Hecker PLLC
405 West Franklin Street
Tucson, Arizona 85701
Telephone: 520-798-3803
Facsimile: 520-620-0405
Email: heckyes@hpzlaw.com

and:

LordCap Green Trust
40 Wall Street – 28th Floor
New York, NY 10005
Attention: PACE Administrator
Telephone: 212-400-7142
Email: team@lordcappace.com

L. *Conflict of Interest.* This Sublease is subject to and may be cancelled in accordance with the provisions of A.R.S. § 38-511.

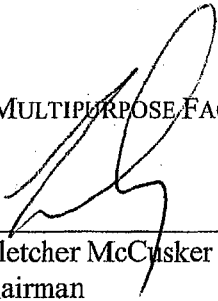
M. *Transfer Rights.* Any transfer of rights and/or responsibilities to successor interests or assigns of Developer shall be subject to prior written approval of District and LordCap.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

This Sublease is dated as of the date first above written.

DISTRICT:

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT

By: 
Name: Fletcher McCusker
Title: Chairman

By: _____
Name: Mark Irvin
Title: Secretary

DEVELOPER:

75 BROADWAY, LLC, an Arizona limited liability company

By: _____
Marcel Dabdoub, Authorized Member

This Sublease is dated as of the date first above written.

DISTRICT:

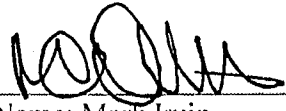
RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT

By: _____

Name: Fletcher McCusker
Title: Chairman

By: _____

Name: Mark Irvin
Title: Secretary

 11/24/2020

DEVELOPER:

75 BROADWAY, L.L.C, an Arizona limited
liability company

By: _____

Marcel Dabdoub, Authorized Member

This Sublease is dated as of the date first above written.

DISTRICT:

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT

By: _____

Name: Fletcher McCusker

Title: Chairman

By: _____

Name: Mark Irvin

Title: Secretary

DEVELOPER:

75 BROADWAY, LLC, an Arizona limited
liability company

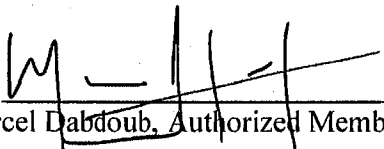
By:  _____
Marcel Dabdoub, Authorized Member

Exhibit A
Gantt Chart

75 E. Broadway Gantt Chart Project Schedule 11-4-2020

Task Name	Duration	Start	Finish
Task Name	Duration	Start	Finish
DUE DILIGENCE	43 days	Fri 2/14/20	Tue 4/14/20
UTILITY UPDATES	46 days	Tue 12/1/20	Tue 2/2/21
SEWER			
WATER			
TEP			
SITE DEVELOPMENT PACKAGE	59 days	Tue 12/1/20	Fri 2/19/21
CITY TRANSPORTATION - TIA MTG	1 day	Tue 12/1/20	Tue 12/1/20
TRAFFIC IMPACT ANALYSIS	27 days	Tue 12/1/20	Wed 1/6/21
TRANSPORTATION - REVIEW	7 days	Wed 1/6/21	Thu 1/14/21
WORK WITH UTILITIES	29 days	Tue 12/1/20	Fri 1/8/21
WATER	29 days	Tue 12/1/20	Fri 1/8/21
SEWER	29 days	Tue 12/1/20	Fri 1/8/21
GAS	29 days	Tue 12/1/20	Fri 1/8/21
ELECTRIC	29 days	Tue 12/1/20	Fri 1/8/21
COMMUNICATIONS	29 days	Tue 12/1/20	Fri 1/8/21
UTILITY DESIGN WORK	56 days	Tue 12/1/20	Tue 2/16/21
GRADING	123 days?	Wed 12/9/20	Fri 5/28/21
DRAINAGE REPORT	21 days	Wed 12/9/20	Wed 1/6/21
GRADING PLAN	51 days	Wed 12/9/20	Wed 2/17/21
PRELIMINARY MEETING	1 day	Thu 2/11/21	Thu 2/11/21
DEVELOPMENT PLAN	45 days	Tue 1/5/21	Mon 3/8/21
SUBMIT FOR REVIEW	1 day	Mon 3/1/21	Mon 3/1/21
REVIEW	11 days	Mon 3/1/21	Mon 3/15/21
1ST COMMENTS	1 day	Mon 3/15/21	Mon 3/15/21
DEVELOPMENT PLAN CORRECTIONS	8 days	Wed 4/21/21	Fri 4/30/21
SUBMITTAL #2	7 days	Mon 5/3/21	Tue 5/11/21
DEVELOPMENT PLAN APPROVED	1 day	Fri 5/28/21	Fri 5/28/21
INFILL INCENTIVE DISTRICT	118 days	Tue 12/1/20	Thu 5/13/21
DESIGN WORK	44 days	Tue 12/1/20	Fri 1/29/21
PRE-SUBMITTAL CONFERENCE	1 day	Thu 2/11/21	Thu 2/11/21
WARD OFFICE MEETINGS	22 days	Mon 2/22/21	Tue 3/23/21
NEIGHBORHOOD MEETINGS	12 days	Thu 3/18/21	Fri 4/2/21
DRB STUDY/MEETINGS	12 days	Thu 3/18/21	Fri 4/2/21
HISTORIC COMMITTEE STUDY	12 days	Thu 3/18/21	Fri 4/2/21
ID SUBMITTAL - REVIEW	36 days	Thu 3/25/21	Thu 5/13/21

HISTORIC OFFICIAL MEETING	1 day	Sat 4/17/21	Sat 4/17/21
DRB OFFICIAL MEETING #1	1 day	Sat 4/17/21	Sat 4/17/21
APPROVAL IID	1 day	Sat 4/17/21	Sat 4/17/21
UTILITY / EARTHWORK PACKAGE	106 days	Fri 1/1/21	Fri 5/28/21
DESIGN WORK	64 days	Fri 1/1/21	Wed 3/31/21
PUBLIC UTILITIES	64 days	Fri 1/1/21	Wed 3/31/21
REVIEWS	8 days	Wed 4/7/21	Fri 4/16/21
ISSUE PERMIT	1 day	Fri 5/28/21	Fri 5/28/21
FOUNDATION CONC. STRUCTURE PACKAGE	152 days	Mon 12/7/20	Tue 7/6/21
BUILDING CODE ANALYSIS	34 days	Mon 12/7/20	Thu 1/21/21
REVIEW WITH BUILDING	1 day	Fri 1/22/21	Fri 1/22/21
FINALIZE STRUCTURAL DESIGN	1 day	Mon 2/1/21	Mon 2/1/21
DRAWINGS	66 days	Mon 3/1/21	Mon 5/31/21
SUBMIT	1 day	Sat 6/5/21	Sat 6/5/21
REVIEW	6 days	Thu 4/1/21	Thu 4/8/21
ISSUE FOUNDATION PERMIT	23 days	Sat 6/5/21	Tue 7/6/21
CORE AND SHELL PACKAGE	220 days	Tue 12/1/20	Mon 10/4/21
SCHEMATIC DESIGN	64 days	Tue 12/1/20	Fri 2/26/21
DESIGN DEVELOPMENT	66 days	Mon 3/1/21	Mon 5/31/21
CONSTRUCTION DOCUMENTS (PHASED)	67 days	Sat 6/5/21	Mon 9/6/21
REVIEW	22 days	Sun 9/5/21	Mon 10/4/21
ISSUE PERMIT	1 day	Mon 9/27/21	Mon 9/27/21
CONSTRUCTION	566 days	Tue 7/6/21	Tue 9/5/23
SITE UTILITIES	33 days	Tue 7/6/21	Thu 8/19/21
FOUNDATIONS	66 days	Tue 7/6/21	Tue 10/5/21
CORE AND SHELL	500 days	Wed 10/6/21	Tue 9/5/23
CERTIFICATE OF COMPLETION	1 day	Tue 9/5/23	Tue 9/5/23