



Board of Supervisors Memorandum

December 1, 2020

Rio Nuevo Multipurpose Facilities District Lease Amendment – 75 E. Broadway

Background

On December 13, 2016, Pima County entered into an agreement with the Rio Nuevo Multipurpose Facilities District to Lease, with an Option to Sell, County property located at 75 E. Broadway for the development of a Class A Office building with retail, parking and the option to include residential, if appropriate. Rio Nuevo selected the development team that included J E Dunn, Peach Properties, and Bog Creek Development. After J E Dunn presented concept and general plans meeting County requirements, Rio Nuevo exercised their option to purchase the parcel once the project was completed. That Lease/Purchase Agreement was approved by the Board on January 8, 2019 with specific performance deadlines included.

J E Dunn was unable to obtain adequate financing for the planned project and notified Rio Nuevo that they were withdrawing from the development agreement. The principals of Peach Properties and Bog Creek Development continued with the development process by incorporating some of the Peach Properties' parcels along Congress Street and the alley north of the County property into an even more extensive development, with more retail, 514 parking spaces, over 150,000 square feet of Class A office space, 120 apartments, and rooftop dining and event centers. The project has also grown in cost, now exceeding \$100,000,000. Bog Creek's financial partner, Boston Asia Capital, provided 80 percent of the financing by becoming a partner in Tucson Group Holdings with Marcel Dabdoub and Ron Schwabe, the main principals behind Peach Properties. Lord Capital (LordCap) has provided a signed letter of intent committing to as much as \$29,000,000 in financing to cover the rest of the project costs with a focus on green building initiatives. Swaim Associates and Sundt Contractors were chosen by the development team to design and build the complex providing additional local jobs.

The attached Amendment 1 to the Lease/Purchase agreement with Rio Nuevo incorporates new milestones and performance parameters as well as recognizes the new Sublease between Rio Nuevo and the combined Development Entity, Tucson Group Holdings. Financing has been committed first this time. There is no cost to the County and the developer's appraisal projects provide nearly \$900,000 in overall tax revenue per year once the project is fully completed and operational.

This is an even more exciting project than the original concept and will provide the first new, multi-use Class A office building in downtown in over 30 years to attract corporate or division headquarters. The project also provides extensive parking that is needed in the central core.

NOV 25 2020 11:30 AM PCD/KCF/M

Handwritten initials in a circle, possibly "KCF" or similar.

The Honorable Chairman and Members, Pima County Board of Supervisors
Re: **Rio Nuevo Multipurpose Facilities District Lease Amendment – 75 E. Broadway**
December 1, 2020
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Recommendation

I recommend the Board approve the attached Amendment 1 of the Lease/Purchase agreement with the Rio Nuevo Multipurpose Facilities District.

Sincerely,

A handwritten signature in black ink, appearing to read "C.H. Huckelberry". The signature is fluid and cursive, with a long, sweeping tail that extends downwards and to the right.

C.H. Huckelberry
County Administrator

CHH/dr – November 25, 2020

Attachment

c: John Moffatt, Director, Economic Development Office

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
fjmcusker@gmail.com

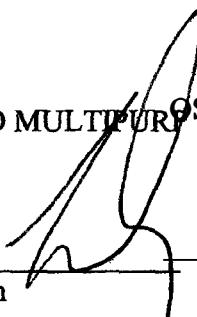
With copies to: Gust Rosenfeld, PLC
One South Church Avenue
Suite 1900
Tucson, Arizona 85701
Attn: Mark Collins, Esq.
mcollins@gustlaw.com

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

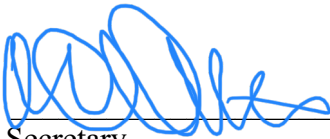
APPROVED AS TO FORM:


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