



## Board of Supervisors Memorandum

February 16, 2021

### 75 E. Broadway Financing

#### Background

This contract is related to the development of a 19 story building on a County owned parcel located at 75 E. Broadway. In 2016, Pima County entered into a Ground Lease Option Agreement on December 13, 2016 with Rio Nuevo to seek out a developer for a new office building with a minimum of 150,000 square feet of Class A office space at least 350 parking spaces and a retail component. As a part of this agreement, the County would lease the property to Rio Nuevo with an option to purchase the property upon completion of the project.

Through an RFP process Rio Nuevo selected a development team headed by J.E. Dunn with participation by local developers Peach Properties and Bog Creek Developers. As part of the planning for the building, a sublease was negotiated between J.E. Dunn and Rio Nuevo. Expecting the project to move forward, Rio Nuevo executed the Ground Lease Purchase Option with Pima County which was approved by the Board on January 8, 2019. As planning and design efforts proceeded, J.E. Dunn was unable to obtain the necessary funding and the project stalled.

The remaining partners, working with Rio Nuevo and Pima County created another development entity, Tucson Group Holdings, to expand and proceed with the project. Boston Asia Capital, an international developer that did over \$1.7 billion in project development last year, was brought in as a managing partner to lead Tucson Group Holdings. Supplemental funding focused on enhancing the green and sustainable components of the project was arranged through LordCap Green Trust (the Lender). The Board of Supervisors approved Amendment 1 to the Rio Nuevo Ground Lease Option Agreement on December 1, 2020 to recognize the new, expanded project parameters and partners as well as set a development schedule. Subsequent to that amendment, as final documents are in preparation for escrow, the need for this Consent and Acknowledgement Agreement arose.

#### Rationale Behind this Agreement

A standard condition for a lender to provide funding to a project is to protect their investment through a provision in the development agreement that provides the lender with the option to step in and complete the project should a default condition occur. Pima County as the land owner, Rio Nuevo as the sublessor, Tucson Group Holdings as the Developer, and LordCap Green Trust as the Lender, all must acknowledge and consent to the inclusion of the provision to protect the lender's position, thus the need for this agreement.

EB11717M0340PC1K15-P

(Signature)

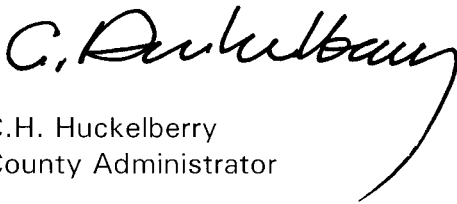
The Honorable Chair and Members, Pima County Board of Supervisors  
Re: **75 E. Broadway Contract**  
February 16, 2021  
Page 2

In Amendment 1 to the Ground Lease Option Agreement, Pima County required a specific project schedule with the first milestone being March 1, 2021. Since there may be minor changes as the development and lending deal is finalized, bringing those minor changes back to the Board would impact that schedule; there is a provision in this agreement that allows the County Attorney or County Administrator to approve minor or non-substantive changes that may arise during the closing process for the project. This provision does not in any way amend or waive the rights or obligations of any of the parties.

Recommendation

I recommend your approval of this agreement related to the development of 75 E. Broadway.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Huckelberry", with a long, sweeping underline that extends to the right.

C.H. Huckelberry  
County Administrator

CHH/dr – February 11, 2021

c: Dr. John Moffatt, Director, Economic Development Office

**CONSENT AND ACKNOWLEDGEMENT OF GROUND LESSOR**  
(75 E. Broadway)

This CONSENT AND ACKNOWLEDGEMENT OF GROUND LESSOR (this “*Agreement*”) is made and entered into as of \_\_\_\_\_, 2021 by and between PIMA COUNTY, a political subdivision of the State of Arizona (“*County*”), RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT, a special taxing district of the State of Arizona (“*District*”), TUCSON GROUP HOLDINGS LLC, a Massachusetts limited liability company (“*Developer*”) and LORDCAP GREEN TRUST, a Delaware statutory trust (“*LordCap*”). Any capitalized term used but not defined herein shall have the meaning specified for such term in the Ground Lease.

**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. District and 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 is more particularly described on Exhibit A of the Ground Lease Option Agreement. 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*”).

D. 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*”).

E. Subsequently all of Awardee’s interest in the Sublease Project (as defined below) and the Premises was assigned, conveyed and transferred to 75 Broadway LLC pursuant to that certain Membership Interest Purchase Agreement, dated November 24, 2020 (the “*MIPA*”), by and

among 75 Broadway LLC, 1001 Development, LLC, 929 Holdings, LLC, J.E. Dunn Construction Company and J.E. Dunn Capital Partners, LLC.

F. District and 75 Broadway LLC have entered into that certain Sublease, dated November 23, 2020 (the “*Original Sublease*”).

G. During the time between the date that District issued its RFP and the date hereof, many documents were executed or partially executed to further the commencement of the Sublease Project. Such documents and the Development Agreement have been terminated pursuant to that certain Termination of Rights, dated as of \_\_\_\_\_, 2021 (the “*Termination of Rights*”), by and among 1001 Development, LLC, 929 Holdings, LLC and Developer and are of no force and effect. Nevertheless, the chronology set forth above remains accurate.

H. 75 Broadway LLC rights and interests under the Sublease are being transferred to the Developer pursuant to a Sublease Assignment Agreement, dated \_\_\_\_\_, 2021 (the “*Sublease Assignment*”).

I. District and Developer intend to enter into the Amended and Restated Sublease, (the “*Sublease*”), which will amend and restate the Original Sublease.

J. Developer intends to continue the planned improvement of the Premises by constructing thereon the project more completely described in Exhibit B to the Sublease (the “*Sublease Project*”).

K. Pursuant to the Ground Lease, District has agreed to purchase from County, and County has agreed to sell to District, the Unimproved Parcel (the “*Ground Lease Purchase Option*”). District and County have agreed to open escrow for that sale as of the date the Project has achieved Core and Shell Completion and proceed diligently to close the transaction as soon as reasonably possible thereafter.

L. Developer has requested that LordCap, and (subject to the terms and conditions of the Leasehold Assessment Program Agreement, dated as of \_\_\_\_\_, 2021, among District, Developer and LordCap (the “*Program Agreement*”), that certain Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statements, dated as of \_\_\_\_\_, 2021, between LordCap and Developer (the “*Developer Deed of Trust*” and, together with the Program Agreement and the other operative documents entered into in connection therewith, the “*Financing Documents*”), LordCap has agreed to, provide certain financial accommodations, as described in the Developer Deed of Trust, to Developer to fund the costs of that portion of the Project that constitute energy-efficiency upgrades, renewable energy systems, water conservation installations, disaster preparedness measures or other environmental sustainability improvements (the “*Financing*”).

M. To secure the repayment of the Financing, LordCap will have the benefit of a first priority lien on (i) all of Developer’s right title and interest under the Sublease and related collateral and (ii) all of District’s right, title and interest as Lessee in and to the Ground Lease (the “*Project Liens*”).

N. LordCap, Developer and District desire that County acknowledge and consent to the foregoing transactions (the “*Transactions*”) and provide the accommodations herein to facilitate the Financing.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereto agree as follows:

1. County hereby acknowledges and consents to the Transactions, as described in the Recitals to this Agreement.

2. During District’s occupancy of the Premises under the terms of the Ground Lease, County agrees not to interfere with LordCap, or LordCap’s agents, in LordCap’s efforts to enforce LordCap’s lien, including LordCap’s exercise of rights to inspect or otherwise enter the Premises pursuant to the Financing Documents, subject to compliance with the terms and conditions of the Ground Lease with regards to access to the Premises; *provided, however*, that if and when LordCap receives the Lessor’s Notice (as defined in Paragraph 3 below), LordCap’s cure rights under the Ground Lease will be as set forth in Paragraph 4.

3. If County intends to take action to terminate District’s possession of the Premises or the Ground Lease prior to the expiration of the Ground Lease term, County agrees to provide LordCap with written notice of such intent, and if applicable, include a description of any default or event of default upon which such termination of the possession of the Premises or the Ground Lease is based (the “*Lessor’s Notice*”) at the address set forth below LordCap’s signature block or at such other address as LordCap may designate in writing from time to time to County. The foregoing shall not limit LordCap’s right to receive notices under Section 13(A) of the Ground Lease.

4. After County has provided the Lessor’s Notice to LordCap, LordCap shall have the right, but not the obligation, without thereby assuming District’s obligations under the Ground Lease, (i) to cure any default in the payment of rent or other amounts due and payable by District under the Ground Lease (including any default of an obligation delegated to District’s subtenant) within the later of (A) any cure period provided to District under the Ground Lease or (B) fifteen (15) days after the date of LordCap’s receipt of Lessor’s Notice, or (ii) to cure any other default by District under the Ground Lease within the later of (A) any cure period provided to District under the Ground Lease or (B) thirty (30) days after the date of LordCap’s receipt of Lessor’s Notice; *provided, however*, if such non-monetary default cannot reasonably be cured by LordCap within such thirty (30) day period, such cure period shall be extended by such time, not to exceed an additional ninety (90) days (or such longer period as County and LordCap may reasonably agree for LordCap to obtain possession of the Premises, if possession of the Premises is necessary to cure such default); *provided* LordCap has commenced curing such non-monetary default within such thirty (30) day period and thereafter diligently pursues the curing of such default.

5. If possession of the Premises by Lordcap is necessary to cure any non-monetary default by District under the Ground Lease:

(a) during any period of possession or occupancy, LordCap shall provide and retain liability and property insurance coverage; and

(b) except for the negligence of County, its agents, employees or contractors, LordCap agrees to indemnify, defend and hold harmless County, and County's agents, employees and contractors, from and against any and all losses, liabilities, damages, costs and expenses (including attorneys' fees) resulting from claims by third parties for injuries to any person and damage to or theft or misappropriation or loss of property occurring in or about the Property and arising from the use and occupancy of the Premises by LordCap, its agents, contractors, employees, invitees, and representatives, or from any activity, work, or thing done, permitted or suffered by LordCap, its agents, contractors, employees, invitees, and representatives, in or about the Premises or due to any other act or omission of LordCap, its agents, contractors, employees, invitees and representatives, in or about the Premises. The furnishing of insurance required hereunder shall not be deemed to limit LordCap's obligations under this Paragraph.

6. LordCap hereby agrees that it shall repair any damage to the Project caused by LordCap, or LordCap's agents, during the period in which LordCap (or its agents) is in possession of or occupies the Premises (ordinary wear and tear excluded).

7. In the event the Ground Lease is rejected or terminated as a result of any bankruptcy or insolvency proceeding with respect to District, County will, at the option of LordCap, within thirty (30) days after such rejection or termination, enter into a new agreement with LordCap having identical terms as the Ground Lease (subject to any conforming changes necessitated by the substitution of parties and other changes as the parties may mutually agree); *provided that* (i) the term under such new agreement shall be no longer than the remaining balance of the term specified in the Ground Lease, (ii) LordCap agrees to perform all of the duties and obligations of "District" under the Ground Lease, (iii) LordCap shall be subject to, and shall be required to cure, any and all of District's defaults under the Ground Lease that was terminated (except for any such defaults that, by their nature, are not capable of being cured by LordCap) as promptly as possible after the execution of the new agreement, but no later than thirty (30) days after the execution of such new agreement, and (iv) except to the extent set forth in clause (i) above, such new agreement shall contain the same conditions, agreements, terms, provisions and limitations as such Ground Lease.

8. This Agreement shall in all respects be a continuing agreement and shall expire upon the earlier of (i) the expiration of the Ground Lease, or (ii) District's satisfaction in full of District's obligations under the Operative Documents, as evidenced by written release or termination by LordCap. County reserves the right to obtain and enforce a judgment lien against the collateral, which shall, however, be subordinate in all respects to LordCap's lien on and rights to the Collateral pursuant to the Ground Lease Deed of Trust.

9. County hereby acknowledges that LordCap is a “Lender” as defined in Section 13 of the Ground Lease.

10. The County hereby approves the revised form of Amended and Restated Sublease attached as Exhibit C with any additional minor or non-substantive changes hereafter approved by the County Administrator and County Attorney’s office. This approval does not in any way amend, limit, or waive any right of County or obligation of District or Developer under the Ground Lease.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, County and LordCap have duly executed this Consent and Acknowledgement of Ground Lessor as of the date first above written.

PIMA COUNTY



\_\_\_\_\_  
John Moffatt  
Economic Development Director

\_\_\_\_\_  
2-10-2021  
Date

\_\_\_\_\_  
Sharon Bronson  
Chair, Board of Supervisors

\_\_\_\_\_  
Date

ATTEST

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Date

APPROVED AS TO FORM



\_\_\_\_\_  
Deputy County Attorney

\_\_\_\_\_  
Regina L. Nassen  
Print DCA Name

\_\_\_\_\_  
2/10/2021  
Date



County's Address for Notices:

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

with a copy to:

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

LORDCAP GREEN TRUST

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

LordCap's Address for Notices:

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

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT, a special taxing district of the State of Arizona,  
as District

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

Name: Fletcher McCusker

Title: Chairman

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

Name: Mark Irvin

Title: Secretary

District's Address for Notices:

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

TUCSON GROUP HOLDINGS LLC,  
a Massachusetts limited liability company

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

Developer's Address for Notices:

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

with copies to:

Keith Authelet  
Director of Development & Construction  
8 Grundy's Way  
Cumberland, RI 02864  
Email: keith.authelet@Bostonasiacapital.com

and:

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

**EXHIBIT A**  
**(TO GROUND LEASE AND OPTION AGREEMENT)**  
**(LEGAL DESCRIPTION OF THE PREMISES)**

**LEGAL DESCRIPTION**  
**EXHIBIT "ONE"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF PIMA, STATE OF ARIZONA AND IS DESCRIBED AS FOLLOWS:

**Parcel No. 1:**

That portion of that certain unnumbered Block (sometimes referred to as Block 248), of the City of Tucson, Pima County, Arizona, according to the plat thereof, as made and executed by S. W. Foreman and approved and adopted by the Mayor and Common Council of said City (then Village) of Tucson, on June 26, 1872, which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats, Page 70, thereof, described as follows:

COMMENCING at the Southwest corner of the property heretofore conveyed by the Corporate Authorities of the City of Tucson, to Kirk L. Hart, by Deed bearing date of December 11, 1903 and recorded in Book 34 of Deeds, Page 822, records of Pima County, Arizona, said point being the present Northeast corner of Broadway and Scott Street;

Thence Easterly along the Southerly line of the property conveyed to Kirt L. Hart, said line being also the present North line of Broadway, a distance of 100.1 feet;

Thence Northerly to a point on the South line of that certain 15 foot strip of ground theretofore conveyed to the said City of Tucson, for alley purposes, by Deed bearing dated May 31, 1992 executed by Kirt L. Hart and recorded in Book 34 of Deeds, Page 15, records of Pima County, Arizona, which point is distant 100.5 feet Easterly from the East line of said Scott Street;

Thence Westerly along the South line of said 15 foot alley, a distance of 100.5 feet to the East line of Scott Street;

Thence Southerly along the East line of Scott Street, being along the West line of said Block, to the POINT OF BEGINNING.

Said property commonly known as Lots 3 and 5, Block 248, City of Tucson.

**Parcel No. 2:**

That portion of that certain unnumbered Block (sometimes referred to as Block 248), of the City of Tucson, Pima County, Arizona, according to the plat thereof, as made and executed by S. W. Foreman and approved and adopted by the Mayor and Common Council of said City (then Village) of Tucson, on June 26, 1872, which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats, Page 70, thereof, described as follows:

COMMENCING at the intersection of the West line of 6th Avenue with the North line of Broadway;

Thence North, along the West line of 6th Avenue and the East line of said Block 248, a distance of 114.4 feet, more or less, to a point on the South line of that certain 15 foot alley, conveyed to the City of Tucson by Deed

**EXHIBIT "ONE"**

(Continued)

recorded in Book 34 of Deeds, Page 15, records of Pima County, Arizona;

Thence Westerly, along the South line of said alley, a distance of 170.7 feet, more or less, to a point thereon distant 100.5 feet from the East line of Scott Street;

Thence South to a point on the North line of Broadway, distant thereon 100.1 feet from the Northeast corner of Scott Street and Broadway;

Thence Easterly, along the South line of Broadway, a distance of 166.63 feet, more or less, to the POINT OF BEGINNING.

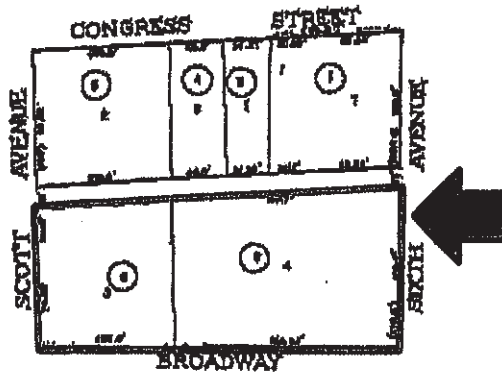
Said property commonly known as Lot 4, Block 248, City of Tucson.

SITE MAP

ASSESSOR'S RECORD MAP

117-15  
1/1

BLOCK 248, CITY OF TUCSON



SCALE 1"=50'

SEE BOOK 5, PAGE 70, A.S.P.

## **Exhibit B**

### **Sublease Project Description**

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. In addition to being a fire lane and service access, the alley on the north side of 75 Broadway will be an urban entertainment corridor creating a covered public space circulating through the development and connecting retail, restaurants and bars within the entire block. It will provide an opportunity for special events, music and outdoor dining, and create a unique urban environment.



**EXHIBIT C**  
**AMENDED & RESTATED SUBLEASE**  
**(75 E. BROADWAY)**

THIS AMENDED & RESTATED SUBLEASE (“*Sublease*”) is entered into as of \_\_\_\_\_, 2021 (the “*Sublease Date*”) by and between RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT, a special taxing district of the State of Arizona (“*District*”), and TUCSON GROUP HOLDINGS LLC, a Massachusetts limited liability company (“*Developer*”). District and Developer are sometimes individually referred to as a “*Party*” and jointly referred to as the “*Parties*.”

**R E C I T A L S**

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. 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 (the “*Site*” and, together with the Alley (defined below) from and after the date on which title to the Alley is acquired by County, the “*Unimproved Parcel*”), which is within District’s boundaries and is more particularly described and depicted on Exhibit A of the Ground Lease Option Agreement. 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*”). In addition to the Site, the Ground Lease will include the lease of the alley located north of the Site between 6th Street and Scott Avenue (the “*Alley*”), which will be developed as open space and common areas. The Alley will be sold by City to County, and County will sell the Alley to District along with the Site.

D. In September of 2017, District issued a Request for Proposal (“*RFP*”) seeking proposals for the development of the Unimproved Parcel. 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*”).

E. 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 Unimproved Parcel 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 Sublease Project (as defined below).

F. Subsequently all of Awardee's interest in the Sublease Project and the Unimproved Parcel was assigned, conveyed and transferred to 75 Broadway LLC, an Arizona limited liability company ("*Original Sublessee*") pursuant to that certain Membership Interest Purchase Agreement, dated November 24, 2020 (the "*MIPA*"), by and among Original Sublessee, 1001 Development, LLC, 929 Holdings, LLC, J.E. Dunn Construction Company and J.E. Dunn Capital Partners, LLC.

G. During the time between the date that District issued its RFP and the Sublease Date, many documents were executed or partially executed to further the commencement of the Sublease Project. Such documents and the Development Agreement have been terminated pursuant to that certain Termination of Rights, dated as of \_\_\_\_\_, 2021 (the "*Termination of Rights*"), by and among District, Original Sublessee, 1001 Development, LLC, 929 Holdings, LLC and Developer and are of no force and effect. Nevertheless, the chronology set forth above remains accurate.

H. District and Original Sublessee entered into that certain Sublease, dated November 23, 2020 (the "*Original Sublease*").

I. Original Sublessee's rights and interests under the Sublease and rights to develop the Project have been transferred to the Developer pursuant to that certain Assignment of Sublease and Development Rights, dated \_\_\_\_\_, 2021 (the "*TGH Assignment*").

J. Developer intends to continue the planned improvement of the Unimproved Parcel by constructing thereon the project as more completely described in Exhibit B to this Sublease (the "*Sublease Project*").

K. The value of constructing and operating the Sublease Project on the Unimproved Parcel 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 state-shared funds derived from transaction privilege taxes (*i.e.* sales tax) generated and collected from Developer's retail sales and construction sales taxes from the Sublease Project ("*TPT Funds*"), upon terms more specifically set forth below, as an economic incentive for Developer to construct the Sublease Project on the Unimproved Parcel at Developer's expense.

L. Pursuant to the Ground Lease, District has agreed to purchase from County, and County has agreed to sell to District, the Unimproved Parcel (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 Sublease Project, and proceed diligently to close the transaction as soon as reasonably possible thereafter.

M. Developer has requested that LordCap Green Trust, a Delaware statutory trust (“*LordCap*”) provide financing for the Sublease 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 (as defined in the Program Agreement, the “*Developer Deed of Trust*”) and the other Operative Documents (as defined in the Program Agreement, the “*Operative Documents*”), LordCap has indicated its intent to provide certain financial accommodations to fund the costs of a portion of the Sublease Project (the “*LordCap Contribution*”).

N. 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.

O. District and Developer desire to amend and restate the Original Sublease on the terms and conditions set forth herein.

## **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 Unimproved Parcel to Developer, and Developer hereby subleases the Unimproved Parcel 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 UNIMPROVED PARCEL.**

Developer has performed its due diligence review of the Unimproved Parcel and accepts possession of the Unimproved Parcel 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 Sublease Project including the Unimproved Parcel, and any portion thereof, and any improvements. District has no obligation whatsoever for the repair, alteration, maintenance and replacement of the Unimproved Parcel, the Sublease 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 Unimproved Parcel or the Sublease 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 Unimproved Parcel 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*.”

#### SECTION 5. BASE RENT.

A. *Base Rent.* Rent for the Unimproved Parcel for the Term will be \$189,000 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*”). In addition, Developer will pay any taxes that District, now or hereafter, is required to pay on the Base Rent.

B. *Additional Rent.* As additional rent, Developer will pay to District those certain “*Lease Assessments*,” required under the Program Agreement and the other Operative Documents, which in turn shall be forward to LordCap by District pursuant to a “*Lease Assessment Assignment Agreement*” to be executed by and between LordCap and District.

C. *Promise to Pay.* DEVELOPER ABSOLUTELY AND UNCONDITIONALLY PROMISES TO PAY RENT WHEN DUE AND OWING HEREUNDER, WITHOUT ANY RIGHT OF RESCISSION AND WITHOUT ANY DEDUCTION WHATSOEVER, INCLUDING ANY DEDUCTION FOR SET-OFF, RECOUPMENT OR COUNTERCLAIM. EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, DEVELOPER HEREBY WAIVES SETOFF, RECOUPMENT, DEMAND, PRESENTMENT, PROTEST, AND ALL NOTICES AND DEMANDS OF ANY DESCRIPTION, AND THE PLEADING OF ANY STATUTE OF LIMITATIONS AS A DEFENSE TO ANY DEMAND UNDER THIS SUBLEASE FOR THE PAYMENT OF RENT, ALL TO THE EXTENT PERMITTED BY LAW.

## SECTION 6. POSSESSION AND ENJOYMENT.

Unless otherwise specifically provided herein, from the Commencement of Construction (defined in Section 7 below) until the Lease Conversion Date, Developer shall be entitled to peacefully hold and enjoy the Unimproved Parcel 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 Unimproved Parcel by providing Developer with written notice of its intent to do so not less than twenty-four (24) hours in advance.

## SECTION 7. THE SUBLEASE PROJECT.

A. *Construction.* In accordance with this Sublease, Developer will design and construct the Sublease Project as defined in the Recitals above. The Sublease 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 Sublease 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. *Commencement of Construction.* "Commencement of Construction" shall be deemed to have occurred when labor is first provided, or equipment or materials are first furnished, to the Unimproved Parcel after issuance of the Foundation Permit (as further discussed in Subsections 7(D)(ii) and (iii) below).

C. *Conditions to Commencement of Construction.* Commencement of Construction 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 Sublease Project per loss single limit for all work at the job site. Developer must maintain this insurance in effect until the Sublease Project is complete and a permanent Core and Shell Certificate of Completion has been issued for the Sublease 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 Sublease Project in accordance with the Final Plans and the provisions of this Sublease, free and clear of all mechanics’ and other liens.

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

D. *Plans and Specifications.* Developer must obtain County’s approval of plans and specifications (“*Plans*”) for the Sublease 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, Developer will submit revised Plans addressing County’s concerns within thirty (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 Sublease Project.

i. *The Site Development Package/Schematic Design.* Developer will submit an electronic set of preliminary construction Plans for the Sublease 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 Sublease 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 Sublease Project, and about the impact of the Sublease Project on adjacent and nearby properties.

ii. *Foundation Package Submittal.* No later than three (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 (10) days after the County approves the Foundation Package Submittal and issues the Foundation Permit, Developer will commence construction of the Sublease Project.

iv. *Core and Shell Package Submittal.* No later than three (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 twenty-six (26) months after County's approval of the Core and Shell Package Submittal ("*Completion Deadline*"), Developer will have completed components of the Sublease Project sufficient to qualify for the Core and Shell Certificate of Completion ("*Substantial Completion*"), which will designate the official approval of the core and shell construction phase. If this does not occur in a timely manner, County may terminate this Sublease by written notice to District and Developer, subject to a period of thirty (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 Sublease 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 Sublease 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 Sublease Project.* All costs, expenses and charges incurred in the construction of the Sublease 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 Unimproved Parcel.] Developer will defend and hold County and District harmless and indemnify them from all such costs, expenses, and charges, including attorneys' fees relating to the construction and maintenance of the Sublease Project. Upon development of a final budget for the Sublease Project, but in no event later than the date of Commencement of Construction, this Sublease will be amended to attach the Sublease Project budget (the "*Budget*") as Exhibit D hereto. Thereafter, Developer will complete the Sublease 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 Sublease Project at appropriate stages of construction.

G. *Substantial Completion.* Construction of the Sublease Project shall reach Substantial Completion by the Completion Deadline, subject only to delays occasioned by Force Majeure (as defined below). If the Sublease 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 Sublease Project will be deemed to have occurred upon issuance of the Core and Shell Certificate of Completion by County for the Sublease 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, pandemics, 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 Unimproved Parcel (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 Sublease 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. District will be entitled to a portion of the revenues from the Parking Garage during the term of the Garage Sublease, pursuant to the express terms of the Garage Sublease.

J. *Garage Management*. If requested by Developer, District shall hire a third party to manage and operate the portion of the Sublease 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).

K. *Subtenant Wages*. Developer will include a provision in each non-retail sublease of any part of the office building constructed as part of the Sublease Project, that requires the subtenant to annually provide to District a report demonstrating that the subtenant’s office employees working at the Sublease Project 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 8. TITLE TO SUBLEASE PROJECT.

Provided that Developer has not breached this Sublease, during the Term of the Sublease, the Sublease 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 Unimproved Parcel.

#### SECTION 9.      FIXTURES AND FURNISHINGS.

Subject to the rights of LordCap under the Developer Deed of Trust and the other Operative Documents, Developer will retain ownership of all personal property, fixtures, equipment and furnishings (collectively, "*Fixtures*") from time to time installed in the Unimproved Parcel 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 Unimproved Parcel. Any Fixtures not removed when this Sublease terminates (other than as a result of a sale of the Unimproved Parcel 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 Sublease Project will be funded by Developer in part by loans from one or more lenders (the "*Lender(s)*"). *Provided* County and District shall 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 Unimproved Parcel, 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 Unimproved Parcel, 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 Sublease 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, following notice to such Lender and 30-day cure period, must cure all Developer defaults, (provided, however, that if such cure is not feasible within such 30-day period and Lender is diligently pursuing such cure, Lender may have up to 90 days to cure such default), and any reletting of the Unimproved Parcel by a Lender must comply with all the terms and conditions of this Sublease. Notwithstanding anything in this Sublease to the contrary, a Lender's liability hereunder shall be limited to its interest in the Unimproved Parcel and shall be without recourse to any of Lender's property or assets other than its interests in the Unimproved Parcel. District agrees to execute agreements subordinating its leasehold interest in the Unimproved Parcel 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 Sublease 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 Unimproved Parcel 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 Unimproved Parcel 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. For the avoidance of doubt, District’s prior written consent will not be required for leases to sub-tenants of the Unimproved Parcel.

#### 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 of Exhibit E attached hereto.

#### 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 Unimproved Parcel, including, but not limited to, the construction of the Sublease 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 Unimproved Parcel 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 Sublease 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 Sublease 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 Unimproved Parcel, and maintain throughout the Term of this Sublease, *provided that*, with respect to the property insurance described in clause (iv) below, Developer shall bind such policy and provide evidence thereof, no later than the earlier of (a) commencement of Construction or (b) 60 days of the Sublease Date, 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 Sublease Project, 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 Unimproved Parcel.

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 Unimproved Parcel, 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 Sublease 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 Unimproved Parcel.

## 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 Unimproved Parcel and any operations on the Unimproved Parcel, and will take all actions necessary to cause the Unimproved Parcel 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 Unimproved Parcel 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 Unimproved Parcel, 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 Unimproved Parcel 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 Unimproved Parcel, or the soil or ground water under or adjacent to the Unimproved Parcel caused or permitted by Developer, its sublessee(s) or their agents, employees, contractors or invitees results in any suspected contamination of the Unimproved Parcel, the soil or ground water under or adjacent to the Unimproved Parcel, Developer will promptly notify District in writing and take all actions, at its sole expense, as are necessary to return the Unimproved Parcel, or such soil or ground water to the condition existing prior to the introduction of any such Hazardous Material to the Unimproved Parcel, 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 Unimproved Parcel.

D. *Pre-existing Contamination.* District agrees that any Hazardous Materials contaminating the Unimproved Parcel prior to possession of the Unimproved Parcel 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 Unimproved Parcel 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 Unimproved Parcel or the soil or ground water under or adjacent to the Unimproved Parcel 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 Unimproved Parcel or the soil or ground water under or adjacent to the Unimproved Parcel 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 Unimproved Parcel, or in connection with any use or occupancy of the Unimproved Parcel 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 Unimproved Parcel.* The vacating or abandonment of the Unimproved Parcel, 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 Unimproved Parcel 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 Sublease Project, that Developer has violated any law related to its ownership or operation of the Sublease 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 12% per annum, 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. *Developer's Representations and Warranties.* As of the Sublease Date, the Commencement of Construction 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 Commencement of Construction, Developer has the financial capability to complete the Sublease 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 Unimproved Parcel having any right or claim to possession or use of the Unimproved Parcel or a claimed preference for occupancy in the Unimproved Parcel.

(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 Unimproved Parcel 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 Unimproved Parcel 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 after a dispute has arisen. For the avoidance of doubt, attorney fees incurred in negotiating the Operative Documents (as defined in the Program Agreement) shall not be included in any award of attorney fees.

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, 5<sup>th</sup> Floor  
Tucson, Arizona 85701

and

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

If to Developer:

Tucson Group Holdings LLC  
c/o Keith Authelet  
Director of Development & Construction  
8 Grundy's Way  
Cumberland, RI 02864  
Email: keith.authelet@Bostonasiacapital.com

with copies to:

Marcel Dabdoub  
45 N. Tucson Blvd  
Tucson, Arizona 85716  
Telephone: 520-631-7788  
Email: [marcelcid@cidholdings.com](mailto:marcelcid@cidholdings.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 PAGE.]

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:

TUCSON GROUP HOLDINGS LLC, a  
Massachusetts limited liability company

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

Name:

Title:

## **Exhibit A**

Legal Description of Unimproved Parcel

[to be updated per Pro Forma Owner's Policy]

## **Exhibit B**

### **Sublease Project Description**

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. In addition to being a fire lane and service access, the alley on the north side of 75 Broadway will be an urban entertainment corridor creating a covered public space circulating through the development and connecting retail, restaurants and bars within the entire block. It will provide an opportunity for special events, music and outdoor dining, and create a unique urban environment.



## Exhibit C

### 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			
<b>SITE DEVELOPMENT PACKAGE</b>	<b>59 days</b>	<b>Tue 12/1/20</b>	<b>Fri 2/19/21</b>
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
<b>WORK WITH UTILITIES</b>	<b>29 days</b>	<b>Tue 12/1/20</b>	<b>Fri 1/8/21</b>
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
<b>GRADING</b>	<b>123 days?</b>	<b>Wed 12/9/20</b>	<b>Fri 5/28/21</b>
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
<b>INFILL INCENTIVE DISTRICT</b>	<b>118 days</b>	<b>Tue 12/1/20</b>	<b>Thu 5/13/21</b>
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
IID 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
<b>UTILITY / EARTHWORK PACKAGE</b>	<b>106 days</b>	<b>Fri 1/1/21</b>	<b>Fri 5/28/21</b>
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
<b>FOUNDATION CONC. STRUCTURE PACKAGE</b>	<b>152 days</b>	<b>Mon 12/7/20</b>	<b>Tue 7/6/21</b>
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
<b>CORE AND SHELL PACKAGE</b>	<b>220 days</b>	<b>Tue 12/1/20</b>	<b>Mon 10/4/21</b>
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
<b>CONSTRUCTION</b>	<b>566 days</b>	<b>Tue 7/6/21</b>	<b>Tue 9/5/23</b>
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

## **Exhibit D**

Budget



**76 E Broadway - Tuscon Holding Group  
Development Project Budget  
11/13/2021**

**Construction Costs**

Construction Contract - Core & Shell	82,250,000
Comercial TI Allowance - CM Apport @ 92%	1,803,090
Office/Mixed Use TI Allowance - CM Apport @ 92%	6,993,610
Construction Contingency	3,672,465
Over/Under Runs to Allocate to Contingency	
Bond Premium	
Sub Total	94,719,165

**Fees Related to Construction**

Architectural Fee - Design Core & Shell	2,990,920
Other: Arch. Reimb. -	89,728
Commercial TI Allowance - Arch Apport @ 8%	156,790
Office/Mixed Use TI Allowance - Arch Apport @ 8%	608,140
Other Consultanting Costs	3,191,321
Sub Total	7,036,899

**Acquisition Costs**

Acquisition of 120 E Congress	1,905,700
Acquisition of 128-130 Congress	5,516,500
Sub Total	7,422,200

**Developers Fee**

Developers Management Fee	2,568,646
Sub Total	2,568,646

**Deveopment Related Costs**

Legal Fees & Expenses	
Pre-Development Work	100,000
JE Dunn Assignment Fee	351,726
Initial Leasing Commissions	1,820,000
Less RN Construction Sales Tax Rebate	(1,742,420)
Less COT Construction Sales Tax Rebate	(1,400,000)
Sub Total	(870,694)

**Guarantees and Reserves**

Reserve for Pre-Stabilization Operating Losses	4,023,784
Minimum Cash Reserve	100,000
Sub Total	4,123,784

Total	115,000,000
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## **Exhibit E**

Form of Memorandum of Sublease

**When Recorded, Return To:**

Gust Rosenfeld, P.L.C.  
One South Church Avenue, Suite 1900  
Tucson, Arizona 85701-1627  
Attention: Mark Collins

---

**MEMORANDUM OF SUBLEASE**

DATE: \_\_\_\_\_, 20\_\_

PARTIES: **RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT**,  
a tax levying special facilities district of the State of Arizona  
1703 East Broadway Boulevard  
Tucson, Arizona 85719 (“**District**”)

**TUCSON GROUP HOLDINGS LLC**,  
a Massachusetts limited liability company  
88 Massachusetts Avenue  
Boston, Massachusetts 02115 (“**Developer**”)

1. District has subleased to Developer, and Developer has subleased from District, pursuant to a Sublease (the “**Sublease**”), dated as of \_\_\_\_\_, 20\_\_ (the “**Sublease Date**”), certain land more particularly described on **Exhibit A** attached hereto (the “**Premises**”).

2. The term of the Sublease is the period beginning on the Sublease Date and ending on the Lease Conversion Date, which will be the date of the District's acquisition of the Premises from Pima County, Arizona, a political subdivision of the State of Arizona.

3. All other terms, conditions and agreements contained in the Sublease are fully incorporated herein by reference as if fully set forth herein. Copies of the Sublease are on file at the offices of District and Developer.

4. In the event of a conflict between the terms of this Memorandum of Sublease and the terms of the Sublease, the terms of the Sublease shall control.

**IN WITNESS WHEREOF**, the parties have executed this Memorandum of Lease as of the date first above written.

**“Landlord”**

**RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT,**  
an Arizona tax levying special facilities district

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ARIZONA       )  
  )  
County of Pima            )

The foregoing instrument, Memorandum of Sublease, consisting of \_\_\_\_\_ pages, including this page and exhibits, was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the Chairman of Rio Nuevo Multipurpose Facilities District, an Arizona tax levying special facilities district, on behalf of the district.

WITNESS my hand and official seal.

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

(Affix Notary Seal Here)

## “Tenant”

**TUCSON GROUP HOLDINGS LLC,**  
a Massachusetts limited liability company,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )  
County of \_\_\_\_\_ )

The foregoing instrument, Memorandum of Sublease, consisting of \_\_\_\_\_ pages, including this page and exhibits, was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of **TUCSON GROUP HOLDINGS LLC**, a Massachusetts limited liability company, on behalf of the company.

WITNESS my hand and official seal.

(Affix Notary Seal Here) \_\_\_\_\_  
Notary Public



## **Exhibit A**

Legal Description of the Premise