F. ANN RODRIGUEZ, RECORDER
Recorded By: JCC
DEPUTY RECORDER
305

TCCWB
CITY OF TUCSON-CITY CLERK
PICKUP

SEQUENCE: 20132800410
NO. PAGES: 3
RES 10/07/2013
16:09
PICK UP
AMOUNT PAID: $7.00

CERTIFICATE OF CLERK
City of Tucson

State of Arizona
County of Pima } *ss*

I, Roger W. Randolph, the duly appointed and qualified City Clerk of the City of Tucson, Arizona, do hereby certify pursuant to Tucson Code § 2-102 that the following is a true and correct copy of Mayor and Council Resolution No. 22102, which was passed and adopted by the Mayor and Council of the City of Tucson, Arizona, at a meeting held on September 24, 2013, at which a quorum was present.

In Witness Whereof, *I have hereunto set my hand and affixed the seal of the City of Tucson, Arizona on October 3, 2013.*

Total of 2 pages certified.
(Exhibits not included)

CITY OF TUCSON
ARIZONA

City Clerk

This ordinance becomes
effective on October 25, 2013

ADOPTED BY THE
MAYOR AND COUNCIL

September 24, 2013

RESOLUTION NO. 22102

RELATING TO DEVELOPMENT; AUTHORIZING AND APPROVING A SETTLEMENT AGREEMENT AND AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH BP POST DEVELOPERS, LLC. AND WITH THE RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

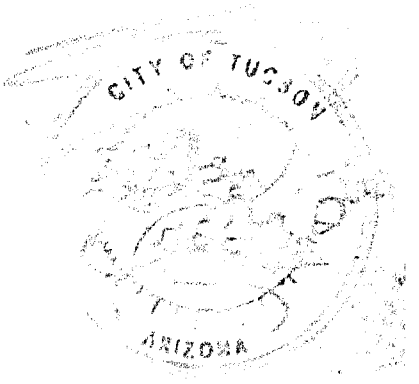
SECTION 1. The Settlement Agreement and Amended and Restated Development Agreement with BP Post Developers, LLC, and with the Rio Nuevo Multipurpose Facilities District, attached as Exhibit 1, is approved.

SECTION 2. The Mayor is authorized and directed to execute the Settlement Agreement and Amended and Restated Development Agreement for and on behalf of the City of Tucson and the City Clerk is directed to attest to the same.

. . .

. . .

. . .



SECTION 3. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Resolution.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Tucson, Arizona on September 24, 2013.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED BY:

CITY MANAGER

MR/dg
9/17/13

F. ANN RODRIGUEZ, RECORDER
Recorded By: JCC
DEPUTY RECORDER
305

TCCWB
CITY OF TUCSON-CITY CLERK
PICKUP

SEQUENCE: 20132800411
NO. PAGES: 47
AAG 10/07/2013
16:09
PICK UP
AMOUNT PAID: $43.00

City Clerk File Note: This document was signed in counterpart resulting in three signature pages.
RWR:SL:dd 09/25/2013

SETTLEMENT AGREEMENT AND AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR BP POST DEVELOPERS, LLC

This Settlement Agreement and Amended and Restated Development Agreement for BP Post Developers, LLC (the **"Agreement"**) dated effective as of the 24th day of September, 2013 (the **"Effective Date"**), is entered into by and among Rio Nuevo Multipurpose Facilities District (**"District"**), the City of Tucson (**"City"**) and BP Post Developers, LLC, an Arizona limited liability company (**"Developer"**). District, City and Developer each may be referred to herein as a **"Party"** and two or more together as the **"Parties."**

RECITALS

A. The District, the City and BP Post Investors, LLC, an Arizona limited liability company (**"Investors"**), entered into that certain Development and Purchase Agreement recorded May 12, 2006, in Docket 12803 at page 3406 of the Official Records of Pima County, Arizona (the **"Initial Agreement"**). The Initial Agreement was executed on behalf of the City as authorized by City Resolution No. 20320 adopted by Mayor and Council on May 2, 2006 (the "**COT Resolution**"); and was executed on behalf of the District as authorized by District Resolution No. 2006-05 adopted by the District board on April 20, 2006.

B. Pursuant to that certain Assignment and Acceptance of Rights to Purchase Property Under the Initial Agreement dated August 9, 2006, Investors assigned its right, title and interest in the Initial Agreement to Developer.

C. Pursuant to the Initial Agreement, Developer acquired from the District pursuant to a deed recorded May 14, 2007 in Docket 13054 at page 2311 of the Official Records of Pima County, Arizona (the **"District to Developer Deed"**) certain real property commonly known as 26 through 72 East Congress St., Tucson Arizona, as more specifically described on **Exhibit A** attached hereto, referred to as the **"Thrifty Block."** The purchase price for the Thrifty Block specified under the Initial Agreement was paid therefor. Following the acquisition of the Thrifty Block, Developer has paid all taxes, assessments, general and special, water and sewer charges and any similar charges pertaining to the Thrifty Block and for any and all utilities relating thereto. The District to Developer Deed incorporated covenants by reference which were imposed on the Thrifty Block in the deed from the federal government to the District recorded November 18, 2005 in Docket 12683 at page 4584 of the Official Records of Pima County, Arizona (the "**U.S. to District Deed**"). The U.S. to District Deed containing all of the covenants (collectively, the **"Covenants"**) is attached hereto as **Exhibit B**. All of the Covenants run with the land.

D. Prior to the conveyance of the Thrifty Block to Developer, the building improvements thereon were demolished, except for the easternmost building commonly referred to as the Indian Trading Post (**"ITP"**). The ITP is subject to a **"Historic Preservation Covenant"** set forth in the U.S. to District Deed and the District to Developer Deed.

Exhibit 1 to Resolution No. 22102

E. At the time of the District's conveyance to Developer of the Thrifty Block, Developer owned, and remains the owner of, the real property adjacent to the Thrifty Block improved with a building situated at 20 E. Congress, Tucson, Arizona. The Initial Agreement contemplated that the Thrifty Block and 20 E. Congress would be developed by Developer for mixed-use purposes, including residential condominiums developed with complementing retail and commercial uses (the **"Proposed Project"**).

F. In furtherance of the Proposed Project, Developer prepared and processed with the City a condominium subdivision plat of the property comprising the Project, designated as "The Post Condominium" recorded on May 18, 2007 in Book 62 and Page 61 of Maps and Plats in the Official Records of Pima County, Arizona (the **"Plat"**).

G. As of the Effective Date, the Proposed Project has not been developed and on or about February 11, 2011, John Kromko and Shelby Hawkins as Plaintiffs filed a lawsuit against the District and Investors as Defendants, styled Kromko vs. Rio Nuevo Multi-Purpose Facilities District, et al., Pima County Docket C2011-1105 (the **"Lawsuit"**). Thereafter, Shelby Hawkins withdrew as a Plaintiff and on or about August 13, 2012, the District filed a Motion for Summary Judgment, which was joined by City, Developer and Investors and on December 6, 2012 a Judgment was entered granting the District's motion and no timely appeal was filed. The Parties hereto also are parties to the Lawsuit, which shall be dismissed as provided herein.

H. The Parties now wish to enter into this Agreement, which is intended to be a development agreement among the District, City and Developer pursuant to A.R.S.§9-500.05 in settlement of the Lawsuit and in place and stead of the Initial Agreement. District approval of this Agreement has been authorized by a resolution of the District's Board of Directors (the **"Board"**) passed at a duly authorized meeting.

I. The District has delegated, and hereby, delegates the authority to act for and on behalf of the District to the District's Chairperson, currently Fletcher McCusker, with respect to the right to grant extensions for contingencies and deadlines hereunder, and/or to grant or authorize waivers under this Agreement, excluding any extensions to be granted by the District under Section 2.8.3 below. Any amendments or modifications of this Agreement must be authorized by the District and not by a representative thereof. City has delegated and hereby delegates the authority to act for and on behalf of the City to the City Manager with respect to the right to grant extensions for contingencies and deadlines hereunder, and/or to grant or authorize waivers under this Agreement. Any amendments or modifications of this Agreement must be authorized by the governing body of the City. Developer has delegated and hereby delegates such authority to so act to Don E. Bourn (or his designee).

J. District and City each hereby expressly find and determine that the consideration hereunder, including without limitation, the execution and delivery of the Initial Agreement, the investments and expenditures made by the Parties thereunder, and the economic development benefits to the community resulting from this Agreement, and settlement and dismissal of the Lawsuit are sufficient consideration to justify the execution and delivery hereof by the Parties.

K. The Parties acknowledge that this Agreement is subject to the provisions of A.R.S. §38-511 and each Party represents and warrants to each other Party with the understanding that each Party is relying thereon that no Party is aware of any facts or circumstances that would permit the cancellation of this Agreement pursuant to the provisions of A.R.S. §38-511(A).

AGREEMENT

NOW, THEREFORE, based on the foregoing Recitals, which are incorporated here as the intention of the Parties in entering into this Agreement and which the Parties acknowledge are true and correct and constitute an integral part of this Agreement, the Parties hereby agree as follows:

1. Purchase and Sale. The Parties acknowledge that Developer has acquired the Thrifty Block pursuant to Paragraph 1 of the Initial Agreement in the manner therein provided, that all requirements for Developer's acquisition of the Thrifty Block under the Initial Agreement have been satisfied or waived as set forth herein, and that the District has assigned, or hereby does assign to Developer, any rights and claims it has or may have against any third party from whom the District acquired any portion of the Thrifty Block. As provided in Paragraph 1.1.7 of the Initial Agreement, Developer acknowledges that the District made no representation or warranty with respect to the condition of the Thrifty Block, District is not liable for any latent or patent defect in such property, and District shall not be liable for any claims relating to the conditions thereof, nor shall District be required under the Initial Agreement or this Agreement to remedy any environmental or other condition of Thrifty Block. Accordingly, the remaining provisions of Paragraph 1 of the Initial Agreement are hereby deleted in their entirety.

2. Development. Paragraph 2 of the Initial Agreement is hereby deleted in its entirety and replaced with the following:

2.1 The Project. Developer shall undertake to develop in accordance with this Agreement not fewer than 20,000 square feet of improvements to be utilized for unrestricted residential, hotel and/or commercial purposes but excluding any use as a Circle K, Seven-Eleven, Quik Trip or similar convenience store (the **"Project"**).

2.2 Reporting. Developer will provide a written quarterly summary to District, with a copy to City, in such format as agreed by the Parties, setting forth its efforts during the prior quarter to complete the Project, including the amounts expended and the purposes thereof (the **"Reports"**). Such Reports may exclude the names or detailed information concerning prospective tenants/owners from which such could be identified to protect the confidentiality of such negotiations; provided, however, upon written request of District, the identity of such third parties shall be provided to the District subject to confidentiality protocols, acceptable to Developer in the reasonable exercise of its discretion, adopted by the District limiting the disclosure thereof to designated individuals and designed to prevent the dissemination thereof. Additionally, upon reasonable prior written notice to Developer from the

District, Developer's designee shall attend meetings of the District's Board to present the Report(s) submitted and address any questions of the Board relating to the Project.

2.3 Compliance. As of the Effective Date, the Property is encumbered by: (i) that certain Construction Deed of Trust and Fixture Filing pursuant to which Developer is the Trustor and National Bank of Arizona is the Beneficiary recorded in Docket 13161 at page 3216, Sequence No. 20072000719 on October 16, 2007 of the Official Records of Pima County, Arizona, which secures a loan which, pursuant to an unrecorded Modification Agreement, is in the original principal amount of $97,773.23 (the **"First Lien"**); and (ii) that certain Deed of Trust pursuant to which Developer is the Trustor and BP Post Lenders, LLC, an Arizona limited liability company is the Beneficiary recorded in Docket 13091 at page 4810, Sequence No. 20071301049 on July 6, 2007 of the Official Records of Pima County, Arizona, which secures a loan which, pursuant to an unrecorded Modification Agreement, is in the original principal amount of $750,000.00 (the **"Second Lien"**). Until the termination of this Agreement as provided in **Paragraph 5.22** below, Developer shall not increase the outstanding principal balance of the First or Second Lien (except, in either case, to the extent a lender thereunder treats any interest or other charges thereunder as an addition to principal), or incur any additional financing secured by the Property. Developer shall initiate and proceed with the development of the Project in accordance with this Agreement. Except as may be otherwise set out in this Agreement, Developer in connection therewith, at its expense, shall comply with all federal, state, county and municipal laws, ordinances, rules and regulations.

2.4 Zoning. In order to develop the Project, the Parties acknowledge that it may be necessary to rezone that portion of Parcel No. 117-120-084A of the Thrifty Block that is zoned C-1 to OCR-2 and that portion of Parcel No. 117-120-083A of the Thrifty Block that is zoned C-2 to OCR-2 (the **"Rezoning"**). District herein authorizes Developer to initiate and proceed with the Rezoning to include any plan amendment that may be required in connection to the Rezoning as of the Effective Date and District shall not oppose or object to Developer obtaining the Rezoning to construct the Project. City shall accept and process the application for the Rezoning in an expedited manner consistent with its Land Use Code (**"LUC"**) and/or its Unified Development Code (**"UDC"**). Developer acknowledges that approval of the Rezoning is a separate legislative act that is within the discretion of the governing body of the City, and that this Agreement does not confer an approval of the Rezoning by the City.

2.5 Standards for Construction.

2.5.1. Licensed Contractors. Developer shall use and employ only licensed and qualified contractors. Developer will advertise contracting opportunities for the Project to those local contractors who have been registered by the City as licensed and qualified so long as the City provides the names and contact information for such local contractors within ten (10) business days after written request therefor. Developer will engage a local general contractor(s) (who need not be scheduled on the City's registration list) for construction of the Project so long as a local general contractor(s) for the Project, or the portion thereof to be constructed by such general contractor(s), is competitive as to time, quality and cost. Further, the general contractor(s) contracts entered into by Developer will require the general

contractor(s) to engage local subcontractors to the extent practicable based on time, quality and cost considerations.

2.5.2 Compliance with Laws. All improvements shall be constructed in a good and workmanlike manner in compliance with all applicable laws, rules, ordinances and regulations, to include any requirements imposed by and through the Administrator of General Services (**"GSA"**).

2.6 Development Review and Approval. Developer shall submit thorough and complete plans, permit applications and other applications, including all construction and building permit applications, to the City and the City shall review the same in accordance with the City's then-current review schedule and practices.

2.7 Governmental Approvals. Developer shall obtain all necessary governmental approvals, permits or licenses that are necessary for Developer's construction of the Project. If any certificate, permit, license or approval issued to Developer is cancelled, expires, lapses or is otherwise withdrawn by any such governmental authority, Developer shall make every commercially reasonable effort to obtain replacement permits. The other Parties shall not oppose or object to Developer's efforts to abandon or partially abandon the Plat, and will Support (as such term is defined in Section 4.3 below) Developer's efforts to re-plat the Project for the uses consistent with its Reports.

2.8 Schedule. Developer shall obtain a building permit issued by the City for the Project pursuant to plans for a building(s) approved by the City within twenty-four (24) months after the recordation of this Agreement (the **"Permit Period"**). The Permit Period and Extension Period(s) (as below defined), as applicable, shall be tolled following the submittal of the Concept Plans until the Parties have approved, or have been deemed to have approved, Concept Plans in accordance with the following procedures.

2.8.1 Concept Plans. Developer shall submit preliminary conceptual architectural elevations (the **"Concept Plans"**) to District for District's approval. District's approval shall not be unreasonably withheld, delayed or conditioned. District's approval shall be deemed given if District fails to respond to an approval request during the first regularly-scheduled monthly Board meeting following the submittal of such request, so long as such request was submitted at least forty-eight (48) hours prior thereto, and otherwise during the second regularly-scheduled monthly Board meeting following the submittal request, provided such submissions include the following language in bold text: **FAILURE TO TIMELY RESPOND TO THIS SUBMISSION FOR APPROVAL AS PROVIDED IN PARAGRAPH 2.8.1 OF THE RESTATED DEVELOPMENT AGREEMENT FOR THE THRIFTY BLOCK SHALL BE DEEMED AN APPROVAL BY DISTRICT.** If District does not approve the Concept Plans, or does not provide Developer with suggested revisions reasonably agreeable to Developer, then the District's designee and Developer's designee shall meet within ten days of such disapproval to discuss alternative Concept Plans. Developer shall resubmit the new Concept Plans no later than 30 days after such meeting and the foregoing procedures shall apply to such resubmittal.

2.8.2 Permit Period. The Permit Period shall be extended by one day for each day of any delay in processing any approvals pursuant to **Paragraphs 2.6** and **2.7** above caused by the City's responses being delayed in excess of the number of days provided therefor under the City's then-current review schedule and practices, any delay in processing any approvals required from Pima County or any delay in processing any approvals required from any other governmental jurisdiction or public or private utility in excess of the number of days provided therefor under the then-current review schedule and practices of any such jurisdiction, agency or company.

2.8.3 Extension. The Permit Period may be extended twice, each time for a twelve (12)-month period (each, an **"Extension Period"**) as herein provided.

(i) So long as Developer has complied with its reporting obligations under **Paragraph 2.2** above, Developer shall be entitled to extend the Permit Period for the first Extension Period by giving written notice of such election to the District prior to the expiration of the initial Permit Period.

(ii) Developer shall be entitled to the second Extension Period provided that the Developer has given a written request therefor to the District (the **"Extension Request"**) prior to the expiration of the first Extension Period, Developer has complied with its reporting obligations under **Paragraph 2.2** above, and such Reports demonstrate that Developer has made reasonable progress toward the issuance of a building permit for the Project. Within fifteen (15) days following the submittal of the Extension Request, the District at a regular or, if necessary, a special meeting of the Board shall consider, in the reasonable exercise of its discretion, whether Developer has made reasonable progress for the issuance of a building permit for the Project and shall provide written notice of its determination to the Developer (the **"Extension Response"**).

(iii) If the Extension Response reflects that the Board has determined in the reasonable exercise of its discretion that the Developer has not made reasonable progress toward the issuance of a building permit for the Project, it shall set forth with reasonable specificity the basis for the District's determination and shall set forth a reasonable period of time for Developer to provide evidence of such progress or to take steps reasonably necessary so as to qualify for the Second Extension Period. If the Developer fails to timely re-submit the Extension Request, such shall be deemed to have been withdrawn. If the Developer timely re-submits the Extension Request for the second Extension Period, within fifteen (15) days following the re-submittal of the Extension Request, the District at a regular or, if necessary, a special meeting of the Board shall consider, in the reasonable exercise of its discretion, whether Developer then has demonstrated reasonable progress for the issuance of a building permit for the Project and shall issue the Extension Response, which shall either approve the Extension Request, or set forth with reasonable specificity the reason(s) that the Board has determined in the reasonable exercise of its discretion that the Developer's re-submittal of the Extension Request failed to address the reason(s) for the Board's disapproval of the Extension Request for the second Extension Period as initially submitted, but shall not provide any additional cure

period (unless the Board elects to provide such a period in the exercise of its sole and unfettered discretion).

(iv) If the District fails to timely issue the Extension Response to the Extension Request for the second Extension Period, or if the District fails to timely issue the Extension Response to the re-submittal of the Extension Request for the second Extension Period, as applicable, the Extension Request shall be deemed to have been granted so long as the Extension Request includes the following language in bold text: **FAILURE TO RESPOND TO THIS REQUEST FOR CONSENT WITHIN FIFTEEN (15) DAYS OF DISTRICT'S RECEIPT OF THIS REQUEST SHALL BE DEEMED A CONSENT BY DISTRICT.**

2.9 ITP Building. The Parties acknowledge that the ITP building (but not the remainder of the Thrifty Block) is subject to the Historic Preservation Covenant which is included in the Covenants attached hereto as **Exhibit B**. Accordingly, the Parties agree that Developer may lease and/or sell the ITP building subject to the Covenants but not subject hereto (separate and apart from the remainder of the Thrifty Block, which would remain under the ownership of Developer and subject to this Agreement), so long as at the time of such lease or sale Developer has demonstrated in its quarterly reporting under **Paragraph 2.2** above that it has expended at least One Hundred Eighty Thousand Dollars ($180,000.00) for the rehabilitation or retrofitting of the ITP building or that the lessee or purchaser thereof, as applicable, is required to do so within twelve (12) months after execution and delivery of such lease or conveyance instrument and has placed such amount in an escrow holdback account for that purpose upon the lease or purchase of the ITP building. In connection with any such sale of the ITP building, the District shall provide a written release of this Agreement, in recordable form and in such form as may be required by the escrow agent engaged in connection with such sale and as shall be reasonably acceptable to the purchaser thereunder.

2.10 Conformance with GSA Requirements. Developer shall comply, or require the compliance with, the Covenants.

2.11 Mechanics' and Materialmen's Liens. Developer shall promptly and diligently take whatever action is necessary to remove any mechanic's or materialmen's liens from the Thrifty Block.

2.12 Graffiti. Developer shall be solely responsible for graffiti abatement on the Thrifty Block.

3. District/City Development Rights and Obligations. Nothing in this Agreement shall preclude Developer from applying for any benefits or incentives offered by the City in the same manner and to the same extent as any other applicant. Paragraph 3 of the Initial Agreement is hereby deleted in its entirety and replaced with the following:

3.1 Incentives. To the extent that the Project (including ITP and 20 E. Congress) may be entitled to the benefits of the incentives offered by, or available to the City

under local, state and federal programs for which it qualifies, such as by way of example and not limitation those available under City Resolution Nos. 20236 and 19388 relating to development in the downtown core, City of Tucson Ordinance No. 10841 relating to overlay zones and the downtown area infill incentive district zone, primary jobs incentive programs, partial building permit fee waivers, reimbursement or credit of construction sales tax revenues for the construction of eligible public utilities or infrastructure, and government property lease excise tax, Developer may submit an application for such benefits in the same manner as any other application; provided, however, that any approval of discretionary incentives by the City is a separate legislative act that is within the discretion of the governing body of the City, and although this Agreement does not confer an approval of any such incentive by the City, the City shall Cooperate (as such term is defined in Section 4.3 below) with the Developer in order for Developer to obtain consideration of the same on a timely basis or to seek approval of the City's Mayor and Council of the same on a timely basis, if required.

3.2 Utilities.

3.2.1 Sewer Credits. City shall Cooperate with Developer and Pima County to obtain credits for Developer for prior or existing sewer fixtures or hook-ups located on the property.

3.2.2 Water Fees. City shall Cooperate with Developer and Tucson Water to obtain credits for Developer for prior or existing water fixtures or hook-ups located on the Thrifty Block.

3.2.3 Solid Waste. City shall Support (as such term is defined in Section 4.3 below) Developer's proposal to dispose of solid wastes generated by the Project through the use of an on-site trash compactor. Developer shall comply with the City's Development Standard 6-01.0 relating to Solid Waste and Recycle Disposal Collection and Storage, which compliance shall include the right to rely on, or apply for, as applicable, any exceptions as therein permitted.

3.3 [Intentionally deleted.]

3.4 [Intentionally deleted.]

3.5 Future Rio Nuevo and Downtown Zone Benefits. Developer is eligible for certain assistance or benefits available for development located within the Rio Nuevo Multipurpose Facilities District and the Rio Nuevo and Downtown Zone. The Mayor and Council may approve future additional assistance or benefits for such development. In the event that the Mayor and Council approve such future assistance or benefits, Developer shall be entitled to receive such future assistance or benefits for the Project, if eligible, and the Mayor and Council may also consider making such future additional assistance or benefits available to Developer as of the Effective Date.

3.6 Development Impact Fees. For the purpose of the application of the City's development impact fees pursuant to Tucson Code Section 23A-71 *et seq.* (**"Impact**

Fees"), City agrees that the following determinations will guide the calculation and assessment of Impact Fees (if any):

3.6.1 Central Benefit District. The Project is located in the Central Benefit District for purposes of the Impact Fees assessed under Tucson Code Section 23A-81(8)

3.6.2 Redevelopment. To the extent that Impact Fees for the Project are subject to Tucson Code Sections 23A-81(5) and -81(6), Developer may use the prior square footage of structures on the Project to calculate the assessment of either residential or non-residential Impact Fees. As applied to the Thrifty Block only, City and Developer have determined based on City permits that the prior square footage of the structures on the Thrifty Block for purposes of calculating Impact Fees shall be 30,200 square feet.

3.7 Variances. District shall not oppose or object to Developer obtaining all variances from the City's Board of Adjustment reasonably necessary to construct the Project, including without limitation, variances from certain site coverage restrictions and from on-site loading and parking requirements for commercial/retail uses.

3.8 20 E. Congress. The property at 20 East Congress shall be treated as part of the Project for purposes of the Rio Nuevo and Downtown Zone regulations in LUC Sec. 2.8.10 and in any UDC equivalent.

3.9 Design Review Board Approval. District shall not oppose or object to Developer obtaining Design Review Board approval of any and all submittals reasonably necessary for the Project, provided that District has approved the Concept Plans as set forth in Section 1 above.

3.10 GSA Compliance Assistance. District and City shall not oppose or object to Developer obtaining any necessary approvals from the state or federal government for development of the ITP in accordance with the Historic Preservation Covenant. District and City shall provide all necessary documentation requested by Developer provided that such documentation is readily available and within the possession of District or City, respectively, and where such documentation is required by GSA but is not readily available within the possession of District or City, District and City will assist Developer in obtaining the same by signing such letters, requests, or applications as may be necessary or appropriate therefor.

3.11 No District or City Future Expenditures. Neither District nor City shall be required to make any repairs or improvements to the ITP.

3.12 Easements. It is anticipated that development of the Project may include incorporation of private improvements on the public rights-of-way. City shall process any request for use of public rights-of-way for private purposes using temporary revocable easements for those uses which are intended, by their nature, to be temporary and permanent easements as to any such improvements that are intended to remain in place so long as the Project remains in place. Annual payments for any temporary revocable easements will be waived by the City, but

the issuance thereof will be subject to payment of application fees and to obtaining permits in accordance with standards established by the City standard development review and building permit processes and approvals, as applicable. No payment will be required for any permanent easements granted by the City, but such will be subject to obtaining permits in accordance with the standards established by the City standard development review and building permit process and approvals, and payment of applicable application fees.

3.13 Air Right Conveyance. It is anticipated that development of the Project may include incorporation of private improvements placed above the public rights-of-way (for example, balconies and living space); provided, however, any such development shall comply with the Covenants, and shall be subject to obtaining permits in accordance with standards established by the City, standard development review and building permit processes, as applicable. City shall process any requests for granting conveyance of air rights pursuant to a permanent easement above public rights-of-way as a standard Real Estate Services request using a form developed specifically for the Project and mutually agreed to by the Parties within thirty (30) days after submittal of the first set of building plans for the Project. City shall waive all application fees associated therewith, and shall provide an easement for the improvements above the public right of way to the applicant at no cost to the applicant. As long as the request for conveyance or air right meets all standard development review and building permit requirements, City shall not unreasonably withhold approval of such request.

3.14 Plan Review. Developer may use the self-certification process for Building Code compliance in the manner and to the extent authorized and provided under the Building Codes adopted and approved by the City. City shall, consistent with its adopted policies, expeditiously review and, if appropriate, approve all Developer's plans, permits and other applications, including all construction and building approvals. City agrees to designate a project manager who shall be responsible for coordinating and expediting to the greatest extent practicable all required reviews.

3.15 Overlapping Development Review. City will Cooperate with Developer to identify opportunities for "overlapping" development review so as to reduce the overall time required for pan review and Project construction. Subject to Developer's assumption of risk in the event of design changes, the Parties will Cooperate to allow the submittal of such construction plans following the second review of the development plan.

4. Default Provisions.

Paragraph 4.1 of the Initial Agreement is hereby deleted and replaced with the following:

4.1 Developer's Actions Constituting Default. If Developer fails to perform any covenant or condition of this Agreement and does not commence to cure such failure within thirty (30) days after written notice from the District clearly identified at the top or beginning thereof in bold text and all capital letters as "**NOTICE OF DEFAULT**" describing such default with reasonable specificity or thereafter fails to diligently prosecute such cure to completion,

then upon written request of the District, Developer shall convey the Project to the District, including but not limited to the real property, any improvements thereon and all plans and specifications as then owned by Developer, or any Related Entity (as below defined) (subject to the rights of the preparers thereof and of the lenders under the First Lien and Second Lien), as the sole and exclusive remedy of the District and the City. Provided, however, if Developer contests the default or the required cure in written notice to the City and District within thirty (30) days after receipt of the default notice, and the Parties do not resolve the matter within thirty (30) days thereafter, then Developer may elect, within ninety (90) days thereafter, to file an action in the Pima County Superior Court. If Developer does not timely file such an action, then Developer shall have waived its right to do so. The Parties acknowledge and agree that such remedy is appropriate and sufficient in light of the investment heretofore made by Developer in the Project and which will hereafter be made by Developer in the Project. For the purposes of this Agreement, a **"Related Entity"** is an entity that is under common control, controlling of, or controlled by Developer or is otherwise a permitted assignee pursuant to **Paragraph 5.4** below.

Paragraph 4.2 of the Initial Agreement is hereby deleted and replaced with the following:

4.2 District Default. District shall be in default under this Agreement if District fails to perform any covenant or condition of this Agreement and does not cure such failure within sixty (60) days after written notice from Developer clearly identified at the top or beginning thereof in bold text and all capital letters as "**NOTICE OF DEFAULT**", or such allowable longer period of time in the event District is, in the reasonable opinion of Developer, diligently attempting to cure the default. In the event of such default that is not timely cured, then upon written request of Developer, City and District shall execute a termination of this Agreement in recordable form, as the sole and exclusive remedy of Developer.

4.3 City and District Default. The Parties acknowledge and agree that the success of the Project by Developer depends, in large part, on the Cooperation (as defined with respect to "Cooperate" below) of the City and District and each agrees to comply in a timely manner with the obligations imposed upon it hereunder, as applicable. Accordingly, the City and District hereby represent and warrant to each Party that there are no disputes between them that would delay or inhibit performance under this Agreement by Developer or concern the Thrifty Block. For purposes of this Agreement, **"Cooperate"** or **"Support"** means shall not oppose, object to or impede and shall take such steps as may be reasonably requested by another Party to demonstrate such Cooperation and Support as such other Party may reasonably request to demonstrate such Cooperation and Support, but a Party shall not be obligated, solely as a result of this requirement, standing alone, to expend funds beyond expenditures made by such Party in the ordinary course of the conduct of its business. An obligation to Cooperate or Support does not preclude taking such actions as the actor may deem reasonably necessary but such obligation does not, standing alone, require the expenditure of funds beyond expenditures made in the actor's ordinary course of business. This Agreement does not automatically confer any approval that would be required by the governing bodies of either the City or the District, or any approval that is dependent upon compliance with statute, codes or other regulations; and does not waive any review or submittal requirements established by statute, codes or other regulations.

5. General Provisions. Paragraph 5 of the Initial Agreement is hereby deleted in its entirety and replaced with the following:

5.1 Dismissal of Lawsuit. Upon the full execution of this Agreement, the Parties shall direct their respective counsel to execute and file with the Court a stipulation and a proposed form of order, substantially in the forms attached as **Exhibits C** and **D**, respectively, to dismiss the Lawsuit with prejudice. Further, effective upon full execution of this Agreement:

5.1.1 Except as otherwise specifically set forth in this Agreement and/or its exhibits, upon the full execution of this Agreement, the District, on its own behalf and on behalf of each of its successors and assigns (the **"District Group"**) hereby releases, remises and forever discharges the Developer, Investors, their Related Entities and their respective predecessors, successors, assigns, members, managers, principals, employees, agents, insurers, businesses and attorneys (the **"Developer Group's Releasees"**) from any and all claims and liabilities of any nature whatsoever, whether known or unknown, now and in the future, contingent or liquidated, debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, torts, damages of every name and nature, both at law and in equity, that the District Group, or any member thereof, has had or ever may have against the Developer Group's Releasees, or any of them (the **"District Group's Released Claims"**). Each member of the District Group represents and warrants that he, she or it has not assigned or in any way alienated any of the District Group's Released Claims. While District Group's Released Claims do include all claims arising out of any act or omission occurring before the date of full execution of this Agreement and pertaining to the Initial Agreement, they do not include any claims that District and/or the District Group may have, now or in the future, against the Developer and/or the Developer Group's Releasees arising out of or resulting from allegations, claims, demands, actions or proceedings (administrative or judicial) unrelated to or not arising out of the Initial Agreement and which are not presently known to the District and/or the District Group.

5.1.2 Except as otherwise specifically set forth in this Agreement and/or its exhibits, upon the full execution of this Agreement, the City, on its own behalf and on behalf of each of its successors and assigns (the **"City Group"**) hereby releases, remises and forever discharges the Developer Group's Releasees from any and all claims and liabilities of any nature whatsoever, whether known or unknown, now and in the future, contingent or liquidated, debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, torts, damages of every name and nature, both at law or in equity, that the City Group, or any member thereof, has had or ever may have against the Developer Group's Releasees, or any of them (the **"City Group's Released Claims"**). Each member of the City Group represents and warrants that he, she or it has not assigned or in any way alienated any of the City Group's Released Claims. While City Group's Released Claims do include all claims arising out of any act or omission occurring before the date of full execution of this Agreement and pertaining to the Initial Agreement, they do not include any claims that City and/or the City Group may have, now or in the future, against the Developer and/or the Developer Group's Releasees arising out of or resulting from allegations, claims, demands, actions or proceedings (administrative or judicial)

unrelated to or not arising out of the Initial Agreement and which are not presently known to the City and/or the City Group.

5.1.3 Except as otherwise specifically set forth in this Agreement and/or its exhibits, upon the full execution of this Agreement, the Developer, on its own behalf and on behalf of the Developer Group, hereby releases, remises and forever discharges the City and the City Group and all of their respective predecessors, principals, employees, agents, insurers, businesses, and attorneys (the "City Group's Releasees") and the District and the District Group and all of their respective predecessors, principals, employees, agents, insurers, businesses and attorneys (the "District **Group's Releasees**") from any and all claims and liabilities of any nature whatsoever, whether known or unknown, now and in the future, contingent or liquidated, debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, torts, damages of every name and nature, both at law and in equity, that the Developer Group, or any member thereof, has had or ever may have against the District Group's Releasees, or any of them, and/or the City Group's Releasees or any of them (the **"Developer Group's Released Claims"**). Each member of the Developer Group represents and warrants that he, she or it has not assigned or in any way alienated any of the Developer Group's Released Claims. While Developer Group's Released Claims do include all claims arising out of any act or omission occurring before the date of full execution of this Agreement and pertaining to the Initial Agreement, they do not include any claims that Developer and/or the Developer Group may have, now or in the future, against the City and/or the City Group's Releasees and/or the District and/or the District Group's Releasees arising out of or resulting from allegations, claims, demands, actions or proceedings (administrative or judicial) unrelated to or not arising out of the Initial Agreement and which are not presently known to the Developer and/or the Developer Group.

5.1.4 Except as otherwise specifically set forth in this Agreement and/or its exhibits, upon the full execution of this Agreement, District on its own behalf and on behalf of the District Group hereby releases, remises and forever discharges the City Group's Releasees from any and all claims and liabilities of any nature whatsoever, whether known or unknown, now and in the future, contingent or liquidated, debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, torts, damages of every name and nature, both at law and in equity, that the District Group, or any member thereof, has had or ever may have against the COT Group's Releasees, or any of them (the "RN Group's Released Claims"). Each member of the District Group represents and warrants that he, she or it has not assigned or in any way alienated any of the District Group's Released Claims. While the RN Group's Released Claims do include all claims arising out of any act or omission occurring before the date of the full execution of this Agreement, they do not include any claims that the District Group or any member thereof may have, now or in the future, against the City Group's Releasees, or any of them arising out of or resulting from allegations, claims, demands, actions or proceedings (administrative or judicial) made or brought by any governmental body or agency, bond or certificate holder, underwriter, trustee or taxpayer representative organization with standing relating to the administration, use, management or application of the 2002 COPs, 2008 Revenue Bonds and 2009 COPs proceeds in compliance with all applicable treasury, tax and securities

laws and regulations, including but not limited, to those relating to maintaining the tax exempt status of interest payable on these such instruments or lawfulness of the use of their resulting proceeds.

5.1.5 Except as otherwise specifically set forth in this Agreement and/or its exhibits, upon the full execution of this Agreement City on its own behalf, and on behalf of the City Group, hereby releases, remises and forever discharges District and its predecessors, successors, assigns employees, agents insurers, businesses and attorneys (the **"RN Group's Releasees"**) from any and all claims and liabilities of any nature whatsoever, whether known or unknown, now and in the future, contingent or liquidated, debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, torts, damages of every name and nature, both at law and in equity, that City Group, or any member thereof, has had or ever may have against the RN Group's Releasees, or any of them (the "COT **Group's Released Claims**"). Each member of the City Group represents and warrants that he, she or it has not assigned or in any way alienated any of the COT Group's Released Claims. While the COT Group's Released Claims do include all claims arising out of any act or omission occurring before the date of the full execution of this Agreement, they do not include any claims that the City Group, or any member thereof may have, now or in the future, against RN Group's Releasees, or any of them arising out of or resulting from allegations, claims, demands, actions or proceedings (administrative or judicial) made or brought by any governmental body or agency, bond or certificate holder, underwriter, trustee, or taxpayer representative organization with standing relating to the administration, use, management or application of the 2002 COPs, 2008 Revenue Bonds and 2009 COPs proceeds in compliance with all applicable treasury, tax and securities laws and regulations, including but not limited to those relating to maintaining the tax exempt status of interest payable on these such instruments or lawfulness of the use of their resulting proceeds.

5.1.6 No Admission. This Agreement is a compromise and settlement of disputed claims and is entered into in order to avoid the expense and uncertainty of litigation and to allow the Parties to advance the development of the Project. This Agreement shall in no event be construed as or be deemed to be evidence of an admission or concession by any Party of any liability or wrongdoing whatsoever. This Agreement, and each of its provisions, shall not be offered or received in evidence in any action or proceeding as an admission or concession of liability or wrongdoing of any nature on the part of any of the Parties. The Parties agree that this Agreement may be used as evidence in any action to enforce the terms of this Agreement.

5.2 Disclaimer of Liability. No Party to this Agreement shall at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of the another Party's construction or entry onto the Thrifty Block, except in the event of negligence or intentional acts of the other Party.

5.3 Notice. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested; to the following addresses:

City: City Manager
City of Tucson
255 W. Alameda, 10th Floor
Tucson, AZ 85726-7210
E-mail:citymanager@tucsonaz.gov

With a copy to:
Michael G. Rankin
Tucson City Attorney
E-mail:mike.rankin@tucsonaz.gov

District: Chairperson of the Board
Rio Nuevo Multipurpose Facilities District
400 West Congress, Suite 152
Tucson, AZ 85701
E-mail:fjmccusker@gmail.com

With a copy to:
Mark L. Collins
Gust Rosenfeld P.L.C.
E-mail:mcollins@gustlaw.com

Developer: Richard M. Rollman
Gabroy, Rollman & Bossé, P.C.
E-mail:rmrollma@gabroylaw.com

Deborah Oseran
Mendelsohn & Oseran, PLC
E-mail:doseran@moelawyers.com

5.4 Successors and Assigns. All of the provisions of this Agreement shall inure to the benefit of and be binding upon successors and assigns of the Parties to this Agreement pursuant to A.R.S. §9-500.05(D). This Agreement shall be assignable to any person or entity in any way affiliated with or controlled by Developer, or to any entity in which Developer is a member, partner or shareholder with at least a fifty (50) percent equity interest, or if to an entity in which the member of Developer retains less than a fifty (50) percent equity interest under an agreement that gives Developer development control of the Project. In connection with the development of the Project, the Parties acknowledge that Developer and any Related Entity may enter into an agreement for the marketing and sale of all or certain portions of the Project. Accordingly, each reference to an obligation of Developer in this Agreement with respect to the Project shall be deemed to refer to an obligation of Developer or to any Related Entity to the extent the rights with respect to a divided or undivided portion of the Thrifty Block to which such obligation relates are assigned by Developer to such Related Entity pursuant to this Agreement. Except with respect to the right to sell the ITP building pursuant to **Paragraph 2.9** above and the right to sell the Thrifty Block, or portion(s) thereof to a Related Entity,

Developer shall not sell, transfer, convey or otherwise agree to dispose of the Thrifty Block or any portion thereof (except as to a Related Entity and except for the ITP building in accordance with the provisions of **Paragraph 2.9** above) prior to the expiration of the Term; provided, however, the provisions hereof shall not preclude Developer from entering into agreements to sell the Project, in whole or in part, upon termination of this Agreement in accordance with the provisions of **Paragraph 5.21** below.

5.5 No Waiver of Strict Performance. The failure of any Party to insist upon a strict performance of any of the agreements, terms, covenants and conditions of this Agreement shall not be deemed a waiver of any rights or remedies that a Party may have and shall not be deemed a waiver of any subsequent breach or default in any of such agreements, terms, covenants and conditions.

5.6 Quiet Enjoyment. District covenants that, as long as Developer shall faithfully perform the agreements, terms, covenants and conditions hereof, Developer shall and may peaceably and quietly have, hold and enjoy the Thrifty Block and the rights granted by this Agreement for the term hereby granted without molestation or disturbance by or from District or third parties controlled by the District, subject, however, to all of the provisions of this Agreement.

5.7 Authority to Execute Agreement; Authority to Manage Agreement. The individuals executing this Agreement hereby represent that each has full right, power, and authority to execute this Agreement on behalf of their respective Parties. Further, each Party to this Agreement covenants to the other Parties that such Party has the legal capacity and authority to enter into this Agreement and to consummate the transactions contemplated hereunder.

5.8 Entire Agreement. Except as set forth herein or in that certain Settlement Agreement between the District and the City dated February 7, 2013, which Settlement Agreement has been or will be recorded in the Official Records of Pima County, Arizona.

5.8.1. This Agreement constitutes the entire agreement and understanding of the Parties pertaining to the subject matter of this Agreement and supersedes the Initial Agreement and all offers, negotiations, and other agreements of any kind.

5.8.2. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, including but not limited to the Initial Agreement and any documents submitted, executed or delivered prior to or in connection therewith, are superseded and merged in this Agreement. There are no representations or understandings of any kind not set forth herein.

5.9 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Arizona.

5.10 Non-Severability. The provisions of this Agreement shall not be given effect individually, and to this end, the provisions of this Agreement are not severable.

5.11 Anti-Moratorium. No moratorium, as that term is defined in A.R.S. §9-463.06, shall be imposed on the Thrifty Block unless it is imposed pursuant to an ordinance that complies with A.R.S. §9-463.06, as it may be amended.

5.12 Headings. The descriptive headings of the Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the Agreement's provisions.

5.13 Exhibits and Schedules. Any exhibit or schedule attached to this Agreement shall be deemed to have been incorporated in this Agreement by this reference with the same force and effect as if it were fully set forth in the body of the Agreement.

5.14 Further Acts. Each of the Parties to this Agreement shall promptly and expeditiously execute and deliver all such documents and perform all such acts as reasonably necessary, from time-to-time, to carry out the matters contemplated by this Agreement.

5.15 Recordation. The Parties shall cause an original counterpart of this Agreement to be recorded in its entirety in the official records of Pima County Arizona not lager than ten (10) days after this Agreement is executed by all Parties.

5.16 Amendments. No change or addition is to be made to this Agreement except by a written amendment executed by all of the Parties. An amendment shall be recorded in the official records of Pima County, Arizona within ten (10) days after its execution.

5.17 Time of Essence. Time is of the essence of this Agreement.

5.18 Force Majeure. Notwithstanding any other term, condition or provision of this Agreement to the contrary, if any Party to this Agreement is precluded from satisfying or fulfilling any duty or obligation imposed upon it due to labor strikes, material shortages, war, civil disturbances, weather conditions, natural disasters, acts of God, or other events beyond the control of such Party, the time period provided herein for the performance by such Party of such duty or obligation shall be extended for a period equal to the delay occasioned by such events.

5.19 Attorneys' Fees. In the event either Party hereto shall commence any civil action against the other to enforce or terminate this Agreement or to recover damages for the breach of any of the provisions, covenants or terms of this Agreement on the part of the other Party, the prevailing Party in such civil action shall be entitled to recover from the other Party, in addition to any relief to which such prevailing Party may be entitled, all costs, expenses and reasonable attorneys' fees incurred in connection therewith.

5.20 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

5.21 Term/Termination Date. The **"Term"** of this Agreement begins as of the Effective Date and ends upon the issuance of a building permit for the Project and Developer's closing of an construction loan for the Project, as evidenced by either the recordation of a Deed of Trust in the Official Records of Pima County, Arizona, or written and binding confirmation from such lender to the District that such Deed of Trust would be recorded upon recordation of a release of this Agreement by the Parties. The District and City each agree to provide a release of this Agreement in such form as shall be reasonably acceptable to counsel for the Parties or as otherwise reasonably required by the escrow agent engaged to close a loan for development of the Project within ten (10) days after written request therefor, which release may include an instruction that such is to be held in the escrow established in connection therewith until the earlier of the issuance of the building permit for the Project or the closing of such construction loan. During the Term of this Agreement, the terms and provisions hereof shall be covenants running with the land and binding upon the Parties, their successors and assigns, subject to the partial release pertaining to the ITP building as set forth in **Paragraph 2.9** above.

5.22 Effect of District Dissolution. If District is dissolved, District's rights and obligations under this Agreement shall automatically transfer to City, and City and Developer shall thereafter be "the Parties" for purposes of this Agreement. Notwithstanding the foregoing sentence, City shall not be responsible for any prior default by District and shall not assume any obligations of the District that require the expenditure of any City funds solely as a result thereof; provided, however, that to the extent such default by District negatively impacts Developer's ability to perform any obligations hereunder, then the City shall provide Developer a reasonable extension of the time period(s) hereunder to perform any such obligation(s) and unless such default is timely cured by the City, the City shall not be entitled to the remedy provided under **Paragraph 4.1** above as a result of Developer's non-performance or default hereunder. If District is dissolved, then any reference to the Concept Plan and any approval thereof shall be deemed deleted from this Agreement, but approval by the City's Design Review Board as provided under **Paragraph 3.9** above shall be required; and Developer shall have the right to exercise its rights of extension under **Paragraph 2.8.3** above by written notice to the City.

Executed this 24th day of September, 2013.

Rio Nuevo Multipurpose Facilities District,
a political subdivision of the State of Arizona

By: _____
Name: _____
Its: _____

City of Tucson, an Arizona municipal corporation

By: _____ ATTEST: _____
~~City Manager~~ Mayor City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

Dated: _____

BP Post Developers, LLC,
an Arizona limited liability company

By: DEB Trust u/a/d August 4, 2005,
as amended, Member

By: _____
Don E. Bourn, Trustee

Executed this ___ day of _____, 2013.

Rio Nuevo Multipurpose Facilities District,
a political subdivision of the State of Arizona

By: _____
Name: _____
Its: _____

City of Tucson, an Arizona municipal corporation

By: _____
City Manager

APPROVED AS TO FORM:

By: _____
City Attorney

Dated: 9/24/13

BP Post Developers, LLC,
an Arizona limited liability company

By: DEB Trust u/a/d August 4, 2005,
as amended, Member

By: _____
Don E. Bourn, Trustee

Executed this ___ day of _____, 2013.

Rio Nuevo Multipurpose Facilities District,
a political subdivision of the State of Arizona

By: _____
Name: Fletcher McCusker
Its: CHAIRMAN

By: _____
Name: MARK IRVIN
Its: SECRETARY

City of Tucson, an Arizona municipal corporation

By: _____
City Manager

APPROVED AS TO FORM:

By: _____
City Attorney

Dated: _____

BP Post Developers, LLC,
an Arizona limited liability company

By: DEB Trust u/a/d August 4, 2005,
as amended, Member

By: _____
Don E. Bourn, Trustee

LENDER CONSENTS

National Bank of Arizona, a national banking association, the Beneficiary under that certain Construction Deed of Trust and Fixture Filing as recorded in Docket 13161 at page 3216, Sequence No. 20072000719 recorded in the Pima County Recorder's Office, Arizona on October 16, 2007 hereby consents to the execution, delivery and recordation of the foregoing Settlement Agreement and Amended and Restated Development Agreement and agrees that such constitutes a **"Permitted Exception"** to and as defined in such Construction Deed of Trust.

NATIONAL BANK OF ARIZONA, a national banking association

By: _____
Name: Paul C. Tees
Its: Senior Vice President

BP Post Lenders, LLC, an Arizona limited liability company, the Beneficiary under that certain Deed of Trust and Fixture Filing as recorded in Docket 13091 at page 4810, Sequence No. 20071301049 recorded in the Pima County Recorder's Office, Arizona on July 6, 2007 hereby consents to the execution, delivery and recordation of the foregoing Settlement Agreement and Amended and Restated Development Agreement and agrees that such constitutes a **"Permitted Exception"** to and as defined in such Deed of Trust.

BP POST LENDERS, LLC, an Arizona limited liability company

By: Roger B. Anderson, DMD, FAGD, Profit Sharing Plan, Sole Member

By: _____
Roger B. Anderson, Trustee

By: _____
Kathleen M. Kirk, Co-Trustee

EXHIBIT A to Exhibit 1 to Resolution No. 22102

LEGAL DESCRIPTION OF THRIFTY BLOCK

Thrifty Block
Former Courthouse & Law Enforcement Site
Tucson, Arizona
GSA Control No. 9-G-AZ-820

EXHIBIT "A" to Exhibit 1 to Resolution No. 22102

PARCEL 1:

Part of Lot 1 in Block 208 of THE CITY OF TUCSON, Pima County, Arizona, according to the official Field Notes, Map and Survey made 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, a certified copy of map is recorded in Book 3 of Maps and Plats at Page 70, described as follows, to-wit:

COMMENCING at the Northeast corner of said Lot 1 at the intersection of Congress and Scott Streets, being South 85 degrees 36 minutes 54 seconds West, 0.915 feet from a copper plug set in the sidewalk;

Thence South 85 degrees 36 minutes 54 seconds West along the North line of said Lot 1, a distance of 50.785 feet to a line between the walls of the Ivancovich Building and former United Bank building, being the TRUE POINT OF BEGINNING;

Continue thence South 85 degrees 36 minutes 54 seconds West along the North line of said Lot 1, a distance of 75 feet, more or less, to a point distant 22.5 feet Easterly from the Northwest corner of said Lot 1;

Continue thence South 85 degrees 36 minutes 54 seconds West along said North line, a distance of 22.50 feet to the Northwest corner of Lot 1;

Thence South 12 degrees 29 minutes 20 seconds East along the East line of said Lot 1 a distance of 100.98 feet, to the Southwest corner of said Lot 1;

Run thence North 77 degrees 17 minutes 7 seconds East along the South line of said Lot 1 (also being the North line of Lot 6 in Block 208 of the City of Tucson, as described in Deed to the United States of America, recorded in Book 56 of the Deeds at Page 429), a distance of 132.65 feet, to the Easterly line of Block 208;

Thence Northerly along the Easterly line of Block 208, to a point North 2 degrees 12 minutes West, distant 10.45 feet from the Northeast corner of the property described in Deed recorded in Book 56 of Deeds at Page 429 and which point is North 2 degrees 12 minutes West, 159.55 feet from its Southeast corner at the northwest corner of Scott and Broadway;

Thence South 77 degrees 2 minutes 52 seconds West, along the South wall of the former United Bank Building, a distance of 48.81 feet;

Thence North 4 degrees 16 minutes 6 seconds West, a distance of 77.34 feet to the TRUE POINT OF BEGINNING.

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PARCEL 2:

That portion of Lot 1 in Block 208 of THE CITY OF TUCSON, Pima County, Arizona, according to the official Survey, Map and Field Notes of said City made 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, a copy of which map is of record in the Office of the County Recorder of Pima County,

Arizona, in Book 3 of Maps and Plats at Page 70 thereof (also known as Parcel 2 in Deed recorded in Docket 8689, Page 2126, Pima County Recorder's Office, Pima County, Arizona), described as follows:

Commencing at the Northeast corner of said Block 208, and as established by City of Tucson Plan No. R-83-07, said point being also the TRUE POINT OF BEGINNING;

Thence South 2 degrees 16 minutes 41 seconds East (South 2 degrees 15 minutes, 35 seconds East, per City of Tucson Plan No. R-83-07), along the Easterly line of said Block 208, as shown on said City of Tucson Plan No. R-83-07, a distance of 70.32 feet to the Southeast corner of said parcel. Said point being also the Northwesterly corner of parcel 5 as described in Docket 8689, Page 2126, Pima County Recorder's Office;

Thence South 77 degrees 8 minutes 14 seconds West, a distance of 48.48 feet;

Thence North 4 degrees 15 minutes 36 seconds West, a distance of 77.38 feet to a point on the Southerly right of way line of Congress Street as established by City of Tucson Plan No. R-83-07;

Thence North 85 degrees 34 minutes 8 seconds East, along said Southerly right of way line, a distance of 50.78 feet to the True Point of Beginning.

PARCEL 3:

All of Lot 2 in Block 208 of the CITY OF TUCSON, Pima County, Arizona, according to the official Survey, Field Notes and Map made and executed by S. W. Foreman and approved and adopted by the Mayor and Common Council of the City of Tucson (then Village) on June 26, 1872, a certified copy of which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats at Page 70, described as follows:

BEGINNING at the Northeast corner of said Lot 2;

Thence Westerly along the North line of said Lot 2, 67.5 feet;

Thence Southerly at right angles to said North line of said Lot 2, to a point in the South line of said Lot 2;

Thence Easterly along the South line of said Lot 2 to the Southeast corner of said Lot 2;

Thence Northerly along the East line of said Lot 2, to the Northeast corner of said Lot 2 and the PLACE OF BEGINNING.

Excepting Therefrom, from Parcels 1 and 3 above, those portions of the following described property lying within Parcels 1 and 3 above:

Commencing at the Northeast corner of Block 208 of the City of Tucson, as recorded in Book 3 of Maps and Plats, at Page 70, Pima County Recorder's Office, and as established by City of Tucson Plan No. R-83-07;

Thence South 2 degrees 16 minutes 41 seconds East (South 2 degrees 15 minutes 35 seconds East, per City of Tucson Plan No. R-83-07), along the Easterly line of said Block 208, as shown on said City of Tucson Plan No. R-83-07, a distance of 70.32 feet to the TRUE POINT OF

Thrifty Block
Former Courthouse & Law Enforcement Site
Tucson, Arizona
GSA Control No. 9-G-AZ-820

BEGINNING. Said point being also the Southeasterly corner of Parcel 2 as described in Docket 8689, Page 2126, Pima County Recorder's Office;

Thence continue South 2 degrees 16 minutes 41 seconds East, along the Easterly line of said Block 208, a distance of 42.88 feet to a point on the Easterly projection of the Northerly face of the Walsh Building, located at 55 East Broadway Boulevard;

Thence South 83 degrees 11 minutes 41 seconds West, along said projection of the Northerly face of said Walsh Building, a distance of 9.06 feet to the Northeasterly corner thereof;

Thence continue South 83 degrees 11 minutes 41 seconds West, along the Northerly face of said Walsh Building, a distance of 141.35 feet to the Northwesterly corner thereof;

Thence North 6 degrees 48 minutes 19 seconds West, perpendicular to the previous line, a distance of 16.33 feet to a point on the Southerly line of Parcel 3 as described in said Docket 8689, at Page 2126;

Thence South 77 degrees 17 minutes 7 seconds West, along the Southerly line of said Parcel 3, a distance of 26.00 feet;

Thence South 77 degrees 1 minute 42 seconds West, continuing along the Southerly line of said Parcel 3, a distance of 14.45 feet to a point of curvature of a non-tangent curve concave to the Southeast, from which point the radius bears South 80 degrees 3 minutes 32 seconds East, said radius point being the aforementioned Northwesterly corner of the Walsh Building;

Thence Northeasterly, along the arc of a curve having a radius of 42.00 feet and a central angle of 73 degrees 15 minutes 13 seconds, for an arc distance of 53.70 feet to a point of tangency;

Thence North 83 degrees 11 minutes 41 seconds East, parallel with and 42.00 feet distant from said Northerly face of the Walsh Building, a distance of 105.77 feet to a point on the Westerly line of said Parcel 2 as recorded in Docket 8689, at Page 2126;

Thence South 4 degrees 15 minutes 36 seconds East, along the Westerly line of said Parcel 2, a distance of 4.38 feet to the Southwesterly corner thereof;

Thence North 77 degrees 8 minutes 14 seconds East, along the Southerly line of said Parcel 2, a distance of 48.48 feet to the TRUE POINT OF BEGINNING.

Parcel 4:

Lot 2 in Block 208 of the City of Tucson, Pima County, Arizona, according to the official survey, field notes and map made and executed by S.W. Foreman and approved and adopted by the Mayor and Common Council of the City of Tucson (then Village) on June 26, 1872, a certified copy of which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats at Page 70;

Except that portion described as follows:

Beginning at the Northeast corner of said Lot 2;

Thence Westerly along the North line of said Lot 2, 67.5 feet (67.13 (M));

Thence Southerly, at right angles to said North line of said Lot 2 (89 degrees 59 minutes 01 seconds (M)), to a point on the south line of said Lot 2;

Thence Easterly along the South line of said Lot 2 to the Southeast Corner of said Lot 2;

Thence Northerly along the East line of said Lot 2, to the Northeast Corner of said Lot 2 and the Place of Beginning.

13044 0316

EXHIBIT B to Exhibit 1 to Resolution No. 22102

U.S. to DISTRICT DEED

Exhibit B to Exhibit 1 to Resolution No. 22102

F. ANN RODRIGUEZ, RECORDER
RECORDED BY: JLW
DEPUTY RECORDER
1541 PE3

TFNTI
CITY OF TUCSON
52 W CONGRESS 2ND FLOOR
PO BOX 27210
TUCSON AZ 85726

DOCKET: 12165
PAGE: 3430
NO. OF PAGES: 20
SEQUENCE: 20032080698
10/28/2003
QCDEED 15:48

MAIL

AMOUNT PAID $ 25.00

Attn: John Updike, Senior Project Manager
Office of The City Manager
52 W. Congress, 2nd Floor
P.O. Box 27210
Tucson, AZ 85726-7210

60009242 SJ

Affidavit Exempt per ARS 11-1134 A-3

DOCUMENT TITLE: Quitclaim Deed

POST000164

Thrifty Block
Former Courthouse & Law Enforcement Site
Tucson, Arizona
GSA Control No. 9-G-AZ-820

Mail Tax Statement To:

John R. Updike, Project Manager
City of Tucson
52 W. Congress
Tucson, Arizona 85701

QUITCLAIM DEED

THIS INDENTURE is made as of the 24th day of October 2003 between the UNITED STATES OF AMERICA, acting by and through the Administrator of the General Services ("Grantor"), under and pursuant to the powers and authority contained in the provisions of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and regulations and orders promulgated thereunder, and the Rio Nuevo Multipurpose Facilities District, a political subdivision of the State of Arizona ("Grantee").

GRANTOR, for and in consideration of the sum of ONE DOLLAR ($1.00), in lawful money of the United States of America, receipt of which is hereby acknowledged, hereby remises releases and quitclaims unto the Grantee, and to their successors and assigns, all of its right title and interest in that certain real property, consisting of approximately 0.3942 acres of land (17,171.43 square feet), situated in the City of Tucson, County of Pima, State of Arizona, all as more particularly described in the attached legal descriptions (**Exhibit A**) incorporated herein (collectively referred to as the "Property").

GRANTOR HEREBY ASSIGNS TO GRANTEE all of its interest in the Revocable License for Non-Federal Use of Real Property No. 09-OL-01AZ0001, dated October 23, 2000 between Grantor and the City of Tucson, and any other licenses, tenancies and permits encumbering any portion of the Property ("Occupancy Agreements"). Grantee accepts and assumes all obligations of the Grantor under the Occupancy Agreements.

GRANTOR HEREBY GRANTS TO GRANTEE a temporary revocable easement for use of adjacent property retained by Grantor, subject to the terms and conditions contained in, and as described in, **Exhibit B** incorporated herein, for the purpose of retaining existing improvements.

GRANTOR HEREBY RESERVES unto itself, its successors and assigns, and by acceptance of this instrument and as further consideration for this conveyance, Grantee covenants and agrees for itself, its successors and assigns as follows, all of which shall be covenants running with the land:

1. **HAZARDOUS SUBSTANCE ACTIVITY.**

   Notice. Pursuant to 40 CFR 373.2 and Section 120(h)(3)(A)(i) of the Comprehensive Environmental Response, Compensation and Liability Act of

1980, as amended (CERCLA)(42 U.S.C. §9620(h)(3)(A)(i)), and based upon a complete search of agency files, the United States gives notice that no hazardous substances have been released or disposed of or stored for one year or more on the Property.

Covenant. United States warrants that all remedial action necessary to protect human health and the environment has been taken before the date of this conveyance. United States warrants that it shall take any additional response action found to be necessary after the date of this conveyance regarding hazardous substances located on the Property on the date of this conveyance.

This covenant shall not apply:

(a) in any case in which Grantee, its successor(s) or assign(s), or any successor in interest to the Property or part thereof is a Potentially Responsible Party (PRP) with respect to the Property immediately prior to the date of this conveyance; **OR**

(b) to the extent but only to the extent that such additional response action or part thereof found to be necessary is the result of an act or failure to act of the Grantee, its successor(s) or assign(s), or any party in possession after the date of this conveyance that either:

(i) results in a release or threatened release of a hazardous substance that was not located on the Property on the date of this conveyance; **OR**

(ii) causes or exacerbates the release or threatened release of a hazardous substance the existence and location of which was known and identified to the applicable regulatory authority as of the date of this conveyance.

In the event Grantee, its successor(s) or assign(s), seeks to have United States conduct any additional response action, and, as a condition precedent to United States incurring any additional cleanup obligation or related expenses, the Grantee, its successor(s) or assign(s), shall provide United States at least 45 days written notice of such a claim and provide credible evidence that:

(A) the associated contamination existed prior to the date of this conveyance; and

(B) the need to conduct any additional response action or part thereof was not the result of any act or failure to act by the Grantee, its successor(s) or assign(s), or any party in possession.

ACCESS. United States reserves a right of access, at reasonable times and upon reasonable advance written notice to Grantee, to all portions of the Property or to any adjoining properties, for environmental investigation, remediation or other corrective action. This reservation includes the right of access to and use of available utilities at reasonable cost to United States. These rights shall be exercisable in any case in which a remedial action, response action or corrective action is found to be necessary after the date of this conveyance, or in which access is necessary to carry out a remedial action, response action, or corrective action on adjoining property. United States shall exercise reasonable efforts to minimize any interference with the operations of any then existing tenants on the Property or any then ongoing development activity in carrying out such response or corrective actions. Pursuant to this reservation, the United States of America, and its respective officers, agents, employees, contractors and subcontractors shall have the right (upon reasonable advance written notice to the record title owner) to enter upon the Property and conduct investigations and surveys, to include drilling, test-pitting, borings, data and records compilation and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary, including but not limited to the installation and operation of monitoring wells, pumping wells, and treatment facilities. Any such entry, including such activities, responses or remedial actions, shall be coordinated with record title owner and shall be performed in a manner that minimizes interruption with activities of authorized occupants.

2. **ASBESTOS COVENANT.**

GRANTEE covenants and agrees, on behalf of themselves, their successors and assigns, that in their use and occupancy of the Property, or any part thereof, they are responsible for compliance with all Federal, state and local laws relating to asbestos; and that, by virtue of this deed, Grantor assumes no liability for damages for personal injury, illness, disability or death, to the GRANTEE, or to GRANTEE's successors, assigns, employees, invitees, or to any other person subject to the control or direction of GRANTEE, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property described in this deed, whether the GRANTEE, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.

3. **PCB and MERCURY COVENANT.**

GRANTEE covenants and agrees, on behalf of themselves, their successors and assigns, that in their use and occupancy of the Property, or any part thereof, they are responsible for compliance with all Federal, state and local laws relating to PCB and mercury; and that, by virtue of this deed, GRANTOR assumes no liability for damages for personal injury, illness, disability or death, to the GRANTEE, or to GRANTEE's successors, assigns, employees, invitees, or to any other person subject to the control or direction of GRANTEE, its successors or assigns, or to any other person, including

members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with PCB and mercury on the Property described in this deed, whether the GRANTEE, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.

4. HISTORIC PRESERVATION COVENANT.

A. The Grantee shall preserve and maintain Building F, located at 68-72 East Congress Street, Tucson, Arizona (see attached "East Congress" map, **Exhibit C**), in accordance with the Secretary of the Interior's Standards for Rehabilitation and guidelines for Rehabilitating Historic Buildings (National Park Service, 1983), in order to preserve and enhance those qualities that make Building F eligible for listing in the National Register of Historic Places.

B. The Grantee shall not undertake nor permit to be undertaken any construction, alteration, or remodeling of Building F without first consulting the Arizona State Historic Preservation Office regarding the scope of work to be performed, and taking into account the Arizona State Historic Preservation Office's comments thereon.

C. The Arizona State Historic Preservation Office shall be permitted at all reasonable times to inspect Building F to make certain if the above conditions are being observed.

D. In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, the Arizona State Historic Preservation Office, following reasonable notice to the Grantee, shall notify the General Services Administration.

E. In the event of a violation of this covenant, the General Services Administration or the Arizona State Historic Preservation Office may institute a suit to enjoin such violation or for damages by reason of any breach thereof.

F. The Grantee agrees that the Arizona State Historic Preservation Office may at its discretion, with prior notice to the Grantee, convey and assign all or part of its rights and responsibilities contained herein to a third party.

G. Restrictions, stipulations, and covenants contained herein shall be inserted by Grantee verbatim or by express reference in the deed, lease agreement, or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in Building F or any part thereof.

H. This covenant is binding upon Grantee, its successors, and assigns in perpetuity; however, the Arizona State Historic Preservation Office may, for good cause, modify or cancel any or all of the foregoing restrictions upon written application to, and acceptance by, the Grantee, its successors or assigns.

I. The acceptance of the delivery of this (Deed/Title) shall constitute conclusive evidence of the agreement of the Grantee to be bound by the conditions, restrictions, and limitations, and to perform the obligations herein set forth.

J. The failure of the Arizona State Historic Preservation Office to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

5. NON-DISCRIMINATION COVENANT.

The GRANTEE covenants for itself, and its assigns and every successor in interest to the Property hereby conveyed, or any part thereof, that the said GRANTEE and such assigns shall not discriminate upon the basis of race, color, religion, sex, or national origin in the use, occupancy, sale, or lease of the Property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land of interest therein in the locality of the Property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

6. SECURITY COVENANT AND RESTRICTION.

Grantee covenants for itself, its successors and assigns that:

A. No improvement shall be constructed on the Property that affords a potential perch for attacks aimed at the Walsh Building. Features that are prohibited include, without limitation:

(1) Balconies that are on or near the south side of a building on the Property.

(2) Gardens, patios or other public use occupancies on the roof.

B. Grantor shall be permitted review, throughout the process of site development, in order to apprise the selected developer of the Grantor's security concerns. The security concerns relate to improvements that are visible from any part of the Walsh Building.

Such review may consist of, but is not limited to:

(1) Grantor shall have the opportunity to meet with potential developers, prior to award, to present Grantor's security concerns.

(2) After award, Grantor shall have the opportunity to meet with the selected developer to review security concerns in detail, enhancing Grantee's appreciation of Grantor's concerns.

(3) Prior to construction or modification of any improvements that are visible from any part of the Walsh Building, Grantee shall provide Grantor with four copies of 75% construction drawings. Grantor may reasonably ask Grantee to supplement the Concept Documents and Construction Documents with additional information. Grantor shall have 45 calendar days before construction, from receipt of the Concept Drawings and Construction Documents respectively, to review the Concept Drawings and Construction Documents for their impact on the security of the Walsh Building.

C. Upon completion of demolition, Grantee shall construct on the Property a wall or fence along the entire southern border of the Property. This wall or fence must be opaque and at least 8 feet tall. Grantee shall repair, maintain and replace the wall or fence as necessary to keep it in good condition.

D. This covenant shall run with the Property for as long as Grantor's remaining land continues to be owned or occupied by the United States Government.

7. FAA COVENANT.

GRANTEE covenants and agrees, on behalf of it, its successors and assigns and every successor in interest to the PROPERTY herein described, or any part thereof, that any construction or alteration is prohibited unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with Title 14, Code of Federal Regulations, Part 77, entitled "Objects Affecting Navigable Airspace," or under the authority of the Federal Aviation Act of 1958, as amended.

THIS CONVEYANCE IS MADE SUBJECT TO all covenants, easements, reservations and encumbrances, whether or not of record, and any facts which a physical inspection or accurate survey of the premises may disclose. Failure of Grantor or his successor to insist in any one or more instances upon complete performance of any of the covenants or conditions of this indenture will not be construed as a waiver or a relinquishment of the future performance of such covenants or conditions, but the obligations of the Grantee, its successors and assigns, with respect to such future performance shall continue in full force and effect.

SAID PROPERTY transferred by this Indenture was duly determined to be surplus, and was assigned to the General Services Administration for disposal

Thrifty Block
Former Courthouse & Law Enforcement Site
Tucson, Arizona
GSA Control No. 9-G-AZ-820

pursuant to the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and applicable rules, orders and regulations.

IN WITNESS WHEREOF, Grantor has caused this indenture to be executed as of the day and year first written above.

UNITED STATES OF AMERICA
Acting by and through the
ADMINISTRATOR OF GENERAL SERVICES

By: Clark Van Epps

Clark Van Epps
Contracting Officer
Property Disposal Division (9PR)
General Services Administration
450 Golden Gate Ave., 4th Floor East
San Francisco, CA 94102-3434

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Thrifty Block
Former Courthouse & Law Enforcement Site
Tucson, Arizona
GSA Control No. 9-G-AZ-820

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA)
(ss:
County of San Francisco)

On this 24 th day of October, 2003, before me, Rock A. Southward Notary Public in and for the County of San Francisco, State of California, personally appeared Clark Van Epps, personally known to me, or proven upon satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

Notary Public
in and for the County of
San Francisco, State of
California

ROCK A. SOUTHWARD
Commission # 1330192
Notary Public - California
San Francisco County
My Comm. Expires Nov 21, 2005

Thrifty Block
Former Courthouse & Law Enforcement Site
Tucson, Arizona
GSA Control No. 9-G-AZ-820

ACCEPTANCE of QUITCLAIM DEED

GRANTEE, through its authorized representative, hereby accepts title to the conveyed PROPERTY and accepts and agrees to all of the terms, conditions, and restrictions contained in the QUITCLAIM DEED set forth above. Executed on behalf of the GRANTEE this 27th day of October, 2003, at PIMA County.

CITY OF TUCSON, RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT

By: Karen Thoreson
Acting Project Director

ATTEST

By: John R. Updike
Senior Project Manager

APPROVED AS TO FORM:

By: Michael Rankin

Title: Senior Assistant City Attorney

Dated: 10-27-03

20030490369

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Thrifty Block
Former Courthouse & Law Enforcement Site
Tucson, Arizona
GSA Control No. 9-G-AZ-820

EXHIBIT "A" to Exhibit B to Exhibit1 to Resolution No.22102

LEGAL DESCRIPTION (contains 3 parcels)

PARCEL 1:

Part of Lot 1 in Block 208 of THE CITY OF TUCSON, Pima County, Arizona, according to the official Field Notes, Map and Survey made 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, a certified copy of map is recorded in Book 3 of Maps and Plats at Page 70, described as follows, to-wit:

COMMENCING at the Northeast corner of said Lot 1 at the intersection of Congress and Scott Streets, being South 85 degrees 36 minutes 54 seconds West, 0.915 feet from a copper plug set in the sidewalk;

Thence South 85 degrees 36 minutes 54 seconds West along the North line of said Lot 1, a distance of 50.785 feet to a line between the walls of the Ivancovich Building and former United Bank building, being the TRUE POINT OF BEGINNING;

Continue thence South 85 degrees 36 minutes 54 seconds West along the North line of said Lot 1, a distance of 75 feet, more or less, to a point distant 22.5 feet Easterly from the Northwest corner of said Lot 1;

Continue thence South 85 degrees 36 minutes 54 seconds West along said North line, a distance of 22.50 feet to the Northwest corner of Lot 1;

Thence South 12 degrees 29 minutes 20 seconds East along the East line of said Lot 1 a distance of 100.98 feet, to the Southwest corner of said Lot 1;

Run thence North 77 degrees 17 minutes 7 seconds East along the South line of said Lot 1 (also being the North line of Lot 6 in Block 208 of the City of Tucson, as described in Deed to the United States of America, recorded in Book 56 of the Deeds at Page 429), a distance of 132.65 feet, to the Easterly line of Block 208;

Thence Northerly along the Easterly line of Block 208, to a point North 2 degrees 12 minutes West, distant 10.45 feet from the Northeast corner of the property described in Deed recorded in Book 56 of Deeds at Page 429 and which point is North 2 degrees 12 minutes West, 159.55 feet from its Southeast corner at the northwest corner of Scott and Broadway;

Thence South 77 degrees 2 minutes 52 seconds West, along the South wall of the former United Bank Building, a distance of 48.81 feet;

Thence North 4 degrees 16 minutes 6 seconds West, a distance of 77.34 feet to the TRUE POINT OF BEGINNING.

PARCEL 2:

That portion of Lot 1 in Block 208 of THE CITY OF TUCSON, Pima County, Arizona, according to the official Survey, Map and Field Notes of said City made 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, a copy of which map is of record in the Office of the County Recorder of Pima County,

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Thrifty Block
Former Courthouse & Law Enforcement Site
Tucson, Arizona
GSA Control No. 9-G-AZ-820

Arizona, in Book 3 of Maps and Plats at Page 70 thereof (also known as Parcel 2 in Deed recorded in Docket 8689, Page 2126, Pima County Recorder's Office, Pima County, Arizona), described as follows:

Commencing at the Northeast corner of said Block 208, and as established by City of Tucson Plan No. R-83-07, said point being also the TRUE POINT OF BEGINNING;

Thence South 2 degrees 16 minutes 41 seconds East (South 2 degrees 15 minutes, 35 seconds East, per City of Tucson Plan No. R-83-07), along the Easterly line of said Block 208, as shown on said City of Tucson Plan No. R-83-07, a distance of 70.32 feet to the Southeast corner of said parcel. Said point being also the Northwesterly corner of parcel 5 as described in Docket 8689, Page 2126, Pima County Recorder's Office;

Thence South 77 degrees 8 minutes 14 seconds West, a distance of 48.48 feet;

Thence North 4 degrees 15 minutes 36 seconds West, a distance of 77.38 feet to a point on the Southerly right of way line of Congress Street as established by City of Tucson Plan No. R-83-07;

Thence North 85 degrees 34 minutes 8 seconds East, along said Southerly right of way line, a distance of 50.78 feet to the True Point of Beginning.

PARCEL 3:

All of Lot 2 in Block 208 of the CITY OF TUCSON, Pima County, Arizona, according to the official Survey, Field Notes and Map made and executed by S. W. Foreman and approved and adopted by the Mayor and Common Council of the City of Tucson (then Village) on June 26, 1872, a certified copy of which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats at Page 70, described as follows:

BEGINNING at the Northeast corner of said Lot 2;

Thence Westerly along the North line of said Lot 2, 67.5 feet;

Thence Southerly at right angles to said North line of said Lot 2, to a point in the South line of said Lot 2;

Thence Easterly along the South line of said Lot 2 to the Southeast corner of said Lot 2;

Thence Northerly along the East line of said Lot 2, to the Northeast corner of said Lot 2 and the PLACE OF BEGINNING.

Excepting Therefrom, from Parcels 1 and 3 above, those portions of the following described property lying within Parcels 1 and 3 above:

Commencing at the Northeast corner of Block 208 of the City of Tucson, as recorded in Book 3 of Maps and Plats, at Page 70, Pima County Recorder's Office, and as established by City of Tucson Plan No. R-83-07;

Thence South 2 degrees 16 minutes 41 seconds East (South 2 degrees 15 minutes 35 seconds East, per City of Tucson Plan No. R-83-07), along the Easterly line of said Block 208, as shown on said City of Tucson Plan No. R-83-07, a distance of 70.32 feet to the TRUE POINT OF

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Thrifty Block
Former Courthouse & Law Enforcement Site
Tucson, Arizona
GSA Control No. 9-G-AZ-820

BEGINNING. Said point being also the Southeasterly corner of Parcel 2 as described in Docket 8689, Page 2126, Pima County Recorder's Office;

Thence continue South 2 degrees 16 minutes 41 seconds East, along the Easterly line of said Block 208, a distance of 42.88 feet to a point on the Easterly projection of the Northerly face of the Walsh Building, located at 55 East Broadway Boulevard;

Thence South 83 degrees 11 minutes 41 seconds West, along said projection of the Northerly face of said Walsh Building, a distance of 9.06 feet to the Northeasterly corner thereof;

Thence continue South 83 degrees 11 minutes 41 seconds West, along the Northerly face of said Walsh Building, a distance of 141.35 feet to the Northwesterly corner thereof;

Thence North 6 degrees 48 minutes 19 seconds West, perpendicular to the previous line, a distance of 16.33 feet to a point on the Southerly line of Parcel 3 as described in said Docket 8689, at Page 2126;

Thence South 77 degrees 17 minutes 7 seconds West, along the Southerly line of said Parcel 3, a distance of 26.00 feet;

Thence South 77 degrees 1 minute 42 seconds West, continuing along the Southerly line of said Parcel 3, a distance of 14.45 feet to a point of curvature of a non-tangent curve concave to the Southeast, from which point the radius bears South 80 degrees 3 minutes 32 seconds East, said radius point being the aforementioned Northwesterly corner of the Walsh Building;

Thence Northeasterly, along the arc of a curve having a radius of 42.00 feet and a central angle of 73 degrees 15 minutes 13 seconds, for an arc distance of 53.70 feet to a point of tangency;

Thence North 83 degrees 11 minutes 41 seconds East, parallel with and 42.00 feet distant from said Northerly face of the Walsh Building, a distance of 105.77 feet to a point on the Westerly line of said Parcel 2 as recorded in Docket 8689, at Page 2126;

Thence South 4 degrees 15 minutes 36 seconds East, along the Westerly line of said Parcel 2, a distance of 4.38 feet to the Southwesterly corner thereof;

Thence North 77 degrees 8 minutes 14 seconds East, along the Southerly line of said Parcel 2, a distance of 48.48 feet to the TRUE POINT OF BEGINNING.

Parcel 4:

Lot 2 in Block 208 of the City of Tucson, Pima County, Arizona, according to the official survey, field notes and map made and executed by S.W. Foreman and approved and adopted by the Mayor and Common Council of the City of Tucson (then Village) on June 26, 1872, a certified copy of which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats at Page 70;

Except that portion described as follows:

Beginning at the Northeast corner of said Lot 2;

Thence Westerly along the North line of said Lot 2, 67.5 feet (67.13 (M));

Thence Southerly, at right angles to said North line of said Lot 2 (89 degrees 59 minutes 01 seconds (M)), to a point on the south line of said Lot 2;

Thence Easterly along the South line of said Lot 2 to the Southeast Corner of said Lot 2;

Thence Northerly along the East line of said Lot 2, to the Northeast Corner of said Lot 2 and the Place of Beginning.

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United States of America
Acting by and through the
Administrator of General Services

By: Clark Van Epps
By: Clark Van Epps
As: Contracting Officer
For: Property Disposal Division (9PR)
General Services Administration

Rio Nuevo Multipurpose Facilities District

Accepted By:
By: Gregory Shelko
As: Director
For: Rio Nuevo Multipurpose Facilities District

EXHIBIT C to Exhibit 1 to Resolution No. 22102

STIPULATION

GUST ROSENFELD P.L.C.
One S. Church Ave., Suite 1900
Tucson, Arizona 85701-1627
Tel.: (520) 628-7070
Fax: (520) 624-3849
Mark L. Collins, SB #003929
(mcollins@gustlaw.com)
Robert M. Savage, SB #020662
(rsavage@gustlaw.com)

Attorneys for Rio Nuevo Multipurpose Facilities District

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

JOHN KROMKO,

Plaintiff,

vs.

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT and BP POST INVESTORS, LLC,

Defendants.

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT,

Cross-Claimant,

vs.

BP POST INVESTORS, LLC,

Cross-Defendant.

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT,

Third-Party Plaintiff,

vs.

THE CITY OF TUCSON; and BP POST DEVELOPERS, LLC,

Third-Party Defendants.

No. C2011-1105

STIPULATION TO DISMISS WITH PREJUDICE

(Hon. Kenneth Lee)

The above parties agree and stipulate that this matter be dismissed with prejudice, each party to bear its own fees and costs.

RESPECTFULLY SUBMITTED this _____ day of _____ 2013.

GUST ROSENFELD, PLC

By:_____
Mark L. Collins
Robert M. Savage
Attorneys for Rio Nuevo Multipurpose Facilities District

GABROY, ROLLMAN & BOSSE, PC

By:_____
Richard M. Rollman
Richard A. Brown
Attorneys for BP Post Investors, LLC and BP Post Developers, LLC

TUCSON CITY ATTORNEY

By:_____
Michael G. Rankin
Michael W. L. McCrory
Attorneys for the City of Tucson

Original filed and a copy *hand-delivered* _____, 2013 to:

The Hon. Kenneth Lee
PIMA COUNTY SUPERIOR COURT

Copy mailed _____, 2013 to:

David T. Hardy
8987 E. Tanque Verde Rd.
PMB 265
Tucson, AZ 85749-8919
Attorneys for Plaintiff

By: _____

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EXHIBIT D to Exhibit 1 to Resolution No. 22102

PROPOSED FORM OF ORDER

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

JOHN KROMKO and SHELBY HAWKINS,

Plaintiff,

vs.

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT and BP POST INVESTORS, LLC,

Defendants.

No. C2011-1105

ORDER

(Hon. Kenneth Lee)

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT,

Cross-Claimant,

vs.

BP POST INVESTORS, LLC,

Cross-Defendant.

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT,

Third-Party Plaintiff,

vs.

THE CITY OF TUCSON; and BP POST DEVELOPERS, LLC,

Third-Party Defendants.

Upon stipulation of the parties and good cause appearing,

IT IS HEREBY ORDERED that this matter is dismissed with prejudice, each party to bear its own attorney's fees and costs.

DATED: _____

_____

JUDGE, PIMA COUNTY SUPERIOR COURT

Exhibit D to Exhibit 1 to Resolution No. 22102