

PURCHASE/LEASE/OPTION AGREEMENT

This Purchase, Lease, and Option Agreement (this “**Agreement**”) is entered into as of April 11, 2018 (“**Effective Date**”) by and between 44 E. Broadway, LLC, an Arizona limited liability company (“**Lessee**”), and Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona (the “**District**”) (collectively “**Parties**”).

BACKGROUND

The Parties acknowledge and agree that the following “Background” is true and correct and constitutes an integral part of this Agreement.

A. Lessee owns certain properties located at 44 E. Broadway, Tucson, Arizona (the “**Property**”). The Property consists of 6 condominium units containing approximately 16,445 square feet (excluding the common elements)(collectively “**Condominiums**”) as more particularly described in Exhibit A and a vacant lot due west of the Condominiums (“**West Lot**”) as more particularly described in Exhibit B. In addition, Lessee owns a vacant lot at 12-20 E. Ochoa Street (“**South Lot**”) which lies to the south of the West Lot the legal description of which is set forth in Exhibit C. The Property and the South Lot may herein be referred to as the “**Premises**”.

B. The Lessee intends to expand the first-floor retail space of the Condominiums from 895 square feet to 6,235 square feet by converting most of the covered parking under the existing building into retail units (the “**Condo Retail Phase**”). In addition, Lessee intends to improve the West and South Lots (collectively “**Adjacent Lots**”) by creating approximately 18,325 square feet of new street-front retail space, above which will be a new parking garage with approximately 137 parking spaces and approximately 60,652 square feet of new Class A office space (the “**New Building Phase**”).

C. The Lessee anticipates spending approximately \$34,000,000 (“**Construction Costs**”) to complete the Condo Retail Phase and the New Building Phase (collectively the “**Project**”).

D. The construction of the Project will create construction jobs and generate construction sales tax that will further benefit the City and the District.

E. The value of constructing and operating the Project on the Premises will be analyzed through an economic and fiscal impact analysis to be ordered by the District and paid for by the Developer (the “**Economic Analysis**”). The District has determined that the Project would not be constructed in the absence of this Agreement. Accordingly, the Board has determined that, subject to the Economic Analysis, it is in the best interests of the public to rebate a portion of the state transaction privilege taxes (also called sales taxes) (“**TPT Funds**”) generated and collected from Developer’s retail sales and construction sales taxes from the Project, upon terms more specifically set forth below, as an economic incentive for Developer to construct the Project on the Premises at Developer’s expense.

F. The District is a special taxing district of the State of Arizona (the “**State**”) that was formed by the City of Tucson, Arizona (the “**City**”) and the City of South Tucson, Arizona

pursuant to the Stadium District Statutes that commence at A.R.S. §48-4201 *et seq.* A “district” formed under these statutes is defined as “... any county stadium district established pursuant to §48-4202, subsection A, B or C.” §48-4201(3).” The voters who authorized formation of the District authorized the District to receive an incremental portion of state-shared **TPT Funds** collected from within the District’s boundaries, all of which lie within the City. The District’s right to receive TPT Funds currently ceases on July 1, 2025 (“**Sunset Date**”).

G. The Project is located along a major gateway into the City. The District desires that Lessee construct and develop the Property as described above to further the District’s purposes of enhancing Downtown Tucson and the District’s Primary Component (as defined in A.R.S. § 48-4201(4)(B)); the Tucson Convention Center. The Project will: (i) provide a significant investment within the District; (ii) create new opportunities for employment in the District; (iii) provide much needed Class “A” office space in Downtown Tucson; (iv) enhance retail transaction (sales) tax collections in the District; and (v) provide greater ability for the District to promote new development within the District boundaries.

H. The transactions contemplated by this Agreement were presented to and approved by the District’s Board of Directors at its May 30, 2017 (“Approval Date”). Since the Approval Date the Lessee has commenced spending the approximate \$500,000 to complete the Condo Retail Phase.

I. The District is willing to purchase the Project from Lessee and immediately enter into a lease with Lessee (the “**Lease**”) and grant Lessee an option to repurchase the Project at any time during or before the expiration of the Lease (the “**Option**”).

AGREEMENTS

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and in consideration of the mutual covenants, promises and agreements contained herein, the District and Lessee agree as follows:

PURCHASE AND SALE OF PROJECT

1) **Purchase of Project.** Upon and subject to the terms and conditions set forth in this Agreement, the District agrees to purchase from Lessee and Lessee agrees to sell to the District all of Lessee’s right, title and interest in and to the Project. For purposes of this Agreement, the Project includes:

a) **Fee Title.** Title to the Project will be conveyed by a warranty deed (“**Deed**”) conveying marketable, fee simple title in the Project to the District, free and clear of all liens and encumbrances, other than those exceptions permitted under this Agreement or set forth in the Deed or an exhibit thereto (“**Closing Title Exceptions**”).

b) **Easements and Privileges.** All easements appurtenant to the Property and other licenses, grants of right, privileges, or other agreements appurtenant thereto or for the benefit of the Property and all right, title, and interest of Lessee, if any, as the owner of the Property in and to

any roads, streets, and ways, public or private, open or proposed, in front of or adjoining all or any part of the Property and serving the Project.

c) **Declarant Rights.** All of Lessee's right, title and interest, if any, as "declarant" under and pursuant to that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions 44 East Broadway Condominiums, as amended ("**Declaration**"), dated June 15, 2011, and recorded in the Recorder's Office, Pima County, Arizona on July 12, 2011, at Instrument Sequence No. 20111930050 as amended by First Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions 44 East Broadway Condominiums dated December 15, 2016 and recorded on December 30, 2016 in Instrument No.20163650796 of the Official Records in the office of the Pima County Recorder ("**Declarant Rights**"). The assignment of the Declarant Rights shall be evidenced by an Assignment of Declarant Rights in the form attached hereto as Exhibit D. Lessee agrees to indemnify, defend and hold harmless the District from and against any and all claims, damages, expenses, lawsuits, losses and liabilities arising from or in connection with the actions or omissions of Lessee in regard to the Declaration or the Property (as defined in the Declaration) both before and after the date hereof.

d) **Other Rights.** All rights, warranties, guarantees, utility contracts, approvals (governmental or otherwise), permits, certificates of occupancy, surveys, plans and specifications, and any agreements, covenants or indemnifications that Lessee received from a third party, including any prior owner, and relating to the Project.

2) **Purchase Price.** The purchase price for the Project is One Thousand Dollars and 00/100 (\$1,000.00) Dollars ("**Purchase Price**").

3) **Title & Escrow.**

a) **Opening of Escrow.** Upon the full execution of this Agreement, the District shall deposit it with Stewart Title & Trust of Arizona ("**Title Company**") (Michelle Jolly as the "**Escrow Agent**") at 3939 E. Broadway, Tucson, Arizona 85711. The Escrow Agent, as agent for the Title Company, agrees with Lessee and the District that recordation of the Deed constitutes the Escrow Agent's representation that it is holding the closing documents, closing funds, and closing statement and is prepared and irrevocably committed to disburse the closing funds in accordance with the closing statement.

b) **Limitation of Liability.** Lessee and the District hereby agree, jointly and severally, to indemnify and hold harmless the Escrow Agent from and against all costs, damages, judgments, attorneys' fees, expenses, obligations, and liabilities of any kind or nature, which the Escrow Agent in good faith may incur or sustain in connection with this Agreement. The Escrow Agent shall not be liable for any actions taken or omitted by it in good faith and may rely upon, and act in accordance with, the reasonable advice of its counsel without liability on its part for any action taken or omitted in accordance with such advice.

c) **Escrow Instructions.** The terms and provisions of this Agreement shall constitute escrow instructions to the Escrow Agent for the purpose of serving in such capacity for the transaction described herein. In the event of a conflict between the terms and conditions of this

Agreement and any other escrow instructions executed by the parties in connection with this transaction, the terms and conditions of this Agreement shall control.

d) **Closing & Closing Date.** The closing of the transaction (the “**Closing**”) described herein shall occur at such date, time, and place as the Parties may hereinafter agree (the “**Closing Date**”) in accordance with the terms and conditions of this Agreement. The Parties acknowledge and agree that TIME SHALL BE OF THE ESSENCE with respect to the performance by the Parties of their obligations under this Agreement and to consummate the transactions contemplated in this Agreement on the Closing Date. For the purposes of this Agreement, any date to which the Parties agree to adjourn the Closing pursuant to the terms of this Agreement shall be deemed the “Closing Date” hereunder.

4) **Representations and Warranties.**

a) **Lessee.** Lessee makes the following representations and warranties to the District, all of which shall survive the Closing and recordation of the Deed, and shall be complete, true and accurate as of the Effective Date and as of the Closing:

i) **Organization.** Lessee is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Arizona, and has the power, right and authority to enter into this Agreement, and to consummate the transaction contemplated hereby, without the consent or joinder of any other party or order or approval of any court, and this Agreement shall constitute a legal, valid and binding obligation of Lessee, enforceable against it in accordance with the terms and conditions contained herein.

ii) **Performance.** Lessee will have performed, observed and complied with all of the covenants, agreements and conditions required by this Agreement to be performed, observed and complied with by Lessee on or before the Closing, and will execute and deliver all documents required to be executed and delivered by Lessee in order to consummate the transaction contemplated herein, on or before the Closing and at the time period set forth herein. Lessee shall also perform, observe and comply with all post-closing covenants, representations, warranties, agreements, conditions and indemnifications required by this Agreement.

iii) **Litigation.** Except as provided herein, no litigation exists which relates to or arises out of Lessee’s interest in the Project, and Lessee has not received any notice that any such proceedings are contemplated or threatened. There are no actions or proceedings pending or threatened against Lessee before any court, administrative agency, or other governmental body in any way connected with or relating to the Project, or affecting Lessee’s ability to fulfill all of its obligations under this Agreement.

iv) **Violations of Law.** Lessee has not received any notice of any violation of any federal, state, regional or local law, ordinance or other governmental rule or regulation pertaining to the Project, including, without limitation, environmental laws or regulations.

v) **Contracts.** Except as provided in this Agreement, neither this Agreement nor anything required to be done hereunder, including but not limited to the conveyance of the Project, violates or shall violate any contract or agreement to which Lessee is a party.

vi) **U.S. Persons.** Lessee is a “United States person” within the meaning of §1445 of the Internal Revenue Code, as amended.

vii) **Material Change.** Should Lessee receive notice or knowledge of any information regarding any of the matters set forth in this section after the Effective Date and before the Closing which would result in a material change to these warranties, Lessee will immediately notify the District of the same in writing.

viii) **Condition of Project.** Lessee hereby represents and warrants that the Project is in good condition and in compliance with all applicable governmental laws, rules and regulations and that it is suitable for its intended use, as provided in this Agreement; that to the best of its knowledge after a diligent, good faith investigation and inquiry, there are no violations of any federal, state or local environmental laws, rules, regulations or orders on, under, or about the Project, including, but not limited to soil and ground water conditions, and that there have not been, and are not now, any violations of applicable environmental laws either before or during Lessee’s ownership of the Project.

ix) **Environmental Law.** Lessee has not caused or permitted the generation, storage, treatment, release or disposal of any hazardous waste or regulated substances, as defined in any applicable environmental laws, at the Project in violation thereof.

x) **Indemnification.** To the greatest extent permitted by law, Lessee shall indemnify, defend and hold the District, its officers, directors, representatives, agents and employees, harmless for, from and against any liability, loss, claim, action or demand, including attorneys’ fees and costs, that may arise out of or is connected with Lessee’s breach of any covenant, representation, warranty or term contained in this Agreement. Lessee’s indemnification provided in this Agreement shall survive the Closing.

b) **The District.**

i) **Organization.** The District is a special taxing district of the State of Arizona duly organized, validly existing and in good standing under the laws of the State of Arizona and has the power, right and authority to enter into this Agreement, and to consummate the transaction contemplated hereby, without the consent or joinder of any other party or order or approval of any court, and this Agreement shall constitute a legal, valid and binding obligation of the District, enforceable against the District in accordance with the terms and conditions contained herein.

ii) **Performance.** The District will have performed, observed and complied with all of the covenants, agreements and conditions required by this Agreement to be performed, observed and complied with by the District on or before the Closing, and will execute and deliver all documents required to be executed and delivered by the District in order to consummate the transaction contemplated herein on or before the Closing and at the time period set forth herein. The District shall also perform, observe and comply with all post-closing covenants, representations, warranties, agreements, conditions and indemnifications required by this Agreement.

iii) **Other Contracts.** Neither this Agreement nor anything required to be done hereunder, including, but not limited to the acceptance of the conveyance of the Project, violates or shall violate any contract or agreement to which the District is a party.

iv) **Material Change.** Should the District receive notice or knowledge of any information regarding any of the matters set forth in this section after the Effective Date and prior to the Closing which would result in a material change to these warranties, the District will immediately notify Lessee of the same in writing.

v) **Indemnification.** To the greatest extent permitted by law, the District shall indemnify, defend and hold Lessee, its managers, members, representatives, agents and employees, harmless for, from and against any liability, loss, claim, action or demand, including attorneys' fees and costs that may arise out of or is connected with the District's breach of any covenant, representation, warranty or term contained in this Agreement. The District's indemnification provided in this Agreement shall survive the Closing.

5) **Lessee's Deliveries in Escrow.** No fewer than three (3) business days before the Closing, Lessee shall deliver to the Escrow Agent the following:

a) **Deed.** The Deed shall be in the form attached hereto as Exhibit E, executed and acknowledged by Lessee and assigning and conveying to the District title to the Project subject to the Permitted Exceptions.

b) **Intentionally Omitted.**

c) **Proof of Authority.** Such proof of Lessee's authority and authorization to enter into this Agreement and the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing or delivering any instruments, documents, or certificates on behalf of Lessee to act for and bind Lessee as may be reasonably required by the Title Company.

d) **Phase 1 ESA.** Confirmation that the Phase 1 environmental site assessment (and any recommended Phase 2) have been certified to and may be relied upon by both the Lessee and the District.

e) **Additional Documents.** Such other documents and instruments, signed and properly acknowledged by Lessee, if appropriate, as may be reasonably required by the Title Company, the Escrow Agent or otherwise in order to effectuate the provisions of this Agreement and the Closing of the transaction contemplated herein.

6) **The District's Deliveries in Escrow.** At or before the Closing, the District shall deliver to the Escrow Agent all of the following:

a) **Purchase Price.** The Purchase Price, as adjusted in accordance with this Agreement (which adjustments and prorations shall be reflected on the Closing statement prepared by the Escrow Agent), shall be deposited by the District with the Escrow Agent in immediate, same-day federal funds wired for credit into the Escrow Agent's escrow account at a bank satisfactory to Lessee.

b) **Intentionally Omitted.**

c) **Proof of Authenticity.** Such proof of the District's authority and authorization to enter into this Agreement and the transaction contemplated hereby, and such proof of the power and authority of the individual(s) executing or delivering any instruments, documents or certificates on behalf of the District to act for and bind the District as may be reasonably required by the Title Company.

d) **Additional Documents.** Such other documents and instruments, signed and properly acknowledged by the District, if appropriate, as may be reasonably required by the Title Company, the Escrow Agent or otherwise in order to effectuate the provisions of this Agreement and the closing of the transaction contemplated herein.

7) **Closing.**

a) **Closing Statement.** Subject to final approval by Lessee and the District at the Closing, the Escrow Agent shall prepare the final settlement statements consistent with this Agreement.

b) **Disbursement of Net Sale Proceeds.** The Escrow Agent shall disburse the portion of the Purchase Price remaining after the payment of all fees, costs and other charges required of Lessee under this Agreement (the "**Net Sale Proceeds**") to Lessee.

c) **Possession.** Lessee shall deliver possession of the Project to the District at the Closing, and simultaneously, the District will lease the Project to Lessee pursuant to the terms of the Lease set forth below.

d) **Escrow/Title and Other Fees.** The Escrow Agent's escrow fee and all other fees and costs relating to the Closing shall be paid by Lessee.

8) **Brokerage Commission.** The parties understand, acknowledge and agree that no real estate broker is involved in this transaction and that no real estate brokerage commission shall be paid as a result of the sale of the Project. Lessee acknowledges that District Board Members Mark Irvin and Chris Sheafe are each licensed real estate brokers in Arizona. Each party shall defend, indemnify and hold the other harmless from and against any and all claims, costs, liabilities or damages for any real estate brokerage commissions or fees, including any attorneys' fees incurred in connection therewith, which may result from the conduct of the party from whom indemnification is sought.

LEASE OF PROPERTY

9) **Grant of Lease.** Effective upon the Closing, and from the Closing Date (hereinafter also referred to as "**Commencement Date**"), upon the terms and conditions hereinafter set forth, the District, for and in consideration of the covenants and agreements contained herein that are to be kept and performed by Lessee, shall grant, demise and let the Project (the "**Leased Project**") unto Lessee, and Lessee, for and in consideration of the covenants and agreements contained herein that are to be kept and performed by the District, hereby leases and takes the Leased Project from the District.

a) **Condition of Leased Project.** Lessee's acceptance of the Leased Project shall be deemed its acknowledgement and agreement that it has inspected the Leased Project and accepts possession of the Leased Project in its "AS IS" condition on the Commencement Date (as defined below), and except for those representations and warranties of the District contained in this Agreement, without representation or warranty of any kind, express or implied, including, without limitation, any warranty of income potential, future operating expenses or uses or fitness for a particular purpose. Except as otherwise expressly provided in this Agreement, Lessee has full responsibility for the repair, alteration, maintenance, and replacement of the Leased Project, and any portion thereof, and any Improvements (as defined below). The District has no obligation whatsoever for the repair, alteration, maintenance and replacement of the Leased Project, or any portion thereof, or the Improvements. Lessee expressly acknowledges and agrees that the District has not made and is not making, and Lessee is not relying upon, any warranties or representations regarding the Leased Project or any Improvements thereto, except to the extent the same are expressly set forth in this Agreement.

b) **Term.** The term of this Lease is twenty-five (25) years, commencing on the Closing Date (the "**Term**"). The term of the Lease will be divided into two phases: the "**Interim Lease Term**" and the "**Permanent Lease Term**".

i) **Interim Lease Term.** The Interim Lease Term will commence on the Closing Date and terminate on the date when all of the following conditions have been satisfied "**Statutory Satisfaction Date**"):

(1) In reliance on the Economic Analysis, the District has determined by simple majority vote at a duly called meeting and without the use of a consent calendar that the economic and fiscal benefits to the State of Arizona, Pima County, the City of Tucson and school district exceeds the benefits to be received by the Lessee and that the Permanent Lease Term may commence (the "District's Vote").

(2) A notice has been sent by the District to the Pima County Board of Supervisors ("**Board of Supervisors**"), the Mayor and Council of the City ("**Mayor and Council**") and the Board of Tucson Unified School District ("**TUSD Board**") and any other entity required by A.R.S. § 42-6206(B)(1)(a) (collectively, the "**Taxing Authorities**") at least sixty (60) days prior to the date of the District's Vote. Such notice shall contain the name and address of the Lessee, the location and proposed use of the Project and the term of the Lease.

(3) The Economic Analysis has been provided to the Taxing Authorities at least thirty (30) days prior to the date of the District's Vote.

ii) **Permanent Lease Term.** The Permanent Lease Term will commence on the Statutory Satisfaction Date and continue for remainder of the Term.

c) **Rent.** Rent for the Leased Project ("**Rent**") will be One Thousand Dollars (\$1,000.00) per year. Rent for the first year of the Permanent Lease Term will be paid on the Commencement Date, and Rent for each subsequent year of this Lease shall be paid on the anniversary date of the Commencement Date.

d) **Possession and Enjoyment.** Provided the Lessee is not in default hereunder, the District acknowledges and agrees that Lessee, by paying the Rent and performing the other terms and conditions of this Lease, may peaceably hold and enjoy the Leased Project for the private uses described above without any interruption by the District, or any person lawfully claiming by, through or under the District, during the Term except the District shall have the right to enter upon and inspect the Leased Project by providing Lessee with written notice of its intent to do so not less than 24 hours prior thereto.

e) **Lessee's Improvements to the Project.**

i) **Construction.** It is understood that Lessee will be solely responsible for the construction of the Condo Retail Phase and New Building Phase and any tenant improvements and other installations necessary or incidental to the operation or maintenance of the Project (collectively referred to as the "**Improvements**"). Any Improvements constructed and/or installed by Lessee shall be the property of Lessee immediately upon the commencement of their construction and/or installation. If Lessee fails to fulfill any obligations under this Agreement or fails to exercise its option to Purchase the Project as more fully described in Sections 10 through 12 of this Agreement, any and all Improvements will become the property of the District.

ii) **Cost of Improvements.** All costs, expenses and charges incurred in the construction of the Improvements will be Lessee's sole and exclusive obligation, and Lessee shall defend, hold the District harmless and indemnify it from all such costs, expenses, and charges, including attorneys' fees relating thereto.

iii) **Subordinate Encumbrances.** Lessee shall have the right to mortgage, encumber, or grant a lien on its leasehold interest under this Lease, all of which shall be subject to this Lease, and in any such event, provided the District has received written notice of such encumbrance, the lienholder thereof shall be entitled to the same notice of default and cure rights in favor of Lessee as set forth in this Lease. In such case, Lessee shall provide the District with written notice of any such encumbrance not later than 10 (ten) days prior to such encumbrance becoming effective.

iv) The District agrees that it will allow an accommodation deed of trust ("**Accommodation Deed of Trust**") to be recorded with respect to the Project securing an obligation of Lessee in any amount. The only obligation of the District under the Accommodation Deed of Trust shall be to grant the security interest in the Project described therein, and the District shall have no other obligations thereunder.

v) **Memorandum of Lease.** Upon the execution of this Lease, the parties shall also execute a "**Memorandum of Lease**" in the form attached as Exhibit F to be recorded in the Office of the County Recorder of Pima County, Arizona, setting forth such terms and provisions as required by the District in order to provide notice of this Lease in the public records.

f) **Payment of Additional Amounts.** It is the intention of the Parties that this Lease be a completely net lease. As such, except as specifically provided herein, Lessee is solely responsible for any and all capital, operating, maintenance, and replacement costs and any other costs and expenses that result from Lessee's development and use of the Project, including, but not

limited to, the construction of the Improvements. Lessee's payment of insurance, property, excise or other taxes, utilities and any other charges, costs or fees charged and prorated to Lessee under the terms of this Lease (collectively "**Lessee Obligations**") shall accrue and be payable by Lessee from and after the Commencement Date throughout the Term. The District shall forward to Lessee any invoices, bills, or other charges representing Lessee Obligations ("**Lessee Bill**"). Lessee shall pay a Lessee Bill on or before the date such payment becomes due or if no due date is provided, then within ten (10) days of receipt of any such Lessee Bill. Lessee's failure to timely pay a Lessee Bill shall constitute a breach of this Lease.

g) **Utilities.** Lessee shall promptly pay when due all sewer, water, gas, electricity, telephone, garbage, and any other utilities or services which may be incurred in connection with Lessee's use and operation of the Leased Project during the Term, including connection and disconnection charges, if any.

h) **Taxes.** In accordance with A.R.S. §42-6206(A) District notifies the Lessee and the Lessee acknowledges that it is obligated to pay excise taxes on the Project and failure to do so after notice and an opportunity to cure is an event of default that could result in divesting the Lessee of any interest in or right of occupancy of the Project ("**42-6206 Tax Liability**"). In addition to paying and discharging the 42-6206 Tax Liability in a timely fashion, Lessee shall also pay and discharge as and when the same become due and prior to delinquency all real and personal property, ad valorem and excise taxes, assessments, levies, and other charges, general and special, which are or may be during the Term levied, assessed, imposed or charged against the Project and any personal property owned by the District but used by Lessee in connection with its use of the Project and situated thereon. Lessee's obligation to pay such real and personal property and ad valorem taxes, assessments, levies, and other charges shall begin with respect to amounts first accruing from and after the Commencement Date.

i) **Repairs and Maintenance.** Lessee shall, at its sole cost and expense, keep and maintain, and replace where necessary, all Improvements on the Leased Project, including without limitation, buildings, sidewalks, fencing, paving, landscaping, wiring, heating, air conditioning, ventilating, plumbing, parking areas, ingress and egress, and other installations in good condition and repair in all material respects (normal wear and tear excepted), except if caused by the District. Lessee agrees to maintain, and replace where necessary, all underground and unexposed service facilities of the Leased Project.

j) **Assignment.**

i) **No Assignment.** Lessee covenants and agrees that it will not assign this Agreement, or any of its rights or obligations arising hereunder, without first obtaining the written consent of the District, which consent will not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, however, Lessee may assign, transfer or sublet its leasehold interest without first obtaining the District's written consent to an entity directly or indirectly controlled by, controlling, or under common control with Lessee. For the purposes of this section, (i) "control" (including with correlative meaning, the terms "controlling," "controlled by" and "under common control"), means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise, and (ii) "person" means and includes natural

persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

ii) **Assignment or Transfer by the District.** Any assignment or transfer by the District of its interest in the Leased Project will be subject to all of the provisions of this Agreement, including Lessee's option to purchase the Leased Project.

iii) **Subleases.** Lessee shall be permitted to sublease any and all portions of the Project to such subtenants as it chooses, subject to Lessee's compliance with "Sinking Fund" requirements of Section 10 below.

k) **Liability Insurance.** Lessee shall, at its sole cost and expense, obtain and maintain in full force and effect, for the Leased Project, commercial general liability insurance, including third party pollution liability insurance naming the District as an additional insured, in the amount of two million (\$2,000,000) dollars combined single limit, against claims for bodily injury, death or property damage arising out of the use and occupancy of the Leased Project. The liability insurance obtained under this subsection shall be primary and noncontributing and shall contain cross-liability endorsements. A certificate of such insurance shall be furnished to the District at the Commencement Date, and each renewal certificate of such policy shall be furnished to the District at least ten (10) days prior to the expiration of the policy it renews. Each such policy of insurance shall contain an agreement by the insurer, if obtainable, that such policy shall not be canceled without ten (10) days' prior written notice to the District. Such insurance may be in the form of a general coverage, floater policy or so-called blanket policy issued by carriers of recognized responsibility. If and when the Lessee receives notice of cancellation or impending cancellation of any such policy, Lessee shall immediately provide such notice and accompanying information to the District.

l) **General Insurance Requirements.** The liability insurance policy carried pursuant to Section 9(k) of this Agreement must name the District as an additional insured, as the District's interests may appear. Lessee may maintain for its own account any liability insurance, whether or not required by this Agreement, with greater coverage in scope and amounts, and the Lessee shall not be required to name the District as an additional insured on such greater coverage. A certificate or true copy thereof evidencing said liability insurance must be delivered to the District by Lessee not later than ten (10) days prior to the effective date thereof, including all renewals of the insurance policy or policies. The District must also be provided with written notice not later than thirty (30) days prior to the proposed cancellation of any such policy, and Lessee shall notify each insurer providing coverage of the District's name and address for such purpose.

m) **Permits, Laws and Ordinances.** Lessee shall, at its sole cost and expense, comply, and cause its contractors and subcontractors to comply in all material respects with all laws of all applicable governmental authorities which may now or hereafter, from time to time, be established and which are or shall be applicable to Lessee or the District as they relate to the Leased Project and shall take, as otherwise provided herein, all action necessary to cause the Leased Project to comply in all material respects with all provisions of the Contract Documents and this Agreement.

n) **Declarant Rights.** The District agrees to exercise or to authorize Lessee to exercise the Declarant Rights in such reasonable manner as Lessee may be direct in writing and at Lessee's sole cost and expense. Lessee hereby agrees to indemnify, defend and hold harmless the District from and against any and all claims, damages, expenses, lawsuits, losses and liabilities arising from or in connection with the exercise of the Declarant Rights by Lessee.

ECONOMIC INCENTIVE

10) **Sinking Fund.** Within 30 days of the Closing Date and continuing until the receipt by Lessee of amounts equal to the Rebate Cap (as defined below), the District shall establish and maintain a "**Sinking Fund**" into which shall be deposited the Applicable Percentage (as defined below) of the net new TPT Funds ("**Rebates**") (which Rebates include construction sales taxes) actually received by the District from the ADOR as a direct result of payments actually made by all owners, contractors, subcontractors, tenants, sub-tenants or other occupants of the Project (each a "**Tenant**") required to pay transaction privilege taxes to ADOR. For the purposes of this Section, the "**Applicable Percentage**" shall mean (i) from the Closing Date until the Sunset Date 100% of the Rebates and (ii) if the Arizona legislature extends the District's right to receive TIF funds beyond the Sunset Date ("**Extended Sunset Date**"), 50% of such Rebates during the Extended Sunset Date. The Sinking Fund shall be the sole source of funds for the payment of the Rebates.

a) To allow the District to track these amounts and provide with the Lessee with the benefit of the Rebates, Lessee shall require each and all Tenants to execute a form of lease or other use agreement with respect to that portion of the Project being utilized by the Tenant (a "**Tenant Lease**") which Tenant Lease shall require each Tenant to provide Lessee and the District with Tenant's eight digit "**TPT License Number**" and the business name associated with that TPT License Number.

b) Except as otherwise provided herein, the Rebates shall be held in a separate FDIC insured account established by the District solely for the purpose described in this Section 10 and shall not be commingled with any other District funds. The Rebates shall belong to the District and Lessee shall have no interest therein, except it shall have a contractual right to receive such amounts pursuant to this Section 10.

c) The Lessee shall not be entitled to receive any of the Rebates from the Condo Retail Phase ("**Condo Rebates**") unless and until (i) the issuance of an initial permanent certificate of occupancy ("**CofO**") for the Condo Retail Phase, (ii) any and all construction loans associated with the Condo Retail Phase have been paid in full or replaced with a permanent loan as permitted under Section 9(e)(iv), (iii) any and all construction or related liens on the Condo Retail Phase have been released and (iv) the Permanent Lease Term has commenced ("**Condo Completion Conditions**"). Lessee shall provide to District written notice and evidence of the Condo Completion Conditions ("**Condo Completion Notice**"). Within 30 days of receipt of the Condo Completion Notice the District shall evaluate such notice and if it concurs that the Condo Completion Conditions have been satisfied disburse the Condo Rebates to the Lessee.

d) The Lessee shall not be entitled to receive any of the Rebates from the New Building Phase ("**New Building Rebates**") unless and until (i) the issuance of an initial permanent CofO for the New Building Phase, (ii) any and all construction loans associated with the New

Building Phase have been paid in full or replaced with a permanent loan as permitted under Section 9(e)(iv), (iii) any and all construction or related liens on the New Building Phase have been released and (iv) the Permanent Lease Term has commenced (“**New Building Completion Conditions**”). Lessee shall provide to District written notice and evidence of the New Building Completion Conditions (“**Project Completion Notice**”)

e) Commencing on the first business day of the fourth full month after delivery of the Project Completion Notice and continuing quarterly thereafter until the earlier of (i) receipt by Lessee of amounts equal to the Rebate Cap (defined below), (ii) the Sunset Date or (iii) termination of the District’s right to receive TIF Funds from the ADOR, the District shall provide Lessee with a summary of the Rebates received by the District from ADOR during the preceding three months (“**Quarterly Summary**”).

f) Provided that the Lessee is not then in breach of any covenant herein, with each Quarterly Summary the District shall pay to Lessee from the Sinking Fund an amount equal to all Rebates (less any amounts previously paid) arising from the Project during the calendar period reflected in the Quarterly Summary (“**Quarterly Payments**”). Until the Rebate Termination Date (defined below), the District shall make the Quarterly Payments to Lessee until the District has disbursed to Lessee the lesser of (i) the Construction Costs actually expended by the Lessee to complete the Project or (ii) \$4,500,000.00 (the “**Rebate Cap**”). Lessee will provide to the District not less than quarterly a summary of the actual Construction Costs expended on the Project for the District’s reasonable review and approval. Following completion of the Project, the District and Lessee shall set forth in writing the total amount of the Rebate Cap.

g) Notwithstanding anything to the contrary herein, Lessee’s right to receive payments of Rebates shall continue until the earlier of (i) payment of the full Rebate Cap; (ii) the date the District ceases receiving TPT funds from ADOR; or (iii) the date the ownership of the Premises is conveyed to a private party in contravention of A.R.S. §48-4204(B) (the “**Rebate Termination Date**”).

h) Upon Rebate Termination Date, the Sinking Fund shall terminate and any remaining balance shall be paid to the District’s general operating fund.

OPTION TO PURCHASE

11) **Option to Purchase.** The District hereby grants Lessee the exclusive option and right, exercisable in Lessee’s sole discretion, to Purchase the Project (the “**Purchase Option**”), at any time during the Term by giving written notice thereof to the District (the “**Option Exercise Notice**”). The purchase of the Project shall not release Lessee from any liability to the District arising under the Lease prior to the Closing of the sale of the Project to Lessee nor any obligations of Lessee which survive the Closing or the termination of this Agreement, including, but not limited to, Lessee’s obligations of indemnification.

12) **Exercise of Option.** Provided that Lessee is not in default under this Agreement, the Purchase Option may be exercised by Lessee giving the District the Option Exercise Notice at any time after the Effective Date and prior to 5:00 p.m., Tucson, Arizona local time before the

expiration of the Term. The date upon which such Option Exercise Notice is delivered to the District shall be deemed the “**Option Exercise Date.**”

13) **Option Purchase Price.** The Option purchase price for the Project (the “**Option Purchase Price**”) shall be One Thousand (\$1,000.00) Dollars.

14) **Option Purchase Agreement.** On or before the Closing Date each Party shall execute and deliver to the other Party and the Escrow Agent, an Option Purchase Agreement and Escrow Instructions substantially in the form attached hereto as Exhibit G (the “**Option Purchase Agreement**”). The closing of Lessee’s Purchase Option (the “**Option Closing Date**”) shall occur not later than 60 days after the Option Exercise Notice and Sections 3, 4, 5, 6, 7 and 8 of this Agreement shall apply to Lessee’s purchase of the Project and shall be modified as may be necessary for such purpose. The Option Purchase Agreement shall obligate the District to convey the Project to Lessee subject only to the Closing Title Exceptions.

15) **Obligation to Purchase.** If Lessee fails to exercise the Purchase Option during the Term, the Lessee shall purchase the Project from the District no later than 12 months after the end of the Term pursuant to the terms of the Option Purchase Agreement.

16) **Personal Guaranties.** Marcel Dabdoub and Maria Elena Dabdoub, husband and wife (“Dabdoubs”) and (ii) Ron Schwabe and Patricia Schwabe, husband and wife (“Schwabes”) shall personally guaranty all of the Lessee’s obligations hereunder as more specifically set forth in attached Exhibits H & I.

17) **General Provisions.**

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

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

c) **Time.** Time is strictly of the essence of each and every provision of this Agreement.

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

e) **Binding Effect.** This Agreement and all instruments or documents entered into pursuant hereto are binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

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

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

h) **Headings.** The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement.

i) **Entire Agreement.** This Agreement, together with all exhibits referred to herein, which are incorporated herein and made a part hereof by this reference, constitutes the entire agreement between the parties pertaining to the subject matter contained in this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by the Parties.

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

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

i) *If to the District:* Rio Nuevo Multipurpose Facilities District, 400 West Congress, Suite 152, Tucson, Arizona 85701, with a copy to Mark Collins, Esq., Gust Rosenfeld P.L.C., One South Church Avenue, Suite 1900, Tucson, Arizona 85701.

ii) *If to Lessee:* 44 E. Broadway, LLC, 44 E. Broadway, #300, Tucson, Arizona 85701, with a copy to Lawrence M. Hecker, Esq., Hecker PLLC, 405 W. Franklin Street, Tucson, Arizona 85701.

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

m) **Israel Boycott Certification.** Contractor certifies that it is not currently engaged in, and agrees for the duration of this Contract that it will not engage in, a boycott of Israel, as that term is defined in A.R.S. § 35-393.


[SIGNATURES ON FOLLOWING PAGE]

44 E BROADWAY, LLC

By: 
Marcel Dabdeub, Co-Manager

By: 
Ron Schwabe, Co-Manager

RIO NUEVO MULTIPURPOSE FACILITIES
DISTRICT

By: 
Fletcher McCusker, Chairman

By: 
Mark Irvin, Secretary

Exhibit A

Legal Description for Condominiums

EXHIBIT A

LEGAL DESCRIPTION FOR CONDOMINIUMS

PARCEL 1:

Units 101, 201 and 301 thru 304 of 44 EAST BROADWAY CONDOMINIUMS, a condominium project as created by that certain Declaration of Covenants, Conditions and Restrictions recorded in Sequence No. 20111930050 as Amended in Sequence No. 20163650 796 and 20163650797, and as set forth on that certain plat of record in the office of the Pima County Recorder at Sequence No. 20111930049.

PARCEL 3: (Parking Area - Under The Building)

COMMENCING at the Southwest corner of Common Element A of said 44 EAST BROADWAY CONDOMINIUMS, said point lies on the North right of way line of Jackson Street recorded in Docket 8348, page 1059;

THENCE North 79 degrees 35 minutes 02 seconds East, along the South line of said Common Element A and the North line of said right of way line a distance of 63.93;

THENCE North 60 degrees 57 minutes 45 seconds East, a distance of 0.25 feet to the TRUE POINT OF BEGINNING;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 22.00 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 5.33 feet;

THENCE South 83 degrees 25 minutes 58 seconds West, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 16.33 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 5.33 feet;

THENCE South 83 degrees 25 minutes 58 seconds West, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 26.32 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 5.33 feet;

THENCE South 83 degrees 25 minutes 58 seconds West, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 16.33 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 3.42 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 17.33 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 0.83 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 28.73 feet;

THENCE South 06 degrees 34 minutes 02 seconds East, a distance of 2.41 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 14.31 feet;

THENCE South 06 degrees 31 minutes 38 seconds East, a distance of 102.74 feet to a point on said North right of way line;

THENCE South 79 degrees 35 minutes 02 seconds West, along said North line, a distance of 63.03 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 5.51 feet;

THENCE North 83 degrees 25 minutes 58 second East, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 2.67 feet;

THENCE South 83 degrees 25 minutes 58 seconds West, a distance of 2.00 feet to the TRUE POINT OF BEGINNING;

Subject to an easement in favor of the condominium owners association granting the owners of Units 401 through 404 a parking space and access to those parking spaces.

Exhibit B

Legal Description of West Lot

EXHIBIT B
LEGAL DESCRIPTION OF WEST LOT

PARCEL 4: (Adjacent Property)

COMMENCING at the Southwest corner of Common Element A of said 44 EAST BROADWAY CONDOMINIUMS, said point lies on the North right of way line of Jackson Street recorded in Docket 8348, page 1059.

THENCE North 79 degrees 35 minutes 02 seconds East, along the South line of said Common Element A and the North line of said right of way line a distance of 63.93 feet;

THENCE North 60 degrees 57 minutes 45 seconds East, a distance of 0.25 feet to the TRUE POINT OF BEGINNING;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 102.58 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 3.53 feet;

THENCE South 88 degrees 16 minutes 26 seconds West, a distance of 9.73 feet;

THENCE North 01 degrees 43 minutes 34 seconds West, a distance of 26.16 feet to a point on the North line of said Common Element and a point on the South right of way line of Broadway Boulevard as recorded in Docket 8348, page 1059;

THENCE South 84 degrees 30 minutes 00 seconds West, along said North and South lines, a distance of 59.03 feet to the Northwest corner of said Common Element;

THENCE South 06 degrees 46 minutes 59 seconds East, along the West line of said Common Element, a distance of 138.44 feet to the TRUE POINT OF BEGINNING.

EXCEPT all that portion described as follows: :

COMMENCING at the Southwest corner of Common Element A of said 44 EAST BROADWAY CONDOMINIUMS, said point lies on the North right of way line of Jackson Street recorded in Docket 8348, page 1059.

THENCE North 79 degrees 35 minutes 02 seconds East, along the South line of said Common Element A, and the North line of said right of way line a distance of 47.92 feet to the TRUE POINT OF BEGINNING;

THENCE continue North 79 degrees 35 minutes 02 seconds East, along said North and South lines, a distance of 16.04 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 12.00 feet;

THENCE South 82 degrees 06 minutes 02 seconds West, a distance of 16.00 feet;

THENCE South 06 degrees 34 minutes 02 seconds East, a distance of 12.71 feet to the TRUE POINT OF BEGINNING.

Exhibit C

Legal Description of South Lot

EXHIBIT C

LEGAL DESCRIPTION OF SOUTH LOT

PARCEL 1: (Jackson Street Parking)

All of Lots 2 and 3 in Block 217 of the CITY OF TUCSON, Pima County, Arizona, according to the official survey, field notes, and map as made and executed by S.W. Forman 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 which is on record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats at Page 70 thereof, described as follows:

BEGINNING at a point in the North line of said Block 217 distant South 79 degrees 54 minutes 43 seconds West, 110.39 feet from the Northeast corner of said Block 217;

THENCE South 7 degrees 32 minutes 45 seconds East, 136.23 feet (South 07 degrees 10 minutes 29 seconds East 136.45 feet measured) to a point on the South boundary of Block 217, situated South 81 degrees 57 minutes 0 seconds West, 97.374 feet from the Southeast corner of said Block 217;

THENCE South 81 degrees 57 minutes 0 seconds West, 111.966 feet (South 82 degrees 12 minutes 56 seconds West, 112.00 feet measured) along the South boundary of said Block 217 to a point situated North 81 degrees 57 minutes 0 seconds East, 108.85 feet from the Southwest corner of said Block 217;

THENCE North 8 degrees 58 minutes 26 seconds West, 132.14 feet (North 8 degrees 38 minutes 21 seconds West, 132.24 feet measured) to a point on the North boundary of said Block 217, North 79 degrees 54 minutes 43 seconds East, 108.85 feet from the Northwest corner of said Block;

THENCE North 79 degrees 54 minutes 43 seconds East, 115.37 feet (North 80 degrees 07 minutes 20 seconds East, 115.50 feet measured) along the North boundary of said Block 217 to the TRUE POINT OF BEGINNING.

(jv arbs: Lot 2 - Arbs 21, 22, 23, 24 & 25
Lot 3 - Arb 33)

Exhibit D

Assignment of Declarant's Rights

When recorded, return to:
Mark Collins, Esq.
Gust Rosenfeld P.L.C.
One South Church Ave. 1900
Tucson, AZ 85701

ASSIGNMENT OF DECLARANT'S RIGHTS
(Affecting Instruments Recorded at Instrument Sequence No. 20111930050 and
Instrument Sequence No. 20163650796)

In consideration of payment of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, 44. E. Broadway, LLC, an Arizona limited liability company ("**Assignor**") hereby assigns, transfers and sets over to RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT, a special taxing District of the State of Arizona ("**Assignee**"), all of Assignor's right, title and interest, if any, as Declarant under and pursuant to that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions 44 East Broadway Condominiums, as amended ("**Declaration**"), dated June 15, 2011, and recorded in the Recorder's Office, Pima County, Arizona ("**Recorder's Office**"), on July 12, 2011, at Instrument Sequence No. 20111930050 as amended by First Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions of 44 East Broadway Condominiums dated December 15, 2016 and recorded in the Recorder's Office at Instrument Sequence No. 20163650796. In further consideration of this instrument, Assignor agrees to indemnify, defend and hold harmless Assignee from and against any and all claims, damages, expenses, lawsuits, losses and liabilities arising from or in connection with the actions or omissions of Assignor in regard to the Declaration or the Property (as defined in the Declaration) or in the exercise by Assignee of the Declarant's rights after the date hereof.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY.

IN WITNESS WHEREOF, Assignor and Assignee have executed this document effective as of April _____, 2018.

ASSIGNOR:

44 E. Broadway, LLC, an Arizona limited liability company

By _____

Its _____

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The forgoing instrument was acknowledged before me this _____ day of April, 2018, by _____, as Co-Manager of 44 E. Broadway, LLC, an Arizona limited liability company.

.

Notary Public

My Commission Expires:

ASSIGNEE:

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT

By _____

Fletcher McCusker

Its: Chairman

Attest:

By _____

Mark Irvin

Its: Secretary

STATE OF ARIZONA)

) ss.

COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this ____ day of April, 2018, by Fletcher McCusker, as Chairman of RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT, a special taxing District of the State of Arizona, on behalf of the District

My Commission Expires:

Notary Public

Exhibit E

Warranty Deed (from Lessee to District)

Exempt from Affidavit pursuant to A.R.S. §11-1134 (A)(3).

1

EXHIBIT "A"

LEGAL DESCRIPTION

File No.: 158102

PARCEL 1: (Jackson Street Parking)

All of Lots 2 and 3 in Block 217 of the CITY OF TUCSON, Pima County, Arizona, according to the official survey, field notes, and map as made and executed by S.W. Forman 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 which is on record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats at Page 70 thereof, described as follows:

BEGINNING at a point in the North line of said Block 217 distant South 79 degrees 54 minutes 43 seconds West, 110.39 feet from the Northeast corner of said Block 217;

THENCE South 7 degrees 32 minutes 45 seconds East, 136.23 feet (South 07 degrees 10 minutes 29 seconds East 136.45 feet measured) to a point on the South boundary of Block 217, situated South 81 degrees 57 minutes 0 seconds West, 97.374 feet from the Southeast corner of said Block 217;

THENCE South 81 degrees 57 minutes 0 seconds West, 111.966 feet (South 82 degrees 12 minutes 56 seconds West, 112.00 feet measured) along the South boundary of said Block 217 to a point situated North 81 degrees 57 minutes 0 seconds East, 108.85 feet from the Southwest corner of said Block 217;

THENCE North 8 degrees 58 minutes 26 seconds West, 132.14 feet (North 8 degrees 38 minutes 21 seconds West, 132.24 feet measured) to a point on the North boundary of said Block 217, North 79 degrees 54 minutes 43 seconds East, 108.85 feet from the Northwest corner of said Block;

THENCE North 79 degrees 54 minutes 43 seconds East, 115.37 feet (North 80 degrees 07 minutes 20 seconds East, 115.50 feet measured) along the North boundary of said Block 217 to the TRUE POINT OF BEGINNING.

(jv arbs: Lot 2 - Arbs 21, 22, 23, 24 & 25
Lot 3 - Arb 33)

PARCEL 2:

Units 101, 201 and 301 thru 304 of 44 EAST BROADWAY CONDOMINIUMS, a condominium project as created by that certain Declaration of Covenants, Conditions and Restrictions recorded in Sequence No. 20111930050 as Amended in Sequence No. 20163650 796 and 20163650797, and as set forth on that certain plat of record in the office of the Pima County Recorder at Sequence No. 20111930049.

PARCEL 3: (Parking Area - Under The Building)

COMMENCING at the Southwest corner of Common Element A of said 44 EAST BROADWAY CONDOMINIUMS, said point lies on the North right of way line of Jackson Street recorded in Docket 8348, page 1059;

THENCE North 79 degrees 35 minutes 02 seconds East, along the South line of said Common Element A and the North line of said right of way line a distance of 63.93;

THENCE North 60 degrees 57 minutes 45 seconds East, a distance of 0.25 feet to the TRUE POINT OF BEGINNING;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 22.00 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 5.33 feet;

THENCE South 83 degrees 25 minutes 58 seconds West, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 16.33 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 5.33 feet;

THENCE South 83 degrees 25 minutes 58 seconds West, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 26.32 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 5.33 feet;

THENCE South 83 degrees 25 minutes 58 seconds West, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 16.33 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 3.42 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 17.33 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 0.83 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 28.73 feet;

THENCE South 06 degrees 34 minutes 02 seconds East, a distance of 2.41 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 14.31 feet;

THENCE South 06 degrees 31 minutes 38 seconds East, a distance of 102.74 feet to a point on said North right of way line;

THENCE South 79 degrees 35 minutes 02 seconds West, along said North line, a distance of 63.03 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 5.51 feet;

THENCE North 83 degrees 25 minutes 58 second East, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 2.67 feet;

THENCE South 83 degrees 25 minutes 58 seconds West, a distance of 2.00 feet to the TRUE POINT OF BEGINNING.

PARCEL 4: (Adjacent Property)

COMMENCING at the Southwest corner of Common Element A of said 44 EAST BROADWAY CONDOMINIUMS, said point lies on the North right of way line of Jackson Street recorded in Docket 8348, page 1059.

THENCE North 79 degrees 35 minutes 02 seconds East, along the South line of said Common Element A and the North line of said right of way line a distance of 63.93 feet;

THENCE North 60 degrees 57 minutes 45 seconds East, a distance of 0.25 feet to the TRUE POINT OF BEGINNING;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 102.58 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 3.53 feet;

THENCE South 88 degrees 16 minutes 26 seconds West, a distance of 9.73 feet;

THENCE North 01 degrees 43 minutes 34 seconds West, a distance of 26.16 feet to a point on the North line of said Common Element and a point on the South right of way line of Broadway Boulevard as recorded in Docket 8348, page 1059;

THENCE South 84 degrees 30 minutes 00 seconds West, along said North and South lines, a distance of 59.03 feet to the Northwest corner of said Common Element;

THENCE South 06 degrees 46 minutes 59 seconds East, along the West line of said Common Element, a distance of 138.44 feet to the TRUE POINT OF BEGINNING.

EXCEPT all that portion described as follows: :

COMMENCING at the Southwest corner of Common Element A of said 44 EAST BROADWAY CONDOMINIUMS, said point lies on the North right of way line of Jackson Street recorded in Docket 8348, page 1059.

THENCE North 79 degrees 35 minutes 02 seconds East, along the South line of said Common Element A, and the North line of said right of way line a distance of 47.92 feet to the TRUE POINT OF BEGINNING;

THENCE continue North 79 degrees 35 minutes 02 seconds East, along said North and South lines, a distance of 16.04 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 12.00 feet;

THENCE South 82 degrees 06 minutes 02 seconds West, a distance of 16.00 feet;

THENCE South 06 degrees 34 minutes 02 seconds East, a distance of 12.71 feet to the TRUE POINT OF BEGINNING.

PARCEL 5:

Access and Parking Easement Agreement as recorded December 30, 2016, in Sequence No. 20163650798, in the office of the Pima County Recorder .

EXHIBIT B

PERMITTED EXCEPTIONS

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I - Requirements are met.
2. Taxes and assessments collectible by the County Treasurer, not yet due and payable for the full year 2018.
3. Any action by the County Assessor and/or Treasurer, altering the current or prior tax assessment, subsequent to the date of the Policy of Title Insurance.
4. Water rights, claims or title to water, and agreements, covenants, conditions or rights incident thereto, whether or not shown by the public records.
5. Reservations or exceptions in Patents or in Acts authorizing the issuance thereof.
6. Easements, restrictions, reservations and conditions as set forth on the recorded plat of said subdivision recorded in Book 62 of Maps and Plats at Page 49, and in Sequence No. 20111930049.
7. Matters as disclosed by boundary sketch recorded in Book 28 of Record of Survey, page 67.
8. Easement for telephone and telegraph lines and rights incident thereto, as set forth in instrument recorded in Book 60 of Miscellaneous Records, page 161, Book 60 of Miscellaneous Records, page 162, and in Book 60 of Miscellaneous Records, page 165.
9. License for use with the City of Tucson as set forth in Docket 5679, page 10.
10. Easement for electric lines and rights incident thereto, as set forth in instrument recorded in Docket 12744, page 1195.
11. Restrictions, Conditions, Covenants, Reservations, including but not limited to any recitals creating easements, liabilities, obligations or party walls, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin contained in amended and restated instrument recorded in Sequence No. 20111930050; First Amendment recorded in Sequence No. 20163650796; and Certificate of Withdrawal recorded in Sequence No. 20163650797; and Declarant's right, title & interest vested in 44 E. Broadway, LLC, an Arizona limited liability company as set forth in instruments recorded in Sequence No. 20170520097 and in Sequence No. 20172360616.
12. Terms, conditions and provisions of the Access and Parking Easement Agreement as recorded December 30, 2016, in Sequence No. 20163650798.
13. Terms, conditions and provisions of the unrecorded lease agreement executed by and between Rio Nuevo Holdings, LLC, an Arizona limited liability company as Lessor, and 44 E Broadway LLC, an Arizona limited liability company as Lessee, dated ----, and evidenced of record by the Memorandum Of Lease dated ----, recorded ----, in Sequence No. ----.
14. Rights of parties in possession.
NOTE: This exception may be made more specific upon our examination of documents which entitle the occupants in possession.

Exhibit F

Memorandum of Lease

WHEN RECORDED, RETURN TO:

Gust Rosenfeld, PLC
One South Church Avenue, # 1900
Tucson, Arizona 85701
Attn: Mark Collins

MEMORANDUM OF PURCHASE/LEASE OPTION AGREEMENT

THIS MEMORANDUM OF PURCHASE/LEASE/OPTION AGREEMENT ("Memorandum") is made and entered into as of the __th day of April, 2018, by and between the RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT, a special taxing district of the State of Arizona ("Landlord"), and 44 E. Broadway, LLC, an Arizona limited liability company ("Tenant").

1. The Landlord and Tenant have entered into that certain PURCHASE/LEASE/OPTION AGREEMENT, dated as of April __, 2018 ("Lease"), whereby the Landlord leases to Tenant that real property and improvements more particularly described in **Exhibit "A"** attached hereto and by this reference incorporated herein ("Property"). Capitalized terms used in this Memorandum shall have the meanings ascribed to them parenthetically or in the Lease.

2. This Memorandum is being recorded to give constructive notice to all persons dealing with the Property that the Landlord leases to Tenant the Property, and that the Landlord and Tenant consider the Lease to be a binding agreement between the Landlord and Tenant regarding the Property. In accordance with A.R.S. §42-6202.C, (i) Landlord and Tenant are parties to the Lease; (ii) the leased property is legally described on the attached **Exhibit "A"**; (iii) the lease term commenced on April __, 2018, the initial term of the Lease is twenty-five (25) years commencing on April __, 2018 and expiring on April __, 2043 unless terminated or canceled earlier in accordance with the terms of the Lease.

3. The Lease contains an option whereby Tenant may purchase the Property from the Landlord under the terms and conditions set forth therein and which may be exercised at any time during the term of the Lease.

4. This Memorandum is not a complete summary of the Lease. The provisions of this Memorandum shall not be used in interpreting the Lease. In the event of any conflict between the terms and provisions of this Memorandum and the Lease, the terms and provisions

of the Lease shall govern and control.

5. Further information concerning the Lease and the Parties' rights and obligations thereunder may be obtained from counsel for the parties at the following addresses:

Mark L. Collins, Esq.
GUST ROSENFELD P.L.C.
One South Church Avenue
Suite 1900
Tucson, Arizona 85701-1627
(520) 388-4780
(520) 624-3849(facsimile)

Lawrence M. Hecker, Esq.
HECKER PLLC
405 West Franklin Street
Tucson, Arizona 85701-8209
(520) 798-3803
(520) 620-0405 (facsimile)

6. This Memorandum may be executed in multiple counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Memorandum has been executed as of the day and year first set forth above.

[Signature and acknowledgment page follows]

LANDLORD:

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

By: _____
Fletcher McCusker, Chairman

ATTEST:

By: _____
Mark Irvin, Secretary

STATE of ARIZONA)
) ss.
County of PIMA)

The foregoing instrument was acknowledged before me this ____ day of April, 2018 by Fletcher McCusker, Chairman of Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona.

Notary Public

My Commission Expires:

STATE of ARIZONA)
) ss.
County of PIMA)

The foregoing instrument was acknowledged before me this ____ day of April, 2018 by Mark Irvin, Secretary of Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona.

Notary Public

My Commission Expires:

44 E. Broadway LLC, an Arizona limited liability company

By: _____
Marcel Dabdoub, Manager

By: _____
Ron Schwabe, Manager

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument, Memorandum of Lease, dated as of April __, 2018 and consisting of six pages, including this page and the attached Exhibits, was acknowledged before me this ____ day of April, 2018, by Marcel Dabdoub, a Manager of 44 E. Broadway, LLC, an Arizona limited liability company, on behalf of the company, being authorized so to do for the purposes therein contained.

(Seal and Expiration Date)

Notary Public

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument, Memorandum of Lease, dated as of April __, 2018 and consisting of six pages, including this page and the attached Exhibits, was acknowledged before me this ____ day of April, 2018, by Ron Schwabe, a Manager of 44 E. Broadway, LLC, an Arizona limited liability company, on behalf of the company, being authorized so to do for the purposes therein contained.

(Seal and Expiration Date)

Notary Public

Exhibit "A" to Memorandum

Legal Description

EXHIBIT "A"

LEGAL DESCRIPTION

File No.: 158102

PARCEL 1: (Jackson Street Parking)

All of Lots 2 and 3 in Block 217 of the CITY OF TUCSON, Pima County, Arizona, according to the official survey, field notes, and map as made and executed by S.W. Forman 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 which is on record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats at Page 70 thereof, described as follows:

BEGINNING at a point in the North line of said Block 217 distant South 79 degrees 54 minutes 43 seconds West, 110.39 feet from the Northeast corner of said Block 217;

THENCE South 7 degrees 32 minutes 45 seconds East, 136.23 feet (South 07 degrees 10 minutes 29 seconds East 136.45 feet measured) to a point on the South boundary of Block 217, situated South 81 degrees 57 minutes 0 seconds West, 97.374 feet from the Southeast corner of said Block 217;

THENCE South 81 degrees 57 minutes 0 seconds West, 111.966 feet (South 82 degrees 12 minutes 56 seconds West, 112.00 feet measured) along the South boundary of said Block 217 to a point situated North 81 degrees 57 minutes 0 seconds East, 108.85 feet from the Southwest corner of said Block 217;

THENCE North 8 degrees 58 minutes 26 seconds West, 132.14 feet (North 8 degrees 38 minutes 21 seconds West, 132.24 feet measured) to a point on the North boundary of said Block 217, North 79 degrees 54 minutes 43 seconds East, 108.85 feet from the Northwest corner of said Block;

THENCE North 79 degrees 54 minutes 43 seconds East, 115.37 feet (North 80 degrees 07 minutes 20 seconds East, 115.50 feet measured) along the North boundary of said Block 217 to the TRUE POINT OF BEGINNING.

(jv arbs: Lot 2 - Arbs 21, 22, 23, 24 & 25
Lot 3 - Arb 33)

PARCEL 2:

Units 101, 201 and 301 thru 304 of 44 EAST BROADWAY CONDOMINIUMS, a condominium project as created by that certain Declaration of Covenants, Conditions and Restrictions recorded in Sequence No. 20111930050 as Amended in Sequence No. 20163650 796 and 20163650797, and as set forth on that certain plat of record in the office of the Pima County Recorder at Sequence No. 20111930049.

PARCEL 3: (Parking Area - Under The Building)

COMMENCING at the Southwest corner of Common Element A of said 44 EAST BROADWAY CONDOMINIUMS, said point lies on the North right of way line of Jackson Street recorded in Docket 8348, page 1059;

THENCE North 79 degrees 35 minutes 02 seconds East, along the South line of said Common Element A and the North line of said right of way line a distance of 63.93;

THENCE North 60 degrees 57 minutes 45 seconds East, a distance of 0.25 feet to the TRUE POINT OF BEGINNING;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 22.00 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 5.33 feet;

THENCE South 83 degrees 25 minutes 58 seconds West, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 16.33 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 5.33 feet;

THENCE South 83 degrees 25 minutes 58 seconds West, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 26.32 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 5.33 feet;

THENCE South 83 degrees 25 minutes 58 seconds West, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 16.33 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 3.42 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 17.33 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 0.83 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 28.73 feet;

THENCE South 06 degrees 34 minutes 02 seconds East, a distance of 2.41 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 14.31 feet;

THENCE South 06 degrees 31 minutes 38 seconds East, a distance of 102.74 feet to a point on said North right of way line;

THENCE South 79 degrees 35 minutes 02 seconds West, along said North line, a distance of 63.03 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 5.51 feet;

THENCE North 83 degrees 25 minutes 58 second East, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 2.67 feet;

THENCE South 83 degrees 25 minutes 58 seconds West, a distance of 2.00 feet to the TRUE POINT OF BEGINNING.

PARCEL 4: (Adjacent Property)

COMMENCING at the Southwest corner of Common Element A of said 44 EAST BROADWAY CONDOMINIUMS, said point lies on the North right of way line of Jackson Street recorded in Docket 8348, page 1059.

THENCE North 79 degrees 35 minutes 02 seconds East, along the South line of said Common Element A and the North line of said right of way line a distance of 63.93 feet;

THENCE North 60 degrees 57 minutes 45 seconds East, a distance of 0.25 feet to the TRUE POINT OF BEGINNING;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 102.58 feet;

THENCE North 83 degrees 25 minutes 58 seconds East, a distance of 2.00 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 3.53 feet;

THENCE South 88 degrees 16 minutes 26 seconds West, a distance of 9.73 feet;

THENCE North 01 degrees 43 minutes 34 seconds West, a distance of 26.16 feet to a point on the North line of said Common Element and a point on the South right of way line of Broadway Boulevard as recorded in Docket 8348, page 1059;

THENCE South 84 degrees 30 minutes 00 seconds West, along said North and South lines, a distance of 59.03 feet to the Northwest corner of said Common Element;

THENCE South 06 degrees 46 minutes 59 seconds East, along the West line of said Common Element, a distance of 138.44 feet to the TRUE POINT OF BEGINNING.

EXCEPT all that portion described as follows: :

COMMENCING at the Southwest corner of Common Element A of said 44 EAST BROADWAY CONDOMINIUMS, said point lies on the North right of way line of Jackson Street recorded in Docket 8348, page 1059.

THENCE North 79 degrees 35 minutes 02 seconds East, along the South line of said Common Element A, and the North line of said right of way line a distance of 47.92 feet to the TRUE POINT OF BEGINNING;

THENCE continue North 79 degrees 35 minutes 02 seconds East, along said North and South lines, a distance of 16.04 feet;

THENCE North 06 degrees 34 minutes 02 seconds West, a distance of 12.00 feet;

THENCE South 82 degrees 06 minutes 02 seconds West, a distance of 16.00 feet;

THENCE South 06 degrees 34 minutes 02 seconds East, a distance of 12.71 feet to the TRUE POINT OF BEGINNING.

PARCEL 5:

Access and Parking Easement Agreement as recorded December 30, 2016, in Sequence No. 20163650798, in the office of the Pima County Recorder .

Exhibit G

Option Purchase Agreement & Escrow Instructions

OPTION PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

This Option Purchase Agreement and Escrow Instructions ("**Option Purchase Agreement**") is entered into as of April __, 2018 ("**Effective Date**") by, between and between 44 E. Broadway, LLC, an Arizona limited liability company ("**Purchaser**") and Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona (the "**District**"). Purchaser and the District may collectively be referred to as the "**Parties**" or each, individually, as a "**Party**".

BACKGROUND

The Parties acknowledge and agree that the following "**Background**" is true and correct and constitutes an integral part of this Option Purchase Agreement.

- A. On or about April __, 2018, Purchaser and the District executed a Purchase/Lease/Option Agreement ("**Original Agreement**") pursuant to which Purchaser conveyed to the District the property described on Exhibit A (the "**Property**"), which Purchaser has developed in material compliance with the Original Agreement (the "**Project**").
- B. The Original Agreement granted Purchaser a Purchase Option pursuant to which Purchaser could purchase the Property and the Project in accordance with the terms of this Option Purchase Agreement.
- C. All terms defined in the Original Agreement shall have the same meaning in this Option Purchase Agreement except as otherwise provided herein.

AGREEMENTS

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and in consideration of the mutual covenants, promises and agreements contained herein, the District and Purchaser agree as follows:

1) **Purchase of Property.** Upon and subject to the terms and conditions set forth in this Option Purchase Agreement, Purchaser agrees to purchase from the District and the District agrees to sell to Purchaser all of the District's right, title and interest in and to the Property. For purposes of this Option Purchase Agreement, the Property includes:

a) **Fee Title.** Fee title to the Property will be conveyed by a Warranty Deed, in conveying marketable fee simple title in the Property to Purchaser, free and clear of all liens and encumbrances, except exceptions for the Closing Title Exceptions in the form attached hereto as Exhibit A (the "**Deed**").

b) **Easements and Privileges.** All easements appurtenant to the Property and other licenses, grants of right, privileges, or other agreements appurtenant thereto or for the benefit of the Property and all right, title, and interest of the District, if any, as the owner of the Property in and to any roads, streets, and ways, public or private, open or proposed, in front of or adjoining all or any part of the Property and serving the Property.

c) **Other Rights.** All rights, warranties, guarantees, utility contracts, approvals (governmental or otherwise), permits, certificates of occupancy, surveys, plans and specifications, and any agreements, covenants or indemnifications that the District received from Purchaser or any third party, including any prior owner, and relating to the Property.

2) **Purchase Price.** The purchase price for the Property shall be the Option Purchase Price as set forth in Paragraph 13 of the Original Agreement ("**Purchase Price**").

3) **Title & Escrow.**

a) **Opening of Escrow.** Upon the full execution of this Option Purchase Agreement, the District shall deposit it with Stewart Title & Trust of Arizona (the "**Title Company**") (Michelle Jolly as the "**Escrow Agent**") at 3939 E. Broadway, Tucson, Arizona 85711. The Escrow Agent, as agent for the Title Company, agrees with Purchaser and the District that recordation of the Deed (defined below) constitutes the Escrow Agent's representation that it is holding the closing documents, closing funds, and closing statement and is prepared and irrevocably committed to disburse the closing funds in accordance with the closing statements.

b) **Limitation of Liability.** Purchaser and the District hereby agree, jointly and severally, to indemnify and hold harmless the Escrow Agent from and against all costs, damages, judgments, attorney's fees, expenses, obligations, and liabilities of any kind or nature, which the Escrow Agent in good faith may incur or sustain in connection with this Option Purchase Agreement. The Escrow Agent shall not be liable for any actions taken or omitted by it in good faith and may rely upon, and act in accordance with, the reasonable advice of its counsel without liability on its part for any action taken or omitted in accordance with such advice.

c) **Escrow Instructions.** The terms and provisions of this Option Purchase Agreement shall constitute escrow instructions to the Escrow Agent for the purpose of serving in such capacity for the transaction described herein. In the event of a conflict between the terms and conditions of this Option Purchase Agreement and any other escrow instructions executed by the parties in connection with this transaction, the terms and conditions of this Option Purchase Agreement shall control.

d) **Closing & Closing Date.** The closing of the transaction (the "**Closing**") described herein shall occur before 5:00 PM of the tenth (10th) business day after the Option Exercise Date at the offices of the Escrow Agent or at such other date, time, and place as the Parties may hereinafter agree (the "**Closing Date**") in accordance with the terms and conditions of this Option Purchase Agreement. The Parties acknowledge and agree that TIME SHALL BE OF THE ESSENCE with respect to the performance by the Parties of their obligations under this Option Purchase Agreement and to consummate the transactions contemplated in this Option Purchase Agreement on the Closing Date. For the purposes of this Option Purchase Agreement, any date to which the Parties agree to adjourn the Closing pursuant to the terms of this Option Purchase Agreement shall be deemed the "**Closing Date**" hereunder.

4) **Representations and Warranties.**

a) **The District.** The District makes the following representations and warranties to Purchaser, all of which shall survive the closing and recordation of the Deed, and shall be complete, true and accurate as of the Effective Date and as of the Closing:

i) **Organization.** The District is a special taxing district of the State of Arizona duly organized, validly existing and in good standing under the laws of the State of Arizona and has the power, right and authority to enter into this Option Purchase Agreement, and to consummate the transaction contemplated hereby, without the consent or joinder of any other party or order or approval of any court, and this Option Purchase Agreement shall constitute a legal, valid and binding obligation of the District, enforceable against the District in accordance with the terms and conditions contained herein.

ii) **Performance.** The District will have performed, observed and complied with all of the covenants, agreements and conditions required by this Option Purchase Agreement to be performed, observed and complied with by the District on or before the Closing, and will execute and deliver all documents required to be executed and delivered by the District in order to consummate the transaction contemplated herein, on or before the Closing and at the time period set forth herein. The District shall also perform, observe and comply with all post-closing covenants, representations, warranties, agreements, conditions and indemnifications required by this Option Purchase Agreement.

iii) **Other Contracts.** Neither this Option Purchase Agreement nor anything required to be done hereunder, including, but not limited to, the acceptance of the conveyance of the Property, violates or shall violate any contract or agreement to which the District is a party.

iv) **Material Change.** Should the District receive notice or knowledge of any information regarding any of the matters set forth in this section after the Effective Date and prior to the Closing which would result in a material change to these warranties, the District will immediately notify Purchaser of the same in writing.

v) **Indemnification.** To the extent allowed by law, the District shall indemnify, defend and hold Purchaser, its managers, members, representatives, agents and employees, harmless for, from and against any liability, loss, claim, action or demand, including attorneys' fees and costs, that may arise out of or is connected with the District's breach of any covenant, representation, warranty or term contained in this Option Purchase Agreement. The District's indemnification provided in this Option Purchase Agreement shall survive the Closing.

b) **Purchaser.** The Purchaser makes the following representations and warranties to the District, all of which shall survive the closing and recordation of the Deed, and shall be complete, true and accurate as of the Effective Date and as of the Closing:

i) **Organization.** Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Arizona, and has the power, right and authority to enter into this Option Purchase Agreement, and to consummate the transaction contemplated hereby, without the consent or joinder of any other party or order or approval of any court, and this Option Purchase Agreement shall constitute a legal, valid and

binding obligation of Purchaser, enforceable against it in accordance with the terms and conditions contained herein.

ii) **Performance.** Purchaser will have performed, observed and complied with all of the covenants, agreements and conditions required by this Option Purchase Agreement to be performed, observed and complied with by Purchaser on or before the Closing, and will execute and deliver all documents required to be executed and delivered by Purchaser in order to consummate the transaction contemplated herein, on or before the Closing and at the time period set forth herein. Purchaser shall also perform, observe and comply with all post-closing covenants, representations, warranties, agreements, conditions and indemnifications required by this Option Purchase Agreement.

iii) **Litigation.** Except as provided herein, no litigation exists which relates to or arises out of Purchaser's leasehold interest in the Property, and Purchaser has not received any notice that any such proceedings are contemplated or threatened. There are no actions or proceedings pending or threatened against Purchaser before any court, administrative agency, or other governmental body in any way connected with or relating to the Property or affecting Purchaser's ability to fulfill all of its obligations under this Option Purchase Agreement.

iv) **Violations of Law.** Purchaser has not received any notice of any violation of any federal, state, regional or local law, ordinance or other governmental rule or regulation pertaining to the Property, including, without limitation, environmental laws or regulations.

v) **Contracts.** Except as provided in this Option Purchase Agreement, neither this Option Purchase Agreement nor anything required to be done hereunder, including but not limited to, the purchase of the Property, violates or shall violate any contract or agreement to which Purchaser is a party.

vi) **U.S. Persons.** Purchaser is a "United States person" within the meaning of §1445 of the Internal Revenue Code, as amended.

vii) **Material Change.** Should Purchaser receive notice or knowledge of any information regarding any of the matters set forth in this section after the Effective Date and before the Closing which would result in a material change to these warranties, Purchaser will immediately notify the District of the same in writing.

viii) **Indemnification.** Purchaser shall indemnify, defend and hold the District, its managers, board members, representatives, agents and employees, harmless for, from and against any liability, loss, claim, action or demand, including attorneys' fees and costs, that may arise out of or is connected with the Purchaser's breach of any covenant, representation, warranty or term contained in this Option Purchase Agreement. The Purchaser's indemnification provided in this Option Purchase Agreement shall survive the Closing.

5) **District's Deliveries in Escrow.** No fewer than three (3) days before the Closing, the District shall deliver to the Escrow Agent the following:

a) **Deed.** The Deed, executed and acknowledged by the District and assigning and conveying to Purchaser title to the Property subject to the Closing Title Exceptions.

b) **Intentionally Omitted.**

c) **Proof of Authority.** Such proof of the District's authority and authorization to enter into this Option Purchase Agreement and the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing or delivering any instruments, documents, or certificates on behalf of the District to act for and bind the District as may be reasonably required by the Title Company.

d) **Additional Documents.** Such other documents and instruments, signed and properly acknowledged by the District, if appropriate, as may be reasonably required by the Title Company, the Escrow Agent or otherwise in order to effectuate the provisions of this Option Purchase Agreement and the Closing of the transaction contemplated herein.

6) **Purchaser's Deliveries in Escrow.** At or before the Closing, Purchaser shall deliver to the Escrow Agent all of the following:

a) **Purchase Price.** The Purchase Price, as adjusted in accordance with this Option Purchase Agreement (which adjustments and pro rations shall be reflected on the closing statement prepared by the Escrow Agent), shall be deposited by Purchaser with the Escrow Agent in immediate, same-day federal funds wired for credit into the Escrow Agent's escrow account at a bank satisfactory to the District.

b) **Intentionally Omitted.**

c) **Proof of Authenticity.** Such proof of Purchaser's authority and authorization to enter into this Option Purchase Agreement and the transaction contemplated hereby, and such proof of the power and authority of the individual(s) executing or delivering any instruments, documents or certificates on behalf of Purchaser to act for and bind Purchaser as may be reasonably required by the Title Company.

d) **Additional Documents.** Such other documents and instruments, signed and properly acknowledged by Purchaser, if appropriate, as may be reasonably required by the Title Company, the Escrow Agent or otherwise in order to effectuate the provisions of this Option Purchase Agreement and the closing of the transaction contemplated herein.

7) **Closing.**

a) **Closing Statement.** Subject to final approval by the District and Purchaser at the Closing, the Escrow Agent shall prepare the final settlement statements consistent with this Option Purchase Agreement.

b) **Disbursement of Net Sale Proceeds.** The Escrow Agent shall disburse the portion of the Purchase Price remaining after the payment of all fees, costs and other charges required under this Option Purchase Agreement (the "**Net Sale Proceeds**") to the District.

c) **Possession.** The District shall deliver possession of the Property to Purchaser at the Closing.

d) **Escrow & Other Fees.** The Escrow Agent's escrow fee will be evenly divided and paid by the Parties. Each Party shall pay its own attorneys' fees. All other fees and costs relating to the Closing shall be paid by the parties as is customary in similar real estate transactions in Pima County, Arizona.

8) **Brokerage Commission.** The parties understand, acknowledge and agree that no real estate broker is involved in this transaction and that no real estate brokerage commission shall be paid as a result of the sale of the Property. Purchaser acknowledges that District Board Members Mark Irvin and Chris Sheafe are each licensed real estate brokers in Arizona. Each party shall defend, indemnify and hold the other harmless from and against any and all claims, costs, liabilities or damages for any real estate brokerage commissions or fees, including any attorneys' fees incurred in connection therewith, which may result from the conduct of the party from whom indemnification is sought.

9) **General Provisions.**

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

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

c) **Time.** Time is strictly of the essence of each and every provision of this Agreement.

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

e) **Binding Effect.** This Agreement and all instruments or documents entered into pursuant hereto are binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

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

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

h) **Headings.** The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement.

i) **Entire Agreement.** This Agreement, together with all exhibits referred to herein, which are incorporated herein and made a part hereof by this reference, constitute the entire agreement between the parties pertaining to the subject matter contained in this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by the Parties.

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

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

i) *If to the District:* Rio Nuevo Multipurpose Facilities District, 400 West Congress, Suite 152, Tucson, Arizona 85701, with a copy to Mark Collins, Esq., Gust Rosenfeld P.L.C. , One South Church Avenue, Suite 1900, Tucson, Arizona 85701.

ii) *If to Purchaser:* Purchaser44 E. Broadway, LLC, 44 E. Broadway, #300, Tucson, Arizona 85701, with a copy to Lawrence M. Hecker, Esq., Hecker, PLLC, 405 W. Franklin Street, Tucson, Arizona 85701.

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

RIO NUEVO MULTIPURPOSE FACILITIES
DISTRICT

By: _____
Name: Fletcher McCusker
Its: Chairman

By: _____
Name: Mark Irvin
Its: Secretary

44 E. BROADWAY, LLC

By: _____
Name: Marcel Dabdoub
Its: Co - Manager

Exhibit H

Schwabes Personal Guaranties

PERSONAL GUARANTY

FOR VALUABLE CONSIDERATION, Ron Schwabe and Patricia Schwabe, husband and wife ("Guarantors"), unconditionally guaranty and promise to pay to the Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona ("**District**"), on demand, in lawful money of the United States, any and all sums and indebtedness due and owing to the District under that certain Purchase/Lease/Option Agreement ("**Agreement**") dated April ___, 2018, executed by 44 E. Broadway, LLC, an Arizona limited liability company ("**Seller**") and Guarantors further unconditionally guaranty and promise to perform all obligations imposed on Seller under the Agreement. In addition, Guarantors agree as follows:

1. As used herein "indebtedness" includes, without limitation, any and all debts, monetary obligations and liabilities of Seller under the Agreement, whether voluntary or involuntary, and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, or whether recovery upon such indebtedness or obligations may be or hereafter becomes barred by any statute of limitations or any other law, or whether such indebtedness or obligations may be or hereafter become otherwise unenforceable.
2. Guarantors' obligations under this Guaranty are absolute and unconditional.
3. Guarantors shall pay and perform, on demand, all obligations due under the Agreement if they are not timely paid or performed as provided therein.
4. The obligation hereunder is independent of the obligation of Seller under the Agreement, and a separate action or actions may be brought and prosecuted against Guarantors whether or not an action is brought against Seller under the Agreement.
5. Guarantors authorize District, without notice or demand and without affecting their liability hereunder, from time to time, to renew, extend or otherwise change the time for payment or the terms of the indebtedness or other obligations under the Agreement, or any part thereof. Notwithstanding anything contained in this Guaranty to the contrary, Guarantors' obligations hereunder shall not become effective until ten (10) days after their receipt of written notice of default under the Agreement and then only if such default is not cured within such ten-day period. District may assign this Guaranty, in whole or in part, without notice, in connection with the assignment of the Agreement, or a portion thereof.
6. Guarantors waive any right to require District to proceed against Seller under the Agreement prior to proceeding against Guarantors under this Guaranty, including the right to require District to proceed against any security held by District. Guarantors hereby expressly waive any defense they may have in any action brought upon this Guaranty to recover a deficiency in the amount due under the indebtedness secured hereby, and this waiver shall be effective even if Guarantors do not have subrogation rights or the right to proceed against Seller for reimbursement. Guarantors further waive any defense arising by reason of any disability or other defense of Seller or by reason of the cessation from any cause whatsoever of the liability of Seller. Until all indebtedness due under the Agreement shall have been paid in full, Guarantors shall have no right of subrogation, and hereby waive any right to enforce any remedy which District now has or may hereafter have against Seller and also waive any benefit of, and any right

to participate in, any security now or hereafter held by District. Except as otherwise provided in this Guaranty, Guarantors hereby waive demand for performance, notice of non-performance and notice of acceptance of this Guaranty and of the existence or creation of any new or additional indebtedness; provided, however, this Guaranty shall not release District of its obligations of mitigation required under Arizona law.

7. Except as otherwise expressly provided in this Guaranty, Guarantors hereby agree that without the consent of or notice to Guarantors and without affecting any of the obligations of Guarantors hereunder: (a) any term, covenant or condition of the Agreement may be amended, compromised, released or otherwise altered by District and Seller, and Guarantors do guarantee and promise to perform all the obligations of Seller under the Agreement as so amended, compromised, released or altered; (b) any Guarantor of or party to the Agreement may be released, substituted or added by District; (c) any right or remedy under the Agreement, this Guaranty or any other instrument or agreement may be exercised, not exercised, impaired, modified, limited, destroyed or suspended by District; and (d) District or any other person may deal in any manner with Seller, any Guarantor, any party to the Agreement or any other person.

8. Guarantors hereby waive and agree not to assert or to take advantage of: (a) any right to require District to proceed against Seller or any other person or to pursue any other remedy before proceeding against Guarantors, and, specifically, waive the provisions of A.R.S. "12-1641 through 12-1646, A.R.S. 544-142 and 16 A.R.S., Rules of Civil Procedure, Rule 17(f); (b) the defense of any statute of limitations in any action under or related to this Guaranty or the Agreement, or any of them; (c) any right or defense that may arise by reason of the lack of authority of Seller; and (d) any right or defense arising by reason of the absence, impairment, modification, limitation, destruction or cessation (in bankruptcy, by an election of remedies, or otherwise) of the liability of Seller.

9. The liability of Guarantors and all rights, powers and remedies of District hereunder shall be in addition to all rights, powers and remedies given to District by law.

10. This Guaranty shall constitute the entire agreement between Guarantors and District with respect to the subject matter hereof. No provision of this Guaranty or right of District hereunder may be waived, nor may Guarantors be released from any obligation hereunder except by a writing duly executed by District. The failure to enforce any provision of this Guaranty shall not operate as a waiver of such provision or of any other provisions hereof. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

11. Where the context and construction of this Guaranty so require, all words used in the singular herein shall be deemed to have been used in the plural. The word "person" as used herein shall include an individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

12. Guarantors agree to pay reasonable attorneys' fees and all other costs and expenses which may be incurred by District in connection with the enforcement of this Guaranty, whether in a court proceeding or otherwise.

13. This Guaranty and all rights, obligations and liabilities arising hereunder shall be governed by and construed in accordance with the laws of the State of Arizona.

IN WITNESS WHEREOF, the undersigned have hereunto executed this Personal Guaranty to be effective as of the ____ day of April, 2018.

[Signatures follow on next page]

[Signature page to Personal Guaranty of Ron Schwabe and Patricia Schwabe]

Ron Schwabe

Patricia Schwabe

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this _____ day of April, 2018, by Ron Schwabe.

Notary Public

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this _____ day of April, 2018, by Patricia Schwabe.

Notary Public

Exhibit I

Dabdoub Personal Guaranties

PERSONAL GUARANTY

FOR VALUABLE CONSIDERATION, Marcel Dabdoub and Maria Elena Dabdoub, husband and wife ("Guarantors"), unconditionally guaranty and promise to pay to the Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona ("**District**"), on demand, in lawful money of the United States, any and all sums and indebtedness due and owing to the District under that certain Purchase/Lease/Option Agreement ("**Agreement**") dated April __, 2018, executed by 44 E. Broadway LLC, an Arizona limited liability company ("**Seller**") and Guarantors further unconditionally guaranty and promise to perform all obligations imposed on Seller under the Agreement. In addition, Guarantors agree as follows:

1. As used herein "indebtedness" includes, without limitation, any and all debts, monetary obligations and liabilities of Seller under the Agreement, whether voluntary or involuntary, and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, or whether recovery upon such indebtedness or obligations may be or hereafter becomes barred by any statute of limitations or any other law, or whether such indebtedness or obligations may be or hereafter become otherwise unenforceable.
2. Guarantors' obligations under this Guaranty are absolute and unconditional.
3. Guarantors shall pay and perform, on demand, all obligations due under the Agreement if they are not timely paid or performed as provided therein.
4. The obligation hereunder is independent of the obligation of Seller under the Agreement, and a separate action or actions may be brought and prosecuted against Guarantors whether or not an action is brought against Seller under the Agreement.
5. Guarantors authorize District, without notice or demand and without affecting their liability hereunder, from time to time, to renew, extend or otherwise change the time for payment or the terms of the indebtedness or other obligations under the Agreement, or any part thereof. Notwithstanding anything contained in this Guaranty to the contrary, Guarantors' obligations hereunder shall not become effective until ten (10) days after their receipt of written notice of default under the Agreement and then only if such default is not cured within such ten-day period. District may assign this Guaranty, in whole or in part, without notice, in connection with the assignment of the Agreement, or a portion thereof.
6. Guarantors waive any right to require District to proceed against Seller under the Agreement prior to proceeding against Guarantors under this Guaranty, including the right to require District to proceed against any security held by District. Guarantors hereby expressly waive any defense they may have in any action brought upon this Guaranty to recover a deficiency in the amount due under the indebtedness secured hereby, and this waiver shall be effective even if Guarantors do not have subrogation rights or the right to proceed against Seller for reimbursement. Guarantors further waive any defense arising by reason of any disability or other defense of Seller or by reason of the cessation from any cause whatsoever of the liability of Seller. Until all indebtedness due under the Agreement shall have been paid in full, Guarantors shall have no right of subrogation, and hereby waive any right to enforce any remedy which District now has or may hereafter have against Seller and also waive any benefit of, and any right

to participate in, any security now or hereafter held by District. Except as otherwise provided in this Guaranty, Guarantors hereby waive demand for performance, notice of non-performance and notice of acceptance of this Guaranty and of the existence or creation of any new or additional indebtedness; provided, however, this Guaranty shall not release District of its obligations of mitigation required under Arizona law.

7. Except as otherwise expressly provided in this Guaranty, Guarantors hereby agree that without the consent of or notice to Guarantors and without affecting any of the obligations of Guarantors hereunder: (a) any term, covenant or condition of the Agreement may be amended, compromised, released or otherwise altered by District and Seller, and Guarantors do guarantee and promise to perform all the obligations of Seller under the Agreement as so amended, compromised, released or altered; (b) any Guarantor of or party to the Agreement may be released, substituted or added by District; (c) any right or remedy under the Agreement, this Guaranty or any other instrument or agreement may be exercised, not exercised, impaired, modified, limited, destroyed or suspended by District; and (d) District or any other person may deal in any manner with Seller, any Guarantor, any party to the Agreement or any other person.

8. Guarantors hereby waive and agree not to assert or to take advantage of: (a) any right to require District to proceed against Seller or any other person or to pursue any other remedy before proceeding against Guarantors, and, specifically, waive the provisions of A.R.S. "12-1641 through 12-1646, A.R.S. 544-142 and 16 A.R.S., Rules of Civil Procedure, Rule 17(f); (b) the defense of any statute of limitations in any action under or related to this Guaranty or the Agreement, or any of them; (c) any right or defense that may arise by reason of the lack of authority of Seller; and (d) any right or defense arising by reason of the absence, impairment, modification, limitation, destruction or cessation (in bankruptcy, by an election of remedies, or otherwise) of the liability of Seller.

9. The liability of Guarantors and all rights, powers and remedies of District hereunder shall be in addition to all rights, powers and remedies given to District by law.

10. This Guaranty shall constitute the entire agreement between Guarantors and District with respect to the subject matter hereof. No provision of this Guaranty or right of District hereunder may be waived, nor may Guarantors be released from any obligation hereunder except by a writing duly executed by District. The failure to enforce any provision of this Guaranty shall not operate as a waiver of such provision or of any other provisions hereof. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

11. Where the context and construction of this Guaranty so require, all words used in the singular herein shall be deemed to have been used in the plural. The word "person" as used herein shall include an individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

12. Guarantors agree to pay reasonable attorneys' fees and all other costs and expenses which may be incurred by District in connection with the enforcement of this Guaranty, whether in a court proceeding or otherwise.