

PURCHASE/LEASE/OPTION AGREEMENT

This Purchase, Lease, and Option Agreement (this “**Agreement**”) is entered into as of August 4, 2016 (“**Effective Date**”) by, between and among Mission District Partners, an Arizona limited liability company (“**MDP**”), The Gadsden Company, LLC, an Arizona limited liability company (“**Gadsden**”) and Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona (the “**District**”). Gadsden is the manager and owns 75% of MDP. References herein to Gadsden shall mean and include MDP and/or Gadsden, as the context and circumstances require. MDP, Gadsden 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 Agreement.

A. Gadsden owns the approximately 1.48 acre parcel depicted as Parcel “C” on the attached diagram and more fully described on Exhibit A attached hereto and incorporated herein by reference (the “**Property**”), and has developed plans for a 18,000 square foot retail complex that will include approximately 15 small businesses and a 500-seat entertainment venue (collectively the “**Project**”).

B. The Project is conveniently located and easily accessible by the Modern Street Car and, when completed, will generate substantial sales tax revenues that will benefit the District and the City of Tucson. It will also create employment opportunities and attract customers to the area and provide retail and food service amenities to the surrounding neighborhoods and businesses.

C. Construction of the Project will create construction jobs and construction sales tax that will further benefit the City and the District.

D. Gadsden and the City of Tucson (“**City**”) are parties to that certain Amended and Restated Development and Real Estate Purchase Agreement dated as of May 29, 2013, as amended by that certain First Amendment dated as of June 3, 2014 (the “**Development Agreement**”).

E. The Development Agreement contemplates that Gadsden will make certain capital improvements to the Property (“**Credit Improvements**”). The City asserts that construction of the following Credit Improvements has not commenced in a timely manner (“**Unfinished Improvements**”):

- 1) Affordable Housing (completion credit - \$665,918)
- 2) Mercado/Public Market (completion credit - \$464,436)
- 3) Balance of Santa Cruz River Park - (completion credit - \$98,199)
- 4) Parking Garage/Public Parking - (completion credit - \$389,795)

F. Gadsden disputes the City’s position.

G. Gadsden has posted three bonds in the aggregate amount of \$1,608,348 (the “**Bonds**”) pursuant to the Development Agreement to ensure the completion of the Unfinished Improvements.

H. The District, the City and Gadsden have entered into an agreement by which the City has assigned its rights in the Development Agreement and Bonds to the District (“**Assignment Agreement**”). As a result of the Assignment Agreement, Gadsden has limited continuing obligations to the City pursuant to the Development Agreement.

I. The Assignment Agreement has been fully executed and pursuant to its terms, the District has paid the City \$1,218,553 (“**Assignment Price**”).

J. The District believes that the properties it owns adjacent to the Project will benefit from the Project and that it will benefit from the tax revenues to be generated by the Project.

K. Gadsden has a pending commitment for financing of the Project from Clearinghouse CDFI (the “**Lender**”) in the principal amount of \$3,075,000 (“**Loan**”) and estimates that an additional \$2,200,000 will be required in order to complete construction.

L. In order to provide the additional funds needed to complete construction of the Project, the District is willing to purchase the Property from Gadsden and immediately enter into a 15-year lease with Gadsden (the “**Lease**”) and grant Gadsden an option to repurchase the Property at any time during or at the expiration of the Lease (the “**Option**”).

M. The District receives a portion of State-shared funds derived from transaction privilege taxes (i.e. sales tax) called TIF Funds collected from within the District boundaries located within the City of Tucson city limits (“**TIF Receipts**”). All TIF Receipts are collected by the Arizona Department of Revenue (“**ADOR**”), and the District’s share of these TIF Receipts is remitted by ADOR to the District.

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 Gadsden agree as follows:

PURCHASE AND SALE OF PROPERTY

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

a) **Fee Title.** Fee title to the Property will be conveyed by general warranty deed, in a form suitable for recording, conveying marketable fee simple title in the Property to the District, free and clear of all liens and encumbrances, except exceptions permitted under this Agreement.

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 Gadsden, 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 Gadsden received from a third party, including any prior owner, and relating to the Property.

2) **Purchase Price.** The purchase price for the Property is Two-Million, Two-Hundred-Thousand Dollars (\$2,200,000 US) (“**Purchase Price**”).

3) **Title & Escrow.**

a) **Opening of Escrow.** Upon the full execution of this Agreement, the District shall deposit it with Fidelity National Title Agency (“**Title Company**”) (Judy Kaiser as the “**Escrow Agent**”) at 6245 E. Broadway, #200, Tucson, Arizona 85711. The Escrow Agent, as agent for the Title Company, agrees with Gadsden and the District that: (a) 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 statements; and (b) the release of funds to Gadsden, or other party so designated in this Agreement will irrevocably commit Title Company to issue the Title Policy (as defined below) in accordance with this Agreement.

b) **Limitation of Liability.** Gadsden and the District hereby agree, jointly and severally, to indemnify and hold harmless the Escrow Agent from and against all costs, damages, judgment, 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 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 before 5:00 PM of the fifth (5th) business day after the expiration of the Title Review Period or the Extended Title Review Period, as applicable, unless the District terminates this Agreement pursuant to Section 3(e)(iii) hereof 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 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.

e) **Title Commitment.**

i) Within four (4) days of the Opening of Escrow, the Title Company shall issue and deliver to the District a preliminary title commitment for the Property, as well as copies of all instruments referred to therein, including all deeds, easements or other instruments which provide for access to the Property (collectively the “**Title Commitment**”). The Title Commitment shall be an irrevocable commitment by the Title Company to issue the Title Policy (defined below) subject to the satisfaction of the requirements contained in the Title Commitment.

ii) The District shall have twenty (20) days after receipt of the Title Commitment to object either to any exceptions or requirements contained in the Title Commitment or to matters identified on the ALTA/ACSM survey of the Property (“**Survey**”) to be provided and paid for by Gadsden (“**Title Issues**”) by providing written notice thereof to Gadsden. If the District has no objection, it may provide notice thereof to Gadsden, in which case the 20-day period shall cease. In the event of any such objection, Gadsden shall have ten (10) days after receipt of the District’s notice of the Title Issues to review and evaluate the Title Issues and give written notice to the District whether or not Gadsden will cure or cause to be removed the Title Issues (“**Title Review Period**”). If the initial Title Commitment or Survey is updated and/or amended by any new exception(s) or requirement(s) (by endorsement, amendment, or otherwise) that the District deems to be adverse to its anticipated title (“**Amended Title Commitment**”), the Title Review Period will be extended by three (3) business days following the District’s receipt of the Amended Title Commitment (including the best available copies of all new exceptions) to notify Gadsden in writing of the District’s objections to any new exceptions (“**Extended Title Review Period**”). If the District timely objects to any matter disclosed in an Amended Title Commitment, Gadsden may give written notice to the District within three (3) business days after receipt of the new objections as to whether or not Gadsden will cure or cause to be removed an objected to matter. If Gadsden timely gives the District written notice that Gadsden will not cure or cause to be removed the objected to matter (or if Gadsden fails to provide any written notice within the applicable response period), then the District shall have three (3) business days after receipt of such written notice (or, in the case of no written notice, three (3) business days after the expiration of Gadsden’s applicable response period) within which to terminate this Agreement. If the District fails to timely terminate this Agreement under this provision, the Title Review Period and the Extended Title Review Period shall expire.

iii) In the event that the exceptions are not resolved to the reasonable satisfaction of the District prior to expiration of the Title Review Period and the Extended Title Review Period, this Agreement may be canceled by the District giving notice thereof to Gadsden as provided in Section 3(e)(ii) above.

iv) The District and Gadsden hereby agree and acknowledge that electronic delivery of the Title Commitment and any Amended Title Commitments by the Escrow Agent (whether in the form of an attachment to electronic mail or in the form of a link to a website where the Title Commitment or Amended Title Commitment can be downloaded) is an acceptable form of delivery, and the Title Commitment or Amended Title Commitment shall be deemed delivered on the day it is electronically transmitted to and received by the District and Gadsden.

v) Notwithstanding anything mentioned herein to the contrary, on or before the Closing, Gadsden shall satisfy and remove all voluntary monetary liens from the Property, and Gadsden shall cure and cause to be removed all exceptions for rights of parties or entities in possession (other than pursuant to recorded documents affecting the Property) or parties or entities holding lease or option rights and all exceptions for any Lis Pendens or similar recordings against the Property (the "**Unaccepted Exceptions**"), and the District need not expressly object to any such Unaccepted Exceptions as may be disclosed on the Title Commitment or any amendment thereto such that the Unaccepted Exceptions shall not be deemed Permitted Exceptions.

vi) As used in this Agreement, the term "**Permitted Exceptions**" shall collectively mean the exceptions to title reflected in the Title Commitment or any amendment thereto which are approved (or deemed approved) by the District pursuant to this section, but not the Unaccepted Exceptions.

4) **Representations and Warranties.**

a) **Gadsden.** Gadsden 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.** Gadsden and MDP are limited liability companies duly organized, validly existing and in good standing under the laws of the State of Arizona, and each 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 each of Gadsden and MDP, enforceable against them in accordance with the terms and conditions contained herein. Gadsden is the manager of MDP and is fully authorized and empowered to execute this Agreement for and on behalf of MDP.

ii) **Performance.** Gadsden 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 Gadsden on or before the Closing, and will execute and deliver all documents required to be executed and delivered by Gadsden in order to consummate the transaction contemplated herein, on or before the Closing and at the time period set forth herein. Gadsden 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 Gadsden's interest in the Property, and Gadsden has not received any notice that any such proceedings are contemplated or threatened. There are no actions or proceedings pending or threatened against Gadsden before any court, administrative agency, or other governmental body in any way connected with or relating to the Property, or affecting Gadsden's ability to fulfill all of its obligations under this Agreement.

iv) **Violations of Law.** Gadsden 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 Agreement, neither this Agreement nor anything required to be done hereunder, including but not limited to, the conveyance of the Property, violates or shall violate any contract or agreement to which Gadsden is a party.

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

vii) **Bonds.** The Bonds posted by Gadsden in the aggregate amount of \$1,608,348 pursuant to the Development Agreement have been and remain in full force and effect. Until further agreement, Gadsden will take any and all actions necessary to maintain the Bonds in full force and effect.

viii) **Material Change.** Should Gadsden 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, Gadsden will immediately notify the District of the same in writing.

ix) **Condition of Property.** Gadsden hereby represents and warrants that:

(1) The Property 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 Property, 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 Gadsden's ownership of the Property.

x) **Environmental Law.** Gadsden 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 Property in violation thereof.

xi) **Liens.** Prior to the Closing, Gadsden shall pay in full for all labor, materials and services which may give rise to a lien against the Property, materials, machinery, fixtures, supplies or tools furnished within one hundred twenty (120) days immediately preceding the Closing in connection with the construction, alteration or repair of any structure on or improvement to the Property requested by Gadsden, or for the payment of which Gadsden is directly obligated, and for which lien rights may arise under applicable law.

xii) **Loan.** Gadsden has obtained a commitment for the Loan (the “**Loan Commitment**”) from the Lender in the amount described in Recital K for the purpose of funding the construction of the Project, including costs relating to the Loan.

xiii) **Indemnification.** To the greatest extent permitted by law, Gadsden 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 Gadsden’s breach of any covenant, representation, warranty or term contained in this Agreement. Gadsden’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 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 Gadsden of the same in writing.

v) **Indemnification.** The District shall indemnify, defend and hold Gadsden, 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) **Gadsden’s Deliveries in Escrow.** No fewer than three (3) days before the Closing, Gadsden shall deliver to the Escrow Agent the following:

a) **Deed.** A Warranty Deed (the “**Deed**”) in the form attached hereto as Exhibit B, executed and acknowledged by Gadsden and assigning and conveying to the District title to the Property subject to the Permitted Exceptions (as defined below).

b) **State Law Disclosures.** An Affidavit of Property Value, to be prepared by the Escrow Agent as required by Arizona law and executed by Gadsden and the District or their agents.

c) **Proof of Authority.** Such proof of Gadsden’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 Gadsden to act for and bind Gadsden as may be reasonably required by the Title Company.

d) **Bonds.** Copies of the existing Bonds together with any and all documents necessary to ensure that they are in full force and effect and payable to the District in the event of any default by Gadsden.

e) **The Contract Documents.** An assignment of the Contract Documents, as provided in Section 10(e)(vii) below, or so much of the Contract Documents that have been completed and executed by the parties thereto, together with copies of all of the Contract Documents, whether or not completed and executed, including drafts thereof as to those that have not been completed and executed. The District shall subordinate such assignment to any lien in the Contract Documents required by the Lender only to the extent necessary to secure repayment of the Loan.

f) **Loan Documents.** Copies of the Loan Commitment and all of the other documents entered into and to be entered into between Gadsden and the Lender in connection with the Loan (the “**Loan Documents**”), including, but not limited to, all construction proceeds escrow instructions and agreements and all draw schedules.

g) **Personal Guaranties.** An original personal guaranty by (i) Adam Weinstein and Kira Dixon Weinstein, husband and wife, and (ii) Gerald Dixon and Marjorie Dixon, husband and wife, in the forms attached as Exhibits C and D.

h) **Security Agreements.** Security Agreements executed by Gadsden and the District, whereby Gadsden shall grant the District first priority security interests in the “Net Sale Proceeds,” as defined in Section 7(c), and in the “Containers,” as defined in Section 7(f), and in the “Contract Documents,” as defined in Section 10(e)(vii). On the Closing, the Escrow Agent shall file a Financing Statement or Statements with the Arizona Secretary of State, and such other offices as deemed necessary by the District, in order to perfect its security interests described herein.

i) **Additional Documents.** Such other documents and instruments, signed and properly acknowledged by Gadsden, 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 proration 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 Gadsden

b) **State Law Disclosures.** An Affidavit of Value for the Property.

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 Gadsden and the District, at the Closing, the Escrow Agent shall prepare the final settlement statements consistent with this Agreement.

b) **Title Policy.** At the Closing, the Title Company shall deliver to the District an ALTA extended form of title insurance (the "**Title Policy**") with respect to the Property in the full amount of the Purchase Price, which shall insure that fee simple title to the Property is vested in the District, subject only to: (i) the usual printed exceptions and exclusions contained in the Title Policy; and (ii) the Permitted Exceptions. The cost of a basic premium policy shall be paid for by Gadsden with any extended coverage paid for by the District.

c) **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 Gadsden under this Agreement (the "**Net Sale Proceeds**") to the construction escrow account (the "**Construction Escrow Account**") to be established by the Parties at the Closing for the purpose of disbursing the Net Sale Proceeds for the construction of the Improvements and related construction costs.

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

e) **Escrow/Title & 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.

f) **Disbursements from Construction Escrow Account.** After the Closing and prior to the “Loan Closing,” as defined in Section 8, Gadsden shall be entitled to disbursements of a portion of the Net Sale Proceeds held in the Construction Escrow Account in the following amounts and for the purposes set forth below:

i) The sum of Two Hundred Twenty-Five Thousand and No/100 (\$225,000.00) Dollars for the purchase of a total of forty-five (45) used shipping containers that will be renovated, placed on-site and become the location of retail businesses on the Property (the “**Containers**”).

ii) The sum of Seven Thousand Five Hundred and No/100 (\$7,500.00) Dollars for insurance premiums relating to insurance coverage for the Project, including that required under this Agreement.

iii) The sum of Twenty-Five Thousand and No/100 (\$25,000.00) Dollars for attorneys’ fees and costs.

iv) The sum of Three Hundred Thousand and No/100 (\$300,000.00) Dollars for architectural and engineering fees.

Gadsden shall submit draw requests for all disbursements from the Construction Escrow Account to the Escrow Agent and the District not less than three (3) days prior to the disbursement of the funds described in the draw. At the same time, Gadsden shall also provide the Escrow Agent with a receipt, acknowledgment of payment and lien waiver (where appropriate), acknowledging receipt and payment in full for the work and/or materials which are the subject of the draw, and which may be conditional, but only as to the receipt of the monies which are the subject of the draw by the person(s) to whom they are paid. The Escrow Agent shall make payment of all such disbursements directly to the payee described in the draw request.

8) **Loan Closing.** Not later than seventy-five (75) days after the Closing, Gadsden and Lender shall close on the Loan (the “**Loan Closing**”). The gross loan proceeds, in the amount set forth in Recital K, shall be deposited by the Lender with the Escrow Agent on the Loan Closing. The Escrow Agent shall disburse the portion of the loan proceeds remaining after the payment of all fees, costs, reserves and other charges required by the Lender under the Loan (the “**Net Loan Proceeds**”) to the Construction Escrow Account. On or before the Loan Closing, the District shall approve the disbursements from the gross loan proceeds as described above. The Net Loan Proceeds shall be disbursed from the Construction Escrow Account in the same manner and under the same procedure as provided in Section 7(f) above. If the Loan Closing does not occur within the time period described in this paragraph, then Gadsden shall be in default under this Agreement, and the District may pursue any and all remedies available to it in that case, either at law or in equity, including, but not limited to, the enforcement of its security interests described in this Agreement.

9) **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. Gadsden 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

10) **Grant of Lease.** Effective upon the Closing, and from the Closing 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 Gadsden, shall grant, demise and let the Property (the "**Leased Property**") unto Gadsden, and Gadsden, 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 Property from the District.

a) **Condition of Premises.** Gadsden has inspected the Leased Property and accepts possession of the Leased Property 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, Gadsden has full responsibility for the repair, alteration, maintenance, and replacement of the Leased Property, 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 Property, or any portion thereof, or the Improvements except as expressly provided herein. Gadsden expressly acknowledges and agrees that the District has not made and is not making, and Gadsden is not relying upon, any warranties or representations regarding the Leased Property or any Improvements thereto, except to the extent the same are expressly set forth in this Agreement.

b) **Term.** The initial term of this Lease is fifteen (15) years, commencing on the Closing Date (the "**Commencement Date**") and ending on the same day and month in the year 2031 (the "**Term**"). The Parties may extend the Term of this Lease upon mutual, written agreement. The expression "Term" means and includes any subsequent extension thereof.

c) **Rent.** Rent for the Leased Property ("**Rent**") will be One Hundred and No/100 (\$100.00) Dollars per year. Rent for the first year of the 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.** The District acknowledges and agrees that Gadsden, by paying the Rent and performing the other terms and conditions of this Lease, may peaceably hold and enjoy the Leased Property 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 Property by providing Gadsden with written notice of its intent to do so not less than 24 hours prior thereto.

e) **Gadsden's Improvements to the Property.**

i) **Construction.** Gadsden shall improve the Property as depicted in the rendering thereof attached hereto as Exhibit E, together with parking and driveway areas and other installations necessary or incidental to the operation or maintenance thereof (collectively, referred to as the "**Improvements**"). The Improvements shall be constructed and developed in accordance with the plans and specifications therefor, dated June 15, 2016, a copy of which has been furnished to the District, together with all local development and building codes. The Improvements shall be commenced on or before the sixtieth day following Closing and completed (as evidenced by a certificate(s) of occupancy) on or before December 31, 2017, and such Improvements shall be the property of the District as and when they are constructed, beginning with the commencement of the construction thereof.

ii) **Contractor and Subcontractors.** The contractor (the "**Contractor**") and all subcontractors (the "**Subcontractors**") involved in the construction of the Improvements shall be subject to the reasonable approval of the District. Gadsden shall provide the District with written notice of the names of the Contractor and the Subcontractors, and the District shall have ten (10) business days after receipt of such notice to either approve or reject any or all of the Contractor and the Subcontractors. In the event the District objects to the Contractor or any of the Subcontractors, it shall provide written notice thereof to Gadsden within five (5) business days after its receipt of the names of the Contractor and the Subcontractors. In that case, Gadsden shall provide the District with the name or names of an alternate contractor and/or subcontractors within five (5) business days thereafter, and the objection process described above shall continue until the District has approved the Contractor and all the Subcontractors.

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

iv) **Subordination to Lender.** The District shall allow the Lender to hold a first deed of trust on the Property only to the extent necessary to secure repayment of the Loan, and the District shall execute a subordination agreement or similar document(s) as may be necessary for such purpose; provided, however, Gadsden shall keep the Property free and clear of all other liens, claims, and encumbrances, including, but not limited to, mechanics' liens, laborers' liens, materialmen's liens, and other security interests.

v) **Subordinate Encumbrances.** Gadsden 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 Gadsden as set forth in this Lease. In such case, Gadsden shall provide the District with written notice of any such encumbrance not later than 10 (ten) days prior to such encumbrance becoming effective. Notwithstanding the foregoing, in no event shall Gadsden subordinate this Lease to any mortgage, encumbrance, or lien other than to the Lender as contemplated in Section 8.

vi) **Memorandum of Lease.** Upon the execution of this Lease, the parties shall also execute a Memorandum of Lease 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.

vii) **Assignment of Construction Contract and Related Documents.** On the execution of the Lease, Gadsden shall assign the construction contract for the construction of the Improvements, the drawings, plans and specifications therefor, and any and all related and additional documents pertaining to or necessary for the construction of the Improvements and the completion of the Project (the “Contract Documents”). The assignment shall be held by the District as security for Gadsden’s performance of the obligations contained in this Agreement, and it shall only become operative in favor of the District upon a default by Gadsden hereunder. To the extent any portion of the Contract Documents have not been fully completed and executed on the Commencement Date, Gadsden shall assign such documents to the District prior to commencement of construction of the Improvements.

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, Gadsden is solely responsible for any and all capital, operating, maintenance, and replacement costs and any other costs and expenses that result from Gadsden’s development and use of the Property, including, but not limited to, the construction of the Improvements. Gadsden’s payment of insurance, taxes, utilities and any other charges, costs or fees charged and prorated to Gadsden under the terms of this Lease (collectively “**Gadsden Obligations**”) shall accrue and be payable by Gadsden from and after the Commencement Date throughout the Term. The District shall forward to Gadsden any invoices, bills, or other charges representing Gadsden Obligations (“**Gadsden Bill**”). Gadsden shall pay a Gadsden 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 Gadsden Bill. Gadsden’s failure to timely pay a Gadsden Bill shall constitute a breach of this Lease.

g) **Utilities.** Gadsden 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 Gadsden’s use and operation of the Leased Property during the Term, including connection and disconnection charges, if any.

h) **Taxes.** Gadsden shall pay and discharge as and when the same become due and prior to delinquency all real and personal property and ad valorem taxes, assessments, levies, and other charges, general and special, which are or may be during the Term levied, assessed, imposed or charged against the Property and any personal property owned by the District but used by Gadsden in connection with its use of the Property and situated thereon. Gadsden’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. Gadsden shall not be required or obligated to pay any taxes now or hereafter levied, assessed, imposed or charged against the Property or to the District based on the rental paid or other benefits conferred to The District hereunder, including any income, franchise, excise, gross receipts, sales, or transaction privilege taxes, or any “roll back” or other

taxes relating to The District's ownership of the Leased Property prior to the Commencement Date.

i) **Repairs and Maintenance.** Gadsden shall, at its sole cost and expense, keep and maintain, and replace where necessary, all Improvements on the Leased Property, 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. Gadsden agrees to maintain, and replace where necessary, all underground and unexposed service facilities of the Leased Property.

j) **Assignment.**

i) **No Assignment.** Gadsden covenants and agrees that it will not assign this Agreement, nor 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, Gadsden may assign, transfer or sublet its leasehold interest without first obtaining the District's written consent (i) to any corporation which Gadsden controls, is controlled by or is under common control with, (ii) to any corporation resulting from a merger or consolidation with Gadsden, or (iii) to any person or entity which acquires substantially all of the assets of Gadsden. For the purposes of this Agreement, "controlled by or under common control with" means an entity where Gadsden has a majority ownership interest therein and manages the business thereof and "under common control with" means where the principals of Gadsden own the majority interest therein and manage the business thereof.

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

iii) **Subleases.** Gadsden shall be permitted to sublease portions of the Project to such subtenants as it chooses, subject to the requirements of Section 14(a).

k) **Liability Insurance.** Gadsden shall, at its sole cost and expense, obtain and maintain in full force and effect, for each Property and Leased Property commercial general liability insurance, including third party pollution liability insurance if obtainable from carriers and at reasonable rates, naming the District as an additional insured, in the amount of five million dollars (\$5,000,000) combined single limit, against claims for bodily injury, death or property damage arising out of the use and occupancy of the Leased Property. 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.

l) **Property Insurance.** Gadsden shall insure the Improvements for the replacement value thereof (exclusive of the cost of excavations, foundations and footings) against loss or damage by fire and such other hazards as are normally found in the standard extended coverage endorsement in Tucson Arizona, as determined at the time of any such loss or damage.

m) **General Insurance Requirements.** All insurance policies carried pursuant to any provision of Section 10 of this Agreement must name the District as an additional insured, as the District's interests may appear. Gadsden will have the right to adjust all losses and execute all proofs of loss. Gadsden may maintain for its own account any insurance, whether or not required by this Agreement, with greater coverage in scope and amounts, and the proceeds thereof shall belong to Gadsden. Gadsden, in its discretion, may carry any insurance under a blanket fire and other hazards insurance policy or policies. A certificate or true copy thereof evidencing said insurance must be delivered to the District by Gadsden 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 Gadsden shall notify each insurer providing coverage of the District's name and address for such purpose.

n) **Permits, Laws and Ordinances.** Gadsden 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 Gadsden or the District as they relate to the Leased Property and shall take, as otherwise provided herein, all action necessary to cause the Leased Property to comply in all material respects with all provisions of the Contract Documents and this Agreement.

11) **Completion of Unfinished Improvements.** Gadsden shall use its best, diligent, good faith efforts to complete the Unfinished Improvements in accordance with the following timetable:

a) **Affordable Housing.** Gadsden will use its best, diligent, good faith efforts to commence construction of a 70-unit affordable housing project on or before December 31, 2017.

b) **Mercado/Public Market.** See Paragraph 10(e)(i) above.

c) **Balance of Santa Cruz River Park.** Gadsden will establish to the District's reasonable satisfaction that it has made expenditures to the Santa Cruz River Park in a total amount of at least \$500,000 on or before December 31, 2017.

d) **Parking Garage/Public Parking.** Gadsden will use its best, diligent, good faith efforts to commence construction of the Parking Garage/Public Parking on or before December 31, 2017. In the event that it fails to complete construction of the Parking Garage/Public Parking by December 31, 2017, it will make 31 parking spaces available to the District which the District may provide to the City on a temporary basis until construction of the Parking Garage/Public Parking is completed.

e) **Failure to Complete.** In the event Gadsden fails to timely complete any of the Unfinished Improvements and, where available, obtain a certificate of occupancy therefor, the

Option Exercise Price (defined below) will increase by an amount equal to the completion credits for such Unfinished Improvement(s) (“**Failure to Complete Damages**”). Notwithstanding the foregoing calculation, the Failure to Complete Damages shall not exceed the Assignment Price. In the alternative and notwithstanding the foregoing terms and provisions of this Subsection 11(e), the District may treat Gadsden’s failure to timely complete any of the Unfinished Improvements as a default under this Lease and pursue all remedies available to it as a result.

OPTION TO PURCHASE

12) **Option to Purchase.** The District hereby grants Gadsden the exclusive option and right, exercisable in Gadsden’s sole discretion (the “**Purchase Option**”), to purchase the Property at any time during the Term of the Lease (the “**Option Term**”) by giving written notice thereof to the District (the “**Option Exercise Notice**”). Neither the exercise of the Purchase Option nor the purchase of the Property pursuant to the exercise of the Purchase Option shall release Gadsden from any liability thereof to the District arising under the Lease prior to the successful exercise of the Purchase Option nor any obligations of Gadsden which survive the Closing or the termination of this Agreement, including, but not limited to, Gadsden’s obligations of indemnification. As consideration for the Purchase Option granted by the District to Gadsden, Gadsden shall pay the District an amount equal to three (3%) percent of the Purchase Price, compounded annually, calculated from the Effective Date through the Option Closing Date (as defined below). The Option Purchase Price shall be paid by Gadsden on the Option Closing Date.

13) **Exercise of Option.** Provided that Gadsden is not in default under this Agreement, the Purchase Option may be exercised by Gadsden giving 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 Option Term. The date upon which such Option Exercise Notice is delivered to the District shall be deemed the “**Option Exercise Date.**”

14) **Option Purchase Price.** The purchase price for the Property shall be \$2,200,000 increased by the Failure to Complete Damages, if any (the “**Option Purchase Price**”), and decreased by fifty (50%) percent of the gross TIF Receipts actually received by the District from the Commencement Date to the Option Closing Date as a result of payments by all tenants or other occupants of the Project (each a “Tenant”) required to pay transaction privilege taxes to the State of Arizona (the “**Sales Tax Amount**”). In order to assist the District in tracking these amounts, Gadsden will:

a) Require in the form of lease or other use agreement relating to the use of a portion of the Project (a “**Tenant Lease**”) that each Tenant provide Gadsden for each calendar month during the term of such Tenant’s Tenant Lease with a copy of its Transaction Privilege, Use, and Severance Tax Return (the “**TPT Return**”) as filed with the Arizona Department of Revenue.

b) Deliver to the District on or before the 15th day of each calendar month, commencing on the first full month after the Commencement Date, a calculation showing the aggregate TIF Receipts generated by the Tenants for the previous calendar month together with copies of the TPT Return of each Tenant with the name of and any other identifying information concerning such Tenant redacted.

15) **Option Purchase Agreement.** Within fifteen (15) days following the Option Exercise Date, each Party shall execute and deliver to the other Party and the Escrow Agent, the Option Purchase Agreement and Escrow Instructions materially in the form attached hereto as Exhibit F (the “**Option Purchase Agreement**”). The Closing of Gadsden’s purchase of the Property shall occur not later than sixty (60) days after the Option Exercise Date (the “**Option Closing Date**”), and Sections 3, 4, 5, 6, 7 and 8 shall apply to Gadsden’s purchase of the Property and shall be modified as may be necessary for such purpose.

16) **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:

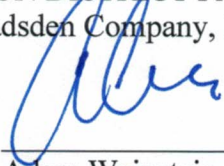
i) *If to the District:* Rio Nuevo Multipurpose Facilities District, 400 West Congress, Suite 152, Tucson, Arizona 85701, with a copy to Mark Collins, Esq., Gust Rosenfeld P.L.C. , One South Church Avenue, Suite 1900, Tucson, Arizona 85701.

ii) *If to Gadsden:* The Gadsden Company, LLC, 127 W. Franklin Street, Tucson, Arizona 85701, with a copy to Lawrence M. Hecker, Esq., Hecker, PLLC, 405 W. Franklin Street, Tucson, Arizona 85701.

iii) *If to MDP:* The Gadsden Company, LLC, 127 W. Franklin Street, 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.

MISSION DISTRICT PARTNERS, LLC
The Gadsden Company, L.L.C., Manager

By: 
Name: Adam Weinstein
Its: Co-Manager

By: 
Name: Gerald J. Dixon
Its: Co-Manager

THE GADSDEN COMPANY, LLC

By: 

Name: Adam Weinstein

Its: Co-Manager

By: 

Name: Gerald J. Dixon

Its: Co-Manager

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT



By: _____
Name: Fletcher McCusker
Its: Chairman



By: _____
Name: Mark Irvin
Its: Secretary