

**TRIPLE NET
BUILD-TO-SUIT GOVERNMENT
PROPERTY LEASE EXCISE TAX**

BY AND BETWEEN

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

“LANDLORD”

AND

CATERPILLAR GLOBAL MINING LLC,
a Delaware limited liability company

“TENANT”

875 W. Cushing

Tucson, Arizona

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**TRIPLE NET
BUILD-TO-SUIT GOVERNMENT
PROPERTY LEASE EXCISE TAX**

THIS LEASE ("Lease") is entered into as of the 22 day of JUNE, 2017 (the "Effective Date"), by and between **RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT**, an Arizona tax levying special facilities district, having its office at 400 West Congress, Suite 152, Tucson, AZ 85701 (hereinafter "Landlord"), and **CATERPILLAR GLOBAL MINING LLC**, a Delaware limited liability company, having an office at 97 East Congress, Tucson, AZ 85701 (hereinafter "Tenant"). Capitalized terms used in this Lease shall have the meanings ascribed to them parenthetically or in Section 2.1 of this Lease.

RECITALS:

A. Landlord 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 under the Stadium District Statutes pursuant to A.R.S. §48-4201 *et seq.*

B. Landlord has acquired real property from the City more particularly described in Exhibit A attached hereto (the "Land") upon which the "New Facility" will be located. The Land and the New Facility constitute the "Premises." After acquisition of the Land and construction of the New Facility by Landlord, the Premises will be "Government Property Improvements" under A.R.S. §42-6201(2), under which Landlord is a "Government Lessor" pursuant to A.R.S. §42-6201(1), and Tenant is a "Prime Lessee" pursuant to A.R.S. §42-6201(4).

C. The Premises are located within the special taxing district limits of Landlord and in a single central business district in a redevelopment area established pursuant to Title 36, Chapter 12, Article 3 of Arizona Revised Statutes (A.R.S. §§36-1471 *et seq.*) (the "CBD"). More than one year has lapsed from the City's designation of the CBD, and Landlord has determined (based on an estimate of an independent third party) that (i) Landlord's construction and renovation of, and improvements to, the Premises (collectively, "Construction") will result in an increase in property value of at least one hundred percent, and (ii) within the term of this Lease, the economic and fiscal benefit to the State and the Landlord will exceed the benefits received by Tenant under the Lease.

D. The Premises will be subject to the Government Property Lease Excise Tax as provided for under A.R.S. §42-6202 (A) and (B) (the "GPLET"). The City of Tucson has indicated that it will approve the abatement of the GPLET pursuant to a resolution to be approved by the City's Mayor and Council (the "Consent"), beginning on the date of the issuance of the permanent Certificate of Occupancy for the New Facility (the "Commencement Date"), and ending eight years thereafter, all as provided in A.R.S. §42-6206(C). The Consent will be attached hereto as Exhibit M.

E. Immediately following the 8 year period of the abatement of the GPLET, if and to the extent that excise taxes are assessed against Tenant, Landlord shall reimburse and/or indemnify and hold Tenant harmless for the following percentages of such excise tax assessments on an annual basis declining from the ninth 9th year through the 15th year of the Rental Period in the following percentages: 87.5%, 75%, 62.5%, 50%, 37.5%, 25%, 12.5% with no excise tax relief beginning in the 16th year of the Rental Period.

ARTICLE 1 LEASE OF THE SITE

§ 1.1. Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, upon and in consideration of the terms and conditions contained herein, the Premises, including surface, subsurface and air rights on, under, above and appurtenant to presently existing or to be constructed on the Land. The Premises are subject to, and further described by, the following:

A. Other covenants, restrictions, easements, agreements, and reservations of record, if any.

B. Present and future building restrictions and regulations, zoning laws, ordinances, resolutions and regulations of the municipality in which the Land lies and all present and future ordinances, laws, regulations and orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction over the Land.

C. The condition and state of repair of the Premises as the same may be on the Commencement Date.

§ 1.2. Term. Although this Lease, and the obligations of Landlord and Tenant as set forth in this Lease shall commence on the date of execution of this Lease, the term of this Lease ("Rental Period") shall commence on the issuance of a permanent Certificate of Occupancy for the New Facility ("Commencement Date") and, subject to Tenant's Purchase Option and Termination Right, shall expire at 12:00 midnight on the last day of the Rental Period ("Termination Date"), unless this Lease is sooner terminated as hereinafter provided. The Commencement Date and the Termination Date shall be set forth in the Amendment to Lease substantially in the form attached hereto as Exhibit C. Subject to the indemnification provisions set forth in Article 13 below, provided that Tenant does not interfere with or interrupt Landlord's Work and that Tenant has complied with Article 5 hereof regarding insurance, Tenant may enter the Premises prior to the Commencement Date at no rent, to install any items required by Tenant which are not Landlord's responsibility.

§ 1.3. Tenant's Termination Right. Notwithstanding any provision of this Lease to the contrary, provided that Tenant exercises its Purchase Option hereunder, Tenant may terminate this Lease at any time upon not less than 60 days' prior written notice to Landlord.

ARTICLE 2 DEFINITIONS

§ 2.1. Definitions. For the purposes of this Lease, the following words shall have the definition and meaning hereafter set forth.

“Affiliate”: As applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person. For the purposes of this definition, (i) “control” (including with correlative meaning, the terms “controlling,” “controlled by” and “under common control”), as applied to any person, 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.

“Additional Payments”: As defined in § 4.1.

“Applicable Laws”: The federal, state, county and local laws (statutory and common law), ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City which apply to the Premises.

“Board”: The Board of Directors of Landlord.

“CBD”: As defined in Recital C.

“Certificate of Occupancy”: As defined in § 9.2.

“Commencement Date”: As defined in § 1.2.

“Consent”: As defined in Recital D and as attached hereto on Exhibit M.

“Effective Date”: The date on which this Lease is fully executed by all parties hereto, as indicated by the latest date on the signature pages of this Lease.

“Enforced Delays”: As defined in § 26.1.

“Event of Default”: As defined in § 17.1.

“Impositions”: As defined in § 4.1.

“Land”: As defined in Recital B and is described on Exhibit A.



“Landlord”: The Landlord named herein and its successors and assigns.

“Landlord’s Lender”: Any lender of Landlord that provides construction or permanent financing for the Project.

“Net Rent”: As defined in § 3.1 A.

“New Facility”: Any and all structures or improvements to be constructed on the Land pursuant to this Lease, as shown on Exhibit I attached hereto.

“New Facility Budget”: That portion of the Project Budget shown as the “New Facility (Building) Subtotal” on Exhibit D.

“Option Period”: As defined in §28.2.

“Premises”: As defined in Recital B.

“Project”: As described in Section 10.1.

“Project Budget”: As described on Exhibit D.

“Purchase Option”: As defined in §28.1.

“Relocation Incentive”: The \$2,000,000 paid by Landlord to Tenant to assist with relocation costs to be paid within 30 days of confirmation that the \$4,000,000 Arizona Commerce Authority’s incentive to Tenant has been paid.

“Rental Period”: The period beginning on the Commencement Date and ending 25 years from the first day of the month following the date of issuance of the Certificate of Occupancy, subject to the Purchase Option exercised by Tenant in accordance with § 1.3 and Article 28.

“Second Notice”: As defined in § 17.2.

“Tenant”: The Tenant named herein and its successors and assigns.

“Termination Right”: As defined in § 1.3.

ARTICLE 3 RENT

§ 3.1. Net Rent.

A. Base and Adjustments. Tenant agrees to provide valuable consideration for the Premises from the Effective Date until the Commencement Date. From and after the Commencement Date, Tenant shall pay to Landlord Net Rent on a monthly basis.

The parties agree that the Net Rent shall be calculated in a manner that provides sufficient debt service to pay all principal and interest when due on the bonds issued to finance the New Facility Budget (the "Bonds") in accordance with the conditions and qualifications contained in the June 22, 2017 Raymond James proposal attached hereto as Exhibit B (the "Raymond James Proposal") or such alternate proposal to be provided by another financial institution that both parties agree is superior to the Raymond James Proposal (the "Alternate Proposal"). Regardless of the proposal used, the Net Rent shall be sufficient to pay debt service when due and payable as set forth in the final term sheet or bond purchase agreement setting forth the actual debt service on the Bonds. For illustration purposes as set forth in the Raymond James Proposal, Net Rent for each month of the first ten years of the Rental Period shall be adjusted monthly to account for any changes in interest rate on the variable rate Bonds in accordance with the debt service schedule on the Bonds. The interest rate on the Bonds shall be subject to an interest rate cap of 3% for the first ten years of the Rental Period. For purposes of example, the actual Net Rent shall be based on the Par Amount of the Bonds (as defined in the Raymond James Proposal or Alternate Proposal) at the then current LIBOR interest rate, as published, plus a market driven credit spread initially estimated to be five basis points. After the first ten years of the Rental Period, the interest rate on the Bonds shall float with the market rate and will not be subject to the initial 3% interest rate cap. At any time during the Rental Period, Tenant may terminate this Lease pursuant to Section 1.3 above, provided that it complies with the Option to Purchase provisions contained in Article 28 below. The parties acknowledge that the terms contained in the Raymond James Proposal are based on the financial conditions existing as of June 1, 2017, and are subject to change until the Bonds are actually issued. Notwithstanding the foregoing, the parties agree that they may amend this Lease to substitute the financing proposed by the Raymond James Proposal with more favorable financing illustrated in an Alternate Proposal that is provided by one of Tenant's corporate lenders on or before June 30, 2017.

B. Monthly Installments. All payments of Net Rent shall be made in monthly installments in advance, without notice, beginning on the first day of the first month following the Commencement Date and in like fashion each month thereafter. Landlord or Landlord's designee shall receive such payments at least 30 days prior to the due date for debt service on the Bonds. Each installment of Net Rent shall be paid by Tenant via Automated Clearing House payment. All billing statements, reconciliations, invoices or other inquiries concerning payments shall be sent to Caterpillar_Real_Estate@cat.com.

§ 3.2. Rent Absolutely Net. It is the purpose and intent of the Landlord and Tenant that Net Rent payable hereunder shall be absolutely net to Landlord so that this Lease shall yield to Landlord the Net Rent herein specified, free of any charges, assessments, Impositions, or deductions of any kind charged, assessed, or imposed on or against the Premises and without abatement, deduction or set-off by the Tenant, except as hereinafter otherwise specifically provided in this Lease. Landlord shall not be expected or required to pay any such charge, assessment or Imposition or be under any obligation or liability hereunder except as herein expressly set forth. All costs expenses, and

obligations of any kind relating to the maintenance and operation of the Premises, including all construction, alterations, repairs, reconstruction, and replacements as hereinafter provided, which are incurred during the Rental Period shall be paid by Tenant. Landlord shall be indemnified and saved harmless by Tenant from and against all of the foregoing costs, expenses, and obligations.

§ 3.3. Non-Subordination. Landlord's interest in this Lease, as the same may be modified, amended or renewed, shall not be subject or subordinate to (a) any mortgage now or hereafter placed upon Tenant's interest in this Lease, or (b) any other liens or encumbrances hereafter affecting Tenant's interest in this Lease.

§ 3.4. No Release of Obligations. Except for either a mutual release and waiver of rights and liabilities arising under this Lease or to the extent expressly provided in this Lease, no happening, event, occurrence, or situation during the Rental Period, whether foreseen or unforeseen, and however extraordinary (including, without limitation, Tenant's failure, refusal, or inability for any reason to occupy the New Facility) shall relieve the Tenant of its liability to pay the Net Rent and Additional Payments and other charges under this Lease, nor shall it relieve the Tenant of any of its other obligations under this Lease.

ARTICLE 4 ADDITIONAL PAYMENTS

§ 4.1. "Additional Payments" Defined. Tenant shall pay all Additional Payments during the Rental Period, without notice (except as specifically provided) and without abatement, deduction or setoff (except as provided in § 4.2), before any fine, penalty, interest, or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof. "Additional Payments" include all sums, impositions, costs, expenses and other payments and all taxes, including personal property taxes, taxes on rents, leases or occupancy, and government property improvement lease excise tax ("GPLET"), assessments, special assessments, enhanced municipal services district assessments, water and sewer rents, rates and charges, charges for public utilities, excises, levies, licenses, and permit fees, water, sewer, utilities, and other governmental or quasi-governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which, at any time during the Rental Period may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or with respect to, or become a lien on, the Premises or any part thereof, or any appurtenances thereto, any use or occupation of the Premises, or such franchises as may be appurtenant to the use of the Premises (all of which are sometimes herein referred to collectively as "Impositions" and individually as an "Imposition") provided, however, that:

A. if, by law, any Imposition may at the option of the Tenant be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and in such event, shall pay such



installments as they become due during the Rental Period before any fine, penalty, further interest or cost may be added thereto;

B. any Imposition (including Impositions which have been converted into installment payments by Tenant, as referred to in paragraph (A) of this § 4.1) relating to a fiscal period of the taxing authority, a part of which period is included within the Rental Period and a part of which is included in the period of time after the expiration of the Rental Period shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or become a lien upon the Premises, or shall become payable, during the Rental Period) be adjusted between Landlord and Tenant as of the expiration of the Rental Period, so that Tenant shall pay that portion of such Imposition attributable to the Rental Period and Landlord shall pay the remainder thereof; and

C. in no event shall Tenant be liable for any tax on Landlord's income, or for any real property taxes on the Premises so long as Landlord owns the Premises.

Tenant shall pay to Landlord, with and in addition to monthly Net Rent, all taxes imposed by any governmental unit on the rentals received by Landlord pursuant to the terms of this Lease. Tenant shall pay all other Impositions directly to the taxing authority or authorities, unless otherwise requested by Landlord.

§ 4.2. Contest. Tenant, if it shall so desire, may contest the validity or amount of any Imposition, in which event, Tenant may defer the payment thereof during the pendency of such contest. Nothing herein contained, however, shall be so construed as to allow such item to remain unpaid for a length of time that permits the Premises or any part thereof, or the lien thereon created by such Imposition to be sold for the nonpayment of the same. If the amount so deposited shall exceed the amount of such payment, the excess shall be paid to Tenant or, in case there shall be any deficiency, the amount of such deficiency shall be promptly paid by Tenant to Landlord together with all interest, penalties or other charges accruing thereon.

§ 4.3. Assessment Reduction. Tenant may, if it shall so desire, without expense to Landlord, endeavor at any time to obtain a lowering of an Imposition or assessment upon the Premises for the purpose of reducing the amount thereof. However, in such event, Landlord will not be required to cooperate with Tenant and may in fact oppose such endeavor. Tenant shall be authorized to collect any refund payable as a result of any proceeding Tenant may institute for that purpose and any such refund shall be the property of Tenant to the extent to which it may be based on a payment made by Tenant.

§ 4.4. Hold Harmless. Landlord shall not be required to join in any action or proceeding referred to in §§ 4.3 or 4.4 (unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event any such action or proceeding may be taken by Tenant in the name of the Landlord only with Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed). Tenant hereby agrees to save Landlord harmless from all costs, expenses,

claims, loss or damage by reason of, in connection with, on account of, growing out of or resulting from, any such action or proceeding.

§ 4.5. Government Property Lease Excise Tax. As required under Arizona Revised Statutes Section 42-6206, Tenant is hereby notified of its potential tax liability under the Government Property Lease Excise Tax ("GPLET") provisions of Arizona Revised Statutes ("A.R.S."), Section 42-6201, *et seq.* Failure of Tenant to pay the tax after notice and an opportunity to cure is an Event of Default that could result in termination of this Lease. Pursuant to the City's authority, the City has abated or will abate Tenant's obligation for the GPLET pursuant to A.R.S. § 42-6209 for an eight year period commencing on the issuance of a permanent Certificate of Occupancy (or its equivalent) for the New Facility. Subject to the foregoing, Landlord shall take any additional action as necessary for Tenant to qualify for GPLET tax treatment. Landlord shall reimburse and/or indemnify and hold Tenant harmless, if for any reason, Tenant fails to receive the full benefit of the eight (8) year period of abatement of the GPLET. Immediately following the eight year period of abatement of the GPLET, the New Facility will be taxed as Government Property Improvements in accordance with A.R.S. § 42-6201 *et seq.* from the expiration of the applicable eight year abatement period through the end of the Rental Period, except that, if and to the extent that excise taxes are assessed against Tenant, Landlord shall reimburse and/or indemnify and hold Tenant harmless for the following percentages of such excise tax assessments on an annual basis declining from the ninth 9th year through the 15th year of the Rental Period in the following percentages: 87.5%, 75%, 62.5%, 50%, 37.5%, 25%, 12.5% with no excise tax relief beginning in the 16th year of the Rental Period. For so long as Landlord owns the Premises, the Premises are not subject to real property tax.

§ 4.6. Administrative Fee. Along with payment of the monthly Net Rent, Tenant shall pay Landlord a monthly administrative fee of \$1,458.33 (the "Administrative Fee") which shall be used by Landlord for the administration of this Lease.

ARTICLE 5 INSURANCE

§ 5.1. Tenant Obligation to Insure. Tenant shall procure and maintain for the duration of this Lease, at Tenant's own cost and expense, insurance against claims for injuries to persons or damages to property which may arise from or in connection with this Lease by the Tenant, its agents, subtenants, employees, contractors, licensees or invitees in accordance with the insurance requirements set forth in Exhibit E attached hereto.

§ 5.2. Failure to Maintain Insurance. If Tenant fails or refuses to provide a copy of the renewal insurance certificates, or otherwise fails or refuses to procure or maintain insurance as required by this Lease, Landlord shall have the right, at Landlord's election, and without notice, to procure and maintain such insurance. The premiums paid by Landlord shall be due and payable from Tenant to Landlord on the first day of the



month following the date on which the premiums were paid. Landlord shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer(s) and insured(s).

The lapse or cancellation of any policy of insurance required herein, in whole or in part for the benefit of Landlord, shall be an Event of Default. No cure of such default can be accomplished unless a new or renewed policy is issued which specifically provides the required coverage to the Landlord for any liability arising during the lapsed or previously uncovered period.

§ 5.3. Right to Self-Insure. Notwithstanding any obligation or requirement of Tenant concerning insurance stated herein, Tenant, through Caterpillar Inc., shall self-insure against all risks related to this Lease and to meet its insurance obligations hereunder, provided that Caterpillar Inc. maintains a net worth (as shown by its financial statements audited in accordance with GAAP) of not less than \$100,000,000.00. Certificates of Insurance will not be issued.

§ 5.4. Landlord Obligation to Insure. Landlord at its expense shall procure and maintain during the Rental Period, comprehensive general public liability insurance against loss for personal injury, death and property damage arising out of the negligence, gross negligence or willful misconduct of Landlord, its employees or agents while on the Premises, with a combined single amount of not less than \$2,000,000.00.

ARTICLE 6 SURRENDER

§ 6.1. Surrender--Removable Property. Unless Tenant has purchased the Premises pursuant to the Purchase Option set forth in Article 28, upon the expiration of the Rental Period or on the sooner termination thereof, Tenant shall peaceably and quietly leave, surrender, and yield up to the Landlord all of the Premises free of occupants, and shall repair all damage to the Premises caused by or resulting from the removal of any removable property of Tenant or of subtenants, normal wear and tear excepted. Subject to the expiration of any notice provision in § 20.1, any property of Tenant or any subtenant which shall remain in the building after the expiration of the Rental Period or sooner termination thereof shall be deemed to have been abandoned and may either be retained by Landlord as its property or disposed of in such manner as Landlord may see fit. If such property or any part thereof shall be sold, Landlord shall receive and retain the proceeds of such sale. Tenant shall be liable to Landlord for any and all costs of removal and the repair of any and all damages caused thereby in excess of any proceeds received by Landlord from any sale of Tenant's property pursuant to this provision.

§ 6.2. Waste. Tenant shall not commit or suffer to be committed any material waste or impairment of the Premises.

§ 6.3. Title. Except as provided in § 10.5 below, upon issuance of a Certificate of Occupancy with respect to the New Facility, title to the New Facility shall

automatically vest in Landlord without the requirement of any deed, conveyance, or bill of sale thereon, subject, however, to Tenant's rights and Purchase Option under this Lease. However, if Landlord or Tenant should reasonably require any such documents or instruments in confirmation thereof, Tenant and Landlord shall execute, acknowledge, and deliver the same.

§ 6.4. Soil and Buildings Tests. Unless Tenant has exercised its Purchase Option pursuant to Article 28, within the three months immediately preceding the expiration of this Lease or within two months of any earlier termination of the Lease, Tenant shall deliver to Landlord a soil and building conditions report prepared in compliance with current ASTM standards by an independent qualified engineer, licensed by the State of Arizona, stating that any Regulated Substances remaining at, on or under the Premises are left in full compliance with applicable Environmental Laws. If any remaining Regulated Materials are determined to be non-compliant with applicable Environmental Laws by an agency with appropriate jurisdiction to make such determination, Tenant is fully responsible for removing such Regulated Substances in full compliance with applicable Environmental Laws, except to the extent the Regulated Substances are present at, on or under the Premises prior to the Commencement Date or as a result of any act or omission of Landlord, its employees, agents, businesses or contractors.

§ 6.5. Failure to Correct Hazardous Conditions or Obtain Tests. Should Tenant fail to deliver to Landlord the report required by § 6.4, Landlord may cause a report to be prepared to like effect and Tenant shall be liable to Landlord for 100% of the cost of said report. Should the report provided by Landlord state that the Premises cannot be used or leased due to the presence of non-compliant Regulated Substances, Tenant shall forthwith remediate the Premises in full compliance with applicable Environmental Laws at Tenant's expense; further, Tenant shall be required to pay to Landlord an amount equal to 100% of the Net Rent and Additional Payments theretofore owing until the Premises are remediated in accordance with Environmental Laws (as defined in Section 27.1 A below). This shall not be construed as an extension of an expired or terminated lease but solely as damages to Landlord due to Tenant's activities which prevent Landlord from re-leasing the Premises. Tenant, following such lease expiration or termination, shall be allowed access to the Premises only to the extent necessary to remove or otherwise remediate the Premises and shall conduct no gainful business activity whatsoever at said Premises.

§ 6.6. Survival of Provisions. The provisions of this Article 6 shall survive the expiration or any termination of this Lease.

ARTICLE 7 LANDLORD'S PERFORMANCE FOR TENANT

§ 7.1. Cure Rights, Costs, and Damages. If Tenant shall fail to pay any Imposition or make any other payment required to be made under this Lease or shall default in the performance of any other covenant, agreement, term, provision, limitation,



or condition herein contained, Landlord, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default for the account and at the expense of Tenant, immediately and without notice. Bills for any expense required by Landlord in connection therewith, and bills for all such expenses and disbursements of every kind and nature whatsoever, including reasonable attorney's or administrative fees, involved in collection or endeavoring to collect the rent or Additional Payments or any part thereof, or enforcing or endeavoring to enforce any right against Tenant, under or in connection with this Lease, or pursuant to law, including (without being limited to) any such cost, expense, and disbursements involved in instituting and prosecuting summary proceedings, as well as bills for any property, material, labor, or services provided furnished, or rendered, or caused to be furnished or rendered, by Landlord to Tenant, with respect to the Premises and other equipment and construction work done for the account of the Tenant together with interest at the rate of 5% per annum compounded monthly from the respective dates of the Landlord's making of each such payment or incurring of each such cost or expense, may be sent by Landlord to Tenant monthly, or immediately, at Landlord's option, and shall be due and payable in accordance with the terms of said bills and if not paid when due the amount thereof shall immediately become due and payable as Additional Payments.

ARTICLE 8 USES AND MAINTENANCE

§ 8.1. Absence of Warranties. Subject to Section 10.4 E, Tenant has leased the Premises after a full and complete examination thereof, as well as the title thereto, and knowledge of its present uses and non-uses. Upon completion of the New Facility, Tenant will accept the same in its condition or state in which it has been constructed without any representation or warranty, express or implied in fact or by law, by Landlord and without recourse to Landlord as to the title thereto, the nature, condition, or usability thereof or the use or uses to which the Premises or any part thereof may be put. Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, demolition, replacement, maintenance, and management of the Premises, including but not limited to the performance of all burdens running with the Land.

§ 8.2. Permitted Uses. In no event shall the Premises or any part thereof be used for any purpose prohibited by this Lease. Regardless of the uses which would otherwise be allowed pursuant to the I-1 zoning classification or other ordinances which may be applicable to the Premises at any time during the Rental Period, the uses set forth in Exhibit F together with ancillary parking uses are the only permitted uses. Any change in the permitted uses must be approved by Landlord in writing, which approval shall not be unreasonably withheld, conditioned or delayed. Moreover, any permitted use which involves the handling, production and/or storage of Regulated Substances on the Premises shall be subject to all applicable Environmental Laws.

§ 8.3. Maintenance and Repairs. Subject to Section 10.4 E., Tenant shall take good care of the Premises, make all repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain



and keep the Premises and the sidewalks, curbs, and landscaping in good condition in accordance with City of Tucson standards and this Lease, whichever is more stringent. Tenant shall also keep the sidewalks and gutters on the Premises free and clear from rubbish and shall not obstruct the same or allow the same to be obstructed in any manner. Tenant shall keep the Premises free and clear of any and all mechanics' liens or other similar liens or charges incidental to work done or material supplied in or about the Premises, subject to the provisions of Article 11 and Tenant's right to contest and appeal any claim.

ARTICLE 9 COMPLIANCE

§ 9.1. Tenant Obligations. Tenant shall assume and perform any and all obligations under any covenants, easements and agreements affecting the title to the Premises. Tenant shall diligently comply, at its own expense during the Rental Period, with all applicable present and future laws, acts, rules, requirements, orders, directions, ordinances, and/or regulations concerning the Premises or any part thereof, or the use thereof, or the streets adjacent thereto, of any federal, state, municipal, or other public department, bureau, officer, or authority, or other body having similar functions, or of any liability, fire, or other insurance company having policies outstanding with respect to the Premises. The foregoing shall apply whether or not such laws, acts, rules, requirements, orders, directions, ordinances and/or regulations require the making of structural alterations or the use or application of portions of the Premises for compliance therewith or interfere with the use and enjoyment of the Premises. Notwithstanding the foregoing, Tenant may, in good faith (and wherever necessary, in the name of, but without expense to and with the prior written permission of, Landlord), contest the validity of any such law, act, rule, requirement, order, direction, ordinance and/or regulation and, pending the determination of such contest, may postpone compliance therewith, except that Tenant shall not so postpone compliance therewith, as to subject Landlord to the risk of any fine or penalty or prosecution for a crime.

§ 9.2. Certificate of Occupancy. Landlord shall obtain a permanent certificate of occupancy for the New Facility prior to the Commencement Date, and Tenant shall obtain any certificate of occupancy with respect to the Premises which may at any time be required after the Commencement Date by any governmental agency having jurisdiction thereof (collectively, "Certificate of Occupancy").

ARTICLE 10 CONSTRUCTION AND OPERATION OF NEW FACILITY

§ 10.1. Project. Landlord has purchased the Land from the City and will construct the New Facility thereon at Landlord's sole cost and expense ("Landlord's Work"); provided, however, that the cost of the New Facility shall not exceed the costs set forth in the New Facility Budget, as set forth in Exhibit D attached hereto.

§ 10.2. Improvement Costs Not Within the Project Budget Amount. At no expense to Tenant, prior to the issuance of the Certificate of Occupancy, Landlord shall pay for or arrange for a third-party (e.g., the City or County) to pay for any and all costs set forth below, which costs shall not be included in the Project Budget:

- A. Landlord's cost of acquiring the Land.
- B. Removing and properly disposing of all landfill and other Regulated Substances or undertaking other environmental remediation (including, without limitation, the installation and/or removal of any and all monitoring wells pursuant to Environmental Laws or other applicable state or local regulation) on or within 100 feet of the boundaries of the Land, as well as removing all archeologically sensitive materials from within the Land boundaries and at least 100 feet outside of the Land boundaries, including payment of cumulative costs, if any, exceeding \$113,500 for the Phase 1 Environmental, Phase 2 Environmental, and Archaeology line items set forth in the Project Budget;
- C. Providing appropriate sewer, storm drainage and electricity to the Land.
- D. Providing traffic improvements to facilitate ingress and egress to the Land, including all required traffic signals and signage to the north, as well as the construction of South Avenida del Convento, and
- E. Relocating the sewer main from its current location to either the east or west boundary of the Land.
- F. Providing Swaim Associates, Ltd. ("Swaim") as the project manager, including payment of Swaim's fee, if any, above the \$250,000 set forth in the Project Budget.
- G. Facilitating completion the Infill Incentive District ("IID") process to utilize IID's administrative review and approval process to cause the entire Land to be zoned I-1.
- H. All costs and expenses, including legal and attorney's fees incurred or related to the issuance of bonds used to finance the cost of the New Facility in excess of \$322,500, but excluding all financing costs of the bonds.
- I. Landlord's attorneys' fees, except as set forth in Subsection 10.2(H) above.
- J. Payment of the Relocation Incentive.
- K. Designing and constructing erosion protection improvements on the City owned property east of the Premises in full compliance with applicable federal, state and local laws and ordinances and all costs and expenses associated therewith.



L. Providing necessary elevation changes so that all functional areas of the New Facility, access and utilities are two feet above Zone X (0.2%) flood level, and that areas of the New Facility within two feet above Zone X (0.2%) flood level shall be limited to non-essential use, contain no service utilities and be constructed to protect from flooding.

§ 10.3. Procurement and Statutory Compliance: The New Facility shall be designed and constructed by Landlord through a selection process that must comply with Landlord's "Procurement Code" and "Title 34" of the Arizona Revised Statutes.

A. The New Facility shall include, subject to the New Facility Budget, an approximately 150,000 square foot building and approximately 500 parking spaces which shall be prepared by design professionals chosen by Landlord and Tenant. The New Facility design shall include provisions for 30% additional square footage and 30% additional parking (the "Expansion Design"). The parties acknowledge that the Expansion Design may decrease the amount of the New Facility Budget available for construction of the New Facility. Therefore the parties shall work together in good faith to approve each phase of the design (including the Expansion Design) to insure that the New Facility can be built in accordance with Exhibits H, I and J.

B. Landlord shall procure the "Design Professionals" to prepare the "Design" for the construction of the New Facility. Landlord and Tenant shall each be entitled to appoint members to the "Design Professionals Evaluation Committee." Landlord and Tenant shall prepare qualifications and review the qualifications using predetermined criteria for solicitation by Landlord. Up to six companies may be qualified and invited to interview for "Design." The Design Professional Evaluation Committee shall review the qualifications, conduct interviews, score the companies based on the predetermined criteria, and make a recommendation for selection by the Board. The final decision is to be approved by the Board.

C. Landlord shall procure a Construction Manager at Risk ("CM@Risk") company for pre-construction design services. Landlord and Tenant shall each be entitled to appoint members to the "CM@Risk Evaluation Committee." The CM@Risk Evaluation Committee shall prepare qualifications and review the qualifications using predetermined criteria. Up to six companies shall be qualified and invited to prepare proposals for pre-construction design services. The CM@Risk Evaluation Committee shall review the qualifications, conduct interviews, score the companies based on the predetermined criteria, and make a recommendation for selection by the Board. The final decision is to be approved by the Board.

D. The contract method for procuring the construction management company shall be a Construction Manager @ Risk Contractor with a cost of work, plus a fixed fee with a guaranteed maximum price ("GMP") and construction time. The agreement will be in general accordance with AIA Document A133-2009. The construction



management company shall be at risk ("CM@Risk") to construct the New Facility within the GMP and within the construction time allowed.

E. Landlord will also obtain any required approvals of the final plans and specifications by any and all federal, state, municipal and other governmental authorities, offices and departments having jurisdiction in the matter and provide conformed copies of executed approvals (if any) to Tenant.

§ 10.4. Completion Requirements. Landlord will construct the New Facility in a good, careful, proper, and workmanlike manner in accordance with:

A. The approved "Plans and Specifications" in Exhibits H, I and J; and

B. All provisions of law and any and all permits and authority required by ordinance, code, law, or public regulations or by any authority at any time having jurisdiction over the Premises.

C. Subject to Enforced Delays, Landlord shall complete the New Facility and obtain a permanent Certificate of Occupancy on or before March 1, 2019. If the permanent Certificate of Occupancy is not issued by such date, Landlord shall assign to Tenant the right to receive liquidated damages, if any, under either Landlord's agreement with the Design Professionals or the CM@Risk.

D. Both Landlord and Tenant shall approve in writing all pay applications presented by the CM@Risk. Pay applications shall include a current schedule of values, construction schedule, and a forecast for monthly pay requests for the entire project. An estimate of the work submitted shall be deemed approved and certified for payment after seven days from the date of submission unless before that time the Landlord or Tenant prepares and issues a specific written finding setting forth those items in detail in the estimate of the work that are not approved for payment under the CM@Risk contract. The Landlord may withhold an amount from the progress payment to the CM@Risk sufficient to pay the expenses the Landlord or Tenant reasonably expects to incur in correcting the deficiency set forth in the written finding. The progress payments shall be paid on or before fourteen days after the estimate of the work is certified and approved. The estimate of the work shall be deemed received by Landlord and Tenant on submission to any person designated by the Landlord and Tenant for the submission, review or approval of the estimate of the work.

E. When Landlord considers the New Facility to be substantially complete, Landlord will notify Tenant and, within three business days thereafter, Landlord's representative and Tenant's representative shall conduct a walk-through of the Premises and compile a list of incomplete and corrective items relating to the improvements (collectively, "Punch List Items"), which items Landlord shall complete and correct at Landlord's sole cost and expense promptly thereafter, and Landlord shall remain responsible for the completion and correction of such items. Landlord shall construct the New Facility in compliance with all laws in effect at the time of construction. Landlord

shall obtain a warranty from each contractor against defective materials and workmanship with respect to the New Facility for a period of at least one year from the issuance of the permanent Certificate of Occupancy and standard or extended warranties from the respective installer or manufacturer of the roof (at least 15 years) and of the water heaters, lighting and mechanical compressors (at least 5 years in each case), all of which warranties shall be assigned by Landlord to Tenant without recourse or warranty of assignability. Landlord shall use its best efforts to obtain warranties in the name of Tenant or which are assignable to Tenant. Landlord shall assign to Tenant all other construction warranties, and all warranties relating to workmanship and materials, of any kind, that it may receive in relation to the construction of the New Facility.

§ 10.5. Ownership of Buildings and Improvements.

A. During Term. Prior to receipt of the permanent Certificate of Occupancy, and during the Rental Period, title to the land and all buildings and improvements constructed on the Premises for Tenant pursuant to this Lease shall be in the Landlord.

B. Ownership at Termination. Unless Tenant has purchased the Premises pursuant to the Purchase Option set forth in this Lease, on the expiration or sooner termination of the Rental Period title to all buildings and improvements which constitute or are a part of the Premises, exclusive of trade fixtures and personal property of Tenant and subtenants, shall (without the payment of compensation to Tenant or others) remain in Landlord free and clear of all claims and encumbrances on such buildings and improvements by Tenant, and anyone claiming under or through Tenant. Any piping, wells, pumps, tanks or other equipment installed on the property by Tenant shall be left in a structurally sound, non-leaking condition so as not to become the source of any future environmental contamination or hazard. In such circumstances, upon request, Tenant shall quitclaim to Landlord its possessory interest in the buildings and improvements. Tenant agrees to and shall defend, indemnify and hold Landlord harmless from and against all liability and loss which may arise from the assertion of any claims and any encumbrances on such buildings and improvements; provided, however, such duty to indemnify and hold harmless shall not apply to any claims or encumbrances which are attributable to the acts or conduct of the Landlord. Additionally, Tenant shall assign to Landlord, and Landlord shall be entitled to the benefit of, any licenses, warranties or guarantees applicable to equipment, systems, fixtures or personal property conveyed or otherwise transferred to, or for the benefit of, Landlord under this Lease. Tenant shall not quitclaim its possessory interest in the aforementioned buildings and equipment to Landlord until such buildings and equipment have been inspected by Landlord and they have been determined not to present a potential environmental hazard. This provision 10.5 shall survive the expiration or earlier termination of this Lease.

Notwithstanding the foregoing, Landlord and Tenant acknowledge and agree that it is Tenant's current intent to exercise its Purchase Option upon expiration of the Lease or earlier.



§ 10.6. Tenant's Management and Operating Covenant. Following issuance of the Certificate of Occupancy and continuing during the remainder of the Rental Period, Tenant shall prudently manage and operate (or cause to be managed and operated) the New Facility and will properly maintain the New Facility and all other improvements to the Premises in good repair, reasonable wear and tear excepted. Tenant shall, at its expense, maintain the Premises in good condition and repair and shall make all structural repairs and replacements to both exteriors and interiors and to parking surfaces necessitated by any cause. Without limiting the generality of the foregoing, Tenant shall, at its sole cost and expense, be responsible for the care, maintenance and replacement of all heating and refrigerated air conditioning or evaporative cooling equipment and parts thereof serving the Premises, whether or not such equipment was installed by Tenant or Landlord, and shall replace all cracked, chipped and broken glass windows, doors and other glass on the premises. Landlord shall have no obligation to repair, maintain, alter or modify the Premises or any part thereof, or any plumbing, heating, electrical, air conditioning or other mechanical installation therein. If Tenant fails to comply with the foregoing requirements, Landlord may (but shall not be obligated to) effect such maintenance and repair, and its cost shall be due and payable as additional rent to Landlord within ten days after Landlord's written demand.

§ 10.7. Tenant Obligations.

A. Tenant shall select Tucson as the area for new offices, commencing no later than January 1, 2017.

B. Tenant shall provide the following high-quality jobs:

(1) During the period beginning May 1, 2016 and ending upon the termination of the Lease, Tenant will create at least 635 net new full-time jobs in Arizona, filled by Arizona residents. Net new jobs may include those created by one or more Affiliates of Tenant or by a contracting agency provider engaged by Tenant. The average annual wage for the new jobs must be equal to or greater than the median annual wage in Pima County, determined as of the date the average wage is determined, and also be at least \$90,000. "Annual wage" as used in this §10.7 means base gross annual wage plus any other direct compensation and incentive bonuses if applicable provided to employees, excluding the value of any health care and related benefits.

(2) Tenant will also pay at least 65% of the health insurance premiums for all net new full-time jobs.

C. Tenant shall be responsible for the cost of installing and maintaining its communications and IT equipment.



ARTICLE 11
IMPAIRMENT OF LANDLORD'S TITLE

§ 11.1. **No Liens.** Subject to the right of contest and appeal, Tenant shall not create, or suffer to be created or to remain, and shall discharge any mechanic's, laborer's, or materialman's lien which might be or become a lien, encumbrance, or charge upon the Premises or any part thereof or the income therefrom and Tenant will not suffer any other matter or thing arising out of Tenant's use and occupancy of the Premises whereby the estate, rights, and interests of Landlord in the Premises or any part thereof might be materially impaired.

The provisions of this Article 11 are not intended to limit any rights Tenant may have under Article 4 of this Lease.

§ 11.2. **Discharge.** If any mechanic's, laborer's, or materialman's lien shall at any time be filed against the Premises or any part thereof, Tenant, within thirty (30) days after notice of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise (or shall commence and diligently pursue such actions as will achieve such result). Tenant shall notify Landlord in writing of its action to either satisfy or contest the lien and, if contested, of the matter's status on a monthly basis until concluded.

§ 11.3. **No Implied Consent.** Nothing contained in this Lease shall be deemed or construed in any way as constituting Landlord's express or implied authorization, consent or request to any contractor, subcontractor, laborer or materialman, architect, or consultant, for the construction or demolition of any improvement, the performance of any labor or services or the furnishing of any materials for any improvements, alterations to or repair of the Premises or any part thereof.

§ 11.4. **No Agency Intended.** The parties acknowledge that Tenant is required to operate and maintain the New Facility. In connection therewith, the parties agree that Tenant is not the agent of Landlord for the operation or maintenance of any improvement Tenant on the Premises, the same to be accomplished at the sole expense of Tenant.

ARTICLE 12
INSPECTION

§ 12.1. **Inspection and Entry.** Landlord may enter upon the Premises, or any part thereof, for the purpose of ascertaining their condition or whether Tenant is observing and performing the obligations assumed by it under this Lease, all without hindrance or molestation from Tenant, provided that such entry does not interfere with Tenant's business operations or the operations of any assignee or subtenant and provided that Landlord shall give Tenant at least 48 hours written notice prior to any inspection of any building interior.

This notice provision shall not be construed to prohibit or delay any entry authorized by any writ or warrant issued by any Court, nor to any entry authorized by any health or welfare statute, code, ordinance, rule or regulation.

ARTICLE 13 INDEMNIFICATION

§ 13.1. Indemnification of Landlord.

A. Tenant shall indemnify and save Landlord harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including property damage, personal injury and wrongful death and further including, without limitation, architects' and attorneys' fees and disbursements, which may be asserted against Landlord by third parties by reason of any of the following, unless caused by or contributed to by the Landlord's negligence, gross negligence or willful misconduct or omission:

(1) operation or maintenance of the New Facility or any other work or thing done in, on or about the Premises or any part thereof by Tenant or its agents during the Rental Period;

(2) any use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or improvements or any nuisance made or suffered thereon or any failure by Tenant to keep the Premises or improvements or any part thereof in a safe condition;

(3) any acts of the Tenant or any subtenant or any of its or their respective agents, contractors, servants, employees, licensees or invitees;

(4) any fire, accident, injury (including death) or damage to any person or property occurring in, on or about the Premises or improvements or any part thereof;

(5) any failure on the part of Tenant to pay rent or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with and the exercise by Landlord of any remedy provided in this Lease with respect thereto;

(6) any lien or claim which may be alleged to have arisen against or on the Premises or improvements or any part thereof or any of the assets of, or funds appropriated to, Landlord or any liability which may be asserted against Landlord with respect thereto to the extent arising, in each such case, out of the acts of Tenant, its contractors, agents or subtenants;

(7) any failure on the part of Tenant to keep, observe, comply with and perform any of the terms, covenants, agreements, provisions, conditions or limitations



contained in the subleases or other contracts and agreements affecting the Premises or improvements or any part thereof, on Tenant's part to be kept, observed or performed;

(8) any transaction of Tenant relating to or arising out of the execution of this Lease or other contracts and agreements affecting the Premises or improvements, the New Facility or any part thereof or any activities performed by Tenant which are required by the terms of this Lease or such other contracts and agreements entered into by Tenant, or any party acting on behalf of Tenant;

(9) any tax, including any tax attributable to the execution, delivery or recording of this Lease, with respect to events occurring during the Rental Period.

B. Tenant will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises and improvements at the sole risk of Tenant and save the Landlord harmless from any loss or damage thereto by any cause whatsoever other than the negligence, gross negligence or willful conduct or omission of Landlord, its agents, employees and contractors.

C. The obligations of Tenant under this Section shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Premises.

D. Notwithstanding the foregoing or any other provision of this Lease to the contrary, in no event shall any indemnification obligation of Tenant extend to or cover any damages or claims arising from or relating to the negligence, gross negligence or willful misconduct or omissions of Landlord, its agents, employees or contractors.

E. If any claim, action or proceeding is made or brought against Landlord by reason of any event to which reference is made in this Section, then, upon demand by Landlord, Tenant, at its sole cost and expense, shall resist or defend such claim, action or proceeding in Landlord's name, if necessary, by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys selected by Tenant, as approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Landlord may engage its own attorneys to defend it or to assist in its defense at Landlord's sole expense. Landlord shall at all times have the right to accept or reject any offer to compromise or settle, any lawsuit, claim, demand or liability asserted against it. However, Tenant shall not be responsible to indemnify for any settlements entered into by Landlord under this Section without prior written consent by Tenant, which shall not be unreasonably withheld, conditioned or delayed.

§ 13.2. Indemnification of Tenant. Landlord shall indemnify and hold harmless Tenant, its officers, employees and agents, from and against all claims and demands of any nature whatsoever arising out of the injury to or death of any person or damage to property, to the extent caused by the acts or omissions of Landlord, its

employees, agents, guests, licensees or invitees, but excluding to the extent caused by Tenant's negligence, gross negligence or willful misconduct or omission.

§ 13.3. Survival of Indemnification Obligations. The provisions of this Article 13 shall survive the expiration or earlier termination of this Lease.

ARTICLE 14 DAMAGE OR DESTRUCTION

§ 14.1. Tenant Repair and Restoration. If at any time during the Rental Period the Premises or any part thereof shall be damaged or destroyed by fire or other occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant, at its sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, shall proceed with reasonable diligence to repair, alter, restore, replace, or rebuild the same. Anything herein to the contrary notwithstanding, Tenant shall immediately secure the Premises and undertake temporary repairs and work necessary to protect the public and to protect the Premises from further damage.

§ 14.2. Payment of Insurance Proceeds. All insurance proceeds on account of such damage or destruction under the policies of insurance provided for in Article 5, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof shall be paid to the Tenant.

§ 14.3. Failure to Commence Repairs. If Tenant is required to restore the Premises pursuant to § 14.1 above and the design work for such restoration shall not have been commenced within 180 days after the date of the damage or destruction, or if such work is not completed within 36 months after completion of such design, Landlord may terminate this Lease pursuant to Article 17, subject in all events to Tenant's Purchase Option.

§ 14.4. Lease Obligations Continue. In no event shall Tenant be entitled to any abatement, allowance, reduction, or suspension of rent because part or all of the Premises shall be untenantable owing to the partial or total destruction thereof. No such damage or destruction shall affect in any way the obligation of Tenant to pay Net Rent, Additional Payments, and other charges herein reserved or required to be paid, nor release Tenant of or from obligations imposed upon Tenant hereunder.

§ 14.5. Substantial Damage at End of Term. If 50% or more of the square footage of the structural component of the New Facility on the Premises is substantially damaged or destroyed by fire or other casualty at any time during the last three years of the Rental Period (giving effect to all exercised extension options) either Landlord or Tenant may, on 60 days' written notice, terminate this Lease pursuant to Article 18, in which case title to the Premises shall be conveyed to Tenant who shall take the Premises in an "as is" condition, upon exercise of Tenant's Purchase Option.



**ARTICLE 15
CONDEMNATION**

§ 15.1. Total, Substantial, or Unusable Remainder.

A. If at any time during the Rental Period of this Lease:

(1) **Total or Substantial Taking.** Title to the whole or substantially all of the Premises shall be taken in condemnation proceedings or by any right of eminent domain or by agreement in lieu of such proceedings, this Lease shall terminate and expire on the date possession is transferred to the condemning authority and the Net Rent and Additional Payments reserved shall be apportioned and paid to such date; or

(2) **Remainder Unusable for Purposes Leased.** Title to a substantial portion of the Premises shall be taken in condemnation proceedings or by any right of eminent domain or by agreement in lieu of such proceeding, and the remaining part of the Premises cannot feasibly be used or converted for use by Tenant for the uses set forth in § 8.2 hereof, Tenant may, at its option, terminate this Lease within 90 days after such taking by serving upon Landlord at any time within said 90 day period, a 30 day written notice of Tenant's election to so terminate accompanied by a certificate of Tenant that the remaining part of the Premises cannot feasibly be used or converted for use by Tenant as contemplated in § 8.2 hereof.

B. Award. In the event of such taking, Landlord shall be entitled to the portion of the award representing the present value of the rental to be paid to Landlord under this Lease subject to Tenant's Purchase Option, in which case if exercised, Tenant shall be entitled to Landlord's portion, and Tenant shall be entitled to the balance of the award.

§ 15.2. Partial Taking-Lease Continues. In the event of any taking of less than the whole or substantially all of the Premises, the Rental Period shall not be reduced or affected in any way.

A. Award Payment. Tenant shall be entitled to all compensation paid by the condemning authority in the event of a partial taking.

B. Restoration of Remainder. If such taking occurs during the Rental Period and the remaining part of the Premises can feasibly be used or converted for use by Tenant as contemplated in § 8.2 hereof, Tenant, at its sole cost and expense and whether or not the condemnation proceeds shall be sufficient for the purpose, shall proceed with reasonable diligence to repair, alter (including any necessary demolition and reconstruction) and restore the remaining part of the Premises to substantially their former condition, so as to be complete, rentable and usable and of the quality provided for in this Lease for the original construction of the affected building(s).

§ 15.3. Rights of Participation. Each party shall have the right, at its own expense, to appear in and defend any condemnation proceeding and participate in any and all hearings, trials, and appeals therein.

§ 15.4. Notice of Proceeding. In the event Landlord or Tenant shall receive notice of any proposed or pending condemnation proceedings affecting the Premises, the party receiving such notice shall promptly notify the other party of the receipt and contents thereof.

§ 15.5. Relocation Benefits. Tenant is not waiving any of its rights to any federal, state or local relocation benefits or assistance provided in connection with any condemnation or prospective condemnation action.

ARTICLE 16

ASSIGNMENT AND SUBLETTING

§ 16.1. Assignment by Tenant. Tenant shall not assign or encumber its interest in this Lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity to occupy or use all or any part of the Premises, without first obtaining Landlord's prior written consent, which may be withheld in Landlord's sole, absolute and unfettered discretion, except that Tenant can assign, sublease or encumber its interest to an Affiliate without Landlord's consent. Any assignment, sublease or encumbrance without Landlord's prior written consent shall be voidable, at Landlord's election, and shall constitute an Event of Default. Notwithstanding anything contained in this §16.1 to the contrary but otherwise subject to the provisions of this Lease, Tenant may assign all or any portion of the Premises, without the prior written consent of Landlord, to any of the following: (i) an affiliate of Tenant, (ii) any corporation, limited partnership, limited liability partnership, limited liability company or other business entity in which or with which Tenant, or its corporate successors or assigns, is merged or consolidated, in accordance with applicable statutory provisions governing merger and consolidation of business entities, so long as: (a) Tenant's obligations hereunder are assumed by the entity surviving such merger or created by such consolidation; and (b) such surviving or created entity has the financial ability, after the effective consummation of such merger or consolidation to perform Tenant's obligations under this Lease, and (iii) any corporation, limited partnership, limited liability partnership, limited liability company or other business entity acquiring all or substantially all of Tenant's assets, so long as such entity has the financial ability after such acquisition to perform Tenant's obligations under this Lease, provided Tenant shall and hereby agrees to remain primarily liable under this Lease, and Tenant gives Landlord not less than 180 days prior written notice of such assignment.

§ 16.2. Notice of Proposed Assignment. Tenant shall notify Landlord in writing of Tenant's intent to assign this Lease or sublease Tenant's interest in the Premises, the name of the proposed assignee or sublessee, information concerning the financial responsibility of the proposed assignee or sublessee and the terms of the

proposed assignment or subletting, and Landlord shall, within 30 days of receipt of such written notice, and additional information reasonably requested by Landlord concerning the proposed assignee's or sublessee's financial responsibility, elect one of the following:

- A. Consent to such proposed assignment, encumbrance or sublease; or
- B. Refuse such consent, which refusal shall be on reasonable grounds.

Landlord's failure to respond within the timeline set forth in this §16.2 shall be deemed to be an acceptance of such consent.

§ 16.3. Landlord's Consent. Without limiting Landlord's grounds for disapproval, Landlord's disapproval shall be deemed reasonable if it is based on Landlord's analysis that (i) the proposed assignee's or sublessee's credit is not consistent with the rental obligations under this Lease or (ii) the assignee's or sublessee's use and occupancy of the Premises will be inconsistent with §8.2 of this Lease. Landlord's waiver or consent to any assignment or subletting shall not relieve Tenant from any primary obligation under this Lease, including payment of the Net Rent amounts set forth in Section 3.1. As a condition for granting its consent to any assignment or sublease, Landlord may require that the assignee or sublessee remit directly to Landlord, on a monthly basis, all monies due to Landlord. In the event that Landlord shall consent to an assignment or sublease under the provisions of this § 16.3, Tenant shall pay Landlord's reasonable processing costs and reasonable attorneys' fees incurred in giving such consent. If for any proposed assignment or sublease Tenant receives rent or other consideration in lieu of rent, whether cash or any other form whatsoever, either initially or over the term of the assignment or sublease, in excess of the Net Rent called for hereunder, or, in case of the sublease of a portion of the Premises, in excess of such rent fairly allocable to such portion, Tenant shall pay to Landlord as Additional Rent hereunder 50% of the excess value of each such payment of rent received by Tenant promptly after its receipt.

§ 16.4. Assignment by Landlord. Landlord shall not assign or encumber its interest in the Lease or in the Premises without first obtaining Tenant's prior written consent, which may be withheld in Tenant's sole, absolute and unfettered discretion. Notwithstanding the foregoing, this provision shall not prevent Landlord, without Tenant's consent, from assigning its interest herein and to the Premises to the City or any other governmental entity in the State of Arizona, or otherwise by operation of law; provided, however, such assignee shall assume all of Landlord's obligations (including but not limited to those set forth in Section 4.5) and shall receive all of Landlord's benefits hereunder.

ARTICLE 17 DEFAULT BY TENANT

§ 17.1. Events of Default. The happening of any one of the following events (herein called "Events of Default") shall be considered a material breach and default by Tenant under this Lease:

A. Monetary Default. If default shall be made in the due and punctual payment of any Net Rent or Additional Payments and such default continues for 30 days after written notice thereof to Tenant; or

B. Non-Monetary Default. If default shall be made by Tenant in the performance of or compliance with any of the covenants, agreements, terms, limitations, or conditions hereof other than those referred to in the foregoing subsection (A), and such default shall continue for a period of 30 days after written notice thereof from Landlord to Tenant (provided, that if Tenant proceeds with due diligence during such 30 day period to substantially cure such default and is unable by reason of the nature of the work involved, to cure the same within the required 30 days, its time to do so shall be extended by the time reasonably necessary to cure the same as determined by Landlord); or

C. Bankruptcy, Voluntary. If Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated as bankrupt or insolvent, or shall take the benefit of any relevant legislation that may be in force for bankrupt or insolvent debtors or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state, or other statute, law or regulation, or if Tenant shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties, or shall make any general assignment for the benefit of creditors; or

D. Bankruptcy, Involuntary. If a petition shall be filed against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation, and shall remain undismissed or unstayed for 90 days, or if any trustee, receiver or liquidator of Tenant, or of all or substantial part of its properties, shall be appointed without the consent or acquiescence of Tenant and such appointment shall remain unvacated and unstayed for 90 days; or

E. Insurance, Lapse or Termination. Notwithstanding the provisions of paragraph B, above, the lapse or cancellation of any policy of insurance required herein, in whole or in part for the benefit of Landlord, shall be an event of default. No cure of such default can be accomplished unless a new or renewed policy is issued which specifically provides the required coverage to the Landlord for any liability arising during the lapsed or previously uncovered period.

§ 17.2. Notice and Termination. Upon the occurrence of one or more of the Events of Default listed in § 17.1, the Landlord at any time thereafter, but not after such default is cured, may give written notice ("Second Notice") to Tenant specifying such Event(s) of Default and stating that this Lease and the Rental Period hereby demised shall expire and terminate on the date specified in such notice, which shall be at least 30 days after the giving of such Second Notice, and upon the date specified in such Second Notice, subject to Tenant's exercise of its Purchase Option prior to such date, this Lease



and the Rental Period hereby demised and all rights of Tenant under this Lease shall expire and terminate as though such date were the date originally set forth herein for the termination hereof.

§ 17.3. Tenant Liability. In the event that Landlord terminates this Lease due to a default of Tenant, Tenant shall pay Landlord an amount equal to the Purchase Price set forth in § 28.3(A) that would have been due if the Purchase Option had been exercised on the day of such termination. Alternatively, in addition to any other remedies available to Landlord at law or in equity, Landlord may, at Landlord's sole option, continue the Lease in effect after Tenant's breach and abandonment and recover Net Rent and all other financial obligations of Tenant as they become due.

§ 17.4. No Implied Waivers. No failure by Landlord to insist upon the strict performance of any covenant, agreement, term or condition hereof or to exercise any right or remedy consequent upon a breach hereof, and no acceptance of full or partial Net Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition hereof to be performed or complied with by Landlord or Tenant, and no breach thereof, shall be waived, altered or modified, except by a written instrument executed by the party to be charged therewith. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term, limitation and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach hereof.

§ 17.5. Remedies Cumulative. In the event of any breach by Tenant of any of the covenants, agreements, terms or conditions hereof, Landlord, in addition to any and all other rights, shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise for such breach.

§ 17.6. Late Charge. In the event of Tenant's failure to pay Net Rent or Additional Payments on or before the expiration of the grace period set forth in Section 17.1 A above, Tenant shall pay Landlord interest on any such overdue payments and associated late charges at the rate of 2% per month, but in no event an amount greater than permitted by law, but this shall in no way limit any claim for damages for Landlord for any breach or default by Tenant.

§ 17.7. Specific Performance. If a default is not commenced to be cured within 30 calendar days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, Landlord may, at its option, thereafter (but not before) commence an action for specific performance of the terms of this Lease pertaining to such default.

§ 17.8. Self-Help. If a default is not commenced to be cured within 30 calendar days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, Landlord may,

at its option, enter upon the Premises, and cure such default, in which event Landlord may charge Tenant for its hard and soft costs, together with an administrative and mobilization expense not to exceed 5% of all such costs, which shall be paid to Landlord within 10 days after receipt of an itemized invoice for such costs.

ARTICLE 18 DEFAULT BY LANDLORD

§ 18.1. Limitations of Landlord's Liability. Landlord's liability hereunder for any default shall be limited to the value of the Premises and shall not extend to any other assets of Landlord.

§ 18.2. Remedies. In the event of any breach by Landlord of any of the covenants, agreements, terms, or conditions hereof, Tenant, in addition to any and all other rights, shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise for such breach.

ARTICLE 19 UNENFORCEABLE TERMS

§ 19.1. Severability. Landlord and Tenant each believes that the execution, delivery and performance of this Lease are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Lease is declared void or unenforceable (or is construed as requiring the Landlord to do any act in violation of any Applicable Law, including any constitutional provision, law, regulation, City Code or City Charter), such provision shall be deemed severed from this Lease and this Lease shall otherwise remain in full force and effect. Upon such occurrence, this Lease shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the parties as if such severance and reformation were not required. Unless prohibited by Applicable Laws, the parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Lease, as reformed.

ARTICLE 20 NOTICES

§ 20.1. Notices. Any notice, request, demand, statement, or consent herein required or permitted to be given by either party to the other hereunder, except as pursuant to Article 12, shall be in writing signed by or on behalf of the party giving the notice and addressed to the other parties at the address as set forth below:



If to Landlord:

Rio Nuevo Multipurpose Facilities District
Attention Chairman Fletcher McCusker
400 W. Congress #152
Tucson, Arizona 85701

With a copy to:

Mark Collins, Esq.
Gust Rosenfeld P.L.C.
1 S. Church Ave. #1900
Tucson, Arizona 85701

If to Tenant:

Caterpillar Global Mining, LLC
875 W. Cushing Street
Tucson, Arizona 85745
Attn: Facility Manager

With a copy to:

Caterpillar Inc.
100 NE Adams Street
Peoria, Illinois 61629-6120
Attn: Manager, Corporate Real Estate

And a copy to:

Caterpillar Inc.
100 NE Adams Street
Peoria, Illinois 61629-9600
Attn: Deputy General Counsel, Commercial Services

All billing notices to Tenant shall be sent to:

Caterpillar_Real_Estate@cat.com

Each party may by notice in writing change its address for the purpose of this Lease, which address shall thereafter be used in place of the former address. Each notice, demand, request, or communication which shall be mailed to any of the aforesaid shall be deemed sufficiently given, served, or sent for all purposes hereunder two business days after it shall be mailed by United States registered or certified mail, postage prepaid, in any post office or branch post office regularly maintained by the United States Government, upon personal delivery, or one business day after deposit with any commercial air courier or express service.

ARTICLE 21 CONDITION

§ 21.1. Condition of Premises. Tenant represents that the Premises, any sidewalks, vaults, the title to the Premises, parking areas adjoining the same, any subsurface conditions thereof, and the present uses and non-uses thereof, have been examined by Tenant and that Tenant accepts the same in the condition or state in which they or any of them may be on the date of the execution of this Lease, without representation or warranty, express or implied in fact or by law, by Landlord and without recourse to Landlord, as to the nature, condition, or usability thereof or the use or uses to which the Premises or any part thereof may be put.

Subject to Section 10.4 E., upon completion of the New Facility, as evidenced by a Certificate of Occupancy, Tenant shall accept the Premises as being in good and satisfactory condition and suitable for Tenant's purposes provided that Landlord has caused the Premises to be constructed in substantial conformance with the Plans and Specifications. Upon Landlord tendering possession of the Premises to Tenant, Tenant will accept possession of the Premises. Subject to any Punch List Items, Tenant will accept the Premises in its "AS-IS, WHERE-IS" condition.

§ 21.2. AS IS. EXCEPT AS PROVIDED HEREIN, NEITHER LANDLORD NOR ANYONE ACTING FOR OR ON BEHALF OF LANDLORD, HAS MADE ANY REPRESENTATION, WARRANTY, STATEMENT OR PROMISE TO TENANT CONCERNING THE PREMISES, OR THE QUALITY, VALUE, FEASIBILITY, DESIRABILITY, THE IMPROVEMENTS FOR OR INTO ANY PARTICULAR USE, THE CURRENT OR PROJECTED INCOME OR EXPENSES OF THE PREMISES, OR ANY OTHER MATTER WITH RESPECT TO THE PREMISES; THAT IN ENTERING INTO THIS LEASE, TENANT HAS NOT RELIED UPON ANY REPRESENTATION, STATEMENT OR WARRANTY OF LANDLORD OR ANYONE ACTING FOR OR ON BEHALF OF LANDLORD, OTHER THAN AS EXPRESSLY CONTAINED IN THIS LEASE; AND TENANT DOES HEREBY WAIVE AND LANDLORD DOES HEREBY DISCLAIM ALL WARRANTIES OF ANY KIND OR TYPE WHATSOEVER WITH RESPECT TO THE PREMISES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THOSE OF MARKETABILITY, MERCHANTABILITY AND TITLE, FITNESS FOR A PARTICULAR PURPOSE, TENANTABILITY, HABITABILITY, OR USE, EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, TENANT SHALL ACCEPT THE EXISTING PREMISES "AS-IS" AND "WHERE-IS" AT THE EFFECTIVE DATE, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH HEREIN. EXCEPT AS EXPRESSLY SET FORTH HEREIN, LANDLORD MAKES NO REPRESENTATION OR WARRANTY AS TO THE PHYSICAL CONDITION OR SAFETY OF THE PREMISES.



ARTICLE 22
QUIET ENJOYMENT

§ 22.1. **Quiet Enjoyment.** Subject to all of the conditions, terms, and provisions contained in this Lease, Landlord covenants that Tenant, upon paying the Net Rent and Additional Payments and observing and keeping all terms, covenants, agreements, limitations, and conditions hereof on its part to be kept, shall quietly have and enjoy the Premises during the Rental Period, without hindrance or molestation by Landlord.

ARTICLE 23
ESTOPPEL

§ 23.1. **Estoppel Certificates.** Landlord or Tenant (including Tenant's assignees and subtenants) may request a certificate (benefiting itself, its successors and lenders) evidencing whether or not:

A. The Lease is in full force and effect along with the amount and current status of the Net Rent and Additional Payments due hereunder;

B. The Lease has been modified or amended in any respect or describing such modifications or amendments, if any; and

C. There are any existing defaults thereunder, to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any.

The party receiving such a request shall cooperate with the requesting party and shall deliver a written response within 20 days of such request.

ARTICLE 24
CONSENTS

§ 24.1. **Parties and Notice.** Whenever the consent or approval of a party to this Lease is required or reasonably requested under this Lease, if they fail to notify the other party in writing within 30 days (except where a longer period is otherwise specified herein for the giving of such consent or approval) after the giving of a written request therefor in the manner specified herein for the giving of notice, it shall be concluded that such consent or approval has been given.

ARTICLE 25
LANDLORD NOT LIABLE

§ 25.1. **Limitation of Liability.** Except as provided in this Lease, and except for Landlord's negligence, gross negligence or willful misconduct or omission, Landlord shall not be responsible or liable for any damage or injury to any property, fixtures, merchandise, or decorations or to any person or persons at any time on the Premises from

steam, gas, electricity, water, rain, or any other source whether the same may leak into, issue or flow from any part of the Premises or from pipes or plumbing work of the same, or from any other place or quarter.

ARTICLE 26 ENFORCED DELAY

§ 26.1. Enforced Delay; Extension of Time of Performance. Whether stated or not, all periods of time in this Lease are subject to this Section. Neither the Landlord nor Tenant, as the case may be, shall be considered to have caused an Event of Default with respect to its obligations under this Lease (or to have failed to meet any required date of performance) in the event of enforced delay (an “Enforced Delay”) due to:

A. causes beyond its reasonable control and without its negligent or intentional failure to comply with the terms hereof, including, but not restricted to, acts of God, acts of public enemy, acts of the Federal, state or local government, acts of the other Party, litigation or other action authorized by law concerning the validity and enforceability of this Lease or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum), fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of national emergency or national alert, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting the Property (whether permanent or temporary) by any public, quasi-public or private entity;

B. the discovery of Regulated Substances (defined in Article 27 below) on, at or affecting the Property not disclosed by any applicable environmental assessment or otherwise known by or disclosed to the Party or Parties affected thereby; the discovery of funerary objects or archaeological resources or artifacts on, at or affecting the Property requiring repatriation, study, removal or further acts mandated by federal or state law; or the discovery of Endangered Species on, at or affecting the Property;

C. the order, judgment, action, or determination of any court, administrative agency, governmental authority or other governmental body (collectively, an “Order”) which delays the completion of the work or other obligation of the Party claiming the delay; or the suspension, termination, interruption, denial, or failure of renewal (collectively, a “Failure”) of issuance of any permit, license, consent, authorization, or approval necessary to Tenant’s or Landlord’s undertakings pursuant to this Lease, unless it is shown that such Order or Failure is the result of the failure to comply with Applicable Laws or to fully comply with the applicable application requirements by the Party claiming the delay; provided, however, that the contesting in good faith of any such

Order or Failure shall not constitute or be construed or deemed as a waiver by a Party of Enforced Delay;

D. the denial of an application, failure to issue, or suspension, termination, delay or interruption other than by or from the Tucson Mayor and City Council or one of the City's departments, divisions, agencies, commissions or boards (collectively, a "Denial") in the issuance or renewal of any permit, approval or consent required or necessary in connection with Tenant's or Landlord's undertakings pursuant to this Lease, if such Denial is not also the result of the failure to comply with Applicable Laws or to fully comply with the applicable application requirements by the Party claiming the delay; provided that the contesting in good faith or the failure in good faith to contest any such Denial shall not constitute or be construed or deemed as a waiver by a Party of Enforced Delay;

E. unreasonable delay by the City of Tucson in processing any application, request for approval, plan or submittal by Landlord or Tenant or the imposition of any unreasonable requirement by the City in connection with any approval process provided that all initial submittals by Landlord or Tenant are completed and that all subsequent submittals address all comments made by City reviewers; and

F. the failure of any contractor, subcontractor or supplier to furnish services, materials or equipment in connection with Tenant's or Landlord's undertakings pursuant to this Lease, if such failure is caused by Enforced Delay as defined herein, if and to the extent, and only so long as the Party claiming the delay is not reasonably able, after using its best efforts, to obtain substitute services, materials or equipment of comparable quality and cost.

§ 26.2. Enforced Delay Exceptions and Notice. In no event will Enforced Delay include any delay resulting from general economic or market conditions, nor from the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Landlord or Tenant in connection with the Project. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided that the Party seeking the benefit of the provisions of this § 26.1 shall, within thirty (30) days after such Party knows of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; provided, however, that either Party's failure to notify the other of an event constituting an Enforced Delay shall not alter, detract from or negate its character as an Enforced Delay if such event of Enforced Delay were not known or reasonably discoverable by such Party.

ARTICLE 27
COMPLIANCE WITH ENVIRONMENTAL LAWS

§ 27.1. Definitions.

A. “Environmental Laws”: Those laws promulgated for the protection of human health or the environment, including but not limited to the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*; the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Arizona Environmental Quality Act, Title 49 of the Arizona Revised Statutes; the Occupational Safety and Health Act of 1970, as amended, 84 Stat. 1590, 29 U.S.C. §§ 651-678; Pima County Air Pollution Control Regulations; Title 41, Chapter 4.1, Article 4, Archaeological Discovery, Arizona Revised Statutes; Landfill Ordinance of City of Tucson, Chapter 29, Article IX of the Tucson Code; regulations promulgated thereunder and any other statutes, laws, regulations, rules and ordinances (whether enacted by the local, county, state or federal government), and any environmental judgment or order of any governmental agency or judicial entity with proper jurisdiction, now in effect or hereinafter enacted that deal with the regulation or protection of human health and the environment, including but not limited to the ambient air, ground water, surface water, and land use, including substrata soils.

B. “Regulated Substances”:

(1) Any substance identified or listed as a hazardous substance, pollutant, hazardous material, or petroleum in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 *et seq.*, and in the regulations promulgated thereto; and Underground Storage Tanks, U.S.C. §§ 6991 to 6991i.

(2) Any substance identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or as a special or solid waste in the Arizona Environmental Quality Act, A.R.S. § 49-201 *et seq.*; including, but not limited to, the Water Quality Assurance Revolving Fund Act, A.R.S. § 49-281 *et seq.*; the Solid Waste Management Act, A.R.S. § 49-701 *et seq.*; the Underground Storage Tank Regulation Act, A.R.S. § 49-1001 *et seq.*; and Management of Special Waste, A.R.S. § 49-851 to 49-868.

(3) All substances, materials and wastes that are, or that become, regulated under, or that are classified as hazardous or toxic under any Environmental Law during the Rental Period.

C. “Release”: Any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping of any Regulated Substance in violation of any applicable Environmental Law.

§ 27.2. Compliance. Tenant shall, at Tenant's own expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, applicable to Tenant's leasehold and/or operation on the Premises.

Tenant shall not cause or permit any Regulated Substance to be used, generated, manufactured, produced, stored, brought upon, or Released on or under the Premises, or transported to or from the Premises, by Tenant, its agents, employees, sublessees, contractors, invitees or a third party in a manner that would constitute or result in a violation of any applicable Environmental Law.

Tenant may provide for the treatment of certain discharges regulated under the pretreatment ordinances pursuant to the Tucson City Code or such other ordinances as may be promulgated and the Federal Clean Water Act, 33 U.S.C. § 1251 et seq.

§ 27.3. Indemnification.

A. To the fullest extent allowed by law, Tenant shall indemnify, defend and hold harmless, on demand, Landlord, its successors and assigns, its officers, directors, employees, boards, and commissions for, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, claims, legal and investigation fees or costs, arising from or related to any third party claim or action for injury, liability, breach of warranty or representation, or damage to persons, property, the environment or the Premises, alleging or arising in connection with contamination of, or adverse effects on, human health, property or the environment pursuant to or as a result of a violation of any applicable Environmental Law and/or the Release of any Regulated Substance in violation of any applicable Environmental Law, which are incurred or assessed as a result, whether in part or in whole, of any use of the Premises or portion thereof by Tenant or its owners or affiliated entities, agents, employees, invitees, contractors, sublessee, visitors or licensees during the Rental Period (collectively "Landlord's Indemnified Matters"). Regardless of the date of termination of this Lease, Tenant's obligations and liabilities under this Article 27 shall continue so long as the Landlord bears any liability or responsibility under Environmental Laws related to Tenant's occupation and/or use of the Premises during the Rental Period. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial actions, removal or restoration work required or conducted by any federal, state or local governmental agency or political subdivision because of Regulated Substances located on the Premises or present in the soil or ground water on, under the Premises, or that have migrated from the Premises due to Tenant's occupation and/or operations during the Rental Period. The parties agree that Landlord's right to enforce this covenant to indemnify is not an adequate remedy at law for Tenant's violation of any provision of this Article and that Landlord shall also have the rights set forth in this Article in addition to all other rights and remedies provided by law or in equity or otherwise provided for in this Lease.

B. Without limiting the foregoing, if the presence of any Regulated Substance on or under the Premises results in any contamination of the Premises or any adjacent real property due to Tenant's occupation and/or operations during the Rental Period, Tenant shall promptly take all actions at its sole cost and expense as are necessary to mitigate any immediate threat to human health or the environment. Tenant shall then undertake any further action necessary to remediate the Premises to an acceptable condition as required by applicable federal, state and/or local Environmental Laws; provided that Landlord's written approval of such actions shall first be obtained, which shall not be unreasonably conditioned, withheld or delayed. Any remedial activities by Tenant shall not be construed as to impair Tenant's rights, if any, to seek contribution or indemnity from another person.

C. If any claim, action or proceeding is made or brought against Landlord by reason of any event to which reference is made in this Section, then, upon demand by Landlord, Tenant, at its sole cost and expense, shall resist or defend such claim, action or proceeding in Landlord's name, if necessary, by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys selected by Tenant, as approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Landlord may engage its own attorneys to defend it or to assist in its defense at Landlord's sole expense. Landlord shall at all times have the right to accept or reject any offer to compromise or settle, any lawsuit, claim, demand or liability asserted against it. However, Tenant shall not be responsible to indemnify settlements related to any Landlord Indemnified Matter entered into without Tenant's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

D. Tenant shall, at Tenant's own cost and expense, make all tests, reports, studies and provide all information to any appropriate governmental agency as may be required pursuant to the Environmental Laws pertaining to Tenant's use of the Premises. This obligation includes but is not limited to any requirements for a site characterization, site assessment and/or a cleanup plan that may be necessary due to any actual or potential Releases of Regulated Substances on or under the Premises during the Rental Period. At no cost or expense to Landlord, Tenant shall promptly provide all information requested by Landlord pertaining to the applicability of the Environmental Laws to the Premises, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination.

In addition, Landlord shall have the right to access and copies, within 10 days of Tenant's receipt of written request, any and all records, test results, studies and/or other documentation, other than trade secrets, regarding environmental conditions relating to the use, storage, or treatment of Regulated Substances by the Tenant on or under the Premises.

E. Tenant shall notify Landlord within five business days of any of the following: (1) any correspondence or communication from any governmental agency regarding any alleged violation of Environmental Laws as a result of Tenant's occupancy

of the Premises or Tenant's use of the Premises, (2) any change in Tenant's use of the Premises that will change or has the potential to change Tenant's or Landlord's obligations or liabilities under Environmental Laws, and (3) any assertion of a third party claim or other third party occurrence for which Tenant may incur an obligation under this Article.

F. Subject to approval of a sublease by Landlord pursuant to Article 16 above, Tenant shall insert the provisions of this Article 27 in any sublease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

G. Tenant shall, at its own expense, obtain and comply with any permits or approvals that are required or may become required as a result of any use of the Premises by the Tenant, its agents, employees, contractors, invitees, assigns and sublessees.

H. Tenant shall obtain and maintain compliance with any applicable financial responsibility requirements of federal and/or state law regarding the ownership or operation of any underground storage tank(s) or any device used for the treatment or storage of a Regulated Substance and present evidence thereof to Landlord, as may be applicable.

I. To the fullest extent allowed by law, Landlord shall indemnify, defend and hold harmless, on demand, Tenant, its successors and assigns, its officers, directors and employees, for, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, claims, legal and investigation fees or costs, arising from or related to any third party claim or action for injury, liability, breach of warranty or representation, or damage to persons, property, the environment or the Premises, alleging or arising in connection with contamination of, or adverse effects on, human health, property or the environment pursuant to or as a result of a violation of any applicable Environmental Law and/or the Release of any Regulated Substance in violation of any applicable Environmental Law (collectively "Tenant's Indemnified Matters") resulting from or in any way connected with or alleged or claimed to arise out of, result from or be in any way connected with (a) the use or occupancy of the Premises by the Landlord, or any portion thereof, prior to Tenant's occupancy of the Premises; and (b) contamination of the Premises by Landlord or by its agents or employees during the Rental Period. Regardless of the date of termination of this Lease, Landlord's obligations and liabilities under this Article 27 shall continue so long as the Tenant bears any liability or responsibility under the Environmental Laws for Tenant's Indemnified Matters related to Section 27.3 I. (a) – (b). This indemnification of Tenant by Landlord includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial actions, removal or restoration work required or conducted by any federal, state or local governmental agency or political subdivision because of Regulated Substances located on the Premises or present in the soil or ground water under the Premises, or that have migrated from the Premises. The parties agree that Tenant's right to enforce this covenant to indemnify is not an adequate remedy at law for Landlord's violation of any provision of this Article and that Tenant shall also have the rights set

forth in this Article in addition to all other rights and remedies provided by law or equity or otherwise provided for in this Lease.

§ 27.4. Noncompliance.

A. Tenant shall, at its sole cost and expense, remedy Tenant's failure or the failure of its agents, employees, contractors, invitees, sublessees or of a third party to comply with any of the requirements and obligations of this Article 27 or applicable Environmental Law. Notwithstanding any other provision in this Lease to the contrary, Landlord shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Law on or under the Premises, without waiving any of its rights under this Lease. The exercise by Landlord of any of its rights under this Article shall not release Tenant from any obligation it would otherwise have hereunder.

B. Landlord shall, at its sole cost and expense, remedy Landlord's failure or the failure of its agents, employees, contractors, invitees, sublessees or of a third party to comply with any of the requirements and obligations of this Article 27 or applicable Environmental Law. Notwithstanding any other provision in this Lease to the contrary, Tenant shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Law on or under the Premises, without waiving any of its rights under this Lease. The exercise by Tenant of any of its rights under this Article shall not release Landlord from any obligation it would otherwise have hereunder.

C. The covenants in this Article 27 shall survive the expiration or earlier termination of this Lease.

ARTICLE 28
OPTION TO PURCHASE PREMISES

§ 28.1. Option to Purchase. Landlord hereby grants to Tenant the exclusive option to purchase the Premises ("Purchase Option") according to the terms and conditions hereinafter set forth.

§ 28.2. Exercise of Option. The Purchase Option granted herein shall become effective and Tenant shall have the right to exercise the Purchase Option hereunder at any time after the execution of this Lease and prior to its termination for any reason ("Option Period"), provided that Tenant's right to exercise the Purchase Option shall be conditioned upon Tenant curing any monetary default under this Lease. The Purchase Option granted herein may be exercised by Tenant at any time during the Option Period by Tenant delivering written notice of exercise to Landlord. Without limiting the foregoing, Landlord agrees that if Landlord has exercised its right to terminate this Lease pursuant to § 17.2, Tenant may exercise the Purchase Option during the period between delivery of the Second Notice and the effective date of the termination set forth therein.

§ 28.3. Conveyance of Premises.

A. Purchase Price.

(1) If Tenant elects to purchase the Premises at the Termination Date, the purchase price for the Premises shall be \$10.00 plus the amount of any uncured monetary defaults accrued during the Rental Period, which shall be payable to Landlord prior to conveyance of title.

(2) If Tenant elects to purchase the Premises prior to the Termination Date, the purchase price for the Premises shall equal: (i) the cost of the New Facility not to exceed the New Facility Budget; (ii) financing costs, including pass-through interest on the necessary financing instruments; (iii) all unpaid Administrative Fees payable to Landlord prior to election; and (iv) amount of any uncured monetary defaults accrued during the Rental Period prior to election; the total of which shall be reduced by the total Net Rent paid with such resulting amount being paid to Landlord prior to conveyance of title.

B. Conveyance of Title and Delivery of Possession.

Landlord and Tenant agree to perform all acts necessary for conveyance in sufficient time for the property interest to be conveyed within ninety (90) days after delivery to Landlord of Tenant's notice of exercise or on the last day of the Rental Period, whichever first occurs. Landlord's entire interest in the Premises shall be conveyed by Special Warranty Deed in the form of Exhibit G. Title to all buildings and improvements which constitute or are a part of the Premises, shall be conveyed to Tenant free and clear of all claims and encumbrances on such buildings and improvements by Landlord, and anyone claiming under or through Landlord, other than encumbrances created by Tenant. All expenses in connection with conveyance of the Premises to Tenant including, but not limited to, title insurance (if requested by Tenant), recordation and notary fees and all other closing costs (including escrow fees if use of an escrow is requested by Tenant), shall be paid by Tenant. Possession shall be delivered to Tenant concurrently with the conveyance of title.

ARTICLE 29 MISCELLANEOUS

§ 29.1. Landlord's Right of Cancellation. The parties hereto acknowledge that this Lease is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.

§ 29.2. Legal Actions. Any legal action instituted pursuant to this Lease shall be brought in the Superior Court of Pima County, Arizona, or in the Federal District Court in the District of Arizona, Southern Division. The prevailing party in such action shall be reimbursed by the non-prevailing party for all costs and expenses of such action,

including reasonable attorneys' fees as may be fixed by the Court. This Lease shall be construed and enforced in accordance with the laws of the State of Arizona.

§ 29.3. Memorandum of Lease. Upon the execution of this Lease, Tenant shall have the right to record in the county in which the Premises is located, a Memorandum of Lease, in the form attached hereto as Exhibit K.

§ 29.4. Entire Agreement. This Lease, together with its schedules and Exhibits and all documents incorporated herein by reference, contains the entire agreement between Landlord and Tenant and any executory agreement hereafter made between Landlord and Tenant shall be ineffective to change, modify, waive, release, discharge, terminate, or effect an abandonment of this Lease, in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, waiver, release, discharge, termination, or the effect of the abandonment is sought.

§ 29.5. Captions. The captions of Articles and Sections in this Lease and its Table of Contents are inserted only as a convenience and for reference and they in no way define, limit, or describe the scope of this Lease or the intent of any provision thereof. References to Articles and Section numbers are to those in this Lease unless otherwise noted.

§ 29.6. Execution and Delivery. This Lease shall bind Tenant upon its execution thereof. Landlord shall be bound only after it executes and delivers the Lease to Tenant.

§ 29.7. Singular and Plural, Gender. If two or more persons, firms, corporations, or other entities constitute either the Landlord or the Tenant, the word "Landlord" or the word "Tenant" shall be construed as if it reads "Landlords" or "Tenants" and the pronouns "it," "he," and "him" appearing herein shall be construed to be the singular or plural, masculine, feminine, or neuter gender as the context in which it is used shall require.

§ 29.8. Multiple Parties. If at any time Landlord or Tenant (Landlord and Tenant being referred to in this Section as a "party") is other than one individual, partnership, firm, corporation, or other entity, the act of, or notice, demand, request, or other communication from or to, or payment of refund from or to, or signature of, or any one of the individuals, partnerships, firms, corporations, or other entities then constituting such party with respect to such party's estate or interest in the Premises or this Lease shall bind all of them as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed, unless all of them theretofore have executed and acknowledged in recordable form and given a notice (which has not theretofore been revoked by notice given by all of them) designating not more than three individuals, partnerships, firms, corporations, or other entities as the agent or agents for all of them. If such a notice of designation has theretofore been given, then, until it is revoked by notice given by all of



them, the act of, or notice, demand, request or other communication from or to, or payment or refund from or to, or signature of, the agent or agents so designated with respect to such party's estate or interest in the Premises or this Lease shall bind all of the individuals, partnerships, firms, corporations, or other entities then constituting such party as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed.

§ 29.9. No Third Party Beneficiaries. No third party shall be entitled to rely upon, benefit from or enforce the terms of this Lease. No provision in this Lease is intended to nor shall it in any way inure to the benefit of any third party so as to constitute a third party beneficiary under this Lease.

§ 29.10. Exhibits and Incorporation. The following exhibits, which are attached hereto or are in the possession of the Landlord and Tenant, are incorporated herein by reference as though fully set forth:

Exhibit "A"	Legal Description
Exhibit "B"	Raymond James Proposal
Exhibit "C"	Form of Amendment to Lease
Exhibit "D"	Project Budget
Exhibit "E"	Insurance Requirements
Exhibit "F"	Prohibited Uses
Exhibit "G"	Form of Special Warranty Deed
Exhibit "H"	Site Plan
Exhibit "I"	Building Floor Plans, Building Elevations, Building Systems and Building Sections
Exhibit "J"	Basis of Design
Exhibit "K"	Form of Memorandum of Lease
Exhibit "L"	Form of Caterpillar Inc.'s Guaranty
Exhibit "M"	Consent

§ 29.11. Attorneys' Fees. Except as set forth in §29.2, each party shall bear its own attorneys' fees in the preparation of this Lease and any other documents related to the Premises.

§ 29.12. Broker's Commission and Representation. Each party represents and warrants that it has incurred no liabilities or claims for brokerage commissions or finders' fees in connection with the execution of this Lease and that it has not dealt with, and has no knowledge of, any real estate broker, agent, or salesperson in connection with this Lease. The parties acknowledge that Mark Irvin and Chris Sheafe are licensed Real Estate Brokers in the State of Arizona and are also members of the Board of Directors of Landlord. Neither Mr. Irvin nor Mr. Sheafe are receiving any compensation under the terms of this Lease and have no fiduciary duty to Tenant.

§ 29.13. Reclaimed Water. This Lease is expressly subject to that certain Tucson Water Reclaimed Water User Agreement dated as of December 13, 2002 and recorded at Sequence No. 20022450494 on December 20, 2002 in the Official Records of Pima County, Arizona, which agreement is incorporated herein by this reference.

§ 29.14. Duty to Cooperate. In all contexts contained herein that require the parties to take some action after the execution of this Lease, the parties hereto covenant that they shall cooperate together in good faith and fair dealing.

ARTICLE 30

CONDITIONS PRECEDENT TO TENANT'S OBLIGATIONS HEREUNDER

§ 30.1. Conditions Precedent. Notwithstanding anything to the contrary contained herein, prior to the issuance of the permanent Certificate of Occupancy, Tenant's obligations under the Lease are subject to the complete satisfaction, as determined by Tenant in its sole discretion, which shall not be unreasonably withheld, of all of the following conditions precedent (the "Conditions Precedent"):

A. Rio Nuevo and the City shall have successfully completed all of the actions necessary for the Excise Taxes to be fully and completely abated for the first eight years of the Lease term.

B. Contractor agrees to build the New Facility according to Tenant's specifications, within the New Facility Budget and building completion date on or before March 1, 2019, as evidenced by a permanent Certificate of Occupancy.

C. Removing and properly disposing of all landfill and other Regulated Substances or undertaking other environmental remediation (including, without limitation, the installation and/or removal of any and all monitoring wells pursuant to Environmental Laws or other applicable state or local regulation) on or within 100 feet of the boundaries of the Land, as well as removing all archeologically sensitive materials from within the Land boundaries and at least 100 feet outside of the Land boundaries.

D. Providing appropriate sewer, storm drainage and electricity to the Land.

E. Providing traffic improvements to facilitate ingress and egress to the Land, including all required traffic signals and signage to the north, as well as the construction of South Avenida del Convento.

F. Relocating the sewer main from its current location to either the east or west boundary of the Land.

G. Facilitating completion the Infill Incentive District ("IID") process to utilize IID's administrative review and approval process to cause the entire Land to be zoned I-1.



H. Designing and constructing erosion protection improvements on the City owned property east of the Premises in full compliance with applicable federal, state and local laws and ordinances and all costs and expenses associated therewith.

I. Providing necessary elevation changes so that all functional areas of the New Facility, access and utilities are two feet above Zone X (0.2%) flood level, and that areas of the New Facility within two feet above Zone X (0.2%) flood level shall be limited to non-essential use, contain no service utilities and be constructed to protect from flooding.

J. Complete satisfaction of all other Conditions Precedent as set forth in Section 10.2 of this Lease.

ARTICLE 31 CATERPILLAR INC.'S GUARANTY

§ 31.1. **Caterpillar Inc.'s Guaranty.** As a condition precedent to Landlord's obligations hereunder, Caterpillar Inc., a Delaware corporation, shall execute a Guaranty of Tenant's obligations hereunder, which shall be timely executed in accordance with Section 32.1 and Lease substantially in the form of Exhibit L, attached hereto, or such other form as required by Landlord's Lender and mutually agreed by Tenant, in Tenant's discretion, which shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 32 LANDLORD'S LENDER

§ 32.1. **Landlord's Lender.** Landlord and Tenant acknowledge and agree that Landlord will sell bonds or otherwise procure construction and permanent financing for the Project. Both Landlord and Tenant agree to cooperate with Landlord's Lender in good faith to amend any of the terms of this Lease as required by Landlord's Lender.

§ 32.2. **Subordination of Lease.** Tenant agrees to subordinate this Lease to any deed of trust, mortgage or other security instrument now or hereafter covering all or any part of the Premises, subject to the receipt of a subordination, non-disturbance and attornment agreement in form and content reasonably and mutually acceptable to Tenant and Landlord's Lender. If required by Landlord's Lender, Tenant shall pay the Net Rent directly to Landlord's Lender or its designee.

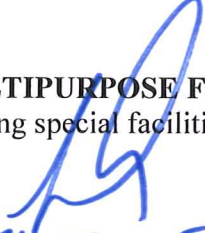
SIGNATURES ON FOLLOWING PAGE




In Witness Whereof, the parties have executed this Lease on the date set forth on the first page.

"Landlord"

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


By: 
Name: F. J. McCusker
Its: CHAIRMAN

ATTEST:

By: 
Name: MARK IRVIN
Its: SECRETARY

"Tenant"

CATERPILLAR GLOBAL MINING LLC,
a Delaware limited liability company

By: 
Name: THOMAS J. BLUTH
Its: President



LIST OF EXHIBITS

Exhibit "A"	Legal Description
Exhibit "B"	Raymond James Proposal
Exhibit "C"	Form of Amendment to Lease
Exhibit "D"	Project Budget
Exhibit "E"	Insurance Requirements
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Exhibit "I"	Building Floor Plans, Building Elevations, Building Systems and Building Sections
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Exhibit "L"	Form of Caterpillar Inc.'s Guaranty
Exhibit "M"	Consent



EXHIBIT A

(Legal Description of Premises)



Exhibit "A" Legal Description

A portion of that parcel shown on City of Tucson Plan No. H-2016-001 which is recorded as a Record of Survey in Sequence No. 20160490502, records of Pima County, Arizona, said portion is situated in the Northeast Quarter of Section 14, Township 14 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, and is described as follows:

COMMENCING at a found 2" diameter brass cap survey monument stamped "RLS 19862" marking the easterly end of curve number "C9" in the Cushing Street monument line as shown on said City of Tucson Plan No. H-2016-001 from which a found 2" diameter brass cap survey monument stamped "RLS 30352" marking the westerly end of curve number "C10" in said monument line, bears North 80°13'42" East, a distance of 706.27 feet;

Thence North 80°13'42" East, along said monument line, a distance of 352.81 feet;

Thence South 09°46'18" East, departing said monument line, a distance of 40.00 feet to a point on the proposed southerly right-of-way line of Cushing Street as shown on said City of Tucson Plan No. H-2016-001, said point being the **POINT OF BEGINNING**;

Thence North 80°13'42" East, along said proposed right-of-way line, a distance of 230.90 feet;

Thence North 80°59'11" East, continuing along said proposed right-of-way line, a distance of 75.57 feet;

Thence North 80°13'42" East, continuing along said proposed right-of-way line, a distance of 47.00 feet to the beginning of a non-tangent curve concave to the south, a radial line of said curve through said beginning having a bearing of North 09°47'02" West;

Thence easterly, continuing along said proposed right-of-way line and along the arc of said non-tangent curve having a radius of 419.00 feet and a central angle of 23°54'02", a distance of 174.78 feet to a non-tangent line;

Thence South 14°07'00" West, continuing along said proposed right-of-way line and along a radial line of the last described curve, a distance of 9.70 feet;

Thence South 60°45'29" East, continuing along said proposed right-of-way line, a distance of 48.31 feet to a point on the easterly line of Block 13 in the Amended Final Plat of Rio Nuevo, recorded in Book 57 of Maps and Plats at Page 40, records of Pima County, Arizona;

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717 NORTH SWAN ROAD • TUCSON, AZ 85711-1210 • TEL: (520) 325-1991 • FAX: (520) 325-2074
ashby@asadinc.tuccoxmail.com

A handwritten signature in blue ink, appearing to be "JPH", is located in the bottom right corner of the page.

Thence South 01°50'18" West, along the easterly line of said Block 13, a distance of 127.31 feet to the northeast corner of Common Area "C" shown on Sheet 2 of 4 in said Amended Final Plat of Rio Nuevo;

Thence continue South 01°50'18" West, along the easterly line of said Common Area "C", a distance of 116.23 feet to the southeast corner thereof;

Thence South 01°03'10" West, departing said Common Area "C", a distance of 102.66 feet to the beginning of a non-tangent curve concave to the west, a radial line of said curve through said beginning having a bearing of South 88°39'53" East;

Thence southerly along a line concentric with and 91.85 feet westerly of the easterly curved line of said parcel shown on City of Tucson Plan No. H-2016-001 and along the arc of said non-tangent curve having a radius of 1,945.95 feet and a central angle of 08°14'47", a distance of 280.08 feet to a non-tangent line;

Thence North 89°42'01" West, departing said parallel line, a distance of 484.78 feet to an angle point in the easterly right-of-way line of proposed Avenida Del Convento;

Thence North 03°51'16" West, along said easterly right-of-way line, a distance of 604.01 feet to the **POINT OF BEGINNING**.

Containing 341,946 square feet or 7.8500 acres, more or less.

Basis of Bearings: North 80°13'42" East between the found 2" diameter brass cap survey monument stamped "RLS 19862" marking the easterly end of curve number "C9" in the Cushing Street monument line as shown on said City of Tucson Plan No. H-2016-001 and the found 2" diameter brass cap survey monument stamped "RLS 30352" marking the westerly end of curve number "C10" in said monument line.

See Exhibit "B" attached hereto and made a part hereof.

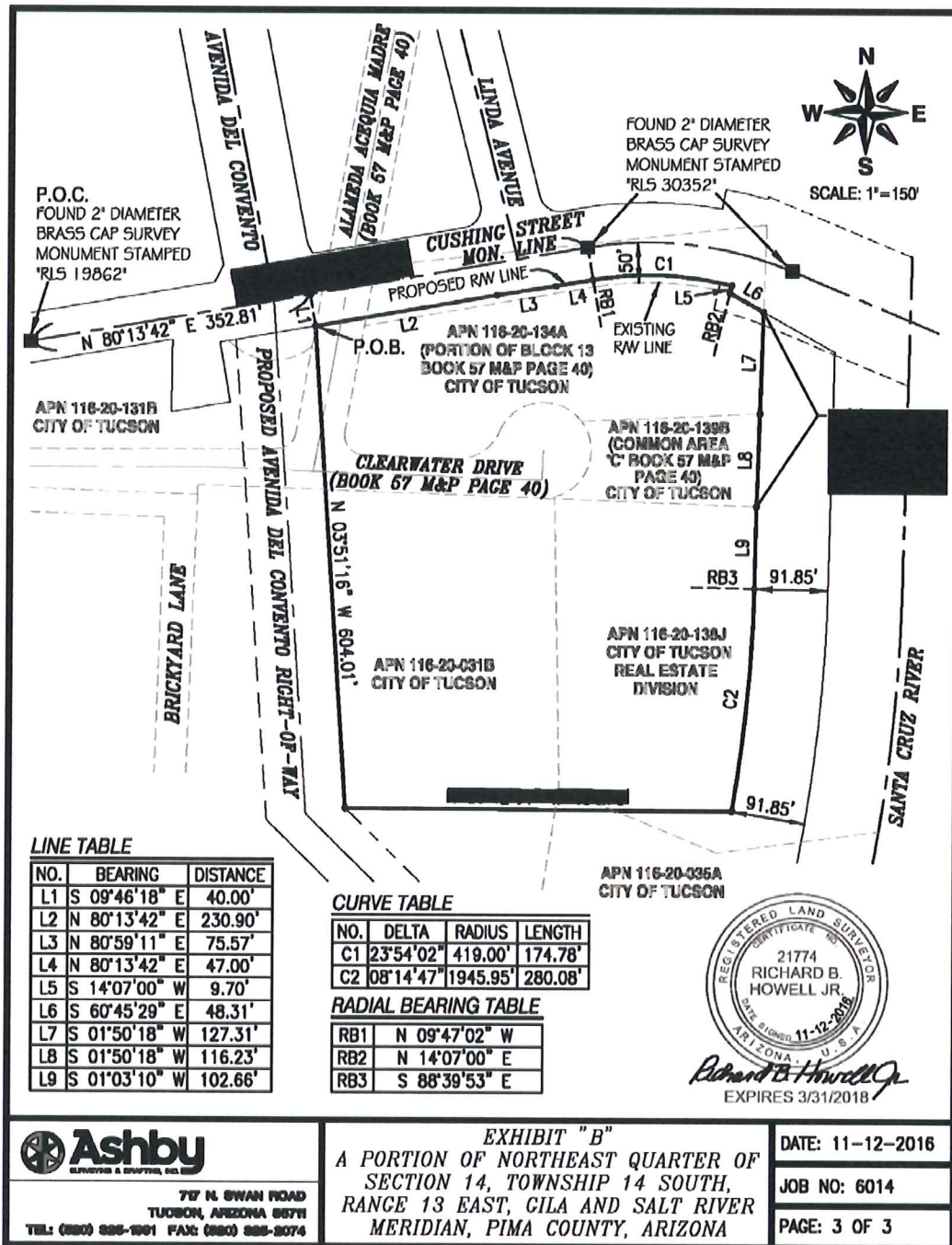


Richard B. Howell Jr., RLS 21774

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ashby@asadinc.tuccoxmail.com





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EXHIBIT B
(Raymond James Proposal)



RAYMOND JAMES®

Lori Sullivan
Managing Director
lori.sullivan@raymondjames.com

Robert A. Nickell, Jr.
Senior Vice President
robert.nickell@raymondjames.com

June 22, 2017

Mr. William C. Davis
Managing Director
Piper Jaffray, & Co.
2525 E. Camelback Rd., Ste. 925
Phoenix, AZ 85016

Dear Mr. Davis:

On behalf of Raymond James & Associates, Inc. ("Raymond James"), please see below our proposed terms and suggested financing structure that we believe best meets the parameters for the Caterpillar project for the Rio Nuevo Multipurpose Facilities District ("the District").

The following outlines our credit assumptions, pricing assumptions, and caveats related to a variable rate bond issue for the District. All pricing and terms contained in this term sheet are indications only and are based on pricing as of June 1, 2017. All pricing is subject to market conditions at the time of pricing. Additionally, all terms of the financing are subject to review and approval of the structure and credit by Raymond James credit and legal departments. Our structure is indicative of similar structures and credit currently in our VRDN book. We are confident of our ability to provide low cost financing for your project.

Issuer: Rio Nuevo Multipurpose Facilities District

Borrower: Rio Nuevo Multipurpose Facilities District

Bond Type: Variable Rate Demand Bonds ("VRDBs")

VRDBs Attributes & Risks*: VRDBs are typically structured as term bonds with a stated final maturity of 10 to 30 years. Principal may be amortized through the operation of a mandatory sinking fund. There are various modes of repricing, but by far the most popular mode is weekly. VRDBs offer the borrower and the investor maximum flexibility. The investor can tender bonds for redemption at par at any time. In addition, the borrower may call bonds for redemption with no prepayment penalty.

The biggest disadvantage and risk to VRDBs (and variable rate debt in general) is interest rate risk. Our proposed structure includes the District purchasing a 10-year Interest Rate Cap to minimize interest rate risk during a portion of the term of the VRDBs. The District's bonds would be subject to basis risk (see discussion on the Interest Rate Cap Term Sheet attached), credit risk, and remarketing risk as well.

**A Distinguishing characteristic of VRDBs include a demand feature that allows investors to "put" or "tender" the VRDBs back to the issuer on the interest reset date and requires a form of liquidity in the event of a failed remarketing. The "put" feature of VRDBs offers the investor the right to require the issuer to repurchase the bonds from the investor at the full face value of the VRDB plus accrued interest. In the event of a failed remarketing of all or a portion of the proposed VRDB's, Caterpillar Inc. will either (a) purchase the portion of the failed remarketing with a proportionate reduction in the Rent amount in the lease between Caterpillar Global Mining LLC ("Tenant") and the District (the "Lease") or (b) will cause Tenant, its affiliate or parent, to exercise its option to purchase the Premises prior to the end of the twenty five year Rental Period per the terms of the Lease. (This language or similar language as agreed to by all parties will also be contained in the Trust Indenture).*

Initial Repricing Mode: Weekly

The weekly floating rate debt can be called monthly on any interest payment date with 30 days' notice and with no penalty or premium. If the redemption occurs prior to the expiration of the ten year interest rate cap there could be some value left in the cap – there is no cost associated with terminating the cap.

Amortization & Term: 25 years; Principal amortized to produce level annual debt service assuming a 3.00% interest rate.

Par Amount: \$44,855,000*

Funding Size: \$43,000,000, deposit to the project fund. Please see preliminary bond sizing attached herein for all sources and uses and estimated debt service.

Credit Rating: Assumed credit rating of Caterpillar, Inc. corporate debt ratings (Moody's: Aa3/P-2, S&P: A/A-1, Fitch: A/F-1), with at least 2 ratings in the Tier 1 short-term ratings category (currently S&P and Fitch), so that the bonds are Money Market eligible. Any change to these ratings will affect pricing and remarketing.

CAT Corporate Guarantee: An unconditional guarantee from Caterpillar Inc. for the lease payments for the full 25 year lease term, including the obligations stated under the VRDBs attributes & risks
* description above.

Security: Assignment of lease payments and the Caterpillar, Inc. unconditional guarantee during the term of the Bonds.

Estimated Pricing: 1-Month LIBOR +5 basis points (subject to credit ratings and market conditions).

The Bonds will not trade or be repriced at a fixed spread to LIBOR, or any particular index, but will rather reprice weekly, as typical for all VRDBs, at a market yield based on credit rating and market conditions, which is currently estimated at 1 month LIBOR + 5 basis points and which is expected to follow 1 month LIBOR given current market conditions.

* Preliminary, subject to change

INDICATIVE TERM SHEET: INTEREST RATE CAP

All pricing and terms contained in this Term Sheet are indications only and are based on pricing as of June 1, 2017. All pricing is subject to change with market conditions and final pricing and the ability to offer an Interest Rate Cap transaction is subject to review by Raymond James Credit and Legal Departments.

The Interest Rate Cap transaction will be governed under a Long Form Confirmation referenced to the 2002 ISDA Master Agreement. The definitions and provisions contained in the 2006 ISDA Definitions (as published by the International Swaps and Derivatives Association, Inc.) will be incorporated into the Long Form Confirmation.

The terms of this particular Transaction to which this Terms Sheet relates are as follows:

Notional Amount: Initially USD 44,855,000, thereafter amortizing as set forth in Exhibit 1, which is attached hereto and incorporated by reference into this Term Sheet

Trade Date: [TBD]

Effective Date: September 1, 2017

Termination Date: September 1, 2027

Fixed Amounts:

Fixed Payer: Counterparty ("Party B")

**Fixed Amount
Payer Payment
Date:**

One Business Days succeeding the Trade Date which shall be [TBD]

Fixed Amount: USD 1,530,000

Floating Amounts:

**Floating Rate
Payer:** RJCS ("Party A")

Cap Rate: 3.00%



Floating Rate Payer Payment Dates: The 1st day of each month, beginning with October 1, 2017, continuing up to and including the Termination Date, subject to adjustment in accordance with the designated Business Day Convention.

Floating Rate Period End Date: The 1st day of each month, beginning with October 1, 2017, continuing up to and including the Termination Date, subject to adjustment in accordance with the designated Business Day Convention.

Floating Rate Option: USD – LIBOR – BBA

Designated Maturity: One Month

Floating Rate Spread: 0.00%

Floating Rate Reset Dates: The First Business Day of each Floating Rate Calculation Period

Method of Averaging: Not Applicable

Floating Rate Day Count Fraction: Actual/360

Compounding: Not Applicable

Business Day Convention: Following

Calculation Agent: Party A

Business Days: New York, London

Potential Risks:

Counterparty will remain subject to basis risk between where bonds are remarketed and the 1-month USD-LIBOR-BBA index. The interest rate cap transaction will be based upon the 1-month USD-LIBOR-BBA index which may not be the same as the rate on which the underlying bonds are re-marketed. To the extent that the rate on the bonds differs from 1-month USD-LIBOR-BBA index, the Counterparty's maximum hedged interest rate may be higher than the Cap Rate specified in the Term Sheet.

EXHIBIT 1

**Estimated
Amortization Schedule**

From & Including	To but Excluding	Notional Amount
9/1/2017	9/1/2018	\$44,855,000
9/1/2018	9/1/2019	\$44,855,000
9/1/2019	9/1/2020	\$44,205,000
9/1/2020	9/1/2021	\$42,860,000
9/1/2021	9/1/2022	\$41,470,000
9/1/2022	9/1/2023	\$40,040,000
9/1/2023	9/1/2024	\$38,565,000
9/1/2024	9/1/2025	\$37,045,000
9/1/2025	9/1/2026	\$35,475,000
9/1/2026	9/1/2027	\$33,860,000



EXHIBIT 2

Preliminary Bond Sizing and Estimated Financing Results



DISCLAIMER

The information contained herein is solely intended to facilitate discussion of potentially applicable financing applications and is not intended to be a specific buy/sell recommendation, nor is it an official confirmation of terms. Any terms discussed herein are preliminary until confirmed in a definitive written agreement. While we believe that the outlined financial structure or marketing strategy is the best approach under the current market conditions, the market conditions at the time any proposed transaction is structured or sold may be different, which may require a different approach.

The analysis or information presented herein is based upon hypothetical projections and/or past performance that have certain limitations. No representation is made that it is accurate or complete or that any results indicated will be achieved. In no way is past performance indicative of future results. Changes to any prices, levels, or assumptions contained herein may have a material impact on results. Any estimates or assumptions contained herein represent our best judgment as of the date indicated and are subject to change without notice. Examples are merely representative and are not meant to be all-inclusive.

Raymond James shall have no liability, contingent or otherwise, to the recipient hereof or to any third party, or any responsibility whatsoever, for the accuracy, correctness, timeliness, reliability or completeness of the data or formulae provided herein or for the performance of or any other aspect of the materials, structures and strategies presented herein.

This presentation is provided to you for the purpose of your consideration of the engagement of Raymond James as an underwriter and not as your financial advisor or Municipal Advisor (as defined in Section 15B of the Exchange Act of 1934, as amended), and we expressly disclaim any intention to act as your fiduciary in connection with the subject matter of this presentation. The information provided is not intended to be and should not be construed as a recommendation or "advice" within the meaning of Section 15B of the above-referenced Act. Any portion of this presentation which provides information on municipal financial products or the issuance of municipal securities is only given to provide you with factual information or to demonstrate our experience with respect to municipal markets and products.

Municipal Securities Rulemaking Board ("MSRB") Rule G-17 requires that we make the following disclosure to you at the earliest stages of our relationship, as underwriter, with respect to an issue of municipal securities: the underwriter's primary role is to purchase securities with a view to distribution in an arm's-length commercial transaction with the issuer and it has financial and other interests that differ from those of the issuer.

Raymond James does not provide accounting, tax or legal advice; however, you should be aware that any proposed transaction could have accounting, tax, legal or other implications that should be discussed with your advisors and/or legal counsel.

Raymond James and affiliates, and officers, directors and employees thereof, including individuals who may be involved in the preparation or presentation of this material, may from time to time have positions in, and buy or sell, the securities, derivatives (including options) or other financial products of entities mentioned herein. In addition, Raymond James or affiliates thereof may have served as an underwriter or placement agent with respect to a public or private offering of securities by one or more of the entities referenced herein.

This Proposal is not a binding commitment, obligation, or undertaking of Raymond James. No obligation or liability with respect to any issuance or purchase of any Bonds or other securities described herein shall exist, nor shall any representations be deemed made, nor any reliance on any communications regarding the subject matter hereof be reasonable or justified unless and until (1) all necessary Raymond James, rating agency or other third party approvals, as applicable, shall have been obtained, including, without limitation, any required Raymond James senior management and credit committee approvals, (2) all of the terms and conditions of the documents pertaining to the subject transaction are agreed to by the parties thereto as evidenced by the execution and delivery of all such documents by all such parties, and (3) all conditions hereafter established by Raymond James for closing of the transaction have been satisfied in our sole discretion. Until execution and delivery of all such definitive agreements, all parties shall have the absolute right to amend this Proposal and/or terminate all negotiations for any reason without liability therefor.

EXHIBIT C

(Form of Amendment to Lease)

AMENDMENT TO TRIPLE NET BUILD-TO-SUIT GOVERNMENT PROPERTY LEASE EXCISE TAX

THIS AMENDMENT TO TRIPLE NET BUILD-TO-SUIT GOVERNMENT PROPERTY LEASE EXCISE TAX (this "Amendment") is made and entered into as of the Effective Date by and between **RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT**, an Arizona tax levying special facilities district, having its office at 400 West Congress, Suite 152, Tucson, AZ 85701 (hereinafter "Landlord"), and **CATERPILLAR GLOBAL MINING LLC**, a Delaware limited liability company, having an office at 97 East Congress, Tucson, AZ 85701 (hereinafter "Tenant"). Landlord and Tenant are referred to collectively as the "Parties." The "Effective Date" shall be the date upon which the last of Landlord and Tenant executed this Amendment, as indicated on the signature pages of this Amendment.

The Parties have previously executed and delivered that certain Triple Net Build-To-Suit Government Property Lease Excise Tax with an Effective Date of _____ (the "Lease") with respect to certain Premises, which Lease is evidenced by a Memorandum of Ground Lease dated _____ and recorded _____ in _____ of the official records of the Pima County, Arizona Recorder.

Landlord and Tenant have agreed to memorialize the Commencement Date as contemplated by Section 1.2 of the Lease and to the amount of the Net Rent pursuant to Section 3.1 (b)(i)(1) of the Lease.

In consideration of the covenants and agreements contained in this Amendment, the Parties agree as follows:

1. Definitions. Capitalized terms used in this Amendment without definition shall have the meanings assigned to such terms in the Lease, unless the context expressly requires otherwise.

2. Term. The Commencement Date is _____. The Termination Date of the Lease is _____, unless terminated earlier pursuant to the terms of the Lease.

3. Net Rent. Pursuant to Section 3.1 A, the Net Rent for the first ten years of the Rental Period shall be adjusted on a monthly basis in accordance with _____. Thereafter, Net Rent shall _____.

4. Full Force and Effect. Except as expressly modified by this Amendment, the Lease remains unmodified and in full force and effect. All references in the Lease to "this Lease" shall be deemed references to the Lease as modified by this Amendment.



5. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument. Signature and acknowledgment pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single or multiple original(s) of this Amendment.

IN WITNESS WHEREOF, Landlord and Tenant have executed and delivered this Amendment as of the date set forth under the signatures of the Parties below.

“Landlord”

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

By: _____
Name: _____
Its: _____

Date of Execution: _____

ATTEST:

By: _____
Name: _____
Its: _____

Date of Execution: _____

“Tenant”

CATERPILLAR GLOBAL MINING LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

Date of Execution: _____



EXHIBIT D
(Project Budget)



Caterpillar Project Budget
6/717

ITEM	BUDGET COST
Construction	
Building / Parking	\$ 34,858,239.00
GMP 1 - Mass Grading	\$ 1,645,930.00
Infrastructure - Communications, Water, Electrical, Natural Gas	\$ 300,000.00
Subtotal	\$ 36,804,169.00
Fees / Permits / Testing / Utilities:	
Architect / Engineering	\$ 2,753,877.00
Project Management - Rio Nuevo	\$ 250,000.00
Construction Representative - Caterpillar	\$ -
Reimbursable / Travel	\$ 200,000.00
CM@R Pre-Construction	\$ 400,354.00
Special Inspections / Materials Testing	\$ 100,000.00
Permits	\$ 150,000.00
Alta Survey	\$ 11,100.00
Plat	\$ 17,000.00
Phase 1 Environmental	\$ 7,500.00
Phase 2 Environmental	\$ 61,000.00
Geotechnical	\$ 50,000.00
Archaeology	\$ 45,000.00
Water Meters	\$ 70,000.00
Sewer Connection Fees	\$ 80,000.00
Subtotal	\$ 4,195,831.00
Contingency	
Owners / Rio Nuevo	\$ 2,000,000.00
New Facility (Building) Subtotal	\$ 43,000,000.00
FF&E	
Furnishings	\$ -
Technology	\$ -
Subtotal	\$ 5,000,000.00
Contingency	
Caterpillar	\$ 2,000,000.00
PROJECT BUDGET TOTAL	\$ 50,000,000.00

EXHIBIT E

(Insurance Requirements)

1. Types of Coverage. Tenant at its sole cost and expense shall, during the entire Rental Period hereof, obtain, maintain and keep in full force and effect, providing at least the coverages set forth herein:

A. Comprehensive all risk insurance on the Premises, Improvements (including all replacements and additions thereto) and its personal property, in each case (i) in an amount equal to 100% of the "Full Replacement Cost," which for purposes of this Lease shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation; (ii) containing either an agreed amount endorsement or a waiver of all co-insurance provisions; and (iii) if any of the New Facility or the use of the Premises shall at any time constitute a legal non-conforming structure or use, Tenant shall obtain an "Ordinance or Law Coverage" or "Enforcement" endorsement, which shall include sufficient coverage for (a) costs to comply with building and zoning codes and ordinances, (b) demolition costs, and (c) increased costs of construction. If any portion of the Premises is currently or at any time in the future located in a federally designated "special flood hazard area," Tenant shall obtain flood hazard insurance, but in no event less than the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended. Deductibles for properties designated as Special Flood Hazard Areas as defined by the Federal Emergency Management Agency may be subject to higher deductibles based on a percentage of the values of the location and subject to a minimum of \$1,000,000. Any recovery by Landlord, Tenant or Landlord's Lender under any policy of insurance maintained in accordance with Subsection 1.A of this Exhibit E shall be applied in the manner provided in Article 14 of this Lease. Landlord at its option may obtain such insurance and bill Tenant the costs of such insurance as additional rent.

B. A policy for commercial general liability insurance covering Tenant's use and occupancy of the Premises, including bodily injury, property damage, contractual liability under this Lease, independent contractors, products and completed operations liability and owned/non-owned auto liability, occurring on the Premises, minimum combined single limit \$5,000,000 and \$5,000,000 aggregate. Such policy shall include a blanket waiver of subrogation in favor of Landlord and shall include Landlord as an additional insured under a blanket endorsement. Tenant's insurance shall be primary, with any insurance maintained by Landlord to be considered excess. Tenant agrees that it will not keep, use, sell, or offer for sale in or upon the Premises any article which may be prohibited by the standard form of fire insurance policy. Such insurance (i) to be on the "occurrence" form; and (ii) to continue at not less than the aforesaid limit until required to be changed by Landlord in writing to an amount which is then customary and commercially reasonable in relation to the type of operation then being conducted by Tenant in the Premises, by reason of changed economic conditions making such protection inadequate.

C. Worker's compensation insurance covering all persons employed by Tenant in connection with any work done on or about the Premises with respect to which claims for death or bodily injury could be asserted against Landlord or the Premises. In lieu of such workmen's compensation insurance, Tenant may provide a program of self-insurance so long as it complies with the rules, regulations and requirements of the appropriate state agency of the State of Arizona, but no less than \$500,000 / \$500,000 / \$500,000.

D. To the extent not covered by a policy required pursuant to Subsection 1.A through 1.C above, (i) at all times during which structural construction, material repairs or alterations are being made with respect to the New Facility insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (ii) during construction other than cosmetic changes the insurance provided for in Subsection 1.A above, written in a so-called builder's risk completed value form on a non-reporting basis.

E. If the Premises contains HVAC or other equipment not covered by a policy required pursuant to Subsection 1.A through 1.C above, comprehensive boiler and machinery insurance, in amounts as shall be reasonably required by Landlord or Landlord's Lender.

F. Any other form or forms of insurance as Tenant or Landlord or Landlord's Lender may reasonably require from time to time in form, in amounts and for insurance risks against which a prudent tenant would protect itself, but in no event shall such increased amounts of insurance or such other commercially reasonable types of insurance be in excess of that then commonly required by landlords of comparable projects in metropolitan Tucson, Arizona.

2. Policies.

A. All insurance provided for in Subsection 1 hereof shall be obtained under valid and enforceable policies (the "**Policies**" or in the singular, the "**Policy**").

B. The Policies maintained pursuant to this Lease shall (i) with respect to all policies of fire, all risk or similar casualty insurance, provide that the insurer waives all rights of subrogation against Landlord, any successor to Landlord's interest in the Premises and Landlord's Lender; (ii) provide that in the event of a loss involving more than one insured the Policies shall be deemed to apply separately for the interest of each insured; and (iii) be primary and without right or provision of contribution as to any other insurance carried by Landlord.

C. The insurance companies must be approved, authorized or licensed to provide insurance in Arizona and have a rating of "A" or better for claims paying ability assigned by Moody's Investors Service, Inc. and Standard & Poor's Rating Group or a general policy rating of A- or better and a financial class of VIII or better assigned by A.M. Best Company, Inc. Each such insurer shall be referred to herein as a "**Qualified Insurer.**" Tenant agrees that certificates of insurance or, if required by Landlord or the



mortgagees of Landlord, will be delivered to Landlord as soon as practicable after the placing of the required insurance, but in no event later than 10 days prior to the time Tenant takes possession of all or any part of the Premises, including possession taken pursuant to Section 2.1 of the Lease.

D. Tenant shall use commercially reasonable efforts to notify Landlord and Landlord's Lender in writing prior to any, reduction in coverage below the requirements contained in this Lease, cancellation, or other termination thereof.

E. Tenant may provide any required insurance through an umbrella or blanket liability or casualty Policy (which blanket or umbrella policy may be issued to the parent company of Tenant, if any, so long as Tenant is and remains a named insured under said policy and such blanket policy otherwise complies with the terms of this Lease), provided, in each case, such Policy affords the coverage required above, is issued by a Qualified Insurer.

F. All Policies of insurance provided for or contemplated by Section 1 of this Exhibit E, except for the Policies referenced in Subsection 1.A and 1.C, shall name Landlord, Tenant and Landlord's Lender as the insured or additional insured, as required by this Exhibit E or as their respective interests may appear, and in the case of property damage, boiler and machinery and flood insurance, shall contain a standard non-contributing mortgagee clause naming the Landlord's Lender as the person to which all payments made by such insurance company shall be paid as loss payee and mortgagee providing, among other things, that the loss thereunder shall be payable to Landlord's Lender. If no Landlord's Lender exists, the Landlord shall be named as sole loss payee. If Landlord is named as loss payee, and a blanket property policy is in place, Tenant shall be entitled to participate in any settlement and adjustment with the carrier subject to Landlord's approval which shall not be unreasonably withheld, conditioned or delayed, provided that in any case, Landlord shall and hereby is authorized to solely collect and receive any such insurance proceeds with respect to its interests as established by this Lease.

3. **Payment of Proceeds on Termination.** Notwithstanding anything in this Lease to the contrary, in the event of damage to or destruction of the Premises entitling either party to terminate this Lease pursuant to Article 14 of the Lease, Tenant will immediately pay to Landlord all of the insurance proceeds (except to the extent related to Tenant's trade fixtures, equipment, furniture or other personal property) covering the Premises. Tenant shall be entitled to any portion of the insurance proceeds which relate to Tenant's trade fixtures, equipment, furniture and other personal property.

4. **No Separate Insurance.** Tenant shall not obtain any separate or additional insurance which is contributing in the event of loss unless Landlord and Landlord's Lender (if any) are each insured thereunder (as their interests may appear). Landlord may, but shall not be obligated to, take out and carry any other form or forms of insurance as it or the Landlord's Lender may reasonably determine advisable. Tenant acknowledges that it has no right to receive any proceeds from any such insurance policies carried by Landlord. Landlord will not carry insurance of any kind on Tenant's



property, furniture or furnishings or on any equipment of Tenant under this Lease and Landlord shall not be obligated to repair any damage thereto or replace the same.

5. **Compliance.** Tenant shall comply with all of the terms and conditions of each insurance policy maintained pursuant to the terms of this Lease. Tenant shall promptly comply with all reasonable requirements of the insurance authority or of any insurer now or hereafter in effect relating to the Premises.

6. **Landlord Protections.** If any insurance policy shall be canceled or cancellation shall be threatened or the coverage thereunder reduced or threatened to be reduced, in any way by reason of the use or occupation of the Premises or any part thereof by Tenant or by any assignee or sub-tenant of Tenant or by anyone permitted by Tenant to be on the Premises and, if Tenant fails to remedy the condition giving rise to cancellation, threatened cancellation or reduction of coverage within forty-eight (48) hours after written notice thereof from Landlord, Landlord may, at its option to obtain such Policies and enter upon the Premises and attempt to remedy such condition and Tenant shall forthwith pay the cost thereof to Landlord as additional rent. Notwithstanding the foregoing provisions of this Section 6, if Tenant fails to remedy as aforesaid, Tenant shall be in default of its obligations hereunder and Landlord shall have no obligation to attempt to remedy such default.

7. **Waiver of Subrogation.** As provided in Subsection 2.B above, any policy or policies of fire, all risk or similar casualty insurance, which either party obtains in connection with the Premises and the insurance required to be obtained by Tenant pursuant to the provisions of Subsection 1.C above shall include a clause or endorsement denying the insurer any rights of subrogation against the other party to the extent rights have been waived by the insured prior to the occurrence of injury or loss. Landlord and Tenant hereby waive any rights of recovery against the other for injury or loss due to hazards covered by any such policy of insurance or which would have been covered under the insurance policies required under this Lease, regardless of whether the negligence of the other party caused such loss or damage and irrespective of whether such policies contain such a waiver of subrogation clause or endorsement.



EXHIBIT F

(Permitted Uses)

Tenant may use the Premises for offices, research and development, laboratory and prototyping purposes, and all other lawful purposes in furtherance of the foregoing in conjunction with Caterpillar Inc.'s businesses.

EXHIBIT G

(Form of Special Warranty Deed)

WHEN RECORDED, RETURN TO:

Caterpillar Inc.
100 NE Adams Street
Peoria, Illinois 61629-6120
Attn: Manager, Corporate Real Estate

SPECIAL WARRANTY DEED

For good and valuable consideration, **RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT**, an Arizona tax levying special facilities district ("**Grantor**"), does hereby convey to **CATERPILLAR GLOBAL MINING LLC**, a Delaware limited liability company ("**Grantee**"), that certain real property situated in Pima County, Arizona, and legally described on **Exhibit A** attached hereto and made a part hereof, together with all rights, privileges, easements and appurtenant benefits relating thereto and all improvements located thereon (the "**Property**");

SUBJECT TO: the matters set forth on **Exhibit B** attached hereto and made a part hereof.

AND THE GRANTOR hereby binds itself and its successors to warrant and defend the title against the acts of the Grantor and no other, subject to the matters set forth above.

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed as of the _____ day of _____, 20__.

[SIGNATURE AND NOTARY PAGE FOLLOWS]

GRANTOR:

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

By: _____
Name: _____
Its: _____

ATTEST:

By: _____
Name: _____
Its: _____

STATE OF ARIZONA)
)
County of Pima)

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

WITNESS my hand and official seal.

Notary Public

(Affix Notary Seal Here)



Exhibit A
TO SPECIAL WARRANTY DEED

Legal Description of Property on following three pages





Exhibit "A"
Legal Description

A portion of that parcel shown on City of Tucson Plan No. H-2016-001 which is recorded as a Record of Survey in Sequence No. 20160490502, records of Pima County, Arizona, said portion is situated in the Northeast Quarter of Section 14, Township 14 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, and is described as follows:

COMMENCING at a found 2" diameter brass cap survey monument stamped "RLS 19862" marking the easterly end of curve number "C9" in the Cushing Street monument line as shown on said City of Tucson Plan No. H-2016-001 from which a found 2" diameter brass cap survey monument stamped "RLS 30352" marking the westerly end of curve number "C10" in said monument line, bears North 80°13'42" East, a distance of 706.27 feet;

Thence North 80°13'42" East, along said monument line, a distance of 352.81 feet;

Thence South 09°46'18" East, departing said monument line, a distance of 40.00 feet to a point on the proposed southerly right-of-way line of Cushing Street as shown on said City of Tucson Plan No. H-2016-001, said point being the **POINT OF BEGINNING**;

Thence North 80°13'42" East, along said proposed right-of-way line, a distance of 230.90 feet;

Thence North 80°59'11" East, continuing along said proposed right-of-way line, a distance of 75.57 feet;

Thence North 80°13'42" East, continuing along said proposed right-of-way line, a distance of 47.00 feet to the beginning of a non-tangent curve concave to the south, a radial line of said curve through said beginning having a bearing of North 09°47'02" West;

Thence easterly, continuing along said proposed right-of-way line and along the arc of said non-tangent curve having a radius of 419.00 feet and a central angle of 23°54'02", a distance of 174.78 feet to a non-tangent line;

Thence South 14°07'00" West, continuing along said proposed right-of-way line and along a radial line of the last described curve, a distance of 9.70 feet;

Thence South 60°45'29" East, continuing along said proposed right-of-way line, a distance of 48.31 feet to a point on the easterly line of Block 13 in the Amended Final Plat of Rio Nuevo, recorded in Book 57 of Maps and Plats at Page 40, records of Pima County, Arizona;

Page 1 of 3

717 NORTH SWAN ROAD • TUCSON, AZ 85711-1210 • TEL: (520) 325-1991 • FAX: (520) 325-2074
ashby@asadinc.tuccoxmail.com

A handwritten signature in blue ink, appearing to be "J. Ashby", is located in the bottom right corner of the page.

Thence South 01°50'18" West, along the easterly line of said Block 13, a distance of 127.31 feet to the northeast corner of Common Area "C" shown on Sheet 2 of 4 in said Amended Final Plat of Rio Nuevo;

Thence continue South 01°50'18" West, along the easterly line of said Common Area "C", a distance of 116.23 feet to the southeast corner thereof;

Thence South 01°03'10" West, departing said Common Area "C", a distance of 102.66 feet to the beginning of a non-tangent curve concave to the west, a radial line of said curve through said beginning having a bearing of South 88°39'53" East;

Thence southerly along a line concentric with and 91.85 feet westerly of the easterly curved line of said parcel shown on City of Tucson Plan No. H-2016-001 and along the arc of said non-tangent curve having a radius of 1,945.95 feet and a central angle of 08°14'47", a distance of 280.08 feet to a non-tangent line;

Thence North 89°42'01" West, departing said parallel line, a distance of 484.78 feet to an angle point in the easterly right-of-way line of proposed Avenida Del Convento;

Thence North 03°51'16" West, along said easterly right-of-way line, a distance of 604.01 feet to the **POINT OF BEGINNING**.

Containing 341,946 square feet or 7.8500 acres, more or less.

Basis of Bearings: North 80°13'42" East between the found 2" diameter brass cap survey monument stamped "RLS 19862" marking the easterly end of curve number "C9" in the Cushing Street monument line as shown on said City of Tucson Plan No. H-2016-001 and the found 2" diameter brass cap survey monument stamped "RLS 30352" marking the westerly end of curve number "C10" in said monument line.

See Exhibit "B" attached hereto and made a part hereof.



Richard B. Howell Jr., RLS 21774

Page 2 of 3

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ashby@asadinc.tuccoxmail.com



A handwritten signature in blue ink, located in the bottom right corner of the page. The signature is stylized and appears to be "JPH".

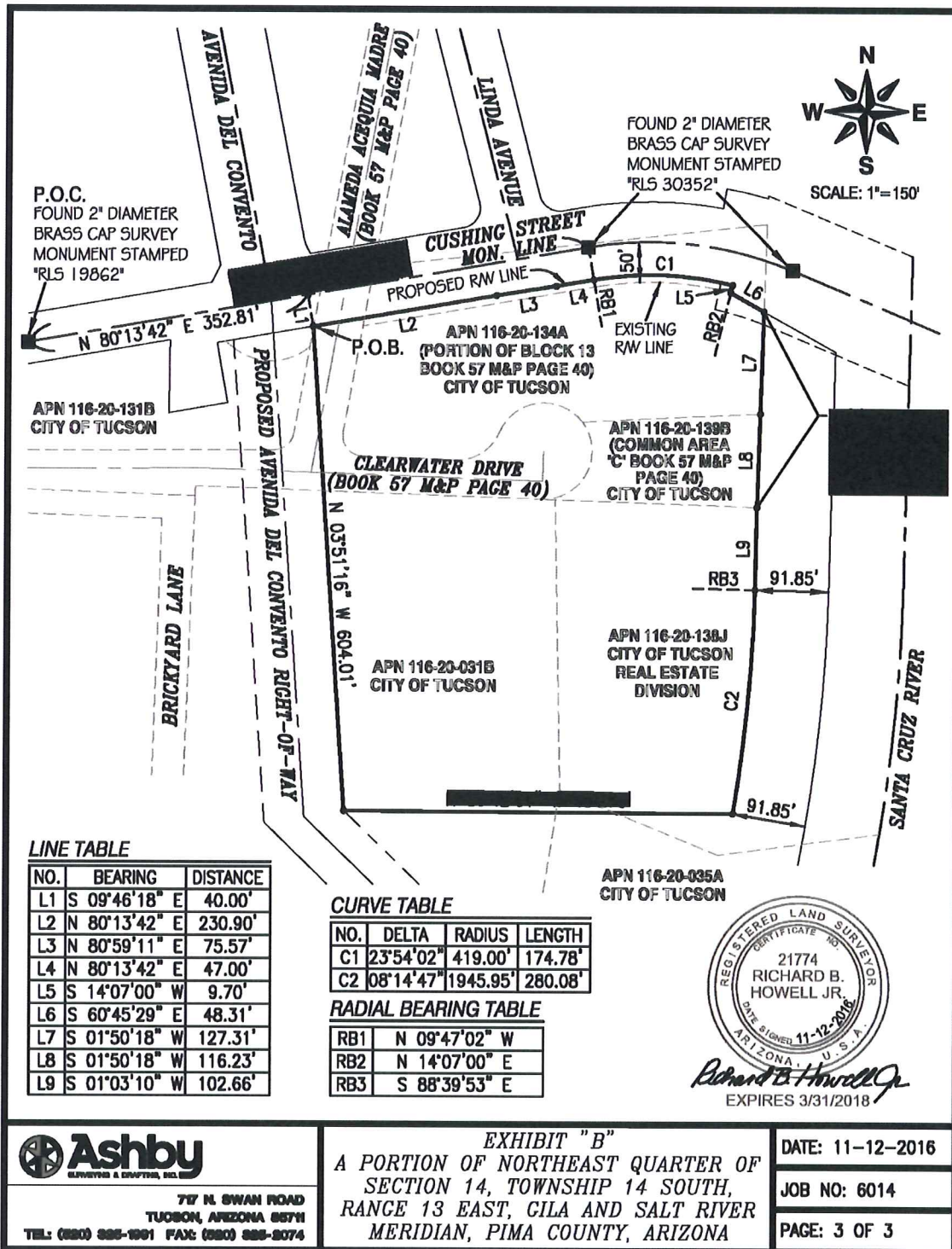


Exhibit B

TO SPECIAL WARRANTY DEED

Permitted Exceptions

(Site Plan)

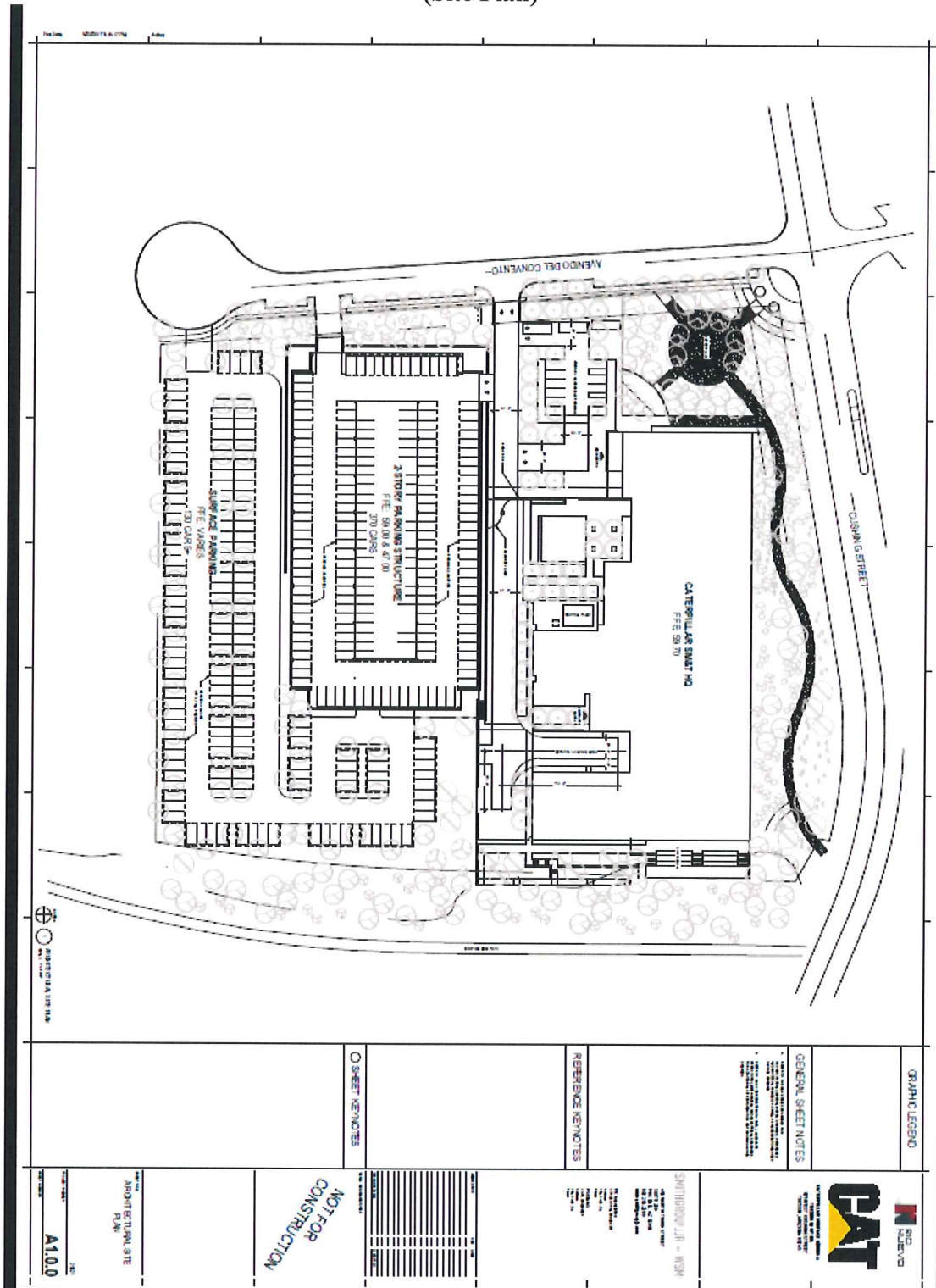


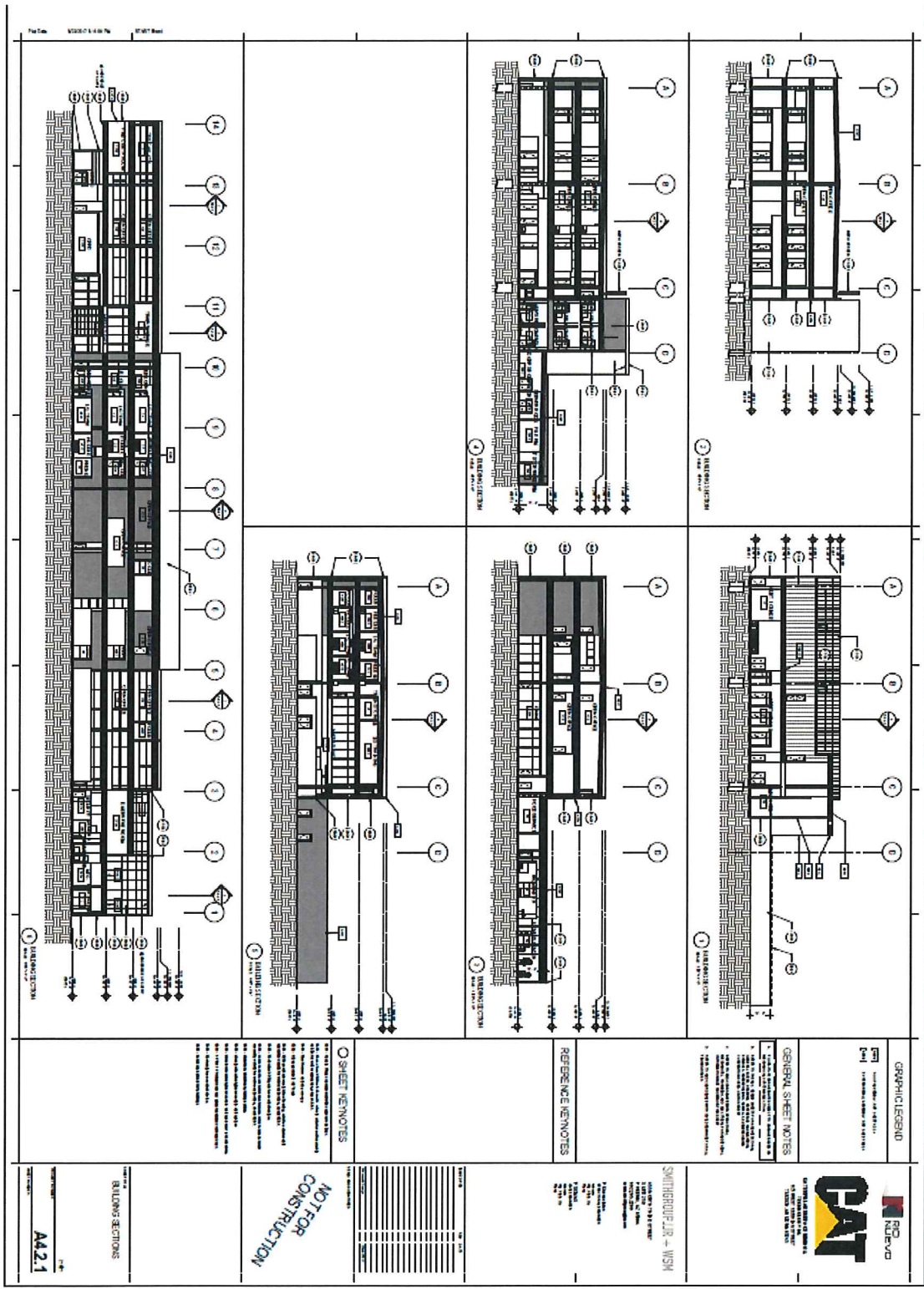
EXHIBIT I

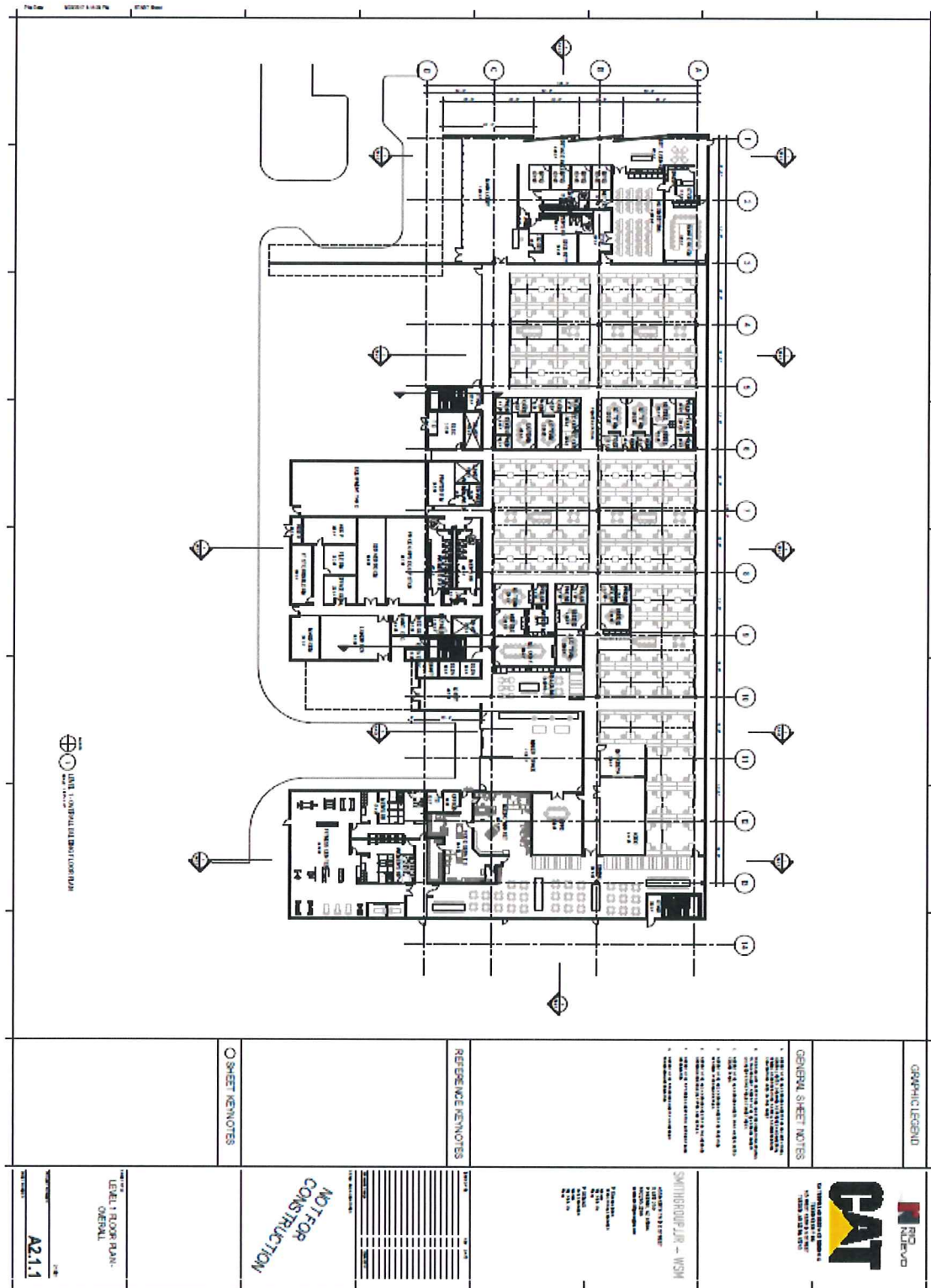
(Building Floor Plans, Building Elevations, Building Systems and Building Sections)

See following six pages.



Handwritten signature





Handwritten signature







EXHIBIT J

(Basis of Design)

Reference is made to that certain Schematic Design – Basis of Design Manual for Caterpillar Surface Mining & Technology HQ prepared by Smith Group JJR+WSM dated May 22, 2017.



5. In the event of a conflict between the terms of this Memorandum of Lease and the terms of the Lease, the terms of the Lease shall control.

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

“Landlord”

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

By: _____
Name: _____
Its: _____

ATTEST:

By: _____
Name: _____
Its: _____

STATE OF ARIZONA)

County of Pima)

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

WITNESS my hand and official seal.

Notary Public

(Affix Notary Seal Here)



Tenant”

CATERPILLAR GLOBAL MINING LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

STATE OF _____)
County of _____)

The foregoing instrument, Memorandum of Lease, consisting of _____ pages, including this page and exhibits, was acknowledged before me this _____ day of _____, 20____, by _____, the _____ of Caterpillar Global Mining LLC, a Delaware limited liability company, on behalf of the company.

WITNESS my hand and official seal.

Notary Public

(Affix Notary Seal Here)



Exhibit A to Memorandum of Lease



Exhibit "A" Legal Description

A portion of that parcel shown on City of Tucson Plan No. H-2016-001 which is recorded as a Record of Survey in Sequence No. 20160490502, records of Pima County, Arizona, said portion is situated in the Northeast Quarter of Section 14, Township 14 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, and is described as follows:

COMMENCING at a found 2" diameter brass cap survey monument stamped "RLS 19862" marking the easterly end of curve number "C9" in the Cushing Street monument line as shown on said City of Tucson Plan No. H-2016-001 from which a found 2" diameter brass cap survey monument stamped "RLS 30352" marking the westerly end of curve number "C10" in said monument line, bears North 80°13'42" East, a distance of 706.27 feet;

Thence North 80°13'42" East, along said monument line, a distance of 352.81 feet;

Thence South 09°46'18" East, departing said monument line, a distance of 40.00 feet to a point on the proposed southerly right-of-way line of Cushing Street as shown on said City of Tucson Plan No. H-2016-001, said point being the **POINT OF BEGINNING**;

Thence North 80°13'42" East, along said proposed right-of-way line, a distance of 230.90 feet;

Thence North 80°59'11" East, continuing along said proposed right-of-way line, a distance of 75.57 feet;

Thence North 80°13'42" East, continuing along said proposed right-of-way line, a distance of 47.00 feet to the beginning of a non-tangent curve concave to the south, a radial line of said curve through said beginning having a bearing of North 09°47'02" West;

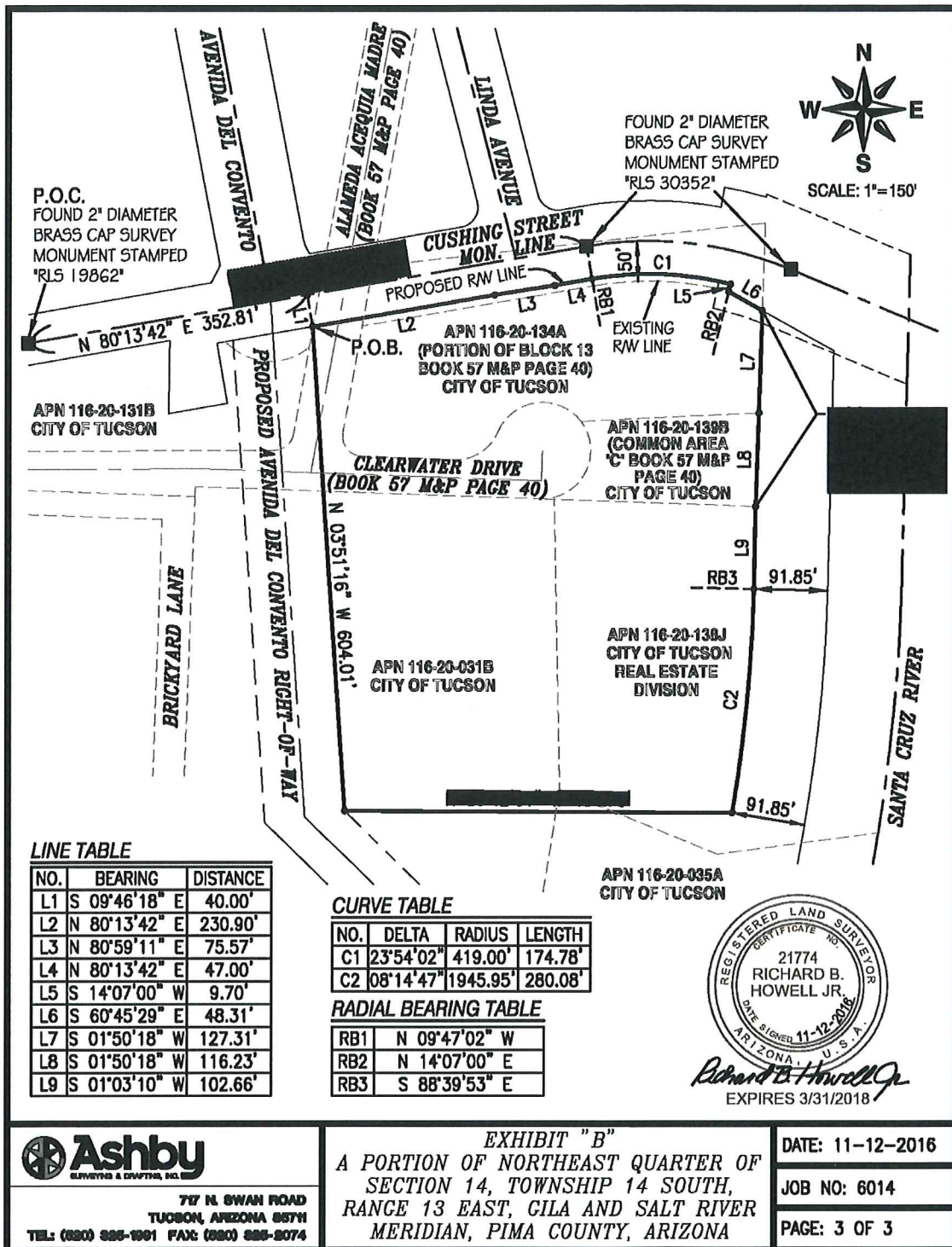
Thence easterly, continuing along said proposed right-of-way line and along the arc of said non-tangent curve having a radius of 419.00 feet and a central angle of 23°54'02", a distance of 174.78 feet to a non-tangent line;

Thence South 14°07'00" West, continuing along said proposed right-of-way line and along a radial line of the last described curve, a distance of 9.70 feet;

Thence South 60°45'29" East, continuing along said proposed right-of-way line, a distance of 48.31 feet to a point on the easterly line of Block 13 in the Amended Final Plat of Rio Nuevo, recorded in Book 57 of Maps and Plats at Page 40, records of Pima County, Arizona;

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ashby@asadinc.tuccoxmail.com



Thence South 01°50'18" West, along the easterly line of said Block 13, a distance of 127.31 feet to the northeast corner of Common Area "C" shown on Sheet 2 of 4 in said Amended Final Plat of Rio Nuevo;

Thence continue South 01°50'18" West, along the easterly line of said Common Area "C", a distance of 116.23 feet to the southeast corner thereof;

Thence South 01°03'10" West, departing said Common Area "C", a distance of 102.66 feet to the beginning of a non-tangent curve concave to the west, a radial line of said curve through said beginning having a bearing of South 88°39'53" East;

Thence southerly along a line concentric with and 91.85 feet westerly of the easterly curved line of said parcel shown on City of Tucson Plan No. H-2016-001 and along the arc of said non-tangent curve having a radius of 1,945.95 feet and a central angle of 08°14'47", a distance of 280.08 feet to a non-tangent line;

Thence North 89°42'01" West, departing said parallel line, a distance of 484.78 feet to an angle point in the easterly right-of-way line of proposed Avenida Del Convento;

Thence North 03°51'16" West, along said easterly right-of-way line, a distance of 604.01 feet to the **POINT OF BEGINNING**.

Containing 341,946 square feet or 7.8500 acres, more or less.

Basis of Bearings: North 80°13'42" East between the found 2" diameter brass cap survey monument stamped "RLS 19862" marking the easterly end of curve number "C9" in the Cushing Street monument line as shown on said City of Tucson Plan No. H-2016-001 and the found 2" diameter brass cap survey monument stamped "RLS 30352" marking the westerly end of curve number "C10" in said monument line.

See Exhibit "B" attached hereto and made a part hereof.



Richard B. Howell Jr., RLS 21774

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EXHIBIT L

(Form of Caterpillar Inc.'s Guaranty)

[This form is subject to Landlord's Lender approval]

_____, 2017

Rio Nuevo Multipurpose Facilities District
400 W. Congress #152
Tucson, Arizona 85701
Attn: Chairman Fletcher McCusker

Dear Chairman McCusker:

Caterpillar Global Mining LLC (the "Tenant") is an indirect wholly owned subsidiary of Caterpillar Inc. ("Caterpillar").

We understand that the Rio Nuevo Multipurpose Facilities District (the "Landlord") and Tenant entered into a Triple Net Build-To-Suit Government Property Lease Excise Tax (the "Lease") as of _____, 2017. Capitalized terms not defined in this correspondence shall bear the definitions set forth in the Lease.

This letter confirms that if the Tenant should default in the payment of any sum due and owing to the Landlord and all obligations to be performed by Tenant pursuant to the terms of the Lease ("Obligation"), Caterpillar will promptly pay the Landlord any sums in default and any other amounts then properly due and owing to the Landlord up to, but not exceeding \$44,855,000, provided that Caterpillar is notified of such default and given at least twenty (20) days prior notice in writing, at the address above and to the attention of "Treasurer," of the Landlord's intention to demand payment hereunder.

The liability of Caterpillar under this guaranty shall exist irrespective of: (i) any change of the time, manner or place of payment, or any other term, of any Obligation, (ii) any exchange, release, or non-perfection of any collateral securing payment of any Obligation, and (iii) any law, regulation or order of any jurisdiction affecting any term of any Obligation or the Landlord's rights with respect thereto.

This guaranty shall be construed in accordance with the laws of the State of Arizona and shall remain valid until six (6) months following the end of the Lease Rental Period, at which time it shall become null and void, whether it is returned to Caterpillar or not.

Very truly yours,
Caterpillar Inc.

By: _____
Richard D. Moore
Treasurer



EXHIBIT M

(Consent)

(City of Tucson Resolution Authorizing Excise Tax Abatement)

To be inserted after execution of this Lease.

