

**RIO NUEVO – TP CONGRESS PARTNERS, LLC**  
**DEVELOPMENT AGREEMENT**

This Development Agreement (“**Agreement**”) is dated as of July 3, 2023 (the “**Effective Date**”). The parties to this Agreement are **TP Congress Partners, LLC**, an Arizona limited liability company (“**Developer**”), and **Rio Nuevo Multipurpose Facilities District**, a tax levying public improvement district (“**District**”).

**RECITALS**

A. District is a special taxing district of the State of Arizona (the “**State**”) that was formed by the City of Tucson, Arizona (the “**City**”) and the City of South Tucson, Arizona under the Stadium District Statutes that commence at A.R.S. § 48-4201 *et seq.* A “**District**” formed under these statutes is defined as “any county stadium district established pursuant to section 48-4202, subsection A, B or C.” § 48-4201(3). The voters who authorized District’s formation authorized it to receive an incremental portion of State-shared funds derived from transaction privilege taxes (*i.e.*, sales tax and construction sales tax called “**TPT Funds**”) collected from within District’s boundaries, all of which lie within the City.

B. Developer will invest at least Four Million Dollars (\$4,000,000.00) to acquire and construct a commercial project at the vacant historic Indian Trading Post, located at 72 East Congress Street, Tucson, Arizona (the “**Premises**”), which is legally described and depicted in Exhibit A. Developer will renovate and repurpose the Premises to include a restaurant/bar and ancillary uses (collectively, the “**Project**”), as described and depicted in the construction proposal, architectural drawings, and renderings, all of which will be produced and consistent with the presentation made by Developer at District’s March 28, 2023 board meeting (collectively, the “**Construction Proposal**”), attached hereto as Exhibit B.

C. District will acquire the Premises from BP Post Developers, LLC, an Arizona limited liability company (“**Seller**”), for the purchase price of One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) (the “**Purchase Price**”). The Purchase Price will be paid at closing to Seller and will be funded as follows: (a) Developer will pay One Million and No/100 Dollars (\$1,000,000.00) in immediately available funds at closing to the escrow agent (the “**Developer Purchase Contribution**”); and (b) District will sign an unsecured Promissory Note in the amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00) as set forth in that certain Agreement of Purchase and Sale executed on March 31, 2023, between District and Seller (the “**District Promissory Obligation**”). Any additional contributions made by District to Developer will be for the sole purpose of reimbursing Developer for its construction of the Project on the Premises, as more particularly set forth in Section 4 below.

D. After District has acquired the Premises, it will lease the Premises back to Developer, as set forth in Section 3 below.

E. District desires that Developer cause the Project to be constructed and developed on the Premises to further District’s purposes of enhancing Downtown Tucson and District’s Primary Component (as defined in A.R.S. § 48-4201(4)(B)), the Tucson Convention Center. The Project on the Premises (as defined in Section 2 below) will: (i) provide a significant investment

within District; (ii) create new opportunities for employment in District; (iii) enhance retail transaction (sales) tax collections in District; and (iv) provide greater ability for District to promote new development within District boundaries. The value of constructing and operating the Project on the Premises and granting Developer the benefits herein and in the GP Lease will be analyzed through an economic and fiscal impact analysis to be ordered by District and paid for by Developer at closing (the “**Economic Analysis**”), attached hereto as Exhibit C.

F. District has determined that the Project would not be constructed in the absence of this Agreement and that it is in the best interests of the public to assist Developer by advancing TPT Funds that will be generated by the eventual subtenants of the Project and increased business within District encouraged by use of the Project, as provided in Section 5 of this Agreement.

G. The purpose of this Agreement is to set forth each party’s benefits and obligations pertaining to the construction and operation of the Project. To the extent allowed by law and subject to the terms and conditions hereinafter, this Agreement will be binding upon its execution by authorized representatives of the parties.

## **AGREEMENT**

1. Incorporation and Representation. The foregoing Recitals are hereby incorporated into this Agreement by this reference as if set forth in full, and each party represents that such Recitals are true and accurate to the best of each party’s knowledge, information, and belief.

2. The Premises. The exact location of the Premises is shown in Exhibit A.

3. Ownership and Lease of Premises.

(a) Ownership. District holds fee title to the Premises.

(b) GP Lease. Concurrent with the execution of this Agreement, the parties will enter into a triple net governmental property lease (the “**GP Lease**”) for a term of up to twenty-five (25) years from the date specified in the GP Lease, or such other term as allowed by statute. The form of GP Lease is attached as Exhibit D. Due to the governmental nature of District, certain aspects of the GP Lease and this Agreement will be governed by A.R.S. §§ 42-6201 *et seq.* and 48-4201 *et seq.* Pursuant to the GP Lease, Developer will be solely responsible for operating and managing the Project and for paying all expenses relating to the same. The GP Lease includes an option in favor of Developer to purchase the Premises during the term of the GP Lease (the “**Developer Option**”) at an “**Exercise Price**” equal to an appraised fair market value of the Premises (*i.e.*, One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00)), as provided by an independent third party at or around October 11, 2022. Pursuant to A.R.S. § 42-6206, if the option to purchase is not exercised during the term of the GP Lease, Developer (or its successors or assigns) shall acquire title to the Premises at the Exercise Price as soon as reasonably practicable but in all cases, within twelve months after expiration of the GP Lease. District has represented to the best of its knowledge, and Developer’s understanding is that payment by Developer of the Exercise Price for the Premises complies with all governmental procurement laws, rules, and regulations applicable to the Project, including, but not limited to, A.R.S. Title 34. Moreover, upon payment by Developer of the Exercise Price as described in the GP Lease, District agrees to convey the Premises to Developer free and clear of any lien or encumbrance securing the Premises.

(c) Notwithstanding any language to the contrary in this Agreement or the GP Lease, regardless of whether Developer acquires title to the Premises during or after the expiration of the GP Lease term, the gross demonstratable costs actually paid by Developer toward development of the Project, including all construction costs/improvements and the Developer Purchase Contribution of \$1,000,000.00 as set forth in Recital C, will be credited against the Exercise Price. By way of example, (i) if Developer pays \$400,000.00 in construction costs toward the Project, the balance of the Exercise Price due and payable by Developer to exercise the purchase option will be the Exercise Price less \$1,400,000.00 (i.e., the Developer Purchase Contribution and the \$400,000 construction costs); (ii) if, in its development of the Premises, Developer pays an amount greater than the Exercise Price to acquire, develop, and/or otherwise improve the Premises, Developer shall have the option to pay District \$1,000.00 for the transfer of title to the Premises upon exercising the purchase option described in this Section or acquiring title after the GP Lease's term; and (iii) if economic conditions change and Developer does not expend any amounts in connection with construction of the Project, Developer will not be eligible for reimbursements from District, but may exercise the Purchase Option and purchase the Premises upon payment of amounts due by the District under the district Promissory Obligation, being Five Hundred Thousand Dollars (\$500,000.00) plus interest at the rate of 10% per annum from the Property acquisition date until the Developer's Purchase Option is exercised.

4. Obligations of Developer. To be eligible for the Economic Incentive (as defined below), Developer must satisfy the following requirements (the "**Minimum Requirements**") during the timelines set forth herein:

(a) Governmental Approval and Construction Contracts. Developer shall be solely responsible for obtaining all necessary governmental approvals to construct the Project, including, but not limited to, any zoning interpretations or rezoning of the Premises, if necessary; obtaining design approval of the Project; and obtaining all necessary permits for the construction of the Project within eighteen (18) months from the Effective Date, excepting reasonable delays by issuing government departments through no fault of Developer (the "**Outside Permit Date**"). Developer shall also be solely responsible for obtaining bids for the design and construction of the Project and for entering into all necessary contracts for the same within one year from the Effective Date.

(b) Due Diligence. Developer will obtain an extended coverage commitment for title insurance in a form reasonably satisfactory to the parties insuring each party's respective interests, as such interests may change from time to time. Developer will also obtain a Phase I Environmental Assessment (and a Phase II, if deemed necessary by the Phase I) certified to the parties in a form satisfactory to Developer. Finally, Developer will obtain any other studies or due diligence required by the City, or reasonably requested by District, to obtain the governmental approvals needed to construct the Project.

(c) Financing of the Project. Developer will obtain both construction and permanent financing for the Project, without pledging or otherwise relying upon any TPT Funds that may be received from District as a revenue stream for repayment of such financing. During the construction period, the financing may be secured by Developer's leasehold interest in the Premises, subject to District's approval which will not be unreasonably withheld. Upon Developer's exercise of its option to purchase the Premises from District as provided in the

GP Lease, such fee title will be free and clear of all liens or encumbrances, except for such liens or encumbrances as may arise from the GP Lease, or otherwise arise as a result of the acts or omissions of Developer (or its use and tenancy of the Premises).

(d) Project Renovations. Upon receipt of the building permits required for the construction of the Project, Developer will construct the Project in substantial conformance with the plans and specifications approved by the City, and will, subject to force majeure events, improve the Project to “gray shell” condition (the “**Renovations**”) no later than two years from the Outside Permit Date (the “**Completion Date**”).

(e) Tenant Improvements. Following the Renovations, Developer will construct additional improvements according to review and approval by the City, and will, subject to force majeure events, improve the Project to the particular specifications of the tenants (the “**Tenant Improvements**” and, together with the Renovations, the “**Improvements**”). To be eligible for the TI Reimbursement (as defined below), the Project must be completed, and a Certificate of Occupancy issued for the Premises, no later than three years from the Outside Permit Date.

(f) Insurance. In addition to insurance required under the Lease, Developer shall maintain at its own cost and expense the following: (i) Causes of Loss-Basic Form (formerly “all-risk”) Property Insurance against loss or damage to the Improvements and betterments at the Premises, written at a functional replacement cost or historic reproduction cost, covering the Premises for the Term (as defined in the GP Lease); and (ii) builder’s risk insurance to be maintained during the construction of the Project, as contemplated by this Agreement, in the full amount of the cost of the Improvements, and Developer shall further cause all its contractors and subcontractors to maintain insurance reasonably required by District and consistent with the requirements of the GPLET Lease. The above-referenced insurance policies shall include an endorsement to provide a waiver of subrogation in favor of District and shall be endorsed to include District as “an additional insured,” and Developer and its contractors and subcontractors shall maintain such policies with responsible insurance companies with an A.M. Best’s rating of A-VIII or better, and allowed to do business in the State of Arizona.

(g) Successor or Assigns. Developer will have the sole discretion and ability to transfer or assign all its rights and responsibilities associated with this Agreement to any entity for which Developer, ZFI Holdings, LLC or ZFI Acquisitions, LLC (or their respective principals or affiliates) act as a manager or maintain a controlling interest. If Developer intends to transfer any of its rights and/or responsibilities pursuant to the first sentence of this paragraph, Developer shall, in all cases, first notify District thereof more than thirty (30) days before the transfer being effectuated. Any other transfer or assignment by Developer of any rights and/or responsibilities to a successor-in-interest or assign shall be subject to the prior written approval of District, which may be withheld in District’s sole and absolute discretion.

(h) Sole Use. Developer hereby irrevocably covenants and agrees to use the Economic Incentive (as defined below) solely to defray Developer’s actual costs for the construction, renovation, and repurposing of the Premises in compliance with this Agreement and the Construction Proposal documents.

(i) Documentation. Developer shall promptly provide District with any and all documentation and/or evidence District reasonably requests to establish that the Economic Incentive provided herein, and each installment of funds made to Developer hereunder, is used consistently with District's stated purpose and goals, this Agreement, and the Construction Proposal documents.

(j) No Material Change in Scope. Developer agrees that it shall not materially change the scope of the Project without first notifying District in writing and negotiating with District before any material changes are made to the Project.

(k) Termination of Right to Economic Incentive. In addition to such other restrictions and conditions expressly contained in this Agreement, Developer's right to the Economic Incentive will terminate at the earlier of: (i) the completion date of the Improvements and payment by District to Developer of the Economic Incentive, as provided in this Agreement, (ii) Developer exercising its Purchase Option and acquiring title to the Premises, or (iii) December 31, 2026. District's agreement to provide the Economic Incentive is contingent on District's ownership of the Premises as reflected in the accompanying GP Lease and as approved during the Board's public meetings. If Developer exercises its Developer Option and acquires title to the Premises before District has paid the maximum amount of the Economic Incentive, then Developer understands, agrees, and acknowledges that it will cease to be eligible to apply for or receive any remaining Economic Incentive funds and District will be absolved of any duty, obligation, promise, commitment, or otherwise to contribute any remaining Economic Incentive funds to Developer. Notwithstanding the foregoing, if none of the work anticipated under this Agreement has commenced by December 31, 2025, as extended by force majeure events (the "**Outside Commencement Date**"), then this Agreement, without further act or notice required, shall automatically expire and terminate, and the parties shall have no rights or obligations hereunder. If Developer's failure to commence work by the Outside Commencement Date is through no fault of its own, including governmental delays in approving plans or issuing permits or a force majeure event, then District shall reimburse to Developer the One Million Dollar (\$1,000,000) Developer Purchase Contribution advanced by Developer to enable District to purchase the Premises. However, if Developer's failure to commence work by the Outside Commencement Dates is due to factors within Developer's reasonable control (or due to Developer's tenants or business partners backing out of the deal) then District has no obligation to reimburse District for the Developer Purchase Contribution. For the avoidance of all doubt, District will only reimburse the Developer Purchase Contribution if Developer has in good faith diligently endeavored to begin the work contemplated herein.

## 5. Renovation Reimbursement.

(a) Reimbursement for Renovations. District will reimburse Developer for the Renovations in *pro rata* installments, proportional to actual work and construction progress completed on the Project (the "**Renovation Reimbursement**"), in accordance with the Distribution Procedure outlined below.

(b) Release of Funds. Subject to Developer's continued satisfaction of the Minimum Requirements set forth in Section 4, District will pay the Renovation Reimbursement to Developer as described in this Section 5.

(c) Amount and Limitations. The total Renovation Reimbursement that may be paid to Developer will not exceed One Million and No/100 Dollars (\$1,000,000.00).

(d) Distribution Procedure. The Renovation Reimbursement will be payable in *pro rata* installments, proportional to actual work and construction progress completed on the Project. Accordingly, District will release each installment of funds in an amount consistent with the latest construction draw submitted by Developer or Developer's general contractor engaged for completion of the Project (the "**Contractor**") and only upon completion of the following required conditions:

(i) Developer and/or Contractor shall deliver to District a signed construction draw ("**Draw Notice**") identifying the Renovations that have been made to the Premises in compliance with the Construction Proposal;

(ii) For each Draw Notice submitted by Developer or Contractor, Developer or its architect shall further provide to District verification that: (X) certain improvements consistent with the applicable construction draw number have been made to the Premises in compliance with the Construction Proposal, and (Y) proof of payment to Contractor and each of the applicable subcontractors and/or suppliers for Renovation Reimbursement draws previously paid by District. Developer shall provide Conditional Lien waivers from all contractors, subcontractors, and suppliers with each Draw Notice as a condition for release of any money by District, and Unconditional Lien waivers evidencing such payments for work completed for each prior Draw Notice. All lien waivers shall be in the form prescribed in A.R.S. § 33-1008;

(iii) District shall have ten (10) business days from date of receipt of each Developer's applicable construction draw to inspect the construction work and confirm such work has been done in accordance with the Construction Proposal, if applicable, and the submitted Draw Notice. Within seven (7) business days of such inspection, District shall notify Developer in writing if the work (or any portion thereof) is not approved, and District may withhold any Renovation Reimbursement payment to Developer until such time as the work has been corrected or performed in accordance with District's notice and to its satisfaction. If District fails to inspect the Premises or provide notice within the time periods specified in this Section, District will conclusively be deemed to have approved the Draw Notice;

(iv) As a further condition for release of any funds by District, Developer shall also provide District with a complete set of all applicable lien waivers from Contractor, all subcontractors, and all suppliers performing work on, or providing materials to, the Premises related to the Project for work applicable to any previously approved Draw Notice. Such lien waivers shall be in the forms set forth in A.R.S. § 33-1008. Upon completion of each of the foregoing requirements and procedures, and following the applicable inspection and approval periods set forth above, District will release and provide funds to Developer in accordance with this Section and subject to the other terms and conditions of this Agreement; and

(v) Subject to the other terms and conditions in this Agreement, if Developer satisfies each of the terms and conditions in this Section 5(d), District shall release the applicable installment of funds. For any work approved by District, each such installment shall be released no later than within fourteen (14) days following the date on which District inspects and approves the Improvements on the Premises and pursuant to Section 6(d)(iii), above.

6. Tenant Improvement Reimbursement.

(a) Reimbursement for Tenant Improvements. Following completion of the Renovations, District will reimburse Developer for the Tenant Improvements in *pro rata* installments, proportional to actual work and construction progress completed on the Project (the “**TI Reimbursement**” and, together with the Renovation Reimbursement, the “**Economic Incentive**”), in accordance with the Distribution Procedure outlined below.

(b) Release of Funds. Subject to Developer’s continued satisfaction of the Minimum Requirements set forth in Section 4, District will pay the TI Reimbursement to Developer as described in this Section.

(c) Amount and Limitations. The total TI Reimbursement that may be paid to Developer will not exceed Five Hundred Thousand and No/100 Dollars (\$500,000.00).

(d) Distribution Procedure. The TI Reimbursement will be payable in *pro rata* installments, proportional to actual work and construction progress completed on the Project. Accordingly, District will release each installment of funds in an amount consistent with the latest construction draw submitted by Contractor and only upon completion of the following required conditions:

(i) Developer and/or Contractor shall deliver to District a Draw Notice proving the Tenant Improvements have been made to the Premises in compliance with the Construction Proposal;

(ii) For each Draw Notice submitted by Developer or Contractor, Developer or its architect shall further provide to District verification that: (X) certain improvements consistent with the applicable construction draw number have been made to the Premises in compliance with the Construction Proposal, and (Y) proof of payment to Contractor and each of the applicable subcontractors and/or suppliers for TI Reimbursement draws previously paid by District. Developer shall provide Conditional Lien waivers from all contractors, subcontractors, and suppliers with each Draw Notice as a condition for release of any money by District, and Unconditional Lien waivers evidencing such payments for each subsequent Draw Notice. All lien waivers shall be in the form prescribed in A.R.S. § 33-1008;

(iii) District shall have ten (10) business days from date of receipt of each Developer’s applicable construction draw to inspect the construction work and confirm such work is in accordance with the Construction Proposal, if applicable, and the submitted Draw Notice. Within seven (7) business days of such inspection, District shall notify Developer in writing if the work (or any portion thereof) is not approved, and District may

withhold any TI Reimbursement payment to Developer until such time as the work has been corrected or performed in accordance with District's notice and to its satisfaction. If District fails to inspect the Premises or provide notice within the time periods specified in this Section, District will conclusively be deemed to have approved the Draw Notice; and

(iv) As a further condition for release of any funds by District, Developer shall also provide District with a complete set of all applicable lien waivers from Contractor, all subcontractors, and all suppliers performing work on, or providing materials to, the Premises related to the Project for work applicable to any previously approved Draw Notice. Such lien waivers shall be in the forms set forth in A.R.S. § 33-1008. Upon completion of each of the foregoing requirements and procedures and following the applicable inspection and approval periods set forth above, District will release and provide funds to Developer in accordance with this Section and subject to the other terms and conditions of this Agreement.

(e) Subject to the other terms and conditions in this Agreement, if Developer satisfies each of the terms and conditions in this Section 6(d), District shall release the applicable installment of funds. For any work approved by District, each such installment shall be released no later than within fourteen (14) business days following the date on which District inspects and approves the Improvements on the Premises and pursuant to Section 7(d)(iii).

7. Miscellaneous.

(a) Notice. Any objection, approval, disapproval, demand, document, or other notice that any party may desire or may be obligated to give to the other party shall be in writing and may be given by personal delivery; registered or certified mail (return receipt requested); email transmission (with delivery receipt); or by commercial courier at the address of the party set forth below, or at any other address later designated in writing. Change of address by a party shall be given by notice as follows:

**If to District:**

Rio Nuevo Multipurpose Facilities  
District  
Attn: Fletcher McCusker  
1703 East Broadway Boulevard,  
Tucson, Arizona 85719  
[brandihb@rionuevo-tucson.org](mailto:brandihb@rionuevo-tucson.org)

***With a copy to:***

Farhang & Medcoff, PLLC  
Attn: Timothy Medcoff, Esq.  
100 South Church Avenue, Suite 100  
Tucson, Arizona 85701  
[tmedcoff@farhangmedcoff.com](mailto:tmedcoff@farhangmedcoff.com)

**If to Developer:**

TP Congress Partners, LLC  
Attn: Zach Fenton  
6700 N. Oracle Road, Suite 504  
Tucson, AZ 85704



[zach@fentoninvestco.com](mailto:zach@fentoninvestco.com)

*With a copy to:*

Hinderaker Rauh & Weisman, P.L.C.  
Attention Ted Hinderaker  
2401 E. Speedway Blvd.  
Tucson, AZ. 85719  
[ted@hrtucson.com](mailto:ted@hrtucson.com)

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

(c) No Partnership; Third Parties. Nothing in this Agreement creates any partnership, joint venture, or other similar arrangement between the parties. Unless otherwise expressly provided herein, no term or provision of this Agreement is (or is intended to be) for the benefit of any person, firm, organization, or corporation not a party hereto, and no other person, firm, organization, or corporation has any right or standing to any cause of action hereunder.

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

(e) No Liability of District Officials. No director, officer, board member, official, representative, agent, attorney, or employee of District shall be personally liable to Developer, or to any successor in interest to Developer, in the event of any default hereunder by District, or for any amount which may become due to Developer or its permitted successors, or with respect to any obligation of District pursuant to this Agreement. No director, officer, board member, official, representative, agent, attorney, or employee of Developer shall be personally liable to District, or to any successor in interest to District, except for acts of willful misconduct, reckless behavior, or gross negligence, in the event of any default hereunder by Developer, or for any amount which may become due to District or its permitted successors, or with respect to any obligation of Developer pursuant to this Agreement.

(f) Conflict of Interest. This Agreement is subject to and may be terminated by District in accordance with the provisions of A.R.S. § 38-511.

(g) Israel Boycott. If and to the extent that A.R.S. §§ 35-393 *et seq.* is applicable, Developer certifies that it is not currently engaged in, and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel as that term is defined in A.R.S. § 35-393.

(h) Procurement Obligations. District represents to the best of its knowledge and understanding (and Developer believes) that District has complied with all governmental procurement obligations applicable to the purchase of the Premises and awarding of this Agreement to Developer, and that other than compliance with the terms of this Agreement, Developer is not required to satisfy any procurement obligations applicable to governmental entities.

(i) Legal Compliance. Notwithstanding any language herein to the contrary, if Developer has complied with the terms of this Agreement and is not in default hereunder but, through no fault of its own is unable to exercise the Developer Option as described herein and in the GP Lease because this Agreement is deemed to be unenforceable or contrary to existing law, then in addition to other remedies available to Developer, District agrees to reimburse Developer for the Developer Purchase Contribution and other amounts expended by Developer in constructing and renovating the Premises and tenant improvements to the Premises.

(j) Miscellaneous. Headings used herein are for convenience only and not a material part of this Agreement. This Agreement may be executed in counterpart. This Agreement is governed by Arizona law. At the election of either Party, a Memorandum of this Agreement shall be recorded against title to the Premises.

8. Contingencies. For Developer to be eligible to submit and/or receive reimbursements for construction improvements via draws as identified above, the following conditions/contingencies must be met as reasonably determined by District: (a) District receiving an Economic Analysis showing that the benefit to the public from the Project exceeds the value of any incentives given to Developer by District including, without limit, those granted hereunder and in the GP Lease (defined in Section 3 below); (b) District retaining the right to review and approve the construction costs for the Project as completed (i.e., Developer will share construction draw notices upon receipt with District); (c) the parties entering into a GP Lease; (d) Developer expending at least One Million Dollars (\$1,000,000) towards acquisition of the Premises and two dollars in construction expenditures for every dollar in construction reimbursements as allowed herein, capped at \$1.5MM as outlined above; (e) District making the Cash Contribution except as limited or modified herein, which Developer agrees to use for the purposes prescribed herein; and (f) final ratification of this Agreement by District's full Board of Directors. Without limiting the foregoing, the parties agree and understand that Developer may exercise its option as set forth herein to purchase the Premises at any time for the Exercise Price as defined and explained above.

Notwithstanding anything to the contrary in this Agreement, the parties agree and acknowledge that if Developer accepts any Renovation Reimbursements or Tenant Improvement Reimbursements from District, and Developer uses the Premises contrary to Recital B and Exhibit B hereto, without District approval, before receipt of a shell Certificate of Occupancy allowing for the use of a restaurant and bar on the Premises as outlined in and consistent with Recital B, District reserves all legal, equitable, and/or other rights to claw back or recover any of the Renovation Reimbursements or Tenant Improvement Reimbursements received by Developer.

*[Signatures to appear on next page]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

**DEVELOPER:**

TP Congress Partners, LLC,  
an Arizona limited liability company

By TP Congress Manager, LLC  
an Arizona limited liability company

By Zach Fenton

Name: Zach Fenton

Title: Manager of Manager

**DISTRICT:**

Rio Nuevo Multipurpose Facilities District,  
a tax levying public improvement district

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

Name: Fletcher McCusker

Its: Chairman

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

Name: Edmund Marquez

Its: Secretary

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

**DEVELOPER:**

TP Congress Partners, LLC,  
an Arizona limited liability company

By TP Congress Manager, LLC  
an Arizona limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**DISTRICT:**

Rio Nuevo Multipurpose Facilities District,  
a tax levying public improvement district

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

Name: Fletcher McCusker

Its: Chairman

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

Name: Edmund Marquez

Its: Secretary

**EXHIBIT A**  
**LEGAL DESCRIPTION**

Block 2 of CITY PARK BLOCK 1 AND BLOCK 2, a subdivision of Pima County, Arizona, according to the map of record in the office of the Pima County Recorder at Document No. 20163580490.

{00966213.1}

*[Development Agreement]*

*Exhibit A]*

**EXHIBIT B**  
**CONSTRUCTION PROPOSAL**

{00966213.1}

*[Development Agreement]*

*Exhibit B]*

***NOTE: Exhibit B to be supplemented by final construction proposal, architectural drawings, and renderings, once available***

# Indian Trading Post

Rio Nuevo RFQ

RN – 2.22.2023

Fenton/Scott/Scordato/Pitchford



Congress Street View





February 22<sup>nd</sup>, 2023

Ms. Brandi Haga-Blackman  
Rio Nuevo Multipurpose Facilities District  
1703 E. Broadway Blvd.  
Tucson, AZ 85719

RE: Request for Qualifications for Re-Purposing of the Indian Trading Post

Dear Ms. Haga-Blackman:

On behalf of our Development Team (as defined below), I am pleased to present the enclosed submittal for the consideration of the Rio Nuevo Board. Our team consists of Zach Fenton (ZFI Holdings), Brenndon Scott (BOXYARD Group), Daniel Scordato (Vivace and Uptown Burger), Dean Pitchford (award winning song/screen writer known for Footloose and other major hits) and FORS Architecture. We are extremely excited about the opportunity to redevelop the Indian Trading Post building into an iconic high-end destination restaurant and music venue.

We are thrilled to be partnering with Daniel Scordato, who is Tucson's most famous chef and restaurant owner. Vivace Restaurant has been a Tucson staple for over 30 years, with the Scordato family's first Tucson restaurant opening 50 years ago. We think Daniel's celebrity status will bring significant buzz and cachet to this project. Rio Nuevo's goal is to maximize sales tax generation, and,

based on the fact that Vivace is one of the highest grossing restaurants in Tucson, we think our group presents the best opportunity to achieve an extremely high revenue figure.

We will incorporate a music/entertainment element as well, with the goal of bringing some “New Orleans vibes” to our project. For this we are leaning on the expertise of Dean Pitchford, who is an Oscar and Golden Globe winner. Dean has had an illustrious career and we encourage you to check out his Wikipedia page for a detailed bio.

Best,

Zach Fenton

Contact info  
Zach Fenton, Member  
ZFI Holdings, LLC  
6700 N Oracle Road, Suite 504  
Tucson, AZ 85704  
520-797-6700  
[zach@zfiholdings.com](mailto:zach@zfiholdings.com)

Contracting Entity:  
ZFI Acquisitions, LLC and/or assigns  
We anticipate assigning to a new to-be-formed Arizona limited liability company

### III. PROPOSER QUESTIONNAIRE AND AFFIDAVIT

#### Assurances

The undersigned Proposer hereby submits to the District the enclosed Proposal based upon all terms and conditions set forth in the District's Request for Proposals, all addenda thereto, and all referenced materials. Proposer further specifically agrees hereby to construct and operate the Project in the manner set forth in the Proposal submitted.

The undersigned Proposer acknowledges and states, under penalty of perjury, that:

1. The District is relying on Proposer's submitted information and the representation that Proposer has the capability to successfully undertake and complete the responsibilities and obligations submitted in its Proposal and in the resulting contract.

2. The District has the right to make any further inquiry it deems appropriate to substantiate or supplement information supplied by Proposer.

3. Proposer has read and fully understands all the provisions and conditions set forth in the RFP documents upon which its Proposal is based.

4. The forms and information requested in the RFP are complete and made part of Proposer's Proposal. The District is not responsible for any Proposer errors or omissions.

5. This Proposal may be withdrawn by requesting such withdrawal in writing at any time prior to the Proposal deadline but may not be withdrawn after such date and time.

6. The District reserves the right to reject any and all Proposals and to accept the Proposal that, in its judgment, will provide the best quality development to the District.

7. This Proposal is valid for a minimum of **sixty (60)** days subsequent to the RFP Proposal deadline.

8. All costs incurred by Proposer in connection with this Proposal shall be borne solely by Proposer. Under no circumstances shall the District be responsible for any costs associated with Proposer's Proposal or the RFP process. No contract is formed by the submittal of a response to this RFP by Proposer, and no expectation of a Contract is created by such submittal.

9. Proposer has not in any manner, directly or indirectly, conspired with any person or party to unfairly compete or compromise the competitive nature of the RFP process.

10. The contents of this Proposal have not been communicated by the undersigned or by any employee or agent to any other person engaged in this type of business prior to the official opening of this Proposal.

11. To the best of the Proposer's knowledge, the information provided in its Proposal is true and correct, and neither the undersigned Proposer nor any partner, corporate officer or managing employee have ever been convicted of a felony or a crime involving moral turpitude.

12. **Proposal Summary**

- ☒ Gross Square Footage (SF) 10,224 (note: mezzanine is not included)
- ☒ Commercial SF 10,224
- ☐ Office SF \_\_\_\_\_
- ☐ Other SF (detail) \_\_\_\_\_
  
- ☒ Estimated Number of Construction Jobs TBD
- ☒ Estimated Number of Permanent Jobs ~50 (full and part-time)
- ☒ Estimated Value of Project We anticipate improvements of at least \$2 million

13. **Organization Structure of Entity to Enter into Contracts**

a) What is the name of the Contracting Entity?

- ☒ ZFI Acquisitions, LLC and/or assigns
- ☐ If this entity has been formed, what is the Arizona Corporation Commission file number?  
\_\_\_\_\_
- ☒ If this entity has not been formed, describe the anticipated timing of the creation of such entity: ASAP after award of the RFP  
\_\_\_\_\_

b) Please check the type of organization:

- ☐ Non-Profit 501(c)(3), if so, what year was it incorporated as a 501(c)(3)? \_\_\_\_\_
- ☐ Other Non-Profit \_\_\_\_\_
- ☐ Government Entity
- ☐ Sole Proprietorship
- ☐ Partnership
- ☐ Corporation
- ☒ Other Limited Liability Company

c) Identify the members, if an LLC, partners, if a partnership, or officers, if a corporation, for the Contracting Entity identified above. For the purposes of this RFP, addenda and exhibits, any questions regarding the principals are referring to the officers, partners and members as disclosed.

Primary Members: Zach Fenton, Brenndon Scott, Daniel Scordato, Dean Pitchford

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14. **Legal Status**

a) In the past 10 years, has your proposing entity, or any of its principals or its principal's affiliates, filed a petition in bankruptcy court or had involuntary proceedings filed in bankruptcy court? If "Yes," provide date, case name, case number, venue of the proceeding, and the status of each proceeding.

Yes ( ) No (x)

b) Has your proposing entity, or any of its principals or its principal's affiliates, been declared to be in default under any obligation to or contract with the District? If "Yes," please provide details concerning the nature of the default, including the District contract number.

Yes ( ) No (x)

c) Is the proposing entity, or any of its principals or its principal's affiliates, currently involved in any litigation or claims against the District including any threatened claim or litigation? If "Yes," provide details about such proceedings.

Yes ( ) No (x)

d) Have any of the proposing entity's, or any of its principals' or its principals' affiliate's, contracts been terminated prior to their expiration terms, voluntarily or involuntarily, within the last 10 years? If "Yes," provide name, location, and date of the contract(s).

Yes ( ) No (x)

e) Has the Proposer, or any corporation or other entity that has, directly or indirectly, a controlling interest in the Proposer, or any subsidiary of the Proposer or other entity in which the Proposer has a controlling interest, or any of the Proposer's principals, officers, or directors, ever been barred from bidding on federal, state or local government contracts? If "Yes," provide the current status of such suspension or debarment proceedings.

Yes ( ) No (x)

15. **Affidavit Signatures**

**Proposer's Contracting Entity** (Legal Name): ZFI Acquisitions, LLC and/or assigns

**Description of Proposer's Development Team**

(Key Individuals, Companies and Organizational Structure):

Zach Fenton and Brendon Scott - Co-Managers and Members

Daniel Scordato and Dean Pitchford - Members

\_\_\_\_\_  
\_\_\_\_\_  
**Proposer's Authorized Representative:**

Printed Name\*: \_\_\_\_\_

Title: \_\_\_\_\_

Business Mailing Address: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone: \_\_\_\_\_

Signature \_\_\_\_\_

\*Proposal must be signed by an individual authorized to contractually bind the Proposer.

**NOTARIZED**

Signed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Notary Signature: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

(Affix Seal)

## **SUMMARY OF OUR PROPOSED USE**

Our diverse group proposes to convert the Indian Trading Post building into Downtown Tucson's premier fine dining and entertainment destination. Our vision is to create a space that cultivates our community through the fostering of joyful interaction, unparalleled ambiance, creative entertainment, and world class food and drinks.

### **MAIN FLOOR AND BASEMENT**

Our unique identity will include a main floor restaurant that shares the basement wine cellar with an ultra-lounge brought to life by Daniel Scordato, arguably Tucson's most renowned chef. Mr. Scordato's flagship restaurant, Vivace, has been a local favorite since 1993, as well as Tucson's highest grossing restaurant for many of those years. Mr. Scordato's vision is to create an exciting and unforgettable venue. Whether celebrating a special occasion, being an out-of-town visitor, or simply people wanting to have something other than the usual, this location will excite and surprise its customers with exquisite food and fun entertainment choices.

### **SECOND FLOOR ENTERTAINMENT VENUE**

The upstairs will provide world renowned entertainment produced by Dean Pitchford (seriously, google this guy!). An integral member of our team, Mr. Pitchford will bring his Oscar and Golden Globe winning talents into Tucson to enhance the second-floor entertainment setting. Mr. Pitchford is a prolific actor, writer, director and screenwriter of the hit movie Footloose as well as a collaborator of its soundtrack which sold over 17 million albums. He will conceive and execute a design that will be both elegant and approachable. On any given day, patrons can expect to be delighted by distinguished musicians and entertainers. In addition, the upstairs concept will feature a separate drink and small plates menu curated by Chef Scordato.

## **DESIGN AND ARCHITECTURE**

While an important goal is for our design to make guests feel welcome and comfortable, FORS Architecture Firm will adhere to and maintain the historical significance of The Indian Trading Post building. We will ensure the final design will be respectful to preserving, and maintaining the historic façade, while allowing for the adaptive re-use of the interiors by installing all new modern amenities.

Our goal is simple. We aspire to contribute to the dynamic and beautiful culture of our city with the creation of an iconic, enduring business for Downtown Tucson for a long time to come.

## **CUSTOMER BASE AND ACCESSABILITY**

Through our multiple businesses that we currently own and operate downtown, we can understand that our customers have no distance restrictions. Therefore, we believe that this new destination will pull from all of Tucson. These customers will enjoy the ever-expanding accessibility and parking that is currently available. Downtown Tucson Partnership notes that there is currently over “13,000 easy-to-find parking spaces” accessible to the Indian Trading Post. Pairing this with the proximity of the Ronstadt Transit Center and the Sun Link Streetcar, the Indian Trading Post building is highly accessible. During the planning stage, we would like to identify and implement bicycle parking and an area for rideshare pick up and drop off.

## **ACQUISITION STRUCTURE**

We anticipate entering into a GPLET agreement with Rio Nuevo, and ultimately acquiring title to the property at an appraised value less development costs. Our development costs shall include all expenditures on building improvements and tenant improvements; it will also include financing costs (if applicable), development fees, design/architecture fees, and FF&E. Our total development costs will range from \$2 million - \$3 million.



## **RETURN ON INVESTMENT**

Our group agrees that this restaurant, ultra-lounge, and entertainment venue can generate in excess of \$7,000,000/year in gross sales. This signifies an annual return of \$427,000 to Rio Nuevo.

## **PROJECT SCHEDULE**

We want to move as rapidly as possible to place the Indian Trading Post into service.

Below is our target project schedule (subject to quickly having a development agreement in place with Rio Nuevo):

Creation of Construction Drawings – 4 months  
Construction Permitting – 3 months  
Construction – 9 months

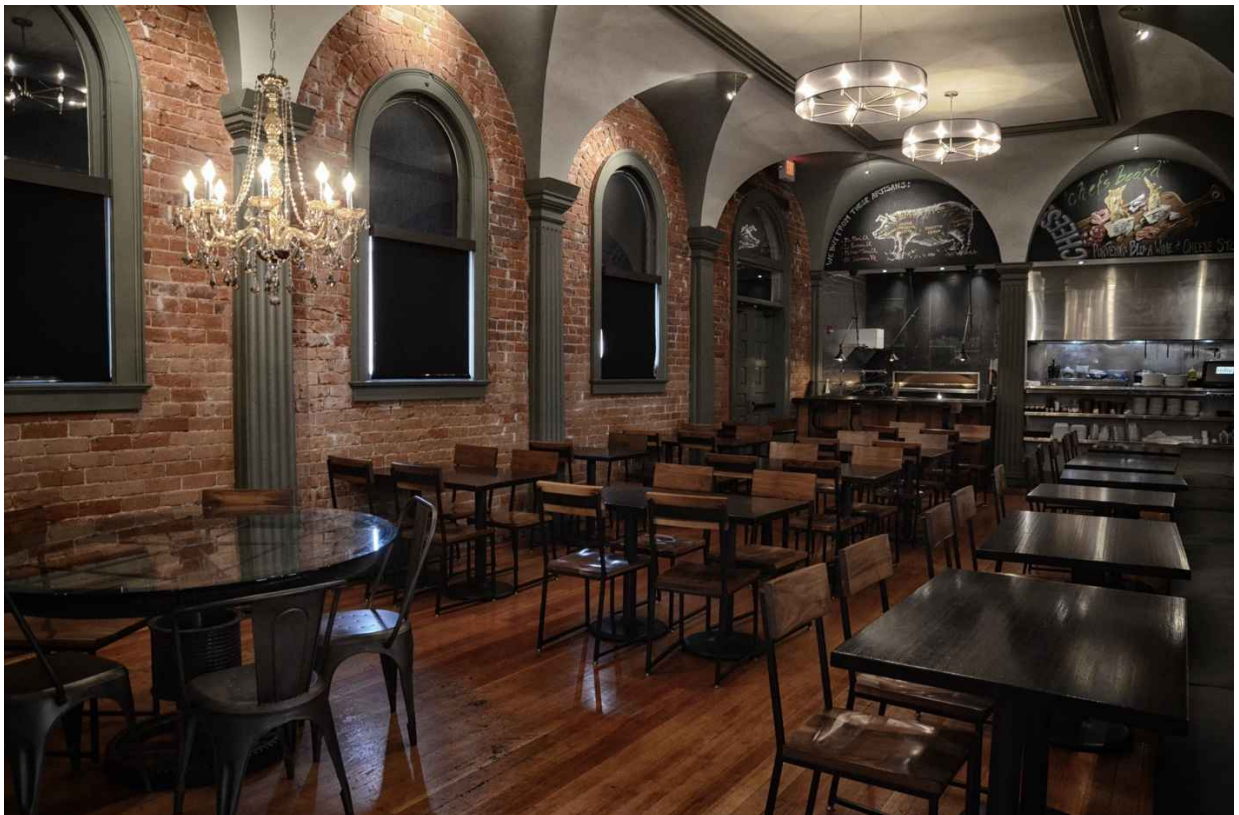
## **COMPARABLE PROJECTS**

The two following projects represent ZFI Holdings' ability to convert historic Downton Tucson buildings into successful, multi-concept enterprises.

Please note that the Rielly Building parallels that of the Indian Trading Post. Both buildings were constructed in the same era and out of similar materials. Furthermore, each building is just over 10,000 square feet, are two stories and have full basements.

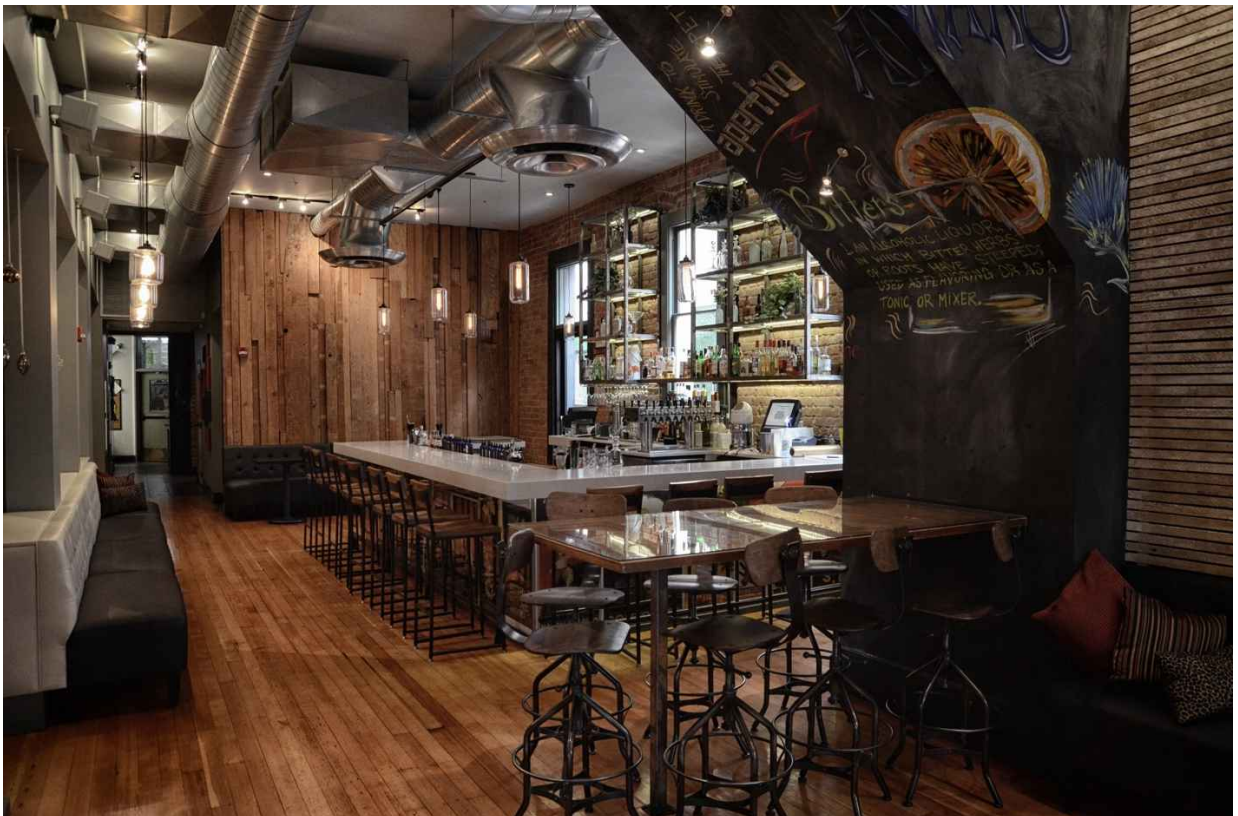


reilly.  
CRAFT PIZZA & DRINK





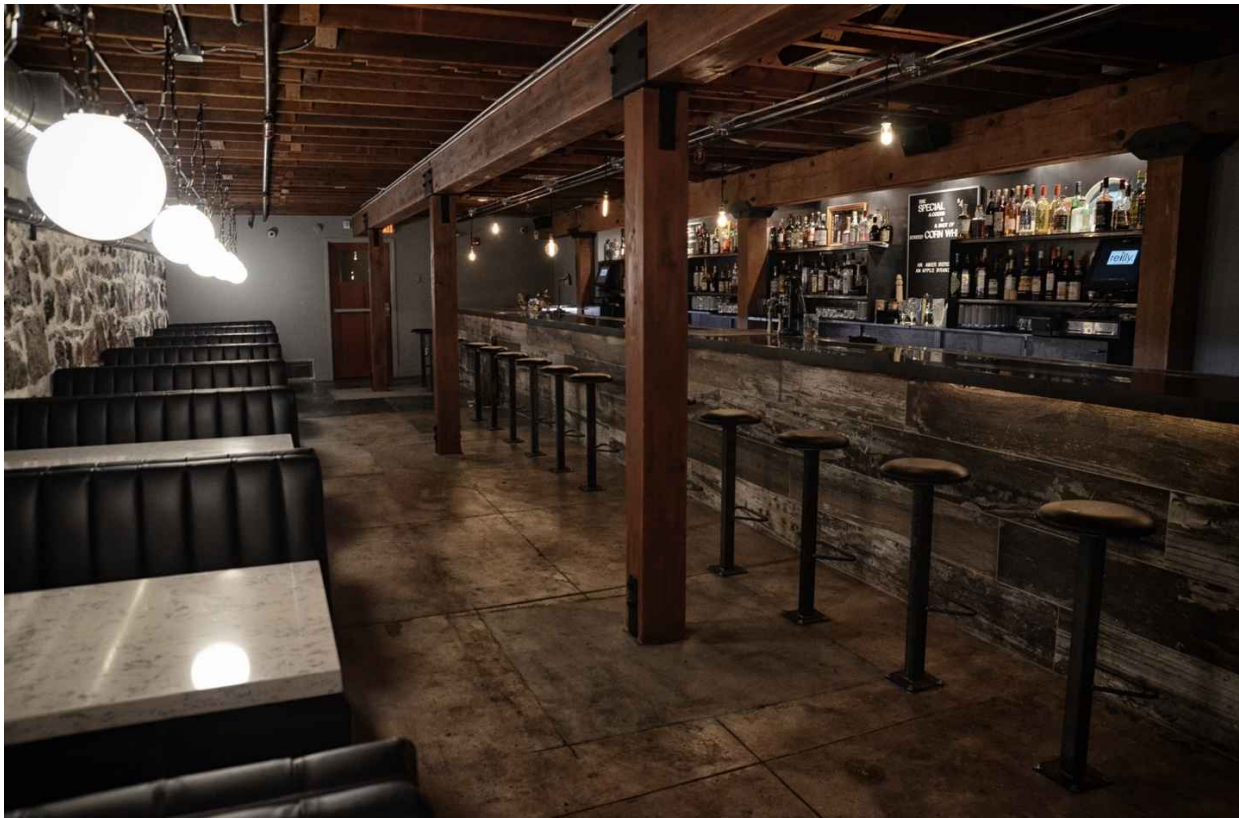
reilly.  
CRAFT PIZZA & DRINK







# Tough Luck Club



# BATA







BATA





barbata





## **RESUMES**

### **ZFI Holdings LLC – Zach Fenton, Principal**

ZFI Holdings, LLC is a real estate investment and asset management company, with particular focus on Downtown Tucson. ZFI's most noteworthy asset is One South Church (Tucson's tallest building). After acquiring the One South Church block in 2015, the site was split to facilitate the development of the Rendezvous Urban Flats, a 100-unit ultra-luxury apartment building. Then, in late 2020, the One South Church tower was condominiumized to allow for a boutique Marriott hotel to open within the lower floors of the building (currently under construction). The total capitalization of these three projects is over \$100 million.



ZFI has been involved in numerous historic renovation/restoration projects in/around the downtown area, including the following:

101 E Pennington Street – converted the Reilly Funeral Home into Reilly Craft Pizza & Drink

460 S 6<sup>th</sup> Avenue – converted an 1886 Catholic girl's school into the Academy Loft Apartments

Toole Block – 9 restaurant/retail spaces, including a fine dining venue (BATA)

117 N 6<sup>th</sup> Avenue – converted a freestanding office building into the John Henry's Bar

1150 N 7<sup>th</sup> Avenue – converting the former Asarco Headquarters into Loft Apartments

350 N 4<sup>th</sup> Avenue – 14 bar/restaurant/retail spaces along historic Fourth Avenue

## **ZFI Holdings LLC**

ZFI has a proven track record of delivering on its promises to Rio Nuevo. We have partnered with the district on five projects:

Quicken Inc – the tenant was successfully moved into downtown in early 2022.

35 E Toole – construction is complete and BATA opened in March 2022.

117 N 6<sup>th</sup> Ave – John Henry's Bar opened in 2019.

1SC Hotel – construction is well underway and anticipated to open April 1, 2023.

Beer Garden Roof Deck – under construction, anticipated completion of May 1, 2023.

While we anticipate obtaining construction financing for this project, ZFI has sufficient liquidity to fund this project entirely in-house, if necessary. Please let us know if you require verification of cash, etc.





**SELECT  
ZFI HOLDINGS  
PROJECT PHOTOS**



## Brenndon Scott - BOXYARD

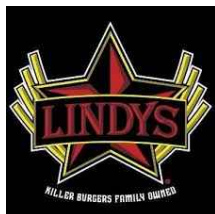
Brenndon Scott is a Tucson native and a graduate of the University of Arizona with a degree in Regional Development. He began a career in commercial real estate in 2002 where, until 2008, led negotiations and completed over 150 lease, sale and development transactions totaling over \$85M. Working in commercial real estate, combined with a love of working in restaurants since the age of 16, helped Brenndon to make the transition into restaurant and bar ownership. He developed and owns BOXYARD on 4<sup>th</sup> Ave, John Henry's in downtown Tucson and Roberts restaurant. In addition, Brenndon owned Bashful Bandit from 2007-2021, Lindy's on 4<sup>th</sup> 2007-2016, and Territorial Bar 2006 – 2008. Outside of restaurant and bar ownership, Brenndon works with startups to develop, conceptualize and execute their business plans. He has helped over 10 businesses open and flourish in Tucson.



References are happily available upon request.



John Henry's



## Chef Daniel Scordato

Full resume available upon request



## Dean Pitchford



Dean Pitchford, an American songwriter, screenwriter, director, actor, and novelist, has won an Oscar and a Golden Globe Award, as well as being nominated for three additional Oscars, two more Golden Globes, eight Grammy Awards and two Tony Awards.

His books, stage shows and movies have earned an international following, and his songs have sold over 70 million records.

**FORS Architecture + Interiors**  
**Miguel Fuentevilla, AIA, RA**

**Principal, Project Manager, Team Lead, Design Team**

Miguel was born and bred in Tucson, Arizona. Miguel has over twenty-six years of design experience focused in the areas of hospitality and commercial architecture. He is skilled in leading a design process that develops consensus from all stakeholders.. Miguel's comprehensive expertise in all aspects of a project has been developed with broad experience in large scale retail, medical and hospitality projects. Miguel applies his client-centric approach to developing highly functional environments while maintaining a passion for creative design and technical execution. Brand development is at the core of his design ethic.

**Education**

Bachelor of Architecture  
University of Arizona

**Experience**

26 years of work experience  
2003 – present: FORS Architecture + Interiors

**Registrations**

Architect: Arizona

**Select Project Experience**

- + **Rialto Block**  
Adaptive Reuse Shell  
Tucson, Arizona
- + **Tucson International Airport Concessions**  
Renovation and interior design
- + **Corbet Block**  
Redevelopment masterplan, core and shell, Tucson, Arizona
- + **Gibson Block**  
Masterplan + shell, Tucson, Arizona
- + **Hub Restaurant + Creamery**  
Renovation and Adoptive Reuse, Tucson, Arizona
- + **Elvias**  
Adaptive Reuse and Interiors, Tucson Arizona
- + **Downtown Kitchen + Carriage House**  
Adoptive reuse and renovation + interior design, Tucson, Arizona
- + **PLAYground**  
Adaptive reuse, renovation and interior design, Tucson, Arizona
- + **Zinburger**  
Adoptive reuse, renovations and interior design, multiple locations
- + **Tinwell Craft Bar**  
Adoptive reuse, renovation, and interior design, Salt Lake City, Utah
- + **Thunder Canyon Brewery**  
Adoptive reuse shell and interior design, Tucson, Arizona





## **REFERENCES**

Joe Kroeger, Managing Partner of Snell & Wilmer  
Evan Feldhausen, Partner at Beach Fleishman  
David Lyons, EVP National Bank of Arizona  
Matthew Desman, Wells Fargo Bank  
Matthew Thrasher, Thrasher Law Offices  
Dennis Caldwell, Caldwell Construction  
Kyle Knutson, DMI Construction

Email addresses and/or phone numbers can be provided upon request.

**EXHIBIT C**  
**ECONOMIC ANALYSIS**

{00966213.1}

*[Development Agreement]*

*Exhibit C]*



APPLIED ECONOMICS

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**ECONOMIC AND REVENUE IMPACTS  
OF INDIAN TRADING POST RE-PURPOSING  
ON THE RIO NUEVO DISTRICT  
AND THE CITY OF TUCSON**

**APRIL 2023**

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## 1.0 INTRODUCTION

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Applied Economics was retained by the Rio Nuevo Multipurpose Facilities District (the District) to perform an economic and fiscal impact analysis of the proposed re-purposing of the historic Indian Trading Post, which includes a three-story 10,224 square foot vacant building located at 72 E. Congress Street in downtown Tucson. The proposed project includes a main floor restaurant, basement wine cellar and a second floor lounge and entertainment venue.

Bourn Companies currently own the property. The District is planning to purchase the property for a net cost of \$500,000, and then invest \$1.0 million to renovate the building to grey shell condition. In addition, the District would agree to reimburse the developer for up to \$500,000 in tenant improvements for a total investment by the District of \$2.0 million.

The project could be eligible for a Government Property Lease Excise Tax (GPLET) agreement that would result in the replacement of all real property taxes during the 25-year term of the agreement with a lease excise tax. The lease excise tax, which is based on a statutory rate per square foot based on the type of use, is typically less than the amount of property tax that would have been paid without the GPLET, typically resulting in an incentive to the lessee. This analysis is intended to provide a framework for understanding the economic and fiscal impacts of the project relative to the incentives being offered to address the statutory economic benefit requirement for the GPLET.

### 1.1 Project Description

The total construction cost is estimated at \$3.5 million, based on information provided by the developer, and would include site work, hard and soft costs, tenant improvements. Note that this cost does not include the building purchase. The proposed restaurant, lounge and entertainment uses could support an estimated 50 jobs and taxable food and beverage sales and building lease payments of \$7.2 million per year.

**FIGURE 1  
DEVELOPMENT ASSUMPTIONS**

Development Type	Square Feet	Estimated Jobs	Annual Taxable Sales and Leases
Restaurant, Lounge, Entertainment Space	10,224	50	\$7,200,000

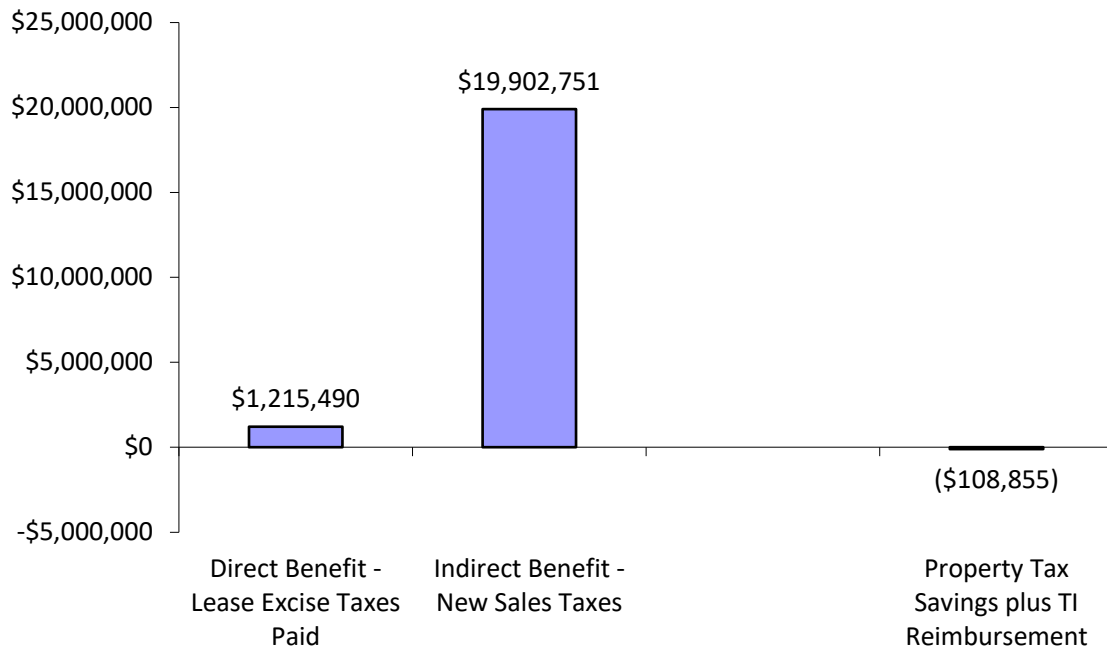
## 2.0 IMPACT SUMMARY

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The re-purposing of the Indian Trading Post in the Rio Nuevo District could provide economic benefits to both the city and the District.

- About 35 direct construction jobs and 10 additional indirect construction jobs could be supported in the City of Tucson during the construction period. The total economic impact of construction is estimated at \$5.4 million over approximately 9 to 12 months.
- Once completed, the tenant businesses could generate an annual economic impact of \$4.9 million, or a total of \$122.4 million over the next 25 years of operations through 2049, which represents the term of the GPLET.
- This level of economic impact assumes that the restaurant, lounge and entertainment venue could directly support about 50 new jobs and \$1.3 million in annual payroll. These business operations could also support an estimated 10 indirect jobs at other local businesses in Tucson. These indirect jobs are the result of business-to-business purchases made by the commercial tenants, as well as local spending by their employees.
- The proposed development agreement includes provisions for a \$2.0 million investment by the District to purchase and renovate the building, and offset the cost of tenant improvements. It is anticipated that the tenants could generate \$2.3 million in new TIF revenues to the District before 2035 when the TIF sunsets, which would exceed the value of the District's investment.
- In terms of other local tax revenues, the commercial tenants could directly generate an estimated \$17.6 million in sales tax revenues to the city, regional transportation authority (RTA) and state from 2024 through 2049. Direct and indirect workers supported by the project could generate an additional \$3.7 million in local and state revenues over 25 years.
- The Indian Trading post project could also qualify for a GPLET. The lease excise tax revenues associated with the GPLET are estimated at \$1.2 million over 25 years. If granted, the benefit to the prime lessee from paying lease excise taxes instead of property taxes, plus the tenant improvement reimbursement, is estimated at -\$108,000 over 25 years because the value of the lease excise taxes exceeds the amount of property tax that would have been paid in the absence of the GPLET (Figure 2). Thus, the benefit to the city, county and state would exceed the value of the GPLET to the prime lessee.

**FIGURE 2**  
**VALUE OF GPLET AND TIF WITH A 25-YEAR TERM**



## 3.0 ECONOMIC IMPACT ANALYSIS

The economic impacts resulting from the re-purposing of the historic Indian Trading Post would include both the one-time construction impacts and on-going operations impacts for the tenant businesses. These impacts are quantified in terms of direct and indirect jobs, labor income and output that could be generated by the projects. Indirect impacts are the result of the multiplier effect and capture supported supplier and consumer businesses in the District and the City of Tucson that could benefit from this project.

### 3.1 Construction Impacts

The estimated construction costs for the project total \$3.5 million, including an investment by the developer of \$2.0 million for site work, hard costs and soft costs, plus an investment by the District of \$1.5 million in grey shell improvements and tenant improvement reimbursements. Construction is anticipated to begin in the second half of 2023 and be completed in 2024.

The multiplier effects of this \$3.5 million in construction spending are estimated to result in a total increase in economic activity of \$5.4 million over the 9 to 12-month construction period (Figure 3). The approximately 35 direct jobs and 10 indirect jobs could result in more than \$2.3 million in additional labor income in the City of Tucson during this period.

**FIGURE 3  
CONSTRUCTION IMPACTS**

	Direct Impacts			Total Impacts		
	Expenditures	Jobs	Labor Income	Output	Jobs	Labor Income
Site Work and Hard Costs	\$2,496,205	24	\$1,232,170	\$3,861,499	32	\$1,657,641
Tenant Improvements	\$1,000,000	11	\$493,617	\$1,546,948	13	\$664,064
<b>Total</b>	<b>\$3,496,205</b>	<b>35</b>	<b>\$1,725,788</b>	<b>\$5,408,447</b>	<b>45</b>	<b>\$2,321,705</b>

<sup>1</sup> Includes \$1.5 million in improvements made by the Rio Nuevo District.

### 3.2 Operations Impacts

Once construction is completed, the new tenants in the proposed project could create an estimated 50 permanent jobs based on the type of food and beverage providers that are envisioned in the ZFI Holdings proposal. The estimated annual economic impacts from on-going operations of these tenants are shown in Figure 4. The 50 new jobs and \$1.3 million in estimated direct labor income or annual payroll could generate \$3.3 million in direct economic output each year.

The multiplier effect of this increase in business activity could result in a total annual impact of \$4.9 million, or \$122.4 million over the next 25 years. The estimated 60 direct and indirect jobs supported by the re-purposing of the Indian Trading Post could result in about \$1.8 million in total annual labor income in Tucson, or \$45.4 million over the next 25 years.



**FIGURE 4  
ANNUAL ECONOMIC IMPACTS**

	Direct Impacts			Total Impacts		
	Output	Jobs	Labor Income	Output	Jobs	Labor Income
2025	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2026	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2027	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2028	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2029	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2030	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2031	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2032	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2033	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2034	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2035	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2036	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2037	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2038	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2039	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2040	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2041	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2042	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2043	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2044	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2045	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2046	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2047	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2048	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
2049	\$3,287,671	50	\$1,326,774	\$4,896,506	60	\$1,816,850
<b>25 Year Total</b>	<b>\$82,191,787</b>	<b>50</b>	<b>\$33,169,353</b>	<b>\$122,412,661</b>	<b>60</b>	<b>\$45,421,253</b>

The direct and indirect jobs generated by this project could support an estimated local population of about 70 people in the City of Tucson, based on local commuting patterns. Supported population includes families of direct employees, as well as families of employees at related supplier and consumer businesses. This estimate assumes that about 51 percent of the employees would live and work in Tucson, based on local commuting data from the Census.<sup>1</sup>

The differences between direct and total economic impacts are called multiplier effects. Multiplier effects are a way of representing the larger economic effects on the local economy. The multiplier effects translate an increase in output (which is similar to gross sales) into a corresponding increase in jobs and labor income. The total increase in output includes the impact of new demand on other local suppliers and consumer businesses. In essence, the

<sup>1</sup> <https://onthemap.ces.census.gov/>

multiplier effect represents the recycling of local spending. This process creates new business opportunities.

The multipliers used in this analysis are from IMPLAN, a national vendor of economic impact software, and are specific to the City of Tucson. Industry-specific multipliers were used for full-service restaurants, other food and beverage services and commercial construction. The average output multiplier for this development is 1.5. This means that for every \$1 million of annual output created by the tenant businesses, an additional \$500,000 in economic activity and 3 local jobs are supported at other local businesses. On average, the income from these indirect jobs is estimated at about \$49,000 per employee.

## 4.0 REVENUE IMPACTS

---

In addition to supporting jobs, labor income and output at related businesses in the city through multiplier effects, the new tenants in the Indian Trading Post building could also generate sales and lease excise tax revenues. Over 25 years, these tenants could generate an estimated \$6.1 million in revenues to the city, \$2.3 million to the District, \$2.3 million to the county, schools and Regional Transportation Authority (RTA), and \$10.3 million to the state, based on the assumptions used in this analysis.

### 4.1 Sales Tax Revenues

The re-purposing of the Indian Trading Post could result in construction sales tax and on-going sales from the restaurant, lounge and entertainment space. One-time sales taxes from construction are estimated at about \$45,000 to the District, \$50,000 to the city and RTA, and \$45,000 to the state in 2023/24. On-going sales tax revenues associated with taxable food and beverage sales, and lease revenues, are estimated at \$6.0 million to the city, \$1.2 million to the RTA, \$2.3 million to the District, and \$10.3 million to the state over the 25-year period, based on assumptions used in this analysis.<sup>2</sup>

The District receives half of the 5.6 percent state sales tax on sales within the District above the base. Since all the taxable activity associated with the new restaurants and lounge space in the Indian Trading Post building would be new, it is assumed that the full 50 percent of the state 5.6 percent tax would be returned to the TIF district. While not directly related to the TIF revenues from this project, the District would reimburse the developer for up to \$500,000 in tenant improvements, which is significantly less than the amount of new TIF revenues that could be generated.

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<sup>2</sup> This analysis assumes that taxable sales increase by 2 percent per year.

**FIGURE 5**  
**ESTIMATED SALES TAX REVENUES FROM TENANT BUSINESSES**

	Sales Tax <sup>1</sup>				Total Indirect Benefit
	Tucson	RTA	Rio Nuevo	State	
2024 (Const.)	\$42,186	\$8,113	\$45,431	\$45,431	\$141,160
2025	\$187,200	\$36,000	\$196,000	\$196,000	\$615,200
2026	\$190,944	\$36,720	\$199,920	\$199,920	\$627,504
2027	\$194,763	\$37,454	\$203,918	\$203,918	\$640,054
2028	\$198,658	\$38,203	\$207,997	\$207,997	\$652,855
2029	\$202,631	\$38,968	\$212,157	\$212,157	\$665,912
2030	\$206,684	\$39,747	\$216,400	\$216,400	\$679,231
2031	\$210,818	\$40,542	\$220,728	\$220,728	\$692,815
2032	\$215,034	\$41,353	\$225,142	\$225,142	\$706,671
2033	\$219,335	\$42,180	\$229,645	\$229,645	\$720,805
2034	\$223,721	\$43,023	\$234,238	\$234,238	\$735,221
2035	\$228,196	\$43,884	\$119,461	\$358,384	\$749,925
2036	\$232,760	\$44,761	\$0	\$487,403	\$764,924
2037	\$237,415	\$45,657	\$0	\$497,151	\$780,222
2038	\$242,163	\$46,570	\$0	\$507,094	\$795,827
2039	\$247,006	\$47,501	\$0	\$517,236	\$811,743
2040	\$251,947	\$48,451	\$0	\$527,580	\$827,978
2041	\$256,985	\$49,420	\$0	\$538,132	\$844,538
2042	\$262,125	\$50,409	\$0	\$548,895	\$861,429
2043	\$267,368	\$51,417	\$0	\$559,873	\$878,657
2044	\$272,715	\$52,445	\$0	\$571,070	\$896,230
2045	\$278,169	\$53,494	\$0	\$582,491	\$914,155
2046	\$283,733	\$54,564	\$0	\$594,141	\$932,438
2047	\$289,407	\$55,655	\$0	\$606,024	\$951,087
2048	\$295,196	\$56,768	\$0	\$618,145	\$970,108
2049	\$301,099	\$57,904	\$0	\$630,507	\$989,511
<b>Total</b>	<b>\$6,038,258</b>	<b>\$1,161,203</b>	<b>\$2,311,038</b>	<b>\$10,335,702</b>	<b>\$19,846,201</b>

<sup>1</sup> Taxable sales and rents are increased at a rate of 2 percent per year to reflect inflation.

#### 4.2 Lease Excise Revenues

This project could be eligible for a GPLET that would result in payment of lease excise tax revenues instead of property taxes. Under state statute, an excise tax is established annually based on the type of use and gross building square footage. The GPLET requires that the land and improvements be conveyed to a government entity and then leased back for private use. At a 2023 excise rate of \$3.57 per square foot, the property could generate \$36,500 in annual excise taxes. The GPLET begins when the certificate of occupancy is issued. Seven percent of the lease excise tax would be allocated to the city, 13 percent to the county, 7 percent to the community college and 73 percent to the Tucson Unified District. Total lease excise tax revenues are estimated at \$1.2 million over 25 years from 2025 to 2049 (Figure 6).<sup>3</sup>

<sup>3</sup> Lease excise tax rates are adjusted annually based on the percent change in the two most recent years of producer price indices for new construction. For this analysis, a 2.3 percent increase is applied annually beginning in 2026.

**FIGURE 6  
ESTIMATED LEASE EXCISE TAX REVENUES**

	Lease Excise Tax				Total Direct Benefit
	City of Tucson	Tucson Unified District	Community Colleges	Pima County	
2025	\$2,555	\$26,645	\$2,555	\$4,745	\$36,500
2026	\$2,614	\$27,259	\$2,614	\$4,854	\$37,340
2027	\$2,674	\$27,886	\$2,674	\$4,966	\$38,201
2028	\$2,736	\$28,529	\$2,736	\$5,080	\$39,080
2029	\$2,799	\$29,186	\$2,799	\$5,197	\$39,981
2030	\$2,863	\$29,858	\$2,863	\$5,317	\$40,902
2031	\$2,929	\$30,546	\$2,929	\$5,440	\$41,844
2032	\$2,997	\$31,250	\$2,997	\$5,565	\$42,808
2033	\$3,066	\$31,969	\$3,066	\$5,693	\$43,794
2034	\$3,136	\$32,706	\$3,136	\$5,824	\$44,802
2035	\$3,208	\$33,459	\$3,208	\$5,958	\$45,834
2036	\$3,282	\$34,230	\$3,282	\$6,096	\$46,890
2037	\$3,358	\$35,018	\$3,358	\$6,236	\$47,970
2038	\$3,435	\$35,825	\$3,435	\$6,380	\$49,075
2039	\$3,514	\$36,650	\$3,514	\$6,527	\$50,206
2040	\$3,595	\$37,494	\$3,595	\$6,677	\$51,362
2041	\$3,678	\$38,358	\$3,678	\$6,831	\$52,545
2042	\$3,763	\$39,241	\$3,763	\$6,988	\$53,755
2043	\$3,850	\$40,145	\$3,850	\$7,149	\$54,994
2044	\$3,938	\$41,070	\$3,938	\$7,314	\$56,260
2045	\$4,029	\$42,016	\$4,029	\$7,482	\$57,556
2046	\$4,122	\$42,984	\$4,122	\$7,655	\$58,882
2047	\$4,217	\$43,974	\$4,217	\$7,831	\$60,238
2048	\$4,314	\$44,987	\$4,314	\$8,011	\$61,626
2049	\$4,413	\$46,023	\$4,413	\$8,196	\$63,045
<b>Total</b>	<b>\$85,084</b>	<b>\$887,308</b>	<b>\$85,084</b>	<b>\$158,014</b>	<b>\$1,215,490</b>

#### **4.3 Employee Revenues**

In addition to sales and lease excise taxes generated by the re-purposing of the Indian Trading Post, there could also be taxes generated by new employees. Using the results from the economic impact analysis, it is possible to estimate employee tax impacts based on the number of direct and indirect jobs. Employee taxes could total over \$3.7 million during the term of the GPLET.

Employee property taxes are estimated at about \$4,000 per year to the city, and an additional \$37,000 per year to the school district, community college and county. In total, the project could generate about \$1.0 million in employee property tax revenues from 2025 to 2049, based on the assumptions used in this analysis (Figure 7). Employee property tax revenues, which represent property taxes on employee housing, were based on average residential assessed per capita in Tucson, times the annual supported population, times a property tax rate of 13.9 percent.

Employee sales taxes to the city and RTA are estimated at \$274,000 over 25 years. Additional employee sales taxes generated to the state are estimated at \$839,000 over 25 years. Sales tax revenues include sales taxes on household spending by employees at the commercial tenants in the project, and indirect employees at other supported local businesses. Employee sales taxes are estimated by multiplying total labor income from the economic impact by 33 percent (share of taxable expenditures), multiplied by 51 percent of employees living in the city, and then multiplied by the sales tax rate.<sup>4</sup> No residency ratio is used for RTA or state sales tax.

State shared income and sales taxes that are distributed to the city and county on a per capita basis are estimated at \$533,000 to the city and \$318,000 to the county over 25 years. This assumes an estimated supported population of 70 people living in Tucson and associated with the project and current per capita distribution rates.

In terms of personal income tax, direct and indirect employees could generate an estimated \$662,000 in revenues to the state from 2025 to 2049. Income taxes are calculated using average income per employee and current schedules from the Arizona Department of Revenue.

**FIGURE 7  
EMPLOYEE REVENUES**

	City of Tucson				County, RTA and Schools				State of Arizona			Total Employee Revenues
	Property	Sales	State Shared Revenues	City Total	Property	Sales	State Shared Revenues	County/ School Total	Sales	Personal Income	State Total	
2024	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2025	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2026	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2027	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2028	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2029	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2030	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2031	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2032	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2033	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2034	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2035	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2036	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2037	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2038	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2039	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2040	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2041	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2042	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2043	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2044	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2045	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2046	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2047	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
2048	\$4,283	\$7,950	\$21,324	\$33,557	\$37,454	\$2,998	\$12,713	\$53,165	\$33,575	\$26,485	\$60,060	\$146,783
<b>Total</b>	<b>\$107,071</b>	<b>\$198,754</b>	<b>\$533,105</b>	<b>\$838,930</b>	<b>\$936,359</b>	<b>\$74,945</b>	<b>\$317,831</b>	<b>\$1,329,135</b>	<b>\$839,385</b>	<b>\$662,113</b>	<b>\$1,501,498</b>	<b>\$3,669,563</b>

<sup>4</sup> According to the Census Bureau Consumer Expenditure Survey persons in the median income range for this project spend about 31 percent of their income on taxable goods. Based on Census commuting estimates, 51 percent of people who work in Tucson also live in the city.

#### **4.4 GPLET Impacts**

During the 25-year GPLET term, the lessee would pay lease excise tax instead of real property tax. In this case, the amount of lease excise tax exceeds the estimated property taxes, so there is effectively no incentive to the developer from the GPLET. The developer could also receive up to \$500,000 in reimbursements from the District to offset the cost of tenant improvements as an additional incentive.

A.R.S. 42-6209 requires that the economic and fiscal benefit to the state, county and city in which the government property improvement is located will exceed the benefits received by the prime lessee within the term of the development agreement. To meet the statutory requirements, it is necessary to show that public benefits created by the project would exceed the value of forgone property taxes during the 25-year term. While the information on sales and other tax revenues generated by the project may be useful to decision-makers, it is not a qualifying public benefit.

The property taxes that would have been paid in the absence of the GPLET are estimated at \$607,000 over the 25-year term, of which \$62,000 would have gone to the city of Tucson, \$316,000 would have gone to Tucson Unified School District (TUSD) and the community colleges, and the remaining \$229,000 would have gone to Pima County and other special districts (Figure 8). In comparison, the amount of lease excise taxes paid is estimated at \$1.2 million. Lease excise taxes represent a public benefit created by the GPLET. The amount of lease excise taxes paid exceeds the amount of estimated property taxes by \$609,000 over 25 years.

The foregone property tax revenues are estimated using average limited property value (LPV) per square foot for comparable retail and restaurants in the downtown area. An average limited property value per square foot of \$108 was used, resulting in a total post-redevelopment LPV estimate of \$1.1 million. It is assumed that the property value would increase by an average of 2.5 percent per year, based on recent increases in LPV for comparable properties, and statutory limitations. A 16 percent assessment ratio was applied to LPV in 2025 to estimated taxable value. The scheduled reduction in the commercial assessment ratio of 0.5 percent per year through 2027 is included in the property tax estimates. Note that LPV, on which property taxes are based, is generally significantly lower than the market value of the building.

**FIGURE 8  
ESTIMATED FOREGONE PROPERTY TAXES**

<b>Year</b>	<b>City of Tucson</b>	<b>TUSD and Community College</b>	<b>Pima County</b>	<b>Other Special Districts</b>	<b>Total Property Tax</b>
2025	\$2,526	\$12,821	\$7,416	\$1,851	\$24,613
2026	\$2,508	\$12,731	\$7,364	\$1,838	\$24,440
2027	\$2,488	\$12,628	\$7,304	\$1,823	\$24,243
2028	\$2,488	\$12,628	\$7,304	\$1,823	\$24,243
2029	\$2,488	\$12,628	\$7,304	\$1,823	\$24,243
2030	\$2,488	\$12,628	\$7,304	\$1,823	\$24,243
2031	\$2,488	\$12,628	\$7,304	\$1,823	\$24,243
2032	\$2,488	\$12,628	\$7,304	\$1,823	\$24,243
2033	\$2,488	\$12,628	\$7,304	\$1,823	\$24,243
2034	\$2,488	\$12,628	\$7,304	\$1,823	\$24,243
2035	\$2,488	\$12,628	\$7,304	\$1,823	\$24,243
2036	\$2,488	\$12,628	\$7,304	\$1,823	\$24,243
2037	\$2,488	\$12,628	\$7,304	\$1,823	\$24,243
2038	\$2,488	\$12,628	\$7,304	\$1,823	\$24,243
2039	\$2,488	\$12,628	\$7,304	\$1,823	\$24,243
2040	\$2,488	\$12,628	\$7,304	\$1,823	\$24,243
2041	\$2,488	\$12,628	\$7,304	\$1,823	\$24,243
2042	\$2,488	\$12,628	\$7,304	\$1,823	\$24,243
2043	\$2,488	\$12,628	\$7,304	\$1,823	\$24,243
2044	\$2,488	\$12,628	\$7,304	\$1,823	\$24,243
2045	\$2,488	\$12,628	\$7,304	\$1,823	\$24,243
2046	\$2,488	\$12,628	\$7,304	\$1,823	\$24,243
2047	\$2,488	\$12,628	\$7,304	\$1,823	\$24,243
2048	\$2,488	\$12,628	\$7,304	\$1,823	\$24,243
2049	\$2,488	\$12,628	\$7,304	\$1,823	\$24,243
<b>Total</b>	<b>\$62,249</b>	<b>\$315,999</b>	<b>\$182,776</b>	<b>\$45,611</b>	<b>\$606,635</b>

Based on a property tax rate of 13.93% in tax rate area 0163. Property values are increased at a rate of 2.5 percent per year.

Over the 25-year term, the direct public benefit to state and local governments is estimated at \$1.2 million, based on the amount of lease excise taxes paid (Figure 9). In comparison, the benefit to the prime lessee is estimated at -\$108,000 over the GPLET term. The benefit to the prime lessee includes the amount of property tax that would have been paid without the GPLET, minus the amount of lease excise taxes paid, plus the value of the tenant improvement reimbursements paid by the District. The project meets the public benefit requirement for a GPLET, however in this case where the amount of lease excise tax paid exceeds the amount of property taxes that would have been paid in the absence of a GPLET, there is no net benefit to the prime lessee.



**FIGURE 9  
25-YEAR VALUE OF GPLET AND TIF REIMBURSEMENT**

	Benefit to State and Local Governments			Benefit to Prime Lessee			
	City of Tucson	County and Schools	Total	Property Tax Savings <sup>1</sup>	Lease Excise Tax Paid	Tenant Improvement Reimb.	Net Savings
2024	\$0	\$0	\$0	\$0	\$0	\$500,000	\$500,000
2025	\$2,555	\$33,945	\$36,500	\$24,613	(\$36,500)	\$0	(\$11,887)
2026	\$2,614	\$34,727	\$37,340	\$24,440	(\$37,340)	\$0	(\$12,901)
2027	\$2,674	\$35,526	\$38,201	\$24,243	(\$38,201)	\$0	(\$13,958)
2028	\$2,736	\$36,345	\$39,080	\$24,243	(\$39,080)	\$0	(\$14,838)
2029	\$2,799	\$37,182	\$39,981	\$24,243	(\$39,981)	\$0	(\$15,738)
2030	\$2,863	\$38,038	\$40,902	\$24,243	(\$40,902)	\$0	(\$16,659)
2031	\$2,929	\$38,915	\$41,844	\$24,243	(\$41,844)	\$0	(\$17,601)
2032	\$2,997	\$39,811	\$42,808	\$24,243	(\$42,808)	\$0	(\$18,565)
2033	\$3,066	\$40,728	\$43,794	\$24,243	(\$43,794)	\$0	(\$19,551)
2034	\$3,136	\$41,666	\$44,802	\$24,243	(\$44,802)	\$0	(\$20,560)
2035	\$3,208	\$42,626	\$45,834	\$24,243	(\$45,834)	\$0	(\$21,592)
2036	\$3,282	\$43,608	\$46,890	\$24,243	(\$46,890)	\$0	(\$22,647)
2037	\$3,358	\$44,612	\$47,970	\$24,243	(\$47,970)	\$0	(\$23,727)
2038	\$3,435	\$45,640	\$49,075	\$24,243	(\$49,075)	\$0	(\$24,832)
2039	\$3,514	\$46,691	\$50,206	\$24,243	(\$50,206)	\$0	(\$25,963)
2040	\$3,595	\$47,767	\$51,362	\$24,243	(\$51,362)	\$0	(\$27,119)
2041	\$3,678	\$48,867	\$52,545	\$24,243	(\$52,545)	\$0	(\$28,302)
2042	\$3,763	\$49,993	\$53,755	\$24,243	(\$53,755)	\$0	(\$29,513)
2043	\$3,850	\$51,144	\$54,994	\$24,243	(\$54,994)	\$0	(\$30,751)
2044	\$3,938	\$52,322	\$56,260	\$24,243	(\$56,260)	\$0	(\$32,018)
2045	\$4,029	\$53,527	\$57,556	\$24,243	(\$57,556)	\$0	(\$33,314)
2046	\$4,122	\$54,760	\$58,882	\$24,243	(\$58,882)	\$0	(\$34,639)
2047	\$4,217	\$56,022	\$60,238	\$24,243	(\$60,238)	\$0	(\$35,996)
2048	\$4,314	\$57,312	\$61,626	\$24,243	(\$61,626)	\$0	(\$37,383)
2049	\$4,413	\$58,632	\$63,045	\$24,243	(\$63,045)	\$0	(\$38,803)
<b>Total</b>	<b>\$85,084</b>	<b>\$1,130,406</b>	<b>\$1,215,490</b>	<b>\$606,635</b>	<b>(\$1,215,490)</b>	<b>\$500,000</b>	<b>(\$108,855)</b>

<sup>1</sup> Based on a property tax rate of 13.93% in tax rate area 0163.

#### 4.5 Summary

The re-purposing of the Indian Trading Post building described in this analysis could create both economic and fiscal benefits for the Rio Nuevo District and the City of Tucson. The adaptive reuse of this property could support new jobs and payroll and create additional tax revenues for the District and the city on a long-term basis. Over the 25-year GPLET term, this project could generate an estimated \$2.3 million in TIF revenues to the District. The project also meets the net benefit requirement for a 25-year GPLET, based on the estimated amount of lease excise taxes generated versus the amount of exempted property taxes.

**EXHIBIT D**  
**GP LEASE**

{00966213.1}

*[Development Agreement]*

*Exhibit D]*

**TRIPLE NET  
GOVERNMENT  
PROPERTY LEASE  
(72 EAST CONGRESS STREET)**

**BY AND BETWEEN**

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

**“LANDLORD”**

**AND**

**TP CONGRESS PARTNERS, LLC**  
an Arizona limited liability company

**“TENANT”**

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## LIST OF SCHEDULES

### SCHEDULE I

## LIST OF EXHIBITS

<b>EXHIBIT A</b>	<b>LEGAL DESCRIPTION</b>
<b>EXHIBIT B</b>	<b>INSURANCE REQUIREMENTS</b>
<b>EXHIBIT C</b>	<b>PROHIBITED USES</b>
<b>EXHIBIT D</b>	<b>FORM OF SPECIAL WARRANTY DEED</b>
<b>EXHIBIT E</b>	<b>FORM OF MEMORANDUM OF LEASE</b>

**TRIPLE NET  
GOVERNMENT  
PROPERTY LEASE  
(72 East Congress Street)**

THIS TRIPLE NET GOVERNMENT PROPERTY LEASE (this “**Lease**”) is entered into as of the 3rd day of July, 2023 (the “**Effective Date**”), by and between **RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT**, an Arizona tax levying special facilities district (“**Landlord**” or “**District**”), and **TP CONGRESS PARTNERS, LLC**, an Arizona limited liability company (“**Tenant**” and, together with Landlord, the “**Parties**,” and each, a “**Party**”). Capitalized terms used in this Lease shall have the meanings ascribed to them parenthetically or in Section 2.1 of this Lease.

**RECITALS:**

**A.** District is a special taxing district of the State of Arizona (the “**State**”) that was formed by the City of Tucson, Arizona (the “**City**”) and the City of South Tucson, Arizona under the Stadium District Statutes that commence at A.R.S. § 48-4201 *et seq.* A “**District**” formed under these statutes is defined as “any county stadium district established pursuant to § 48-4202, subsection A, B or C.” § 48-4201(3). The voters who authorized District’s formation authorized it to receive an incremental portion of State-shared funds derived from transaction privilege taxes (*i.e.*, sales tax called TPT Funds) collected from within District’s boundaries, all of which lie within the City.

**B.** Tenant intends to build a commercial project at 72 East Congress Street, Tucson, Arizona 85701 (the “**Premises**”). Tenant’s certain Request for Qualifications for Re-Purposing of the Indian Trading Post, Solicitation No. RN-2.22.2023, submitted to District on or around February 22, 2023 (the “**Tenant Proposal**”), details the nature of the planned construction, redevelopment, remodeling, and repurposing of the existing improvements and structures on the Premises including, without limit, the remodeling and updating of existing structures and substantial structural and nonstructural repairs, among other things, for the purpose of constructing a restaurant/bar with ancillary uses (either the “**Proposed Work**” or the “**Project**”). In completing the Proposed Work, Tenant anticipates substantial expenditures as set out in the Tenant Proposal.

**C.** District desires that Tenant cause the Project to be constructed and developed and the Proposed Work completed on the Premises to further District’s purposes of enhancing Downtown Tucson and District’s Primary Component (as defined in A.R.S. § 48-4201(4)(B)), the Tucson Convention Center. The Proposed Work on the Premises (as defined in Article II, below) will: (i) provide a significant investment within District; (ii) create new opportunities for employment in District; (iii) enhance retail transaction (sales) tax collections in District; and (iv) provide greater ability for District to promote new development within District boundaries.

**D.** District has the authority to acquire title to the Premises within District's boundaries and construct commercial facilities that its board determines are necessary or beneficial to District as Landlord (A.R.S. §§ 48-4201(4)(b) and 48-4204(B)). It may also "enter into agreements with developers, contractors, tenants, and other users of all or part of such a facility." A.R.S. § 48-4203(B)(2). District has or will enter into a separate Development Agreement with Tenant for the development of the Project which is or will be concurrent with this Lease (the "**Development Agreement**").

**E.** A notice has been sent by District to the Pima County Board of Supervisors, the Mayor and Council of the City, the Board of Tucson Unified School District, and any other entity required by A.R.S. § 42-6206(B)(1)(a) at least sixty (60) days before the date of Landlord's final meeting to approve the Lease. Such notice contained the name and address of Tenant, the location and proposed use of the Project, and the term of the Lease.

**F.** The value of constructing and operating the Project on the Premises has been reviewed and analyzed through an economic and fiscal impact analysis that was ordered by District and completed in or around April 2023 by independent third party, Applied Economics (the "**Economic Analysis**"). Based upon the information, projections, Tenant Proposal from Developer, and the analysis set forth in the Economic Analysis, District has determined that the Project would not have been developed in the absence of this Lease. In reliance on the Economic Analysis, the Board of Directors of Landlord determined by simple majority vote at a duly called meeting and without the use of a consent calendar that the economic and fiscal benefits to the State of Arizona, Pima County, and the City of Tucson exceed the benefits to be received by Tenant.

### **AGREEMENT:**

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

### **ARTICLE I LEASE OF THE PREMISES**

**1.1 Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, upon and in consideration of the terms and conditions herein, the Premises. 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 applicable building restrictions and regulations, zoning laws, ordinances, resolutions, and regulations of the municipality in which the Premises lie and all present and future applicable 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 Premises; and

(c) The condition and state of repair of the Premises as the same may be on the Effective Date.

**1.2 Term.** The Rental Period shall commence upon the Effective Date and, subject to Tenant's Purchase Option and Tenant's Termination Right, shall expire at 12:00 midnight on the Termination Date, unless this Lease is sooner terminated as hereinafter provided.

**1.3 Tenant's Termination Right.** Notwithstanding any provision of this Lease to the contrary, Tenant may terminate this Lease upon forty-five (45) days' written notice to District of District's uncured breach of this Lease or the Development Agreement; *provided*, that, at the time of its delivery of the written notice, Tenant has not exercised its Purchase Option hereunder and is not then in breach of this Lease or the Development Agreement.

## ARTICLE II DEFINITIONS

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

"**A.R.S.**" means Arizona Revised Statutes.

"**Affiliate**" means, as applied to any person, 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**" means all sums, impositions, costs, expenses, other payments, all taxes including, but not limited to, personal property taxes and taxes on rents, leases or occupancy, if any, and 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, insurance, any association dues, pest control, water, sewer, utilities, janitorial, landscaping 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.

**“Applicable Laws”** means 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.

**“Base Rent”** means a net annual rent in the amount of \$1,200 per annum.

**“Business Day”** means each Monday, Tuesday, Wednesday, Thursday, and Friday which is not a day on which banks in Tucson, Arizona are generally authorized or obligated, by law or executive order, to close.

**“City”** has the meaning set forth in Recital A.

**“Denial”** means 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 by the County and the County’s Board of Supervisors.

**“Designated Lender”** has the meaning set forth in Section 16.7.

**“Development Agreement”** as set forth in Recital D, means that certain Development Agreement between the Parties, executed at or before the execution of this Lease. The Parties expressly agree and acknowledge by their execution of this Lease that the terms and conditions of the Development Agreement shall be incorporated herein and made a part of this Lease.

**“Effective Date”** has the meaning set forth in the Preamble to this Lease.

**“Enforced Delay”** has the meaning set forth in Section 25.1.

**“Event of Default”** has the meaning set forth in Section 17.1.

**“Exercise Price”** has the meaning set forth in the Development Agreement between the Parties.

**“Failure”** means a suspension, termination, interruption, denial, or failure of renewal.

**“First Designated Lender”** has the meaning set forth in Section 20.2.

**“GPLET”** means government property improvement lease excise tax.

**“Hazardous Materials”** means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes, or other pollutants, asbestos, or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes, and all other substances or wastes of any nature regulated pursuant to any environmental law.

**“Landlord”** has the meaning set forth in Preamble.

**“Landlord’s Indemnified Matters”** has the meaning set forth in Section 26.3(a).

**“Lease”** has the meaning set forth in Preamble.

**“Monetary Default”** has the meaning set forth in Section 17.1(a).

**“Non-Monetary Default”** has the meaning set forth in Section 17.1(b).

**“Notice of Default”** means a written notice 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 thirty (30) days after the giving of such notice.

**“Option Period”** means the time period after the execution of this Lease and before its termination.

**“Order”** means the order, judgment, action, or determination of any court, administrative agency, governmental authority, or other governmental body.

**“Party”** has the meaning set forth in the Preamble.

**“Plans and Specifications”** has the meaning set forth in Section 9.1.

**“Premises”** has the meaning set forth in Recital B.

**“Proposed Work”** has the meaning set forth in Recital B.

**“Project”** has the meaning set forth in Recital B.

**“Purchase Option”** has the meaning set forth in Section 27.1.

**“Purchase Price”** has the meaning set forth in Section 27.3.

**“Recitals”** means the Recitals to this Lease set forth in the preceding pages, which the Parties acknowledge and agree are true and correct as of the Effective Date and which are further incorporated herein and made a part of the Lease by this reference.

**“Regulated Substances”** has the meaning set forth in Section 26.1(b).

**“Release”** has the meaning set forth in Section 26.1(c).

**“Rent”** means the Base Rent, Additional Payments, and any other amounts owed or owing under this Lease including, without limit, those specified in Section 3.2.

**“Rental Period”** means the period beginning on the Effective Date and ending on the Termination Date.

**“Tenant”** has the meaning set forth in preamble.

**“Tenant Proposal”** has the meaning set forth in Recital B.

“**Tenant Sublease**” has the meaning set forth in Section 16.6.

“**Termination Date**” means twenty-five (25) years from the Effective Date, subject to the Purchase Option exercisable by Tenant in accordance with Section 1.3 and Article XXVII.

“**Termination Right**” means the right of Tenant to terminate this Lease for Landlord’s breach of the Development Agreement at any time upon not less than sixty (60) days’ written notice to Landlord.

### ARTICLE III RENT

**3.1 Base Rent; Annual Installments.** From and after the Effective Date, Tenant shall pay Base Rent to Landlord in legal currency of the United States at the addresses specified or furnished pursuant to Section 20.1, during the Rental Period. All payments of Base Rent shall be made in annual installments in advance, without notice, beginning on the first day of the first month following the Effective Date and in like fashion each year thereafter. Alternatively, Tenant may pay Base Rent for the entire Rental Period or any portion thereof on the first day of the first month following the Effective Date.

**3.2 Rent Absolutely Net.** It is the purpose and intent of the Parties that Rent payable hereunder shall be absolutely net to Landlord so that this Lease shall yield to Landlord the Rent herein specified, free of any charges, assessments, Additional Payments, or deductions of any kind charged, assessed, or imposed on or against the Premises and without abatement, deduction, or set-off by Tenant, except as hereinafter otherwise specifically provided in this Lease. Landlord shall not be expected, obligated, or in any way required to pay any such charge, assessment, or Additional Payment, or be under any obligation or liability hereunder except as may be expressly set forth in this Lease. 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 may arise or become due during the Rental Period shall be paid solely by Tenant. Landlord shall be indemnified and held harmless by Tenant from and against any and 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 a mutual release and waiver of rights and liabilities arising under this Lease, except 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 or operate the Premises or the Project) shall relieve Tenant of its liability to pay the Rent, the Additional Payments, and other charges under this Lease, nor shall it relieve Tenant of any of its other obligations under this Lease.



## ARTICLE IV ADDITIONAL PAYMENTS

**4.1 Additional Payments.** 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 Section 4.3), 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.

(a) If, by law, any Additional Payment may at the option of Tenant be paid in installments (whether or not interest shall accrue on the unpaid balance of such Additional Payment), Tenant may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Additional Payment) 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 Additional Payment (including Additional Payments which have been converted into installment payments by Tenant, as referred to in Section 4.1(a)) 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 Additional Payment 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 the Parties as of the expiration of the Rental Period, so that Tenant shall pay that portion of such Additional Payment attributable to the Rental Period and Landlord shall pay the remainder thereof. Tenant shall pay to Landlord, with and in addition to annual Rent, all taxes imposed by any governmental unit on the Rent received by Landlord pursuant to the terms of this Lease. Tenant shall pay all other Additional Payments directly to the taxing authority(ies), unless otherwise requested by Landlord.

**4.2 Contest.** Tenant, if it shall so desire, may contest the validity or amount of any Additional Payment, in which event Tenant may defer the payment of such Additional Payment during the pendency of such contest; *provided*, that, upon Landlord's request after the payment of such contested Additional Payment shall have become due, Tenant shall deposit with Landlord an amount sufficient to pay such contested Additional Payment together with the interest and penalties thereon (as reasonably estimated by the Parties), which amount shall be applied to the payment of such item when the amount thereof shall be finally fixed and determined. Nothing herein, however, shall be so construed as to allow such contested Additional Payment to remain unpaid for a length of time that permits the Premises or any part thereof, or the lien thereon created by such Additional Payment (which shall not supersede Landlord's Leasehold interest in any way) to be sold for the nonpayment of the same. If the amount so deposited with Landlord shall exceed the amount of such payment (inclusive of any applicable interest and penalties thereon), the excess shall be returned 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 Additional Payment or assessment upon the Premises for the purpose of reducing the amount thereof. However, in such event, Landlord, acting in good faith, 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 Sections 4.3 or this 4.4 (unless required by applicable law or any applicable rule or regulation to make such action or proceeding effective, in which event, any such action or proceeding may be taken by Tenant in the name of Landlord only with Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed). Tenant hereby irrevocably agrees to defend Landlord and shall indemnify and hold 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 A.R.S. § 42-6206, Tenant is hereby notified of its tax liability under the GPLET provisions of A.R.S., § 42-6201, *et seq.* Failure of Tenant to pay the applicable tax after notice with an opportunity to cure is an Event of Default that could result in termination of this Lease. Tenant shall comply with all requirements applicable to a Prime Lessee under the GPLET provisions including, without limitation, those provided in A.R.S. § 42-6204(B). Additionally, during the term of this Lease and subject to Section 7.2, Tenant shall not change the use of the Premises without an amendment to this Lease.

**4.6 Cost of Economic Study.** Upon the execution of this Lease, Tenant will pay to Landlord the cost incurred by Landlord to commission the Economic Analysis required by A.R.S. § 42-6206(B)(1)(b) to verify that the benefit to the City, County, and State received as a result of Tenant's improvements to and operation of the Premises during the Rental Period would significantly exceed the benefits granted to Tenant hereunder.

## **ARTICLE V INSURANCE**

**5.1 Tenant Obligation to Insure.** Tenant shall procure and maintain for the duration of this Lease, at Tenant's sole 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 Tenant, its agents, subtenants, employees, contractors, licensees, or invitees in accordance with the insurance requirements set forth in Exhibit B hereto. For the avoidance of doubt, District must be a named certificate holder for all such policies, and Tenant will ensure District is so named.

**5.2 Failure to Maintain Insurance.** If Tenant fails or refuses to provide a copy of the renewal insurance certificates, together with evidence of payment of premiums therefor, 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 Tenant notices of 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 by Tenant can be accomplished unless a new or renewed policy is issued which specifically provides the required coverage to Landlord for any liability arising during the lapsed or previously uncovered period.

## ARTICLE VI LANDLORD'S PERFORMANCE FOR TENANT

**6.1 Cures--Rights, Costs, and Damages.** If Tenant fails to pay any Additional Payment or make any other payment required to be made under this Lease or defaults in the performance of any other covenant, agreement, term, provision, limitation, or condition herein, 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 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 Tenant together with interest at the rate of 12% per annum compounded monthly from the respective dates of 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 VII USES AND MAINTENANCE

**7.1 Absence of Warranties.** 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. Tenant accepts 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. Throughout the Rental Period, Landlord shall not be required to furnish any services or facilities, or to make any repairs or alterations in or to the Premises, or to provide any off-site improvements, such as utilities or paving, or other forms of access to the Premises, other than what may already exist on the Effective Date. 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 Premises.

**7.2 Permitted Uses.** During the term of this Lease, the Premises shall be used for a purpose generally consistent with the description of the Project set forth in Recital B above; provided, however, that additional compatible uses may be permitted pending presentation and discussion with District. In this regard, the District will consider alternative but compatible uses for the Project, provided that Tenant first submits a written proposal outlining said alternative use to the District for discussion and approval, such approval not to be unreasonably withheld, conditioned, or delayed. Factors to consider in evaluating an alternative use include safety and building code compliance, cost, the availability of financing, and general economic conditions. Regardless of the uses which would otherwise be allowed pursuant to the zoning classification of the Premises or other ordinances which may be applicable to the Premises at any time during the Rental Period, the uses set forth in Exhibit C are, and shall be, expressly prohibited. Moreover, any permitted use which involves the handling, production, and/or storage of Hazardous Materials on the Premises shall be subject to all applicable federal, state, and local laws, rules, and regulations. None of the use limitations contained in this Lease shall survive termination of this Lease.

**7.3 Maintenance and Repairs.** Tenant shall take good care of the Premises and make all repairs thereto, including 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 or in connection with the Project, subject to the provisions of Article XI and Tenant's right to contest and appeal any claim. Nothing in this Lease shall be construed as Landlord's consent, express or implied, to the creation of any such liens identified in the preceding sentence against Landlord or Landlord's interest in the Premises as provided in Section 11.3.

## ARTICLE VIII COMPLIANCE

**8.1 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 present and future laws, acts, rules, requirements, orders, directions, ordinances, and/or regulations,

ordinary or extraordinary, foreseen or unforeseen, 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.

## ARTICLE IX OPERATION OF PROJECT

**9.1 The Project .** As set forth in the Tenant Proposal, the Project will consist of an expansive renovation and overhaul of the Indian Trading Post to include a restaurant/bar with ancillary uses, which are expected to generate substantial TIF Funds and additional economic benefits to District. To the extent required by law, Tenant shall provide plans and specifications (the “**Plans and Specifications**”) for the Project and Proposed Work on the Premises to the City and obtain all necessary building and other permits for improvements described in the Plans and Specifications.

**9.2 Ownership of Buildings and Improvements.** Unless Tenant has purchased the Premises during the Rental Period pursuant to the Purchase Option set forth in Article XXVII of this Lease, on the expiration or sooner termination of the Rental Period, Tenant shall exercise the Purchase Option within the Option Period defined and described in Section 27.2. Before the exercise of the Purchase Option, Tenant agrees to and shall defend, indemnify, and hold Landlord harmless from and against all actual, threatened, or asserted claims, actions, suits, or encumbrances (and any liability, cost, expense, damage, and loss arising therefrom) on or relating to changes or modifications to the scope of the Project or Proposed Work by Tenant, or to the buildings and improvements that Tenant has constructed or improved on the Premises; *provided*, however, such duty to indemnify, defend, and hold harmless shall not apply to any claims, actions, suits, or encumbrances which are directly and primarily attributable to the acts or conduct of Landlord. This Section 9.2 shall survive the expiration or earlier termination of this Lease.

**9.3 Tenant’s Management and Operating Covenant.** During the Rental Period, Tenant shall prudently manage and continuously operate (or cause to be managed and continually operated) the Project and will properly maintain the Project 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, 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, or broken glass windows, doors, and all 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 (10) days after Landlord's written demand.

## ARTICLE X

[INTENTIONALLY OMITTED]

## ARTICLE XI 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.

**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 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 solely required to operate and maintain the Project. In connection therewith, the Parties agree that Tenant is not and shall not be the agent of Landlord for any purpose contemplated by this Lease including, without limit, for the operation or maintenance of any improvement on the Premises, which shall be accomplished at the sole expense of Tenant; *provided*, that, the

foregoing shall be limited only if, and then to the extent that, such agency relationship is intentionally created by the Parties and explicitly stated as such elsewhere in this Lease.

## ARTICLE XII 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 shall not interfere with Tenant's business operations or the operations of any assignee or subtenant; and *further provided*, that, except in the event of a health and safety emergency, Landlord shall give Tenant at least forty-eight (48) hours' written notice before 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 XIII INDEMNIFICATION

### 13.1 Indemnification of Landlord.

(a) In addition to its other indemnification obligations as provided elsewhere in this Lease, Tenant shall indemnify and hold Landlord harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges, and expenses including, but not limited to, property damage, personal injury, and wrongful death and further including, without limitation, architects' and attorneys' fees and disbursements, which may be imposed upon, incurred by, or asserted against Landlord by any third party(ies) by reason of any of the following:

- i.* operation or maintenance of the Project, 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;
- ii.* 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;
- iii.* any acts of Tenant or any subtenant or any of its or their respective agents, contractors, servants, employees, licensees, or invitees;
- iv.* 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;



v. any failure on the part of Tenant to pay Rent or to perform or comply with any of the covenants, agreements, terms, or conditions in this Lease or the Development Agreement on its part to be performed or complied with and the exercise by Landlord of any remedy provided in this Lease or the Development Agreement with respect thereto;

vi. any lien or claim which may be alleged to have arisen against or on the Premises or the Project 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 or omissions of Tenant, its contractors, subcontractors, materialmen, laborers, agents, or subtenants;

vii. any failure on the part of Tenant to keep, observe, comply with and perform any of the terms, covenants, agreements, provisions, conditions, or limitations 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;

viii. any transaction of Tenant relating to or arising out of the execution of this Lease, the Development Agreement, or other contracts and agreements affecting the Premises or improvements, the Project or Proposed Work, or any part thereof or any activities performed by Tenant which are required by the terms of this Lease, the Development Agreement, or such other contracts and agreements entered into by Tenant, or any party acting on behalf of Tenant; or

ix. any tax including, but not limited to, any tax attributable to the execution, delivery, or recording of this Lease, or any excise tax due for which Tenant believes an exemption or abatement applies but is later determined by a taxing authority or court of law to not be applicable to any portion of the Premises, 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 the Project at the sole risk of Tenant and indemnify Landlord 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 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 that is subject to indemnification by Tenant under 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 Landlord, as approved by Tenant, 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.

**13.2 Indemnification of Tenant.** In addition to its other indemnification obligations as provided elsewhere in this Lease, Landlord shall indemnify and hold Tenant 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 imposed upon or incurred by or asserted against Tenant by any third party(ies) by reason of any of the following:

(a) claims and demands of any nature whatsoever arising out of the injury to or death of any person or damage to property, but solely to the extent caused by the grossly negligent acts or omissions or willful misconduct of Landlord, its employees, agents, guests, licensees, or invitees, and further excluding such claims and demands to the extent caused by Tenant's negligence or willful misconduct or omission;

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

(c) failure of Landlord to pay when due the District Promissory Obligation as described in the Development Agreement; or

(d) any lien or claim which arises against or on the Premises or the Project, or any part thereof or any of the assets of, or funds appropriated to, Tenant or any liability which may be asserted against Tenant with respect thereto to the extent arising, in each such case, out of the acts or omissions of Landlord, its contractors, or agents.

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

## ARTICLE XIV DAMAGE OR DESTRUCTION

**14.1 Tenant Repair and Restoration.** If at any time during the Rental Period, the Premises, the Project, 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 V, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof shall be paid to Tenant.

**14.3 Failure to Commence Repairs.** If Tenant is required to restore the Premises pursuant to Section 14.1 above and the design work for such restoration shall not have been commenced within one hundred and eighty (180) days after the date of the damage or destruction, or if such work is not completed within thirty-six (36) months after completion of such design, Landlord may terminate this Lease pursuant to Article XVII, 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 untenable owing to the partial or total destruction thereof. No such damage or destruction shall affect in any way the obligation of Tenant to pay 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 fifty percent (50%) or more of the square footage of the structural component of the Project 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 either Landlord or Tenant may, with sixty (60) days' written notice, terminate this Lease pursuant to Article XVII, 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, in which case Tenant shall be entitled to all insurance proceeds and claims for damages arising out of the casualty event.

## ARTICLE XV CONDEMNATION

### 15.1 Total, Substantial, or Unusable Remainder.

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

(b) **Substantial Taking.** If title to a substantial portion of the Premises shall be taken in condemnation proceedings, by any right of eminent domain, or by agreement in

lieu of such proceeding, and the remaining part of the Premises cannot in the parties' reasonable discretion be used or converted for use by Tenant for the uses set forth in Section 7.2 hereof (a "**Substantial Taking**"), Tenant may, at its option, terminate this Lease within ninety (90) days after such taking by serving upon Landlord at any time within said ninety (90) day period, a thirty (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 reasonably be used or converted for use by Tenant as contemplated in Section 7.2 hereof.

(c) **Award.** In the event of either a Total Taking or a Substantial Taking, Landlord shall be entitled only to the portion of the award equal to the remaining balance owed on District's Promissory Obligation and any unpaid Monetary Defaults, 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 all or substantially all of the Premises, neither the Rent nor the Rental Period shall be reduced or affected in any way.

(a) **Award Payment.** After payment to Landlord of any unpaid Monetary Defaults, 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 in the parties' reasonable discretion be used or converted for use by Tenant as contemplated in Section 7.2 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.

## ARTICLE XVI ASSIGNMENT AND SUBLETTING

**16.1 Assignment by Tenant.** Tenant shall not assign or encumber its interest in this Lease or in 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 may encumber its interest to Tenant's Affiliate or in connection with construction or permanent financing without Landlord's consent. Except with respect to an encumbrance to an Affiliate or lender or an assignment contemplated in the following paragraph, any

other assignment or encumbrance without Landlord's prior written consent shall be voidable, at Landlord's election, and shall constitute an Event of Default.

Notwithstanding anything in this Section 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, as long as Tenant's obligations hereunder are both: (1) assumed by the entity surviving such merger or created by such consolidation, and (2) 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* that, in all such cases as described in (i) or (ii) above, Tenant shall and hereby agrees to at all times remain primarily liable under this Lease, and Tenant shall have given Landlord not less than one hundred and [ninety (90) eighty (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, the name of the proposed assignee, information concerning the financial responsibility of the proposed assignee and the terms of the proposed assignment, and Landlord shall, within thirty (30) days of receipt of such written notice and after its receipt of additional information reasonably requested by Landlord concerning the proposed assignee's financial responsibility, elect one of the following:

(a) Consent to such proposed assignment; or

(b) Refuse such consent; *provided*, however, that, subject to Section 16.1, Landlord shall not unreasonably refuse consent or unreasonably withhold, delay, or condition consent. Landlord's failure to respond within the timeline set forth in this Section 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 credit is not consistent with the Premises' operation obligations under this Lease, or (ii) the assignee's use and occupancy of the Premises will be inconsistent with Section 7.2 of this Lease. Landlord's waiver or consent to any assignment shall not relieve Tenant from any primary obligation under this Lease, including payment of the Rent amounts set forth in Article III. As a condition for granting its consent to any assignment, Landlord may require that the assignee remit directly to Landlord all monies due to Landlord for application in accordance with this Lease. If Landlord consents to an assignment under the provisions of this Section 16.3, Tenant shall pay Landlord's reasonable processing costs and reasonable attorneys' fees incurred in giving such consent.

**16.4 Rent from Assignee.** If this Lease is assigned in whole or in part, whether or not in violation of the provisions hereof, Landlord may and hereby is empowered to collect Rent from the assignee. In such event, Landlord may apply the net amount received by it to Rent and Additional Payments, and no such collection shall be deemed a waiver of the covenant herein against assignment, or an acceptance of the assignee as a Tenant under this Lease, or a release of Tenant from the further performance of the covenants herein on the part of Tenant, except upon sale of the Premises to an unaffiliated third-party as permitted in Section 16.1(iii).

**16.5 Assignment by Landlord.** Landlord shall not assign or encumber its interest in the Lease or in the Premises without Tenant's prior written consent, which may be withheld in Tenant's reasonable 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 and shall receive all of Landlord's benefits hereunder.

**16.6 Sublease by Tenant.** Tenant may sublease (each such sublease, a "**Tenant Sublease**") portions of the Premises in the normal course of Tenant's business for occupancy consistent with the uses permitted by Section 7.2 of this Lease, subject to the rights of Landlord. Neither the consent of Landlord nor the assumption of this Lease shall be required in connection with such Tenant Sublease if all of the conditions set forth below are satisfied:

(a) Each Tenant Sublease shall be subject and subordinate to this Lease and the rights of Landlord;

(b) Any violation of any provision of this Lease, whether by act or omission by any subtenant, shall be deemed a violation of such provision by Tenant, it being the intention and meaning of the Parties that Tenant shall assume and be liable to Landlord for all acts and omissions of all subtenants with respect to this Lease;

(c) Each Tenant Sublease, where applicable, shall obligate Tenant and every subtenant, vendors, tenants, occupants, or the like within the Premises to provide the Parties with their TPT License Number and the business name associated with such license as filed with the Arizona Department of Revenue. Tenant may elect to collect and provide such TPT License Numbers and business names to Landlord; and

(d) Landlord may also require, in its sole discretion, that Tenant deliver to Landlord on or before the fifteenth (15th) day of each calendar month during the Lease Term, commencing on the first full month after the Commencement Date, a calculation showing the aggregate TIF Receipts generated by the subtenants for the previous calendar month, together with copies of the TPT Return of each subtenant with the name of and any other identifying information concerning such subtenant redacted. Notice of the foregoing shall be provided in each Tenant Sublease.

**16.7 Rights of Lenders.** Tenant is granted the absolute right, without Landlord's consent, to obtain financing or refinancing for acquisition, development, and/or construction of the Project and/or improvements to be constructed on the Premises, in whole or in part, from time to time, by one or more persons (individually a "**Lender**," and collectively the "**Lenders**"), using Tenant's leasehold interest under this lease (and in any subleases and rent, income and profits therefor) to create a security interest in favor of Lender. In the Event of Default or other breach of any provision of this Lease by Tenant, Landlord shall provide notice of such Event of Default, at the same time notice is provided to Tenant pursuant to Article XVII, to all Lenders previously designated by Tenant to receive such notice (the "**Designated Lenders**") whose names and addresses were previously provided by written notice to Landlord in accordance with Article XX. Landlord shall give Tenant copies of any such notice provided to such Designated Lenders and, unless Tenant notifies Landlord that the Designated Lenders names or addresses are incorrect (and provides Landlord with the correct information) within three (3) Business Days after Tenant receives its copies of such notice from Landlord, Landlord will be deemed to have given such notice to the Designated Lenders even if their names or addresses are incorrect. Tenant may provide notices to other Lenders. Landlord shall, at any time upon reasonable request by Tenant, provide to any Lender an estoppel certificate or other document evidencing that this Lease is in full force and effect, reasonably acceptable to Landlord, and that no Event of Default by Tenant exists hereunder (or, if appropriate, specifying the nature and duration of any existing Event of Default). Upon request by a Lender, Landlord will enter into a separate non-disturbance agreement with such Lender reasonably acceptable to Lender, consistent with the provisions of this Section 16.7. If a Lender is permitted under the terms of its non-disturbance agreement with Landlord to cure the Event of Default and/or to assume Tenant's position with respect to this Lease, Landlord agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Tenant under this Lease.

**16.8 Landlord's Lien Waiver.** At Tenant's request, Landlord agrees to execute a form of landlord's lien waiver with respect to Tenant's (or its subtenants') financing of any personal property located on the Premises, subject to Landlord's review and approval of any such landlord's lien waiver form.

## ARTICLE XVII DEFAULT BY TENANT

**17.1 Events of Default.** The occurrence of any of the following events (each such event, an "**Event 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 Rent or Additional Payments and such default continues for ten (10) days after written notice thereof to Tenant (a "**Monetary Default**");

(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 thirty (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 thirty (30) days, Tenant's time to do so shall be extended by the time reasonably necessary to cure the same as reasonably determined by Landlord) (a "**Non-Monetary Default**");

(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;

(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 ninety (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 ninety (90) days;

(e) **Insurance, Lapse or Termination.** Notwithstanding the provisions of subsection (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 Landlord for any liability arising during the lapsed or previously uncovered period; or

(f) **Default under any Loan with any Lender.** If Tenant defaults under any loan to any Lender pursuant to the default terms of any loan document.

**17.2 Notice and Termination.** Upon the occurrence of one or more of the Events of Default listed in Section 17.1(a) through Section 17.1(f), above, Landlord may (at any time thereafter until such default is cured) deliver a Notice of Default to Tenant and, upon the date specified in such Notice of Default—subject to Tenant's exercise of its Purchase Option before such date or Tenant's deemed exercise of the Purchase Offer pursuant to A.R.S. § 42-6206(C)—this Lease and the Rental Period shall be 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.** If Landlord terminates this Lease due to an Event of Default of Tenant, Tenant shall pay Landlord an amount equal to the Purchase Price set forth in Section 27.3(a) that would have been due if the Purchase Option had been exercised on the day of such termination, in which event Landlord shall convey title to Tenant subject only



to the Permitted Exceptions and any other title exceptions created or consented to by Tenant. Alternatively, in addition to any other remedies available to Landlord at law or in equity, Landlord may continue the Lease in effect after Tenant's breach and abandonment and recover 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 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.** Upon 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; Default Interest.** If any payment required to be made by Tenant to Landlord under the terms of this Lease is not received within ten (10) days after written notice of delinquency, a late charge shall become immediately due and payable as an Additional Payment in an amount equal to two and a half percent (2.5%) of the late payment. Upon Tenant's failure to pay Rent or Additional Payments on the date when due, Tenant shall pay Landlord interest on any such overdue payments and associated late charges at the rate of twelve percent (12%) 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 thirty (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 thirty (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 fee not to exceed twelve percent (12%) of all such costs, which shall be paid to Landlord within ten (10) days after receipt of an invoice for such costs.

## ARTICLE XVIII DEFAULT BY LANDLORD

**18.1 Remedies.** In the event of any breach by Landlord of any of the covenants, agreements, terms, or conditions hereof, in addition to any and all other rights available at law or equity, Tenant may enjoin such breach, terminate this Lease, exercise the Purchase Option, or file an action for specific performance.

## **ARTICLE XIX UNENFORCEABLE TERMS**

**19.1 Severability.** The Parties each believe 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 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 all other terms and obligations in 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 XX NOTICES**

**20.1 Notices.** Any notice, request, demand, statement, waiver, or consent herein required or permitted to be given in accordance or in connection with this Lease may be delivered by personal delivery, registered or certified mail (return receipt requested), or by commercial courier to the Party or its successors or assigns to whom the notice is intended at the address of the Party set forth below or at any other address as the Parties may later designate:

***If to Landlord/District:*** Rio Nuevo Multipurpose Facilities District  
Attn: Fletcher McCusker  
1703 East Broadway Boulevard,  
Tucson, Arizona 85719  
Telephone: 520-400-9934  
Email: [fjmccusker@gmail.com](mailto:fjmccusker@gmail.com)

***With a copy to:*** Farhang & Medcoff, PLLC  
Attn: Timothy Medcoff, Esq.  
100 South Church Avenue, Suite 100  
Tucson, Arizona 85701  
[tmedcoff@farhangmedcoff.com](mailto:tmedcoff@farhangmedcoff.com)

***With copies to:*** Pima County Facilities Management Department

c/o Director  
150 West Congress Street, 5th Floor  
Tucson, Arizona 85701

Pima County Development Services  
c/o Director  
201 North Stone Avenue  
Tucson, Arizona 85701

***If to Tenant/Developer:***

TP Congress Partners, LLC  
Attn: Zach Fenton  
6700 N. Oracle Road, Suite 504  
Tucson, AZ 85704  
[zach@fentoninvestco.com](mailto:zach@fentoninvestco.com)

***With a copy to:***

Hinderaker Rauh & Weisman, P.L.C.  
Attention Ted Hinderaker  
2401 E. Speedway Blvd.  
Tucson, AZ. 85719  
Email: [ted@hrtucson.com](mailto:ted@hrtucson.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 to be mailed to any of the aforesaid Parties shall be deemed sufficiently given, served, or sent for all purposes hereunder two (2) 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 (1) Business Day after deposit with any commercial air courier or express service.

**20.2 Notice to First Designated Lender of Record.** When, under the terms of this Lease, any notice is required or permitted to be given to a Designated Lender, it is the intention of the Parties that such notice shall only be required to be given to the first Designated Lender of record (the “**First Designated Lender**”). Notice to other Lenders shall be the responsibility of Tenant. Should Tenant fail to give notice to other Lenders, Tenant acknowledges that such failure shall not affect the validity of any action taken by Landlord. This provision takes precedence over any other provisions of this Lease that may impose a greater notice requirement upon Landlord.

## **ARTICLE XXI CONDITION**

**21.1 Condition of Premises.** Tenant represents that it has thoroughly examined the Premises and any sidewalks, vaults, the title to the Premises, parking areas adjoining the Premise, if any, any subsurface conditions thereof, and the present uses and non-uses thereof, and that Tenant accepts all of the foregoing in the condition or state in which each

and every 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. Tenant hereby accepts the Premises as being in good and satisfactory condition and suitable for Tenant. Tenant hereby accepts possession of the Premises. 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 PROJECT, 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 THE PROJECT, OR ANY OTHER MATTER WITH RESPECT TO THE PREMISES OR THE PROJECT; 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 AND THE PROJECT, 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 AND THE PROJECT “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 OR THE PROJECT.

## **ARTICLE XXII QUIET ENJOYMENT**

**22.1 Quiet Enjoyment.** Subject to all of the conditions, terms, and provisions in this Lease, Landlord covenants that Tenant, upon paying the 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. In furtherance of Tenant’s Purchase Option, Landlord covenants that it shall not cause any lien or encumbrance to attach to the Property during the Rental Period, except for those liens or encumbrances that are caused by Tenant during the Rental Period as may be permitted hereunder. Landlord shall promptly pay any lien or encumbrance not existing as of the Effective Date, and Landlord shall promptly pay any lien or encumbrance not otherwise caused by Tenant during the Rental Period.

**22.2 Agreement for Non-Disturbance of Subtenants.** Landlord covenants and agrees, for the benefit of any subtenant, that Landlord shall recognize the subtenant as the direct tenant of Landlord upon termination or expiration of this Lease pursuant to any of the provisions of Article XVII hereof in which title to the Premises remains in Landlord if: (i) all Lenders shall have agreed in writing substantially to the effect that they will not join the subtenant as a party defendant in any foreclosure action or proceeding which may be instituted or taken by said Lenders, nor evict the subtenant from the portion of the Premises demised to it, nor affect any of the subtenant's rights under its sublease by reason of any default under any mortgage, or (ii) Tenant shall deliver to Landlord a certificate of an appraiser, reasonably satisfactory to Landlord, stating, in substance, that the rent payable by the subtenant under its sublease, after taking into account any credits, offsets, or deductions to which the subtenant may be entitled thereunder, constitutes not less than the then fair rental value of the space demised thereunder; *provided*, however, that, at the time of the termination of this Lease: (1) no default exists under the subtenant's sublease which at such time would then permit Landlord thereunder to terminate the same or to exercise any dispossession remedy provided for therein, and (2) the subtenant shall deliver to Landlord an instrument confirming the agreement of such subtenant to attorn to Landlord and to recognize Landlord as the subtenant's landlord under its sublease, which instrument shall provide that neither Landlord, nor anyone claiming by, through or under Landlord shall be:

(a) liable for any act or omission of any prior landlord (including, without limitation, the then defaulting Tenant),

(b) subject to any offsets or defenses which the subtenant may have against any prior landlord (including, without limitation, the then defaulting Tenant),

(c) bound by any payment of rent which the subtenant might have paid for more than the current month to any prior landlord (including, without limitation, the then defaulting Tenant),

(d) bound by any covenant to undertake or complete any construction of the Premises or any portion thereof demised by said sublease,

(e) bound by any obligation to make any payment to the subtenant, and/or

(f) bound by any modification of the sublease which reduces the basic rent, Additional Payments, or other charges payable under the sublease, or shortens the term thereof, or otherwise materially adversely affects the rights of Landlord thereunder, made without the written consent of Landlord.

## ARTICLE XXIII 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 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; and

(d) If applicable, such other terms as are reasonably required by Tenant's Lender.

The Party receiving such a request shall cooperate with the requesting Party and shall deliver a written response within twenty (20) days of such request.

## ARTICLE XXIV LANDLORD NOT LIABLE

**24.1 Limitation of Liability.** 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 or the Project 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 the Project or from pipes or plumbing work of the same, or from any other place or quarter; nor shall Landlord be in any way responsible or liable in case of any accident or injury including death to any of Tenant's employees, agents, subtenants, or to any person or persons in or about the Premises, the Project or the streets, sidewalks, or vaults adjacent thereto; and Tenant agrees that it will not hold Landlord in any way responsible or liable therefor.

## ARTICLE XXV ENFORCED DELAY

**25.1 Enforced Delay; Extension of Time of Performance.** Whether stated or not, all periods of time in this Lease are subject to this Section. Neither 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 due to the following occurrences (each, an "**Enforced Delay**"):

(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 to this Lease, 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, pandemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation,

declaration of national emergency or national alert, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting the Premises (whether permanent or temporary) by any public, quasi-public or private entity;

(b) The discovery of Regulated Substances (defined in Article XXVI, below) on, at or affecting the Premises 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 Premises requiring repatriation, study, removal, or further acts mandated by federal or state law; or the discovery of endangered species on, at, or affecting the Premises;

(c) An Order which delays the completion of the work or other obligation of the Party claiming the delay; or 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) 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 or any of the other agreements described herein relating to the Project, 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 a Party contesting in good faith or the accidental 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 or County in processing any application, request for approval, plan, or submittal by Landlord or Tenant or the imposition of any unreasonable requirement by the City or County 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 or County 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.

**25.2 Enforced Delay Exceptions and Notice.** For the avoidance of doubt, in no event will Enforced Delay include: (i) 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, or (ii) a delay in the payment of money due hereunder, including Rent.

Upon the occurrence of any 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 Article XXV 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 XXVI COMPLIANCE WITH ENVIRONMENTAL LAWS

### 26.1 Definitions.

(a) **“Environmental Laws”** means 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 A.R.S.; 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, A.R.S.; 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”** means:

*i.* 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.

*ii.* 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.

*iii.* 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”** means 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.

**26.2 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, Proposed Work, 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.*

### **26.3 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, expenses, penalties, suits, fines, claims, and 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, sublessees, 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 XXVI shall continue for as long as 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, other than Landlord.

**(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 Landlord's demand, Tenant, at its sole cost and expense, shall resist and 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), or 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 matter indemnified under this Lease if District entered such settlement 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 any actual or alleged environmental contamination.

In addition, Landlord shall have the right to access and copies, within ten (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 Tenant on or under the Premises.

(e) Tenant shall notify Landlord immediately of any of the following: (i) 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, (ii) 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 (iii) 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 any requisite approval required by this Lease, Tenant shall insert the provisions of this Article XXVI in any sublease, assignment, 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 Tenant, its agents, employees, contractors, invitees, assigns, and sublessees.

(h) Tenant shall obtain and maintain compliance with any applicable financial responsibility requirements of federal, state, and/or local 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.

#### **26.4 Noncompliance.**

(a) Tenant shall, at its sole cost and expense, remedy any breach under this Article XXVI. 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 XXVI or applicable Environmental Law shall constitute an Event of Default under this Lease. 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) The covenants in this Article XXVI shall survive the expiration or earlier termination of this Lease.

### **ARTICLE XXVII OPTION TO PURCHASE PREMISES**

**27.1 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.

**27.2 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 for any reason during the Option Period; *provided*, that Tenant’s right to exercise the Purchase Option shall at all times be subject to: (i) Tenant’s compliance with the terms and conditions of the Development Agreement, and (ii) 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 Section 17.2, Tenant shall exercise the Purchase Option during the period between delivery of the Notice of Default and the effective date of the termination therein, subject in all cases to the terms and conditions of the Development Agreement. If Tenant has not exercised its Purchase Option before the expiration of the Rental Period, Tenant shall be deemed to have exercised the Purchase Option as of the expiration of the Rental Period (*i.e.*, as of the Termination Date), and pursuant to A.R.S. § 42-6206(C), the Parties shall consummate the closing such that title vests in Tenant no later than 12 months following the expiration of the Rental Period.

(a) Tenant further acknowledges, agrees, and understands that, immediately upon exercising its Purchase Option, it will no longer be eligible to receive any remaining Economic Incentive funds as further detailed in the Development Agreement and that District will be absolved of any duty, obligation, promise, commitment, or otherwise to contribute any remaining Economic Incentive funds to Developer. Moreover, upon exercise of the Purchase Option, payment of the Purchase Price, and conveyance of the Premises to Tenant, this Lease shall terminate and be of no further force or effect and if requested by either party, the parties shall immediately record a release of any recorded Memorandum of this Lease.

### **27.3 Conveyance of Premises.**

(a) **Purchase Price.** Upon Tenant’s exercise (or deemed exercise) of the Purchase Option—irrespective of manner, timing, or impetus for such exercise—to purchase the Premises, and after Tenant’s Base Rent payments have been made, the “**Purchase Price**” payable by Tenant to Landlord for the Premises shall equal the sum of: (i) the Exercise Price set forth and calculated as provided in Section 4(b) of the Development Agreement, along with any other amounts owed thereunder (but with credit given for the One Million Dollar (\$1,000,000.00) Developer Purchase Contribution advanced by Tenant for Landlord’s purchase of the Premises as described in the Development Agreement and for unreimbursed amounts expended by Tenant in connection with construction and renovation of the Premises as described in Section 3 of the Development Agreement); (ii) the amount of any Rent or other amounts owed by Tenant hereunder and uncured Monetary Defaults accrued during the Rental Period, all of which shall be payable to Landlord before conveyance of title; (iii) all closing costs incurred in connection with the conveyance, and (iv) the sum of One Thousand Dollars (\$1,000.00).

As an example only, if Tenant expends more than One Million Five Hundred Thousand Dollars (\$1,500,000.00) of unreimbursed construction costs in acquiring and developing the Premises, then the Purchase Price would be One Thousand Dollars, plus any amounts due pursuant to (ii) and (iii) in the previous sentence.

**(b) Conveyance of Title and Delivery of Possession.** The Parties 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 a form similar to that provided in Exhibit D. 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 solely by Tenant. Possession shall be delivered to Tenant concurrently with the conveyance of title. Tenant acknowledges and agrees that title to the Premises may be encumbered only by matters that were caused by Tenant during the Rental Period and that Landlord has no obligation to remove any such encumbrance(s). Landlord shall convey title to the Premises to Tenant free and clear of any liens, encumbrances, or exceptions to title not existing as of the Effective Date of this Agreement, created in connection with Landlord's acquisition of the Premises (including but not limited to the District Promissory Obligation described in the Development Agreement) or caused by Landlord or its employees or agents during the Rental Period.

## **ARTICLE XXVIII MISCELLANEOUS**

**28.1 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 this reference.

**28.2 Legal Actions.** Any legal action instituted pursuant to this Lease shall be brought in the County of Pima, State of Arizona, or in the Federal District Court in the District of Arizona located in Tucson, Arizona. 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.

**28.3 Memorandum.** The Parties agree that, at the request of either, each will execute a short form memorandum of this Lease for recording in the Office of the County Recorder, Pima County, Arizona in the form attached as Exhibit E.

**28.4 Entire Agreement.** This Lease, together with its schedules and Exhibits and all documents incorporated herein by reference, and the Development Agreement contain the entire agreement between the Parties and any executory agreement hereafter made between the Parties 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.

**28.5 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.

**28.6 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.

**28.7 Singular and Plural, Gender.** If two or more persons, firms, corporations, or other entities constitute either Landlord or 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.

**28.8 Multiple Parties.** If at any time Landlord or Tenant 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.

**28.9 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.

**28.10 Recitals, Exhibits, and Incorporation.** The Recitals and all exhibits, which are attached hereto or are in the possession of the Parties, are incorporated herein by reference as though fully set forth.

**28.11 Attorneys' Fees.** Except as set forth in Section 28.2, each Party shall bear its own attorneys' fees in the preparation of this Lease and any other documents related to the Premises.

**28.12 Time of Essence.** Time is of the essence of this Lease.


**28.13 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 Chris Sheafe is a licensed Real Estate Broker in the State of Arizona and also a member of the Board of Directors of Landlord. Mr. Sheafe is not receiving any compensation under the terms of this Lease and has no fiduciary duty to Tenant. The Parties further acknowledge that Zach Fenton is a licensed real estate broker or salesperson in the State of Arizona and also the Tenant's manager.

*[Signature to appear on next 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: Fletcher McCusker  
Its: Chairman

ATTEST:

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

**“Tenant”**

**TP Congress Partners, LLC,**  
an Arizona limited liability company

By TP Congress Manager, LLC  
an Arizona limited liability company

By   
Name: Zach Fenton  
Title: Manager of Manager



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: Fletcher McCusker  
Its: Chairman

ATTEST:

By: Edmund Marquez  
Name: Edmund Marquez  
Its: Secretary

**“Tenant”**

**TP Congress Partners, LLC,**  
an Arizona limited liability company

By TP Congress Manager, LLC  
an Arizona limited liability company

By \_\_\_\_\_  
Name: Zach Fenton  
  
Title: \_\_\_\_\_

**Exhibit A**  
**(Legal Description of Premises)**

Block 2 of CITY PARK BLOCK 1 AND BLOCK 2, a subdivision of Pima County, Arizona, according to the map of record in the office of the Pima County Recorder at Document No. 20163580490.

## **Exhibit B (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:

(i) Comprehensive insurance written on the ISO special causes of loss form or equivalent insurance on the Premises, if available on the market, for the Project (including all replacements and additions thereto) and its personal property, in each case (i) in an amount equal to one hundred percent (100%) of the “**Functional Replacement Cost**,” or Historic Reproduction Cost, which for purposes of this Lease shall mean the cost to replace the improvements with a functionally equivalent structure (exclusive of costs of excavations, foundations, underground utilities and footings, and with frame and stucco instead of masonry); (ii) if any of the Project or the use of the Premises shall constitute a legal non-conforming structure or use, post-renovation, 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 One Million and No/100 Dollars (\$1,000,000.00). Any recovery by Landlord or Tenant under any policy of insurance maintained in accordance with Section 1(i) of this Exhibit B shall be applied in the manner provided in Article XV of this Lease. Pursuant to Section 5.2 of the Triple Net Government Property Lease dated as of June 28, 2023, Landlord, at its option, may obtain such insurance and bill Tenant the costs of such insurance as additional rent.

(ii) 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, and if applicable, owned/non-owned auto liability coverage, occurring on the Premises, minimum per occurrence limit of One Million and No/100 Dollars (\$1,000,000.00) and Two Million and No/100 Dollars (\$2,000,000.00) 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. Landlord also agrees to name Tenant as an additional insured and to waive subrogation rights against Tenant under its existing general and public liability policy except to the extent such waiver would void the policy; provided, however, that Tenant’s insurance shall be and always remain primary for the Premises and Landlord’s insurance policy shall remain 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.

(iii) If Tenant has employees, but not otherwise, 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.

(iv) To the extent not covered by a policy required pursuant to Section 1(i) through 1(iii), above: (i) at all times during which structural construction, material repairs, or alterations are being made with respect to the Project 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 Section 1(i) above, written in a so-called builder’s risk completed value form on a non-reporting basis.

(v) If the Premises contains HVAC or other equipment not covered by a policy required pursuant to Section 1(i) through 1(iii) above, comprehensive boiler and machinery insurance, in amounts as shall be reasonably required by Landlord.

(vi) Any other form or forms of insurance as Tenant or Landlord 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.**

(i) All insurance provided for in Section 1 hereof shall be obtained under valid and enforceable policies (the “**Policies**” or in the singular, the “**Policy**”).

(ii) 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; (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; except with respect to coverage limits; and (iii) be primary and without right or provision of contribution as to any other insurance carried by Landlord.

(iii) The insurance companies must be approved 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 ten (10) days before the time Tenant takes possession of all or any part of the Premises, including possession taken pursuant to Section 2.1 of the Lease.

(iv) Tenant shall use commercially reasonable efforts to notify Landlord in writing before any, reduction in coverage below the requirements in this Lease, cancellation, or other termination thereof.

(v) 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.

(vi) All Policies of insurance provided for or contemplated by Section 1 of this Exhibit B, except for the Policies referenced in Section 1(i) and 1(iii), shall name Landlord and Tenant as the insured or additional insured, as required by this Exhibit B or as their respective interests may appear, and in the case of property damage, boiler and machinery, and flood insurance, 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 XIV 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. Upon any such election to terminate the Lease by either Party, Tenant shall be required and automatically deemed to have exercised its Purchase Option under the Lease and accepted the Premises in its then-existing "As-Is / Where As" condition.

**4. No Separate Insurance.** Tenant shall not obtain any separate or additional insurance which is contributing in the event of loss unless Landlord is 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 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, 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 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 Section 2(ii) 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 Section 1(iii) 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 before the occurrence of injury or loss. The Parties 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 C (Prohibited Uses)**

The Premises shall be used only for commercial purposes of the type normally found in a commercial multi-use building including, without limitation, financial institutions, service shops, food and beverage, offices, medical offices, and retail stores. The following uses are specifically prohibited in the Premises without the prior written consent of Landlord which Landlord may withhold in its sole and absolute discretion:

(i) betting parlor; gambling casino or gaming activities including, but not limited to, gambling, electronic gaming machines, slot machines, and other devices similar to the aforementioned.

(ii) a carnival or an amusement park, arcade, a video game parlor, a discotheque, a dance hall.

(iii) funeral parlor; cemetery; crematorium.

(iv) an automobile dealership or a boat dealership; a body and fender shop; motor vehicle storage facility; boat storage facility.

(v) adult bookstore; any establishment primarily engaged in the business of selling, exhibiting, or distributing pornographic or obscene materials; a business primarily engaged in displaying live models or dancers, a video store that sells or rents videos that are rated NC-17, X, XX, XXX, or of a rating assigned to works containing material more sexually explicit than XXX, by the film rating board of the Classification and Rating Administration.

(vi) a central laundry or dry cleaning plant (other than a dry cleaning drop-off facility which does not use dry cleaning fluids or similar chemicals or substances on site in connection with the dry cleaning of clothes).

(vii) any business which creates unreasonably or unusually strong or offensive odors, fumes, emissions, or sounds.

**Exhibit D**  
**(Form of Special Warranty Deed)**

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**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 TP Congress Partners, LLC, an Arizona limited liability company (“**Grantee**”), that certain real property situated in Pima County, Arizona, and legally described on **Exhibit 1** 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 2** 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 District.

WITNESS my hand and official seal.

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

(Affix Notary Seal Here)

**Exhibit 1**  
**TO SPECIAL WARRANTY DEED**

Legal Description of Property on following \_\_\_\_\_ pages

**Exhibit 2**  
**TO SPECIAL WARRANTY DEED**

Permitted Exceptions

**Exhibit E**  
**(Form of Memorandum of Lease)**

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**MEMORANDUM OF LEASE**

DATE: \_\_\_\_\_, 2023

PARTIES:       **RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT**,  
a tax levying special facilities district of the State of Arizona  
1703 E. Broadway Blvd.  
Tucson, Arizona 85719 (“**Landlord**”)

**TP CONGRESS PARTNERS, LLC**  
Attn: Zach Fenton  
6700 N. Oracle Road, Suite 504  
Tucson, AZ 85704 (“**Tenant**”)

1. Landlord has leased to Tenant, and Tenant has leased from Landlord, pursuant to a Triple Net Government Property Lease (the “**Lease**”), dated as of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”), certain land more particularly described in Exhibit M-1 attached hereto (the “**Premises**”).

2. The term of the Lease is the period beginning on the Effective Date and ending 25 years from the Effective Date, subject to the exclusive option to purchase the Premises exercised by Tenant in accordance with Section 1.3 and Article XXVII of the Lease.

3. The Lease contains an option to purchase in favor of Tenant regarding the Premises.

4. All other terms, conditions, and agreements in the Lease are fully incorporated herein by reference as if fully set forth herein. Copies of the Lease are on file at the offices of each Party.

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.

{00965674.1}

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 District.

WITNESS my hand and official seal.

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

(Affix Notary Seal Here)

## “Tenant”

**TP CONGRESS PARTNERS, LLC,**  
an Arizona limited liability company

By TP Congress Manager, LLC  
an Arizona limited liability company

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

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 TP Congress Partners, LLC, an Arizona limited liability company, on behalf of the company.

WITNESS my hand and official seal.

(Affix Notary Seal Here)

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Notary Public

## Exhibit M-1 to Memorandum of Lease

{00965674.1}