

RIO NUEVO – 2358 E. BROADWAY, LLC ECONOMIC DEVELOPMENT AGREEMENT

5034-016 DLT Docketed on Jan 08,2024

This Economic Development Agreement ("**Agreement**") is dated and effective as of the effective date set forth on the signature page of this Agreement (the "**Effective Date**"). The parties to this Agreement are 2358 E. Broadway, LLC, an Arizona limited liability company ("**Developer**") and Rio Nuevo Multipurpose Facilities District, a tax levying public improvement district (the "**District**" and together with Developer, each a "**Party**" and together collectively, the "**Parties**").

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 collected from within District's boundaries and paid to the Arizona Department of Revenue ("ADOR"). The transaction privilege taxes collected by ADOR and received by District from any business operations within District's corporate boundaries are referred to hereinafter as "TPT Funds."
- B. Developer will invest at least \$5,084,128.01 to develop the buildings formerly occupied by La Buhardilla and Country Home Furniture at 2330 to 2360 East Broadway Boulevard, Tucson, Arizona (the "Premises"), which is legally described and attached hereto as Exhibit A and is more particularly described in Section 2 below. Developer will renovate and repurpose the Premises to include, among other things, (i) retail shops; (ii) restaurants, including a bakery and ice cream and pie shop; (iii) a brewery; (iv) an entertainment area, which shall include a bowling alley and golf simulators; and (v) improvements to the parking lot (the "Project"), all of which will be produced and consistent with the presentation made by Developer at District's April 25, 2023 board meeting (collectively, the "Construction Proposal"), attached hereto as Exhibit B.
- **C.** District will invest \$600,000.00 to reimburse Developer to renovate the Premises to "grey shell" condition to include basic roof, ceiling, foundation, walls, electric, plumbing and floors, and up to an additional \$675,000.00 to reimburse Developer for further tenant improvements to the Premises.
- **D.** 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 3 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 (*provided* that Developer has reimbursed District for all the costs and expenses thereof) (the "**Economic Analysis**").

- **E.** 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 <u>Section 6</u> of this Agreement.
- **F.** The Board is empowered, pursuant to A.R.S. § 48-4201 *et seq.*, to appropriate public funds for "Secondary Components" that benefit the TCC, including related commercial facilities within District's boundaries. Accordingly, the Board has determined that it is in the best interests of the public to rebate a portion of the sales tax generated and collected from Developer's retail sales from the Project to provide opportunities for further development in the District and Downtown Tucson that will generate further sales tax revenues to be used for TCC enhancements and new job creation within District's boundaries.
- **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 fullest extent allowed by applicable law and subject to the terms and conditions hereinafter, this Agreement will be binding upon its execution by authorized representatives of the Parties.

AGREEMENT

For good and valuable consideration, including the benefits to District and Developer as described in the foregoing Recitals, District and Developer agree as follows:

1. <u>Incorporation and Representation.</u> 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. Applicable Law and Regulations. All applicable federal, state, and local laws, codes, and ordinances shall govern Developer's work on the Project and use/development of the Premises and Developer shall, at all times, comply with same.

3. <u>**The Premises.**</u> The exact location of the Premises is shown on <u>Exhibit A</u>, as determined pursuant to ALTA/NSPS Survey (the "**Survey**") dated March 10, 2019. The Parties acknowledge that District or Developer may include some off-Premises improvements as part of the Project.

4. <u>Contingencies.</u> This Agreement and the Project will be contingent upon each of the following conditions being met as solely determined by District: (a) Developer committing to develop the Premises in substantial compliance with the "Sunshine Mile" Urban Overlay District ("SMD") as approved by the City on September 14, 2021; (b) Developer committing to develop the Premises in a manner generally consistent with the Placemaking Vision for La Buhardilla-Country Home prepared by Project for Public Spaces; (c) 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 <u>Section 5</u> below); (d) District approving the construction costs for the Project; (e) Developer complying with A.R.S. Title 34 procurement requirements to the extent necessary; (f) the Parties entering into a GP Lease; and (g) final ratification of this Agreement by District's full Board of Directors.

5. <u>Ownership and Lease of Premises.</u>

(a) **Ownership.** As of the effective date, 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 <u>Exhibit C</u>. Because of 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 at an "Exercise Price" equal to an appraised fair market value of the Premises (*i.e.*, \$1,774,000.00), as provided by independent third-party at or around April 19, 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 (12) months after expiration of the GP Lease.

Regardless of whether title to the Premises occurs during or after the expiration of the GP Lease term, the gross demonstratable costs actually paid by Developer toward development of the Project will be credited against the Exercise Price. By way of example, if Developer pays \$500,000.00 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 \$500,000.00. If, in its development of the Premises, Developer pays an amount greater than the Exercise Price, Developer shall 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.

6. <u>Obligations of Developer.</u> In consideration of the benefits to Developer hereunder, all pursuant to the terms and conditions hereof, Developer, on its behalf and for the avoidance of doubt on behalf of its successors and assigns, covenants and agrees as provided below in this Section 6:

(a) Use, Occupancy, and Business on Premises. Developer shall own, occupy, and conduct business operations from the Project for a minimum of five (5) years from the date a final certificate of occupancy is issued for the Project. If Developer: (i) does not own, occupy, and conduct its business operations on the Premises for at least the duration stated in preceding sentence from the date a final certificate of occupancy is issued for the Project, subject to Enforced Delays (as defined in the GP Lease); or (ii) exercises its option to terminate, or otherwise terminates, the GP Lease before the end of the period in the preceding sentence, the District's obligation to rebate to Developer any balance remaining of the TI Reimbursement (as hereinafter defined) shall immediately terminate. and Developer shall promptly pay the District an amount that is equal to twenty-five percent (25%) of all TPT Funds paid by the District to Developer up

to the time of Developer's breach of any of its covenants set forth in this <u>Section 6(a)</u> (the "**Developer Penalty**"). The amount owing to District as the Developer Penalty shall be determined by District at the time Developer ceases its business operations at the Premises or otherwise breaches its covenants, subject to any Enforced Delay, and Developer shall pay the Developer Penalty to the District no later than ten (10) days after the date of District's written notice of the amount of the TPT Funds District paid to Developer. Upon Developer's payment of the Developer Penalty, this Agreement shall terminate and the Parties shall have no continuing obligations to one another hereunder.

(b) Approvals and Preparations. 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 the Premises if necessary, obtaining design approval of the Project, and obtaining all necessary approvals and permits for the construction of the Project within twenty-four (24) months from the Effective Date, excepting reasonable delays by issuing government departments through no fault of Developer. Developer shall also be solely responsible for obtaining any other bids, contracts, plans, approvals, and permits required or prudent for the design and construction, and later business operations upon completion, of the Project and for entering into all necessary contracts for the same within eighteen (18) months from the Effective Date.

(c) Due Diligence. Before any conveyance(s) of title to the Premises, 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. The Survey will be updated, as needed, to comply with the requirements of the title company. 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.

(d) 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, in its sole discretion. 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 other monetary encumbrances after the Effective Date, except for such liens or encumbrances as may arise from the GP Lease or Easement Agreements, or as a result of the acts or omissions of Developer (or its use and tenancy of the Premises).

(e) **Project Renovations.** Developer will present all stages of the plans and specifications for the Project to District for District's (or its agent's) reasonable review, input, and approval. District will be responsible for the cost of such review. If District does not respond to any such submission within fifteen (15) business days of receipt, the submission will be deemed approved. 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 District, and will, subject to force majeure events, improve the Project

to "gray shell" condition (the "**Renovations**"), no later than thirty (30) months after the effective date (the "**Completion Date**"). 06/19/2026

(f) Tenant Improvements. Following the Renovations, Developer will construct additional improvements according to the same review, input and approval conditions set forth above in <u>Section 6(d)</u>, 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 thirty-six (36) months after the effective date. 12/19/2026

(g) Insurance. In addition to insurance required under the Lease, Developer shall maintain at its own cost and expense the following: (i) Causes of Loss-Special Form (formerly "all-risk") Property Insurance against loss or damage to the Improvements and betterments at the Premises, written at replacement cost value and with a replacement cost endorsement, 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. 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, authorized to do business in the State of Arizona.

(h) 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 it maintains 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 is 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. For the avoidance of doubt, third-party tenant lessors may make tenant improvements to the Project after the date described in the previous sentence.

(i) Occupants on the Premises. Developer shall provide to District, on or before the fifteenth (15th) day of each month during the term of this Agreement, the name(s) of each occupant operating their business within the Project.

(j) Sole Use. Developer hereby irrevocably covenants and agrees to use the Renovation Reimbursement and the TI Reimbursement (both as defined below and, together, the "Economic Incentive") solely to defray Developer's as-completed hard construction draw costs (*i.e.*, costs other than architectural/design work, legal fees, permits and furniture, fixtures, or equipment) and/or other Improvements to the Project in compliance with the Construction Proposal.

(k) **Documentation**. Developer shall promptly provide District with any and all documentation and/or evidence District reasonably requests to establish that the

{00966934.1} Exhibit C to Development Agreement

Economic Incentive granted 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.

(I) 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.

(m) Termination of Right to Economic Incentive. In addition to such other restrictions and conditions expressly contained in this Agreement, Developer's right to receive 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, or (ii) September 30, 2026. Notwithstanding the foregoing, if none of the work anticipated under this Agreement has commenced by September 1, 2025, then this Agreement, without further act or notice required, shall automatically expire and terminate, and the Parties shall have no rights or obligations hereunder.

7. <u>Renovation Reimbursement</u>.

(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. The Renovation Reimbursement will be deposited into an escrow account operated by Lori Balsino at Title Security ("Escrow Agent"). Escrow Agent will make distributions of Renovation Reimbursement Funds as directed by District subject to Developer's continued satisfaction of the terms and conditions set forth in Section 6.

(c) Amount & Limitations. The total Renovation Reimbursement paid to Developer will not exceed \$600,000.00.

(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 direct Escrow Agent to 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 signed construction draw ("**Draw Notice**") proving the Renovations 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 authorized by District. Developer shall provide Conditional Lien waivers

from all contractors, subcontractors, and suppliers with each Draw Notice as a condition for authorization of any funding 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. Upon completion of the foregoing, District shall have ten (10) business days from date of receipt of 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 construction draw. 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 property 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 authorize the release of funds to Developer in accordance with this Section and subject to the other terms and conditions of this Agreement; and

(e) Subject to the other terms and conditions in this Agreement, if Developer satisfies each of the terms and conditions in this Section 7(e) 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, above.

8. <u>Tenant Improvement Reimbursement.</u>

(a) <u>Reimbursement for Tenant Improvements</u>. Following completion of the Renovations, District will reimburse Developer for the Tenant Improvements in *pro rata* installments (the "**TI Reimbursement**"), proportional to the amount of construction sales taxes and sales taxes (the "**Sales Taxes**") generated on the Project at the time of the draw request. Developer will be responsible for providing a record of the amount of Sales Taxes generated prior to any release of TI Reimbursement funds. Once said record is received, District will release each installment of TI Reimbursement funds to Developer in accordance with this <u>Section 8</u> within fourteen (14) business days.

(b) Release of Funds. Subject to Developer's continued satisfaction of the terms and conditions set forth in <u>Section 6</u>, District will pay the TI Reimbursement to Developer as described in this Section.

(c) Amount & Limitations. The total TI Reimbursement paid to Developer will not exceed \$675,000.00.

9. <u>Miscellaneous.</u>

(a) Conflict of Interest. THE PARTIES HEREBY AGREE AND ACKNOWLEDGE THAT THIS AGREEMENT IS SUBJECT TO, AND MAY BE CANCELLED IN ACCORDANCE WITH, THE PROVISIONS OF A.R.S. § 38-511.

(b) Sunset Provision. Notwithstanding anything to the contrary herein, under no circumstances shall District be subject to any liability to Developer under this Agreement that arises or results from District's termination or dissolution pursuant to applicable law and/or any actions taken by District in compliance with any applicable statutory mandate (including without limit those set forth in A.R.S. § 48-4202) or intergovernmental agreement relating to the District.

(c) 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
With a copy to:	Farhang & Medcoff, PLLC Attn: Timothy Medcoff, Esq. 100 South Church Avenue, Suite 100 Tucson, Arizona 85701
If to Developer:	2358 E. Broadway, LLC c/o Nathan Ares P.O. Box 31150 Tucson, Arizona 85751 Email: <u>nathan@prepandpastry.com</u>
With a copy to:	Jonathan Rothschild, Esq. Mesch Clark & Rothschild, P.C. 259 N. Meyer Avenue Tucson, Arizona 85710-1090 Email: jrothschild@mcrazlaw.com

(d) 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.

(e) 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.

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

(g) No Liability of District Officials. No director, officer, 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.

(h) Construction with Applicable Law. This Agreement shall be at all times construed in a manner consistent with the Arizona laws, including, without limit, those applicable to multipurpose facilities districts at A.R.S. § 48-4201 *et seq.*

(i) **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.

(j) Sunset Provision. Notwithstanding anything to the contrary herein, under no circumstances shall District be subject to any liability to Developer under this Agreement that arises or results from District's termination or dissolution pursuant to applicable law and/or any actions taken by District in compliance with any applicable statutory mandate (including without limit those set forth in A.R.S. § 48-4202) or intergovernmental agreement relating to District.

(k) 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.

(I) No Offer. The Parties acknowledge and agree that this Agreement shall not constitute an offer or be binding upon either Party until it is fully executed and delivered by District.

[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.

Dec 19 2023 Effective Date: _

DEVELOPER:

2358 E. BROADWAY, LLC, an Arizona limited liability company

By:

Nathan Ares, its Managing Member

DISTRICT:

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

By: Name: Fletcher McCusker

Its: Chairman

By: _____

Name: Taunya Villicana Its: Secretary

EXHIBIT A APPROXIMATE LOCATION OF PREMISES

EXHIBIT B CONSTRUCTION PROPOSAL

EXHIBIT C FORM OF GP LEASE



Title	Economic Development Agreement - Rio Nuevo (2358 E
File name	Development Agreeevo (12.6.23).pdf
Document ID	581cc52ca566e41b752703255fe736c6f5167bfb
Audit trail date format	MM / DD / YYYY
Status	 Signed

Document History

() Sent	12 / 19 / 2023 23:49:07 UTC	Sent for signature to Fletcher McCusker (fjmccusker@gmail.com) and Taunya Villicana (tvillicana@icloud.com) from esign@farhangmedcoff.com IP: 72.196.45.106
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COMPLETED	12 / 20 / 2023 02:04:28 UTC	The document has been completed.