

PURCHASE/LEASE/OPTION AGREEMENT

This Purchase, Lease, and Option Agreement (this “**Agreement**” or “**Lease**”) is entered into as of December 19, 2019 (“**Effective Date**”) by and between Julian Drew Lofts, LLC, an Arizona limited liability company (“**Lessee**” and/or “**Developer**”), and Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona (the “**District**”) (collectively “**Parties**”).

BACKGROUND

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

A. Lessee owns a parking lot (the “**Parking Lot**”), and upon Closing will own (i) a two story building, aka the Lewis Hotel Building, and (ii) a one story building, aka the “Carriage House,” all located near the SE corner of South Arizona Ave., and East Broadway Blvd., in Tucson, Arizona, (collectively, the “**Existing Buildings**” and together with the Parking Lot collectively referred to as the “**Property**”). The Property is legally described in Exhibit A.

B. Title to the Existing Buildings is currently held by The Lewis Hotel, L.L.C., an Arizona limited liability company (“Lewis Hotel LLC”), an affiliate of Lessee, and the Existing Buildings, but not the Parking Lot, are encumbered by a Construction Deed of Trust and Fixture Filing (with Assignment of Rents and Security Agreement) dated February 1, 2010, for the benefit of Western Alliance Bank, an Arizona corporation (“**Existing Lender**”), as beneficiary, and recorded February 3, 2010 at Sequence No. 20100220455, in the Official Records of Pima County, Arizona, as amended by (a) that certain Amendment to Deed of Trust dated June 15, 2011, recorded on June 21, 2011, as Instrument Number 20111720356, in the Official Records of Pima County, Arizona, (b) that certain Second Amendment to Deed of Trust dated July 28, 2015, recorded on August 4, 2015, as Instrument Number 20152160406, in the Official Records of Pima County, Arizona, and (c) that certain Third Amendment to Deed of Trust dated October 13, 2016, recorded on October 24, 2016, as Instrument Number 20162980697, in the Official Records of Pima County, Arizona (collectively, the “**Existing Deed of Trust**”) securing a loan (“**Existing Loan**”) in the original principal amount of \$1,690,000.00 from Existing Lender to Lewis Hotel LLC. Lessee has requested that Existing Lender consent to the transfer of the Existing Buildings to Lessee prior to the Closing and Commencement Date of this Agreement, which consent shall be subject to such underwriting requirements as determined by Existing Lender in its sole discretion. For the sake of clarity, the Existing Lender does not encumber the Parking Lot, which is the first legal description of three set forth on Exhibit A. None of the provisions granting protections to a Leasehold Mortgagee contained herein shall apply to the Parking Lot.

C. Lessee is in the process of spending approximately \$6,000,000 (“**Construction Costs**”) [(i) constructing on the current Parking Lot a three story building with approximately 4,142 square feet of retail space on the ground floor and two floors of apartments above the retail space, and (ii) renovating and refurbishing the Existing Buildings (collectively, upon completion and together with the Property, the “**Project**”).]

D. The construction of the Project will create construction jobs and generate construction sales tax that will benefit the District and the City of Tucson (“**City**”).

E. The transactions contemplated by this Agreement were presented to and conceptually approved by the District’s Board of Directors (the “**Board**”) at its August 27, 2019 meeting.

F. Subject to the occurrence and satisfaction of the conditions described below, the District is willing to purchase the Project from Lessee (“**Purchase**”) and immediately enter into a lease with Lessee (the “**Lease**”) and grant Lessee an option to repurchase the Project at any time during or before the expiration of the Lease (the “**Option**”).

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

H. If, in reliance on the Economic Analysis, the Board determines by simple majority vote at a duly called meeting (“**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 the Lessee (the “**Board Approval**”), the Parties will proceed to the closing of the Purchase and the Lease will commence.

I. A notice will be sent by the District to the Pima County Board of Supervisors, the Mayor and Council of the City and 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 prior to the date of the Meeting. Such notice shall contain the name and address of the Lessee, the location and proposed use of the Project and the term of the Lease.

J. The District is a special taxing district of the State of Arizona (the “**State**”) that was formed by the City and the City of South Tucson, Arizona pursuant to the Stadium District Statutes that commence at A.R.S. §48-4201 *et seq.* A “district” formed under these statutes is defined as “... any county stadium district established pursuant to §48-4202, subsection A, B or C.” §48-4201(3).” The voters who authorized formation of the District authorized the District to receive an incremental portion of state-shared **TPT Funds** collected from within the District’s boundaries, all of which lie within the City. The District’s right to receive TPT Funds currently ceases on July 1, 2035 (the “**Sunset Date**”).

K. The Project is located along a major gateway into the City and within a designated “slum or blighted area” pursuant to A.R.S. 36-1471, *et. seq.*, and also within the City of Tucson’s designated “central business district.” The District desires that Lessee construct and develop the

Property as described above to further the District's purposes of enhancing Downtown Tucson and the District's Primary Component (as defined in A.R.S. § 48-4201(4)(B)); the Tucson Convention Center. The Project will: (i) provide a significant investment within the District; (ii) create new opportunities for employment in the District; (iii) enhance retail transaction (sales) tax collections in the District; and (iv) provide greater ability for the District to promote new development within the District boundaries.

AGREEMENTS

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

PURCHASE AND SALE OF PROJECT

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

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

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

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

2) **Purchase Price.** The purchase price for the Project is \$1,000 ("**Purchase Price**").

3) **Title & Escrow.**

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

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

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

d) **Closing & Closing Date.** Closing of the transaction described herein (the "Closing") shall occur at such date, time and place as the Parties may agree in accordance with the terms and conditions of this Agreement following (i) Board Approval, as evidenced by the District's execution of this Agreement, (ii) transfer of title to the Existing Buildings from Lewis Hotel LLC to Lessee following approval from the Existing Lender, and (iii) Lessee delivering to the District the Project Completion Notice, as defined in Section 11(c) below. The Parties acknowledge and agree that TIME SHALL BE OF THE ESSENCE with respect to the performance by the Parties of their obligations under this Agreement and to consummate the transactions contemplated in this Agreement on the Closing Date. For the purposes of this Agreement, any date to which the Parties agree to adjourn the Closing pursuant to the terms of this Agreement shall be deemed the "Closing Date" hereunder.

4) **Representations and Warranties.**

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

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

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

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

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

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

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

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

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

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

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

b) **The District.**

i) **Organization.** The District is a special taxing district of the State of Arizona duly organized, validly existing and in good standing under the laws of the State of

Arizona and has the power, right and authority to enter into this Agreement, and to consummate the transaction contemplated hereby, without the consent or joinder of any other party or order or approval of any court, and this Agreement shall constitute a legal, valid and binding obligation of the District, enforceable against the District in accordance with the terms and conditions contained herein.

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

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

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

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

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

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

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

c) **Phase 1 ESA.** A Phase 1 environmental site assessment for the Project that is dated no more than 180 days prior to the date of the Closing.

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

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

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

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

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

7) **Closing.**

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

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

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

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

8) **Brokerage Commission.** The parties understand, acknowledge and agree that no real estate broker is involved in this transaction and that no real estate brokerage commission shall be paid as a result of the sale of the Project. Lessee acknowledges that District Board Members Mark Irvin and Chris Sheafe are each licensed real estate brokers in Arizona. District acknowledges that Ross Rulney, a principal of Lessee, is a licensed real estate broker in Arizona. Each party shall

defend, indemnify and hold the other harmless from and against any and all claims, costs, liabilities or damages for any real estate brokerage commissions or fees, including any attorneys' fees incurred in connection therewith, which may result from the conduct of the party from whom indemnification is sought.

LEASE OF PROPERTY

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

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

b) **Term.** The term of this Lease is 25 years, commencing on the Commencement Date (the "**Term**").

c) **Rent.** Rent for the Leased Project ("**Rent**") will be \$100.00 per year, and may be prepaid for the entire term. Rent for the first year of the Term will be paid on the Commencement Date, and Rent for each subsequent year of this Lease shall be paid on the anniversary date of the Commencement Date. No prepaid rent shall be refunded should the Lease terminate prior to the expiration of the Term.

d) **Possession and Enjoyment.** Provided the Lessee is not in default hereunder beyond any applicable notice and cure period, the District acknowledges and agrees that Lessee, by paying the Rent and performing the other terms and conditions of this Lease, may peaceably hold and enjoy the Leased Project for the private uses described above without any interruption by the District, or any person lawfully claiming by, through or under the District, during the Term except the District shall have the right to enter upon and inspect the Leased Project by providing Lessee with written notice of its intent to do so not less than 48 hours prior thereto.

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

i) **Construction.** It is understood that Lessee will be solely responsible for the construction of the Project including any and all tenant improvements and other installations necessary or incidental to the operation or maintenance of the Project (collectively referred to as the "**Improvements**"). Subject to the Option described herein, any Improvements constructed and/or installed by Lessee shall be the property of Lessee immediately upon the commencement of their construction and/or installation but subject to the terms of this Lease.

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

iii) **Subordinate Encumbrances.**

(1) The District acknowledges the Existing Deed of Trust and agrees that concurrent with the Closing Date and as long as the District holds fee title to the Property, the Existing Deed of Trust will be amended to encumber only the Lessee's leasehold interest in the Project (instead of fee title) and the Existing Deed of Trust shall be deemed converted to a Leasehold Mortgage and the beneficiary thereunder a Leasehold Mortgagee, but that upon the expiration or termination of this Agreement and reversion of the Property's title to Lessee, the Existing Deed of Trust, if not then previously released of record, will again encumber fee title to the Project. All protections and notices required by this Lease to be given to a Leasehold Mortgagee shall be extended and given to the beneficiaries under the Existing Deed of Trust or any replacement thereof. The District agrees to sign such agreements and acknowledgements as are consistent with this Agreement and reasonably required by Lender in connection with this Agreement and as reasonably approved by the District, including but not limited to by way of example, an estoppel certificate, subordination agreement, or subordination non-disturbance and attornment agreement.

(2) Lessee shall have the right to mortgage, encumber, or grant a lien on its leasehold interest under this Lease, all of which shall be subject to this Lease, and in any such event, provided the District has received written notice of such encumbrance, the lienholder thereof shall be entitled to the rights of a Leasehold Mortgagee described in Section 9(n) below, including the same notice of default and cure rights in favor of Lessee as set forth in this Lease. In such case, Lessee shall provide the District with written notice of any such encumbrance not later than 10 days prior to such encumbrance becoming effective. Notwithstanding the foregoing, Lessee shall not mortgage, encumber or grant a lien on its leasehold interest in the portion of the Property encumbered by the Existing Deed of Trust unless the Existing Deed of Trust (or any replacement thereof) has been released of record.

iv) **Memorandum of Lease.** Upon the execution of this Lease, the parties shall also execute a "**Memorandum of Lease**" in the form attached as Exhibit C to be recorded in

the Office of the County Recorder of Pima County, Arizona, setting forth such terms and provisions as required by the District in order to provide notice of this Lease in the public records.

f) **Payment of Additional Amounts.** It is the intention of the Parties that this Lease be a completely net lease. As such, except as specifically provided herein, Lessee is solely responsible for any and all capital, operating, maintenance, and replacement costs and any other costs and expenses that result from Lessee's development and use of the Project, including, but not limited to, the construction of the Improvements. Lessee's payment of insurance, property, excise or other taxes, utilities and any other charges, costs or fees charged and prorated to Lessee under the terms of this Lease (collectively "**Lessee Obligations**") shall accrue and be payable by Lessee from and after the Commencement Date throughout the Term. The District shall forward to Lessee any invoices, bills, or other charges representing Lessee Obligations ("**Lessee Bill**"). Lessee shall pay a Lessee Bill on or before the date such payment becomes due or if no due date is provided, then within 10 days of receipt of any such Lessee Bill. Lessee's failure to timely pay a Lessee Bill shall constitute a breach of this Lease.

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

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

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

j) **Assignment.**

i) **No Assignment.** Lessee covenants and agrees that it will not assign this Agreement, or any of its rights or obligations arising hereunder, without first obtaining the written consent of the District, which consent will not be unreasonably withheld, conditioned, or delayed.

Notwithstanding the foregoing, however, Lessee may (i) assign, transfer or sublet its leasehold interest without first obtaining the District's written consent to an entity directly or indirectly controlled by, controlling, or under common control with Lessee, and (ii) (a) without District consent continue to encumber its leasehold interest pursuant to the Existing Deed of Trust and in connection therewith assign its interest in the Lease to Lender, and (b) subject to the District's prior written approval of any third party loan documents (not to be unreasonably withheld, conditioned, or delayed) not less than two weeks prior to any loan closing, encumber its leasehold interest to a Leasehold Mortgagee and in connection therewith assign its interest in the Lease to a Leasehold Mortgagee subject to the terms of Sections 9(n) and 10. For the purposes of this section, (i) "control" (including with correlative meaning, the terms "controlling," "controlled by" and "under common control"), means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise, and (ii) "person" means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

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

iii) **Subleases.** Lessee shall be permitted to sublease any and all portions of the Project to such subtenants as it chooses, subject to Lessee's compliance with "Sinking Fund" requirements of Section 11 below.

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

l) **General Insurance Requirements.** The liability insurance policy carried pursuant to Section 9(k) of this Agreement must name the District as an additional insured, as the District's interests may appear. Lessee may maintain for its own account any liability insurance, whether or not required by this Agreement, with greater coverage in scope and amounts, and the Lessee shall not be required to name the District as an additional insured on such greater coverage. A certificate or true copy thereof evidencing said liability insurance must be delivered to the District by Lessee

not later than 10 days prior to the effective date thereof, including all renewals of the insurance policy or policies. The District must also be provided with written notice not later than 30 days prior to the proposed cancellation of any such policy, and Lessee shall notify each insurer providing coverage of the District's name and address for such purpose.

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

n) **Leasehold Mortgage of Project.** Lessee and any Successor Owner (as hereafter defined) of all or any portion of the Project, is hereby given the absolute right with the District's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, to create a security interest in Lessee's leasehold interest (or any Successor Owner's interest) under this Lease (and in any subleases and the rents, income and profits therefrom) by mortgage, deed of trust, collateral assignment or otherwise, provided that no consent shall be required with respect to the Existing Deed of Trust encumbering Lessee's leasehold interest under this Lease as provided for in Section 9(e)(iii)(1) above. Excluding the Existing Loan and all documentation relating thereto (including any future amendments to the Existing Loan), Lessee acknowledges and agrees that all documentation creating such security interest must be approved by the District and District acknowledges and agrees that if District has not objected to loan documentation within two weeks of receipt of any submittal, District shall be deemed to have approved the submitted loan documents. Any such security interest (including the Existing Deed of Trust) shall be referred to herein as a "**Leasehold Mortgage**," and the holder of a Leasehold Mortgage (including Lender) shall be referred to herein as a "**Leasehold Mortgagee**." The Parties acknowledge and agree that as long as the District holds fee title to the Project, any Leasehold Mortgage (including the Existing Deed of Trust) will encumber only the Lessee's leasehold interest in the Project (instead of fee title), but that upon the expiration or termination of this Lease and reversion of the Project's title to Lessee, any Leasehold Mortgage will again encumber fee title to the Project. District agrees to sign such agreements and acknowledgements as are consistent with this Agreement and reasonably required by a Leasehold Mortgagee in connection with a Leasehold Mortgage, including but not limited to by way of example, a recognition agreement, estoppel certificate, or subordination non-disturbance and attornment agreement. As used herein, "**Successor Owner**" shall mean any subsequent holder of all or any portion of Lessee's leasehold interest in Project created hereby with right of fee ownership upon termination of this Agreement, by foreclosure sale, trustee's sale, or deed in lieu of foreclosure.

i. A Leasehold Mortgagee may enforce such lien and acquire title to Lessee's leasehold estate in any lawful way including, pending foreclosure of such lien, the Leasehold Mortgagee may take possession of, develop, use and operate the Project or applicable portion thereof, performing all obligations performable by Lessee, and upon foreclosure of such lien by power of sale, judicial foreclosure or acquisition of the leasehold estate by deed in lieu of foreclosure, the Leasehold Mortgagee may, sell and assign the leasehold estate hereby created, subject to the District's consent of such

assignment of Lessee's rights and obligations, which consent shall not be unreasonably withheld, conditioned or delayed. Liability for the performance of Lessee's covenants and agreements hereunder shall attach to and be imposed upon any Leasehold Mortgagee or its successors and assigns commencing as of and only during the term of ownership of the leasehold estate. The parties agree and acknowledge that if any Leasehold Mortgagee becomes the lessee hereunder, such Leasehold Mortgagee shall not be liable or responsible for and shall not be deemed to have assumed liability for any other prior actions, omissions, defaults, breaches or other events caused by or relating to the original Lessee or a Successor Owner. Nothing in this section releases the Lessee (or any Successor Owner) from liability arising from events during Lessee's (or the Successor Owner's) operation of the Project, nor (ii) limits or otherwise modifies the District's remedy hereunder to terminate this Lease for certain Events of Default, subject to each Leasehold Mortgagee's right to cure an Event of Default in accordance with the provisions hereof, and right to enter into a new lease in accordance with the provisions of subsection (o) below.

ii. If District shall give any notice, demand, election or other communication required hereunder (hereafter collectively "**Notices**") to Lessee hereunder, District shall concurrently give a copy of each such Notice to the Leasehold Mortgagee at the address designated by the Leasehold Mortgagee. Such copies of Notices shall be sent in the manner set forth in Section 18(k). In the case of an assignment of the Leasehold Mortgage or change in address of the Leasehold Mortgagee, the assignee or Leasehold Mortgagee, by written notice to District, may change the address to which such copies of Notices are to be sent.

iii. District shall provide written notice of any Event of Default under this Lease to Leasehold Mortgagee at the same time notice is provided to Lessee and the Leasehold Mortgagee shall have the cure rights given to Lessee hereunder, or such longer period that may be applicable pursuant to the terms hereof, provided that (a) in no event shall Lender be required to cure any default by Lessee that is personal to Lessee and is not reasonably susceptible to cure by any person or entity other than Lessee, and any such defaults shall be deemed to have been waived by the District as against Leasehold Mortgagee (and its successors); and (b) Leasehold Mortgagee shall be entitled to a cure period of not less than ten (10) days for monetary defaults or thirty (30) days for non-monetary defaults, or such longer cure period(s) as identified in this Agreement (as applicable). If the Leasehold Mortgagee cures an Event of Default on Lessee's behalf, District shall accept such performance with the same force and effect as if furnished by Lessee, and the Leasehold Mortgagee shall thereby and hereby be subrogated to the rights of District. The Leasehold Mortgagee shall have the right to enter upon the Project to give such performance.

iv. In case of an Event of Default by Lessee in the performance or observance of any nonmonetary term, covenant or condition to be performed by it hereunder, if such default cannot practicably be cured by the Leasehold Mortgagee without taking possession of the Project, in such Leasehold Mortgagee's reasonable opinion, or if such default is not susceptible of being cured by the Leasehold Mortgagee, then the District shall not serve a notice of lease termination, if and so long as:

(1) the Leasehold Mortgagee shall proceed diligently to obtain possession of the Project as mortgagee (including possession by a receiver), and, upon obtaining such possession, shall proceed diligently to cure such Events of Default as are reasonably susceptible of cure (subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession); or

(2) the Leasehold Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire Lessee's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure and subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession).

The Leasehold Mortgagee shall not be required to obtain possession or to continue in possession as mortgagee of the Project pursuant to clause (1) above, or to continue to prosecute foreclosure proceedings pursuant to clause (2) above, if and when such Event of Default has been cured. If a Leasehold Mortgagee, its nominee, or a purchaser at a foreclosure sale shall acquire title to Lessee's leasehold estate hereunder, an Event of Default that is personal to the Lessee, such that it is not reasonably susceptible to cure by the person succeeding to the leasehold interest, shall no longer be deemed an Event of Default hereunder. Moreover, such Leasehold Mortgagee, nominee or purchaser at a foreclosure sale shall immediately thereafter be entitled to all benefits that would thereafter accrue to Lessee under this Lease and become liable under this Lease to the same extent as Lessee, and the District hereby agrees to recognize such Leasehold Mortgagee as the lessee under this Lease without the necessity of the execution and delivery of any further instruments on the part of the District to effectuate such recognition; provided, however, the District shall execute and deliver such further instrument or instruments evidencing such recognition as may be reasonably requested by such Leasehold Mortgagee within thirty (30) days from the District's receipt of such request.

If any Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessee, then the times for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

v. District shall upon request of a Leasehold Mortgagee execute, acknowledge and deliver to each Leasehold Mortgagee an instrument prepared at the sole cost and expense of Lessee, in form satisfactory to such Leasehold Mortgagee and District, agreeing to all the provisions of this Section 9(n).

vi. Any Leasehold Mortgagee shall have a right to intervene in and be made a party to any arbitration proceedings or legal proceedings by the parties hereto involving obligations under this Lease, and the Parties hereto do hereby consent to such intervention.

vii. Lessee may delegate irrevocably to the Leasehold Mortgagee the authority to exercise any or all of Lessee's rights hereunder; provided that (i) the Leasehold Mortgagee agrees to perform all of Lessee's monetary obligations under this Lease; and (ii) no such delegation shall be binding upon District unless and until either Lessee or said Leasehold Mortgagee gives to District a true copy of a written instrument effecting such delegation.

vii. At Lessee's request, District agrees to execute a form of landlord's lien waiver, reasonably acceptable to District, with respect to Lessee's financing or refinancing of any personal property, furniture, furnishings, business or trade fixtures and equipment now or hereafter in or about the Project, or any part thereof.

viii Except for the mandatory purchase option at the termination of this Lease, no option of Lessee hereunder may be exercised, and no consent of Lessee allowed or required hereunder shall be effective without the prior written consent of any Leasehold Mortgagee.

ix. Notwithstanding anything to the contrary in this Agreement, the District agrees that any and all insurance casualties or losses and condemnation actions and proceeds, solely with respect to that portion of the Project encumbered by a Leasehold Mortgage, shall be governed by the loan documents evidencing such Leasehold Mortgage, any interest of the District in such proceeds and amounts shall be fully and completely subordinated (as to payment rights and lien priority) to the interest of Leasehold Mortgagee, and any and all insurance loss proceeds and condemnation awards otherwise payable to the District and/or Lessee shall be paid to the Leasehold Mortgagee(s), as applicable, and applied in accordance with the terms and provisions of the Leasehold Mortgage or loan documents evidencing the Leasehold Mortgage, as the case may be. The District further agrees that the Leasehold Mortgagees may be named an additional insured and lender loss payee, as applicable, under any insurance policies relating to the Project. Leasehold Mortgagee shall have no right, title or interest in any and all insurance proceeds and condemnation proceeds generated or resulting from casualties, losses or condemnation actions pertaining to that portion of the Project that is not encumbered by a Leasehold Mortgage, and disposition and application of such amounts shall be governed by the terms of this Lease.

o) New Lease.

i Right to New Lease (Leasehold Mortgagee). The District agrees that, in the event of termination of this Lease for any reason (including, but not limited to, an Event of Default by Lessee), the District, if requested by any Leasehold Mortgagee, will enter into a new separate lease of the Project (or portion thereof, as applicable) with the most senior Leasehold Mortgagee requesting a new lease, which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of the original term of

this Lease, at the rent and upon the terms, covenants and conditions herein contained (a "New Lease"), provided:

(1) Such Leasehold Mortgagee shall make written request upon the District for the New Lease within sixty (60) days after the date such Leasehold Mortgagee receives written notice from the District that the Lease has been terminated; provided that the New Lease shall be entered into no later than 30 days after receipt of the request; and provided, further that until such New Lease becomes effective, this Agreement shall remain in full force and effect;

(2) Such Leasehold Mortgagee shall pay to the District at the time of the execution and delivery of the New Lease any and all sums which would, at that time, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto all reasonable expenses, including reasonable attorneys' fees, which the District shall have incurred by reason of such termination; and

(3) Such Leasehold Mortgagee shall perform and observe all covenants in this Lease to be performed and observed by Lessee, and shall further remedy any other conditions which Lessee under the Lease was obligated to perform under its terms, to the extent the same are not personal to Lessee and are reasonably susceptible of being cured by the Leasehold Mortgagee.

ii. Priority. Notwithstanding anything to the contrary expressed or implied in this Lease, any New Lease made pursuant to this subsection (o) shall have the same priority as this Lease with respect to any mortgage, deed of trust, or other lien, charge, or encumbrance on the fee title to the Project.

iii. No Obligation. Nothing herein contained shall require any Leasehold Mortgagee to enter into a new lease pursuant to this subsection (o) or to cure any default of Lessee referred to above.

iv. Possession. If any Leasehold Mortgagee shall request a new lease as provided in this subsection (o), the District agrees, at the request of, on behalf of and at the expense of the Leasehold Mortgagee, upon assurances from it reasonably satisfactory to the District, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove the original Lessee from the Project then encumbered by a lien in favor of the Leasehold Mortgagee (including, without limitation, the Existing Deed of Trust) at no cost or expense to the District.

v. Grace Period. Unless and until the District has received notice from each Leasehold Mortgagee that the Leasehold Mortgagee elects not to demand a New Lease as provided in this subsection (o), or until the period therefor has expired, the District shall not enter into any new leases or subleases with respect to the Project without the prior written consent of each Leasehold Mortgagee whose Leasehold Mortgage encumbers the Project.

vi. Effect of Transfer. Neither the foreclosure of any Leasehold Mortgage (whether by judicial proceedings or by virtue of any power of sale contained in the Leasehold

Mortgage), nor any conveyance of the leasehold estate created by this Lease by Lessee to any Leasehold Mortgagee or its designee by an assignment or by a deed in lieu of foreclosure or other similar instrument shall require the consent of the District under, or constitute a default under, this Lease, and upon such foreclosure, sale or conveyance, the District shall recognize the purchaser or other transferee in connection therewith as the lessee under this Lease.

vii. No Merger. In no event shall the leasehold interest, estate or rights of Lessee hereunder, or of any Leasehold Mortgagee, merge with any interest, estate or rights of the District in or to the Project. Such leasehold interest, estate and rights of Lessee hereunder, and of any Successor Owner or Leasehold Mortgagee, shall be deemed to be separate and distinct from the District's interest, estate and rights in or to the Project, notwithstanding that any such interests, estates or rights shall at any time be held by or vested in the same person, corporation or other entity.

viii Leasehold Mortgagee Further Assurances. The District and Lessee shall cooperate in including in this Lease by suitable amendment from time to time any provision which may be reasonably requested by any proposed Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Lease, of allowing that Leasehold Mortgagee reasonable means to protect or preserve the lien of its Leasehold Mortgage upon the occurrence of an Event of Default under the terms of this Lease and of confirming the elimination of the ability of Lessee to modify, terminate or waive this Lease or any of its provisions, except as otherwise expressly stated herein, without the prior written approval of the Leasehold Mortgagee. The District and Lessee each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement reasonably necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the term or rent under this Lease nor otherwise in any material respect adversely affect any rights of the District under this Lease. In the event Leasehold Mortgagee exercises its remedy of foreclosure or takes title to Lessee's leasehold estate in the Project through deed in lieu of foreclosure or any other means, Leasehold Mortgagee shall have the right to do so without consent of the District and, from and after the time Leasehold Mortgagee takes such title, the District shall recognize Leasehold Mortgagee (and/or its successors and/or assigns) as the lessee under this Lease.

ECONOMIC INCENTIVE

10) Loan from District. Upon the Commencement Date, the District agrees to loan Lessee the sum of One Million Seven Hundred and Fifty Thousand Dollars (\$1,750,000) (the "Base Loan Amount"), subject to adjustment pursuant to Section 10(b) (the "Loan"), upon the following terms and conditions:

a) The Adjusted Loan Amount (defined below) shall be advanced by the District to Lessee on the Commencement Date.

b) The Base Loan Amount assumes Total Construction Costs for the Project of \$6,000,000, and if Total Construction Costs for the Project exceed or are less than \$6,000,000,

then the Base Loan Amount shall be increased or decreased by 10% of the difference, not to exceed \$100,000 in the aggregate (the “**Adjusted Loan Amount**”). For clarification and as an example only, if Total Construction Costs are \$6,700,000 instead of \$6,000,000, then upon completion of the Project, the District shall loan Lessee an additional \$70,000, being 10% of the overage, and if Total Construction Costs are \$5,300,000 instead of \$6,000,000, then a principal reduction payment of \$70,000 shall be due by Lessee to the District upon completion of the Project. As used herein the term “**Total Construction Costs**” means the sum of all actual construction costs expended for the design and physical construction of the Project, including, but not limited to, architectural fees, engineering fees, and costs related to buildings; parking; infrastructure (for example, water, sewer, gas, electric, drainage, data delivery, etc.); landscaping; improvements to aid access and circulation; lighting; etc. Hard Construction Costs will not include legal expenses, but will include overhead and labor expenses related to physical improvements installed by the owner or third parties and profit amounts included in construction fees paid to third party contractors. Overhead expenses and profit amounts paid to all parties shall not exceed 5% of the Total Construction Costs in the aggregate.

c) Interest shall accrue on all amounts advanced by the District to Lessee at the rate of 4% per annum, from the date of advance until paid, with quarterly payments of accrued interest and principal amortized over a 25 year period with the first payment due commencing upon the first day of the month following the six month anniversary of delivery of the Project Completion Notice to the District, and with a maturity date that is 20 years after the Commencement Date. The Loan will be evidenced by a promissory note in the form attached hereto as Exhibit E (the “**Note**”). TPT Funds (as defined in Section 11 below) shall be applied against any amounts due under the Note upon the terms set forth in the Note. In the event of any conflict between this Agreement and the Note regarding the payment of the Adjusted Loan Amount, the terms of the Note shall control.

d) The Note will be personally guaranteed by Ross Rulney and Lisa Rulney, husband and wife pursuant to the Guaranty attached as Exhibit F (the “**Guaranty**”).

e) At the request of Leasehold Mortgagee (including, without limitation, Existing Lender), concurrently with the advance of the loan evidenced by the Note, the District shall enter into documentation mutually acceptable to the District and Leasehold Mortgagee in order to subordinate its payment rights and lien priority (as applicable) to the rights of Leasehold Mortgagee, in form and substance mutually acceptable to the District and the Leasehold Mortgagee, provided that in no event shall Leasehold Mortgagee be entitled to the receipt of, or have any interest in, TPT Funds. In addition, at the election of Leasehold Mortgagee, the Loan may be cross-defaulted with the Loan evidenced by and secured by the Leasehold Mortgage.

11) **Sinking Fund.** Within 30 days of the OOE, the District shall establish and maintain a “**Sinking Fund**” into which shall be deposited the Applicable Percentage (defined below) of the TPT Funds (“**Rebates**”) (which Rebates include construction sales taxes) actually received by the District from the ADOR as a direct result of payments actually made by all owners, contractors, subcontractors, tenants, sub-tenants or other occupants of the Project (each a “**Tenant**”) required to pay transaction privilege taxes to ADOR. The term “**Applicable Percentage**” shall mean from the OOE until the Sunset Date 100% of the Rebates, subject to the Rebate Termination Date

(defined below). The Sinking Fund shall be the sole source of funds for the Rebates.

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

b) Except as otherwise provided herein, the Rebates shall be held in a separate FDIC insured account established by the District solely for the purpose described in this Section 11 and shall not be commingled with the District's general funds. The Rebates shall belong to the District and Lessee shall have no interest therein, except it shall have a contractual right to receive credit such amounts pursuant to this Section 11.

c) The Lessee shall not be entitled to receive any benefit of the Rebates unless and until (i) the issuance of an initial certificate of occupancy for the Project, (ii) any and all construction loans associated with the Project have been paid in full, converted to permanent financing, or replaced with a permanent loan as permitted under [Section 9(e)(iii) and 9(n), including subparts] and any and all construction or related liens on the Project have been released ("**Project Completion Conditions**"). Lessee shall provide to District written notice and evidence of the satisfaction of the Project Completion Conditions ("**Project Completion Notice**").

d) Commencing on the first business day of the fourth full month after delivery of the Project Completion Notice and continuing quarterly thereafter until Rebate Termination Date (defined below), the District shall provide Lessee with a summary of the Rebates received by the District from ADOR during the preceding three months ("**Quarterly Summary**").

e) Until the Rebate Termination Date (defined below), provided that the District actually receives TPT Funds from ADOR, the District shall hold in the Sinking Fund all TPT Funds generated by the Project up to but not exceeding all principal and accrued interest due under the Loan not previously paid from the Sinking Fund (the "**Rebate Cap**"), it being the parties' intention that Lessee shall be permitted to utilize TPT Funds generated by the Project, if available, to pay all debt service due under the Loan. Commencing on the Effective Date and continuing quarterly thereafter, Lessee will provide the District with an itemized summary of the actual Total Construction Costs expended on the Project for the District's reasonable review and approval. Following completion of the Project, the District and Lessee shall set forth in writing the total amount of the Rebate Cap.

f) Notwithstanding anything to the contrary herein, Lessee's right to receive any benefit from the Rebates shall continue only until the earlier of (i) the Sinking Fund's balance equals the full Rebate Cap; (ii) the date the District ceases receiving TPT funds from ADOR; (iii) the Sunset Date; or (iv) the date the Lease is terminated and fee ownership of the Property is conveyed to a private party in contravention of A.R.S. §48-4204(B) (the "**Rebate Termination Date**").

g) Subject to the Lessee's option to purchase (described below) upon Rebate Termination Date, the Sinking Fund shall terminate, and any remaining balance shall be paid to the District's general operating fund.

PURCHASE BY LESSEE

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

13) **Exercise of Option.** Provided that Lessee is not in default under this Agreement, the Purchase Option may be exercised by Lessee giving the District the Option Exercise Notice at any time after the Effective Date and prior to 5:00 p.m., Tucson, Arizona local time before the expiration of the Term; provided, however that notwithstanding any language herein to the contrary, if Lessee has not timely exercised the Option before expiration of the Term then District shall give written notice to Lessee of the need to exercise the Option and pursuant to A.R.S. §42-6206 (C), Lessee must exercise the Purchase Option and District must convey title to Lessee so that title to the Project vests in Lessee no later than 12 months following the expiration of the Lease Term. The date upon which such Option Exercise Notice is delivered to the District shall be deemed the "**Option Exercise Date.**" Notwithstanding the foregoing, if there are any Leasehold Mortgagees, Lessee (and any Successor Owner whose interest in the Project is encumbered with a Leasehold Mortgage) may not exercise, terminate, modify or waive its Purchase Option under this Section 13 without the prior written approval of the Leasehold Mortgagees, except to the extent Lessee exercises its Purchase Option and the lien of the Leasehold Mortgagees encumbers the resulting fee interest of Lessee (and any Successor Owner), and the District will not recognize, accept or consent thereto without such approval.

14) **Option Purchase Price.** The Option purchase price for the Project shall be the balance of all unpaid monetary obligations due to the District from Lessee under the Lease, plus the greater of (i) \$1,000, or (ii) the outstanding and unpaid balance of the Note (the "**Option Purchase Price**").

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

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

Term pursuant to the Option Purchase Agreement and Sections 3, 4, 5, 6, 7 and 8 of this Agreement as modified as may be necessary for such purpose. The Option Purchase Agreement shall obligate the District to convey the Project to Lessee subject only to the Closing Title Exceptions.

17) **Personal Guaranty.** Ross Rulney and Lisa Rulney, husband and wife ("Rulney") shall personally guaranty all of the Lessee's obligations hereunder as more specifically set forth in attached Exhibit F.

18) **General Provisions.**

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

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

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

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

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

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

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

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

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

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

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

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

ii) *If to Lessee:* Julian Drew Lofts, LLC, 6340 N. Campbell Ave., Suite 170, Tucson, AZ 85718, with copies to Ted Hinderaker, Hinderaker Rauh & Weisman PLC, 2401 E. Speedway Blvd., Tucson, Arizona 85719, and Traci Riccitello, Riccitello Law Firm, 3849 E. Broadway Blvd., #239, Tucson, Arizona 85716.

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

m) **Israel Boycott Certification.** If and to the extent that ARS § 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 ARS § 35-393.

n) **Event of Default/ Notice and Cure.** The happening of any one of the following events (herein called "Events of Default") shall be considered a material breach and default by Lessee under this Lease:

i. Monetary Default. If default shall be made in the due and punctual payment of any monetary amounts due under the Lease or under the Note and such default continues for 15 calendar days after written notice from the District following the due date (a "Monetary Default"); or

ii. Non-Monetary Default. If default shall be made by Lessee in the performance of or compliance with any of the covenants, agreements, terms, limitations, or conditions hereof other than those referred to in the foregoing subsection (A), and such default shall continue for a period of 30 days after written notice thereof from District to Lessee (provided, that if Lessee proceeds with due diligence during such 30 day period to

substantially cure such default and is unable by reason of the nature of the work involved, to cure the same within the required 30 days, its time to do so shall be extended by the time reasonably necessary to cure the same as reasonably determined by District, but in no event shall such time be extended beyond 90 days after the date of written notice) (a “Non-Monetary Default”); or

iii. Bankruptcy, Voluntary. If Lessee 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 Lessee shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Lessee or of all or any substantial part of its properties, or shall make any general assignment for the benefit of creditors

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

o. **Termination.** Upon the occurrence of one or more of the Events of Default listed in Section 18 (n), but not after such default is cured (subject to Lessee’s cure of the Event of Default, exercise of its Purchase Option prior to the expiration of the applicable grace period, and payment of the Option Purchase Price), this Lease and the and all rights of Lessee under this Lease shall expire and terminate as though such date were the date originally set forth herein for the termination hereof; provided, however, that District shall re-convey the Project to Lessee by Special Warranty Deed subject to the Closing Title Exceptions and to payment of the Purchase Price.

19) **Condemnation.** If a portion of the Project shall be taken or condemned by any competent authority for any public use or purpose under any statute or by right of eminent domain, or by a private purchase in lieu thereof under threat of such eminent domain proceedings, and if following such taking or private purchase the retail or residential elements of the Project would not be permitted to operate or continue in substantially the same manner as prior to such taking or private purchase (a “Major Taking”) , then in either of such events, in the District’s reasonable discretion, this Lease shall expire on the date when the Project shall be so taken and the Rent shall be prorated as of that date. Notwithstanding anything to the contrary contained herein, if the taking is a Major Taking, then in the District’s discretion Lessee shall be required to exercise its Purchase Option hereunder prior to the date of the taking, and condemnation awards shall be paid in the following priority: first, to Lessor for any unpaid Option Purchase Price; and second, to Lessee for any remaining amounts payable. If the taking is not a Major Taking, then in the District’s reasonable discretion condemnation proceeds shall first be applied to reduce amounts due under the Note, but the Lease shall continue in full force and effect.

20) **Damage or Destruction.**

a. **Lessee Repair and Restoration.** If at any time during the Term 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, Lessee, 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, Lessee shall immediately secure the Project and undertake temporary repairs and work necessary to protect the public and to protect the Project from further damage.

b. **Payment of Insurance Proceeds.** All insurance proceeds on account of such damage or destruction under the policies of insurance provided for in Section 9, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof shall be paid to the Lessee.

c. **Failure to Commence Repairs.** If Lessee is required to restore the Project pursuant to Section 20(a) above and the design work for such restoration shall not have been commenced within 60 days after the date of the damage or destruction, or if such work is not completed within 18 months after completion of such design, Lessor may terminate this Lease in which case Lessee shall be required to exercise its Purchase Option.

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

e. **Substantial Damage at End of Term.** If the Project is materially damaged or destroyed by fire or other casualty at any time during the last five years of the Term, either Lessor or Lessee may, on 60 days' written notice, terminate this Lease, in which case Lessee shall be required to exercise its Purchase Option and title to the Project shall be conveyed to Lessee who shall take the Project in an "as is" condition.

[SIGNATURES ON FOLLOWING PAGE]

[SIGNATURE PAGE TO PURCHASE LEASE OPTION AGREEMENT]

Julian Drew Lofts, LLC
an Arizona limited liability company

By:  _____
Ross Rulney, Manager

RIO NUEVO MULTIPURPOSE FACILITIES
DISTRICT

By: _____
Fletcher McCusker, Chairman

By: _____
Mark Irvin, Secretary

[SIGNATURE PAGE TO PURCHASE LEASE OPTION AGREEMENT]

Julian Drew Lofts, LLC
an Arizona limited liability company

By: _____
Ross Rulney, Manager

RIO NUEVO MULTIPURPOSE FACILITIES
DISTRICT

By: _____
Fletcher McCusker, Chairman

By: _____
Mark Irvin, Secretary

Exhibit A
Legal Description for Property

JULIAN DREW LOFTS LEGAL DESCRIPTION

[Owned by Julian Drew Lofts, LLC - Pima County Parcel ID 117-17-0020]

Lot 2, Block 256, of the City of Tucson, according to the map or plat of record in the Pima County Recorder's Office in Book 3 of Maps and Plats at Page 70, also known as Book 3 of Maps and Plats at Page 24.

JULIAN DREW BUILDING LEGAL DESCRIPTION

[Owned by The Lewis Hotel, L.L.C. - Pima County Parcel ID 117-17-0010]

Lot 1, Block 256, of the City of Tucson, according to the map or plat of record in the Pima County Recorder's Office in Book 3 of Maps and Plats at Page 70, also known as Book 3 of Maps and Plats at Page 24.

CARRIAGE HOUSE LEGAL DESCRIPTION

[Owned by The Lewis Hotel, L.L.C. - Pima County Parcel ID 117-17-0090]

Lot 6 and the North 6 inches of Lot 7, Block 256, of the City of Tucson, according to the map or plat of record in the Pima County Recorder's Office in Book 3 of Maps and Plats at Page 70, also known as Book 3 of Maps and Plats at Page 24.

Exhibit B
Special Warranty Deed (from Lessee to District)

WHEN RECORDED, RETURN TO:

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

SPECIAL WARRANTY DEED

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

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

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

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

[SIGNATURE AND NOTARY PAGE FOLLOWS]

GRANTOR:

JULIAN DREW LOFTS, LLC
an Arizona limited liability company

By: _____
Ross Rulney, Manager

STATE OF ARIZONA)
)
County of _____)

The foregoing instrument, Special Warranty Deed, consisting of _____ pages, including this page and exhibits, was acknowledged before me this _____ day of _____, 20__, by Ross Rulney, the Manager of JULIAN DREW LOFTS, LLC, an Arizona limited liability company, on behalf of the company.

WITNESS my hand and official seal.

Notary Public

(Affix Notary Seal Here)

Exhibit A

Legal Description for Property

JULIAN DREW LOFTS LEGAL DESCRIPTION

[Owned by Julian Drew Lofts, LLC - Pima County Parcel ID 117-17-0020]

Lot 2, Block 256, of the City of Tucson, according to the map or plat of record in the Pima County Recorder's Office in Book 3 of Maps and Plats at Page 70, also known as Book 3 of Maps and Plats at Page 24.

JULIAN DREW BUILDING LEGAL DESCRIPTION

[Owned by The Lewis Hotel, L.L.C. - Pima County Parcel ID 117-17-0010]

Lot 1, Block 256, of the City of Tucson, according to the map or plat of record in the Pima County Recorder's Office in Book 3 of Maps and Plats at Page 70, also known as Book 3 of Maps and Plats at Page 24.

CARRIAGE HOUSE LEGAL DESCRIPTION

[Owned by The Lewis Hotel, L.L.C. - Pima County Parcel ID 117-17-0090]

Lot 6 and the North 6 inches of Lot 7, Block 256, of the City of Tucson, according to the map or plat of record in the Pima County Recorder's Office in Book 3 of Maps and Plats at Page 70, also known as Book 3 of Maps and Plats at Page 24.

Exhibit C
Memorandum of Lease

When Recorded Return To:

Mark Collins
Gust Rosenfeld PLC
One S. Church Avenue, Suite 1900
Tucson, AZ 85701-1627

MEMORANDUM OF LEASE

DATE: _____, 20__

PARTIES: **RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT**,
a tax levying special facilities district of the State of Arizona
400 W. Congress #152
Tucson, Arizona 85701 ("Lessor")

JULIAN DREW LOFTS, LLC,
an Arizona limited liability company
6340 N. Campbell Ave., Suite 170
Tucson, Arizona 85718
("Lessee")

1. Lessor has leased to Lessee, and Lessee has leased from Lessor, pursuant to a Purchase, Lease, and Option Agreement dated _____, 20__ (the "Lease"), certain land and improvements more particularly described on Exhibit A attached hereto (the "Project").

2. The Project will be subject to the Government Property Lease Excise Tax as provided for under A.R.S. §42-6202 (A) and (B) (the "GPLET").

3. The term of the Lease is for a Term of 25 years from the Commencement Date (which occurs upon delivery of the Project Completion Notice (as such term is defined in the

4. Lease) to Lessor by Lessee) unless terminated or cancelled earlier in accordance with the terms of the Lease.

5. The Lease contains an option to purchase in favor of the Lessee regarding the Project.

6. All other terms, conditions and agreements contained 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 Lessor and Lessee.

7. Section 9 (n) and (o) of the Lease contains rights for Leasehold Mortgagees of the Property.

8. 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.

SIGNATURES ON FOLLOWING PAGES

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

“Lessor”

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

By: _____
Name: _____
Its: _____

ATTEST:

By: _____
Name: _____
Its: _____

STATE OF ARIZONA)

)
County of Pima)

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

WITNESS my hand and official seal.

Notary Public

(Affix Notary Seal Here)

County of Pima)
)

WITNESS my hand and official seal.

(Affix Notary Seal Here)

“Lessee”

JULIAN DREW LOFTS, LLC
an Arizona limited liability company

By: _____
Ross Rulney, Manager

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 Ross Rulney, the Manager of **JULIAN DREW LOFTS, LLC**, an Arizona limited liability company, on behalf of the company.

WITNESS my hand and official seal.

Notary Public

(Affix Notary Seal Here)

Exhibit A

Legal Description for Property

JULIAN DREW LOFTS LEGAL DESCRIPTION

[Owned by Julian Drew Lofts, LLC - Pima County Parcel ID 117-17-0020]

Lot 2, Block 256, of the City of Tucson, according to the map or plat of record in the Pima County Recorder's Office in Book 3 of Maps and Plats at Page 70, also known as Book 3 of Maps and Plats at Page 24.

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Exhibit D
Option Purchase Agreement & Escrow Instructions

OPTION PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

This Option Purchase Agreement and Escrow Instructions ("**Option Purchase Agreement**") is entered into as of _____, 20__ ("**Effective Date**") by, between and between Julian Lewis Lofts, LLC, an Arizona limited liability company ("**Purchaser**") and Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona (the "**District**"). Purchaser and the District may collectively be referred to as the "**Parties**" or each, individually, as a "**Party**."

BACKGROUND

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

A. On or about October__, 2019, Purchaser and the District executed a Purchase/Lease/Option Agreement ("**Original Agreement**") pursuant to which Purchaser conveyed to the District the property described on Exhibit A (the "**Property**"), which Purchaser has developed in material compliance with the Original Agreement (the "**Project**").

B. The Original Agreement granted Purchaser a Purchase Option pursuant to which Purchaser could purchase the Property and the Project in accordance with the terms of this Option Purchase Agreement.

C. All terms defined in the Original Agreement shall have the same meaning in this Option Purchase Agreement except as otherwise provided herein.

AGREEMENTS

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

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

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

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

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

2) **Purchase Price.** The purchase price for the Property shall be the Option Purchase Price as set forth in Paragraph 14 of the Original Agreement ("**Purchase Price**").

3) **Title & Escrow.**

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

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

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

d) **Closing & Closing Date.** The closing of the transaction (the "**Closing**") described herein shall occur before 5:00 PM of the 30th business day after the Option Exercise Date at the offices of the Escrow Agent or at such other date, time, and place as the Parties may hereinafter agree (the "**Closing Date**") in accordance with the terms and conditions of this Option Purchase Agreement. The Parties acknowledge and agree that TIME SHALL BE OF THE ESSENCE with respect to the performance by the Parties of their obligations under this Option Purchase Agreement and to consummate the transactions contemplated in this Option Purchase Agreement on the Closing Date. For the purposes of this Option Purchase Agreement, any date to which the Parties agree to adjourn the Closing pursuant to the terms of this Option Purchase Agreement shall be deemed the "Closing Date" hereunder.

4) **Representations and Warranties.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b) **Intentionally Omitted.**

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

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

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

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

b) **Intentionally Omitted.**

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

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

7) **Closing.**

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

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

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

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

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

9) **General Provisions.**

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

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

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

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

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

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

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

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

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

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

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

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

i) *If to Purchaser:* Julian Drew Lofts, LLC, 6340 N. Campbell Ave., Suite 170, Tucson, AZ 85718, with copies to Ted Hinderaker, Hinderaker Rauh & Weisman PLC, 2401 E. Speedway Blvd., Tucson, Arizona 85719, and Traci Riccitello, Riccitello Law Firm, 3849 E. Broadway Blvd., #239, Tucson, Arizona 85716.

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

RIO NUEVO MULTIPURPOSE FACILITIES
DISTRICT

By: _____
Name: Fletcher McCusker
Its: Chairman
By: _____
Name: Mark Irvin
Its: Secretary

JULIAN LEWIS LOFTS, LLC

By: _____
Name: Ross Rulney
Its: Manager

Exhibit E
Promissory Note

PROMISSORY NOTE

\$ _____ Tucson, Arizona
_____, 20__

1. DEFINITIONS. The following terms will be used as defined terms in this Promissory Note (as it may be amended, modified, extended and renewed from time to time, the "Note"):

Payee: Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona.

Maker: Julian Drew Lofts, LLC, an Arizona limited liability company.

Principal Amount: \$ _____

Stated Interest Rate: 4% interest per annum.

Default Interest Rate: 8% interest per annum, compounded annually.

Maturity Date: _____, [_____, 20__], being 20 years after the date of this Note.

Loan: The loan from Payee to Maker in the Principal Amount and evidenced by this Note

Loan Documents: This Note, the Personal Guaranty, and the Lease Agreement.

Lease Agreement: That Certain Purchase/Lease/ Option Agreement dated December__, 2019 by and between Maker and Payee whereby Maker constructs and improves the Project, sells the Project to Payee and leases the Project from Payee for a term of 25 years, with an option to re-purchase.

Personal Guaranty: That certain Personal Guaranty of even date herewith by Ross Rulney and Lisa Rulney, husband and wife.

Project: A parking lot upon which Maker will construct approximately 4,142 square feet of retail space on the ground floor [with two floors of apartments above the retail space], plus two, two story buildings on the real property generally referred to as 140 E. Broadway Boulevard, Tucson, AZ 85701 and as more particularly described in the Lease Agreement.

2. PROMISE TO PAY. For value received, Maker promises to pay to Payee, at 400 West Congress, Suite 152, Tucson, Arizona 85701, or at such other place as the Payee may from time to time designate in writing, the Principal Amount, together with interest from the date hereof on the unpaid principal balance at the Stated Interest Rate.

3. INTEREST; PAYMENTS.

(a) Maker and Payee are parties to the Lease Agreement, whereby Payee is obligated to pay to Maker the TPT Funds (the "TPT Funds") Payee actually receives from the State of Arizona that are generated from the Project that is the subject of this Loan during the period of time and upon the terms and conditions set forth in the Lease Agreement (the "Rebates"). The Lease Agreement provides that Payee shall hold the Rebates in a "Sinking Fund" until such time as the Rebates are payable to Maker. Until the earlier of (i) payment of this Note in full, or (ii) receipt of TPT Funds equaling the Rebate Cap (as defined in the Lease Agreement), Maker authorizes Payee to apply any Rebates from the Sinking Fund to the amounts due hereunder in the manner set forth below.

(b) The Loan amount evidenced by this Note shall be amortized over a 25 year period commencing upon the date hereof. The first payment hereunder is due on the first day of the month following the six month anniversary of the completion of the Project, as evidenced by a certificate of occupancy for the Project, and on the first day of each quarter thereafter. Upon the receipt of the C of O and the payment of Rebates, Payee shall apply the balance of the Rebates in the Sinking Fund against the quarterly payment then due. Payee shall notify Maker of any additional amount due, and Maker shall make such payment within five business days after receipt of the Payee's notice. If the amount of Rebates for any quarter exceeds the amount of the quarterly payment then due, such excess amount shall be applied at Maker's option to either (i) prepay or reduce principal due hereunder, or (ii) apply against the next quarterly payment.

(c) The balance of the principal amount due, together with accrued and unpaid interest and any other amounts due under this Note, shall be due and payable on the date that is the first day of the month following the date that is 20 years from the date hereof, or upon earlier maturity hereof whether by acceleration or otherwise (the "Maturity Date").

(d) Absent an Event of Default hereunder or other Loan Documents, interest shall accrue upon the unpaid Principal Amount at the Stated Interest Rate. Throughout the term of this Note, interest shall be calculated on a 365-day year with respect to the unpaid balance of the Principal Amount and, in all cases, shall be computed for the actual number of days in the period for which interest is charged.

(e) All payments of principal and/or interest due hereunder shall be made (i) without deduction of any present and future taxes, levies, or withholdings, which amounts shall be paid by Maker, and (ii) without other right of set off.

(f) The entire balance of the Principal Amount and any accrued but unpaid interest is due and payable on or before the Maturity Date.

4. **PREPAYMENT.** Maker may prepay the Loan, in whole or in part, without penalty or premium at any time. In no event shall Maker be entitled to reborrow any amounts prepaid.

5. **LAWFUL MONEY.** Principal and interest are payable in lawful money of the United States of America.

6. **APPLICATION OF PAYMENTS/LATE CHARGE/ DEFAULT INTEREST.**

(a) Absent the occurrence of an Event of Default, as defined in the Lease, any payments received by Payee shall be applied first to sums, other than principal and interest, due Payee pursuant to the Loan Documents, next to the payment of all interest accrued to the date of such payment, and the balance, if any, to the payment of principal. Any payments received by Payee after an Event of Default, shall be applied to the amounts specified in this Paragraph 6(a) in such order as the Payee may, in its reasonable discretion, elect.

(b) If any payment of interest and/or principal is not received by Payee when due and the Monetary Default is not timely cured as provided in Section 18 (o) of the Lease, then, in addition to the remedies available under the Loan Documents or at law or equity, in Payee's sole discretion, interest shall thereafter accrue on the outstanding Principal Amount of this Note at the Default Rate (instead of the Stated Interest Rate) until paid. However, notwithstanding any language herein to the contrary, Payee shall not have the right to accelerate amounts due under this Note until after the expiration of any grace periods set for the in Section 18(n) of the Lease Agreement.

7. **GUARANTY.** Maker's obligations under this Note are guaranteed by Ross Rulney and Lisa Rulney, husband and wife, pursuant to the terms of the Personal Guaranty.

8. **EVENT OF DEFAULT.**

The occurrence of any of the following shall be deemed to be an event of default ("Event of Default") hereunder:

(a) the failure to timely make any payment required under any Loan Document within 15 days after notice from Holder, except that a failure to pay the Note in full on or before the Maturity Date shall constitute an immediate Event of Default; or

(b) the occurrence of an event of default under any of the other Loan Documents; or

9. **REMEDIES.** Upon the occurrence of an Event of Default and termination of the Lease by Payee as allowed in Section 18(o) of the Lease, then at the option of Payee, the entire balance of

principal together with all accrued interest thereon, and all other amounts payable by Maker under the Loan Documents shall, without demand or notice, immediately become due and payable. Upon the occurrence of an Event of Default (and so long as such Event of Default shall continue), the entire principal balance and all other amounts due under the Loan Documents shall accrue interest at the Default Interest Rate subject to the limitations contained in Paragraph 14 hereof. No delay or omission on the part of the Payee in exercising any right under this Note or under any of the other Loan Documents hereof shall operate as a waiver of such right.

10. WAIVER. Maker, endorsers, guarantors, and sureties of this Note hereby (i) a) agree to be jointly and severally bound; (b) severally waive any exemption right against said debt; (c) severally waive the benefit of the provisions of Arizona Revised Statutes Sections 12-1641 through 12-1646, and of Arizona Rule of Civil Procedure 17(f); and (d) waive diligence, demand for payment, presentment for payment, protest, notice of nonpayment, notice of protest, notice of intent to accelerate, notice of acceleration, notice of dishonor, and notice of nonpayment, and all other notices or demands of any kind (except notices specifically provided for in the Loan Documents) and expressly agree that, without in any way affecting the liability of Maker, endorsers, guarantors, or sureties, Payee may extend any maturity date or the time for payment of any installment due hereunder, otherwise modify the Loan Documents, accept additional security, release any person or entity liable, and release any security or guaranty.

11. CHANGE, DISCHARGE, TERMINATION, OR WAIVER. No provision of this Note may be changed, discharged, terminated, or waived except in a writing signed by the party against whom enforcement of the change, discharge, termination, or waiver is sought. No failure on the part of the Payee to exercise and no delay by the Payee in exercising any right or remedy under this Note or under the law shall operate as a waiver thereof.

12. ATTORNEYS' FEES. If any action is brought by any Party in respect to its rights under this Note, the successful Party shall be entitled to reasonable attorneys' fees and court costs as determined by the court.

13. SEVERABILITY. If any provision of this Note is unenforceable, the enforceability of the other provisions shall not be affected and shall remain in full force and effect.

14. INTEREST RATE LIMITATION. Maker hereby agrees to pay an effective rate of interest that is the sum of the interest rate provided for herein, together with any additional rate of interest resulting from any other charges of interest or in the nature of interest paid or to be paid in connection with the Loan pursuant to the provisions of the Loan Documents. Payee and Maker agree that none of the terms and provisions contained herein or in any of the Loan Documents shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate exceeding the maximum interest rate permitted to be charged by the laws of the State of Arizona. In such event, if the Payee of this Note shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate on this Note to a rate in excess of the maximum rate permitted to be charged by the laws of the State of Arizona, all such sums deemed to constitute interest in excess of such maximum rate shall, at the option of Payee, be credited to the payment of other amounts payable under the Loan Documents or returned to Maker.

15. NUMBER AND GENDER. In this Note the singular shall include the plural and the masculine shall include the feminine and neuter gender, and vice versa.

16. HEADINGS. Headings at the beginning of each numbered section of this Note are intended solely for convenience and are not part of this Note.

17. CHOICE OF LAW. This Note shall be governed by and construed in accordance with the laws of the State of Arizona without giving effect to conflict of laws principles. Any action to enforce or interpret this Note shall be brought in a court of proper jurisdiction in Pima County, Arizona.

18. INTEGRATION. The Loan Documents contain the complete understanding and agreement of the Payee and Maker and supersede all prior representations, warranties, agreements, arrangements, understandings, and negotiations. This Note and the Loan Documents shall not be construed for or against any party.

19. BINDING EFFECT. The Loan Documents will be binding upon, and inure to the benefit of, the Holder, Maker, and their respective successors and assigns. Maker may not delegate its obligations under the Loan Documents.

20. TIME OF THE ESSENCE. Time is of the essence with regard to each provision of the Loan Documents as to which time is a factor.

21. SURVIVAL. The representations, warranties, and covenants of the Maker in the Loan Documents shall survive the execution and delivery of the Loan Documents and the making of the Loan.

22. PREFERENTIAL PAYMENT. Maker agrees that to the extent Maker or any other surety or principal of Maker makes any payment to Payee in connection with the indebtedness evidenced by this Note, and all or any part of such payment is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid by Payee or paid over to a trustee, receiver or any other entity, whether under any bankruptcy act or otherwise (any such payment is hereinafter referred to as a "Preferential Payment"), then the indebtedness of Maker under this Note will continue or will be reinstated, as the case may be, and, to the extent of such payment or repayment by Payee, the indebtedness evidenced by this Note or part thereof intended to be satisfied by such Preferential payment will be revived and continue in full force and effect as if said Preferential Payment had not been made.

23. BUSINESS LOAN. Maker represents and covenants to Payee that this loan is being used solely for commercial business purposes and not for consumer purposes.

SIGNATURE ON FOLLOWING PAGE

Maker:

Julian Drew Lofts, LLC
an Arizona limited liability company

By: _____
Ross Rulney, Manager

Exhibit F

Ross and Lisa Rulney Personal Guaranty

PERSONAL GUARANTY

FOR VALUABLE CONSIDERATION, Ross Rulney and Lisa Rulney, husband and wife (collectively, "Guarantor"), unconditionally guaranty and promise to pay to the Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona ("**District**"), on demand, in lawful money of the United States, any and all sums and indebtedness due and owing to the District under (i) that certain Purchase, Lease, and Option Agreement ("**Agreement**") dated _____, 2019, executed by Julian Drew Lofts, LLC, an Arizona limited liability company ("**Lessee**") and (ii) that certain Promissory Note of even date herewith in the original principal amount of \$ _____ executed by Lessee in favor of the District (the "**Note**"). In addition, Guarantor agrees as follows:

1. As used herein "indebtedness" includes, without limitation, any and all debts, monetary obligations and liabilities of Lessee under the Agreement and the Note, whether voluntary or involuntary, and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, or whether recovery upon such indebtedness or obligations may be or hereafter becomes barred by any statute of limitations or any other law, or whether such indebtedness or obligations may be or hereafter become otherwise unenforceable.

2. Guarantor's obligations under this Guaranty are absolute and unconditional.

3. Following an Event of Default under the Agreement or Note, and after applicable notice and cure periods, Guarantor shall pay and perform, on demand, all obligations due under the Agreement if they are not timely paid or performed as provided therein.

4. The obligation hereunder is independent of the obligation of Lessee under the Agreement, and a separate action or actions may be brought and prosecuted against Guarantor whether or not an action is brought against Lessee under the Agreement or the Note.

5. Guarantor authorizes District, without notice or demand and without affecting his liability hereunder, from time to time, to renew, extend or otherwise change the time for payment or the terms of the indebtedness or other obligations under the Agreement, or any part thereof.

6. Guarantor waives any right to require District to proceed against Lessee under the Agreement prior to proceeding against Guarantor under this Guaranty, including the right to require District to proceed against any security held by District. Guarantor hereby expressly waives any defense he may have in any action brought upon this Guaranty to recover a deficiency in the amount due under the indebtedness secured hereby, and this waiver shall be effective even if Guarantor does not have subrogation rights or the right to proceed against the Lessee for reimbursement. Guarantor further waives any defense arising by reason of any disability or other defense of Lessee or by reason of the cessation from any cause whatsoever of the liability of Lessee. Until all indebtedness due under the Agreement shall have been paid in full, Guarantor shall have no right of subrogation, and hereby waives any right to enforce any remedy which

District now has or may hereafter have against Lessee and also waives any benefit of, and any right to participate in, any security now or hereafter held by District. Except as otherwise provided in this Guaranty, Guarantor hereby waives demand for performance, notice of non-performance and notice of acceptance of this Guaranty and of the existence or creation of any new or additional indebtedness; provided, however, this Guaranty shall not release District of its obligations of mitigation required under Arizona law.

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

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

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

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

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

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

13. This Guaranty and all rights, obligations and liabilities arising hereunder shall be governed by and construed in accordance with the laws of the State of Arizona and any action to enforce or interpret this Guaranty shall be brought in Pima County, Arizona.

IN WITNESS WHEREOF, the undersigned have hereunto executed this Personal Guaranty to be effective as of the ____ day of _____, 20__.

Ross Rulney, a married man

Lisa Rulney, a married woman

When Recorded Return To:
Mark Collins
Gust Rosenfeld PLC
One S. Church Avenue, Suite 1900
Tucson, AZ 85701-1627

MEMORANDUM OF LEASE

DATE: _____, 20__

PARTIES: **RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT**,
a tax levying special facilities district of the State of Arizona
400 W. Congress #152
Tucson, Arizona 85701 ("Lessor")

JULIAN DREW LOFTS, LLC,
an Arizona limited liability company
6340 N. Campbell Ave., Suite 170
Tucson, Arizona 85718
("Lessee")

1. Lessor has leased to Lessee, and Lessee has leased from Lessor, pursuant to a Purchase, Lease, and Option Agreement dated _____, 20__ (the "Lease"), certain land and improvements more particularly described on Exhibit A attached hereto (the "Premises").

2. The Premises will be subject to the Government Property Lease Excise Tax as provided for under A.R.S. §42-6202 (A) and (B) (the "GPLET").

3. The Lease Term is 25 years from the Commencement Date (which occurs upon delivery of the Project Completion Notice (as such term is defined in the Lease) to Lessor by Lessee) unless terminated or cancelled earlier in accordance with the terms of the Lease.

4. The Lease contains an option to purchase in favor of the Lessee regarding the Premises.

5. All other terms, conditions and agreements contained 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 Lessor and Lessee.

6. Section 9 (n) of the Lease contains rights for Leasehold Mortgagees of the Property.

7. 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.

SIGNATURES ON FOLLOWING PAGES

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

"Lessor"

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

By:

Name:

Its:



Fletcher McCusker
Chairman

ATTEST:

By:

Name:

Its:


Mark Irvin
Secretary

STATE OF ARIZONA)

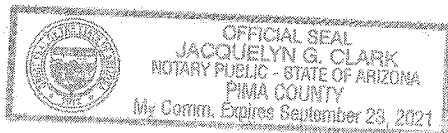
County of Pima)

The foregoing instrument, Memorandum of Lease, consisting of 5 pages, including this page and exhibits, was acknowledged before me this 17th day of December, 2019, by Fletcher McCusker, the Chairman of Rio Nuevo Multipurpose Facilities District, an Arizona tax levying special facilities district, on behalf of the district.

WITNESS my hand and official seal.


Notary Public

(Affix Notary Seal Here)




STATE OF ARIZONA)

County of Pima)

The foregoing instrument, Memorandum of Lease, consisting of 5 pages, including this page and exhibits, was acknowledged before me this 17th day of December, 2019, by MARK IRVIN, the Secretary of Rio Nuevo Multipurpose Facilities District, an Arizona tax levying special facilities district, on behalf of the district.

WITNESS my hand and official seal.


Notary Public

(Affix Notary Seal Here)



“Lessee”

JULIAN DREW LOFTS, LLC
an Arizona limited liability company

By: _____
Ross Rulney, Manager

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 Ross Rulney, the Manager of **JULIAN DREW LOFTS, LLC**, an Arizona limited liability company, on behalf of the company.

WITNESS my hand and official seal.

Notary Public

(Affix Notary Seal Here)