

ADOPTED BY THE
MAYOR AND COUNCIL

RESOLUTION NO. 20320

RELATING TO RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT; APPROVING AND AUTHORIZING A DEVELOPMENT AGREEMENT WITH BP POST INVESTORS, L.L.C., AND THE RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT FOR THE DEVELOPMENT OF THE POST DEVELOPMENT PROJECT; AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. The Development Agreement for the Post Development Project with BP Post Investors, L.L.C., and the Rio Nuevo Multipurpose Facilities District, attached hereto as Attachment 1, is approved.

SECTION 2. The Mayor shall execute the Development Agreement for and on behalf of the City of Tucson and the City Clerk shall attest to the same.

SECTION 3. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this resolution become immediately

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effective, an emergency is declared to exist and this resolution shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Tucson, Arizona on _____.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

REVIEWED BY:



CITY MANAGER

DLP/tec
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DEVELOPMENT AND PURCHASE AGREEMENT

FOR

BP POST INVESTORS, LLC

THIS DEVELOPMENT AND SALE AGREEMENT ("Agreement") is entered into by and among the RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT ("District"), a political subdivision of the State of Arizona, the CITY OF TUCSON ("City"), a municipal corporation, and BP POST INVESTORS, LLC, an Arizona limited liability company ("Developer"). District, City and Developer are sometimes referred to in this Agreement individually as "the Party" or collectively as "the Parties."

RECITALS

A. District is a political subdivision of the State of Arizona. City is a municipal corporation. Developer is an Arizona limited liability company.

B. District and City acknowledge that Developer intends to assign some or all of its rights under this Agreement and a divided or undivided interest in the Property (as defined in Paragraph F below) to an entity that is under common control with Developer (the "Related Entity"). Developer and the Related Entity intend to design and construct an integrated mixed-use project that will include multi-story residential condominiums developed with complementary retail and commercial uses (the "Project"). The Parties acknowledge that the Project is a redevelopment of a development that had been in existence within the prior ten (10) years.

C. District and Bourn Projects, Inc., on behalf of a "company to be incorporated," entered into an Offer to Purchase accepted on June 14, 2004, as authorized by City Ordinance No. 9983 (the "Offer"), attached hereto as **Exhibit "A."** Developer is the "company to be incorporated" as described in the Offer. The Parties now intend that this Agreement shall supersede the Offer and all of the terms and conditions provided therein.

D. District has acquired that certain real property, legally described in **Exhibit "B"** attached hereto, and located at 26 through 72 East Congress Street (the "District Property"). Developer has acquired that certain property located at 20 East Congress Street ("20 East Congress").

E. Developer also may acquire up to three lots currently owned by Chase Bank (the "Bank") located at or around 27 S. Stone Avenue and commonly known as the Bank Parking Lot (the "Bank Property").

F. The District Property, 20 East Congress and the Bank Property may be referred to collectively herein as the "Property."

G. This Agreement acknowledges that the Project may consist of two development phases. "Phase 1" of the Project will include development along Congress Street involving the District Property and 20 East Congress. "Phase 2" of the Project is contingent on the acquisition of the Bank Property and, if it occurs, will involve development of the Bank Property and integration of the Phase 2 development with the Phase 1 development as is architecturally, physically and economically appropriate and feasible.

H. Upon satisfaction of certain terms and conditions in this Agreement, District intends to convey the District Property to Developer.

I. In exchange for conveyance of all or part of the Property and commitments made by District and City herein, Developer agrees to develop the Property pursuant to this Agreement. Attached hereto as **Exhibit "C"** is a "Timeline" that generally identifies the key development and construction benchmarks for the Phase 1 of the Project, which shall be subject to change from time to time upon the mutual agreement of the Parties.

J. This Agreement is intended to be a development agreement between District, City and Developer pursuant to A.R.S. § 9-500.05 for purposes of determining the parties' respective rights and obligations in connection with the purchase and sale and development of the Property.

K. District intends to delegate the authority to manage this Agreement, including the right to grant extensions for contingencies and deadlines therein, to the District's Manager or Director.

L. District and City hereby expressly find and determine that the consideration and commitments herein outlined from Developer, City and District in this Agreement are justified based on the other consideration provided under this Agreement, including without limitation the economic development benefits to the community resulting from this Agreement.

M. This Agreement is subject to the provisions of A.R.S. § 38-511.

AGREEMENT

NOW, THEREFORE, BASED ON THE FOREGOING RECITALS, WHICH ARE INCORPORATED HERE AS THE INTENTION OF THE PARTIES IN ENTERING INTO THIS AGREEMENT, the Parties hereby agree as follows:

1. Purchase and Sale.

1.1 District Property.

1.1.1. **Sale Price.** District will sell the District Property to Developer for \$100.00 upon the Phase 1 Closing (as defined herein).

1.1.2. **Phase 1 Closing.** The "Phase 1 Closing" shall occur upon City's issuance of foundation building permits to Developer or its agents or assigns for Phase 1 of the Project. The Phase 1 Closing shall occur in a time period not to exceed fifteen (15) months from the Effective Date, with four "Contingency Periods" including an initial 6-month period, followed by three 3-month periods. As provided herein, for each Contingency Period, Developer shall provide a refundable deposit or a letter of credit in lieu of cash to District (the "Earnest Money Deposit"), the total of which shall be referred to as the "Phase 1 Earnest Money." The Phase 1 Earnest Money shall be held by District until substantial completion of Phase 1 as established by the issuance of a temporary certificate of occupancy for either a commercial or residential unit, at which time the Earnest Money Deposit shall be refunded to Developer.

1.1.2.1. If Developer meets all of the requirements of any Contingency Period by the deadline for such Contingency Period, Developer shall automatically proceed to the next Contingency Period. If Developer meets all of the requirements of any Contingency Period before the deadline for such Contingency Period, Developer may elect to proceed to the next Contingency Period early by tendering to District the required Earnest Money Deposit and written notification of Developer's election to proceed to the next Contingency Period. If Developer meets all submittal deadlines for any Contingency Period and

works diligently to complete and obtain the required approvals for such submittals, such Contingency Period shall be extended for the time necessary to obtain approval of such submittals and/or required resubmittals as may be necessary to satisfy the requirements of such Contingency Period.

1.1.2.2. If for reasons outside of Developer's control, Developer does not meet all of the requirements of any Contingency Period within the time provided in this Agreement, as such may be extended pursuant to Sections 1.1.2.1 and 1.1.2.4 herein, this Agreement may be cancelled and upon such cancellation, District shall immediately return to Developer all Phase 1 Earnest Money together with any interest earned thereon.

1.1.2.3. If for reasons that are not outside of Developer's control, Developer does not meet all of the requirements of any Contingency Period within the time provided in this Agreement, as such may be extended pursuant to Sections 1.1.2.1 and 1.1.2.4 herein, this Agreement may be cancelled and upon such cancellation, District shall retain all Phase 1 Earnest Money deposited up until that time together with any interest earned thereon.

1.1.2.4. Upon Developer's written request to District to be provided at least five (5) days before the end of any Contingency Period and which shall not be unreasonably denied, District may waive any of the requirements of any Contingency Period or may extend the time in which Developer shall meet the requirements of any Contingency Period.

1.1.2.5. Developer may request an extension of the Phase 1 Closing by providing written notice to District at least ten (10) days before the date on which the Phase 1 Closing is scheduled to occur. District shall not unreasonably deny such request if the extension is required due to delays outside of Developer's control. Within five (5) business days after District approves each extension as provided in this Section, Developer shall provide to District a \$5,000 nonrefundable fee or letter of credit in lieu of cash.

1.1.3. Initial 6-Month Contingency Period. During this Contingency Period, the following shall occur:

1.1.3.1. Earnest Money Deposit. Developer shall provide to District a \$15,000 Earnest Money Deposit upon the Effective Date of this Agreement.

1.1.3.2. Preliminary Concept Plan Submittal. Within thirty (30) days of the Effective Date, Developer shall submit preliminary conceptual architectural elevations to District.

1.1.3.3. Concept Plan Approval. Developer shall obtain District approval of conceptual architectural elevations and a preliminary development plan for Phase 1 of the Project (the "Phase 1 Concept Plans"). District's approval of the Phase 1 Concept Plans shall not be unreasonably withheld, delayed or conditioned. District's approval shall be deemed given if District shall fail to respond to an approval request within ten (10) days after such request shall have been made by Developer, provided such submission includes the following language in bold text: **Failure to respond to this submission for approval within ten (10) days of District's receipt of this request shall be deemed an approval by District.** In the event that District does not approve of the Phase 1 Concept Plans or does not provide Developer with suggested revisions reasonably agreeable to Developer, then Developer's sole and exclusive remedy will be to terminate this Agreement by delivering written notice of such termination to District and City on or before five (5) business days after Developer's receipt of District's

disapproval or suggested revisions to the Phase 1 Concept Plans and receive a refund of the Phase 1 Earnest Money together with any interest earned thereon. Developer's failure to timely cancel this Agreement pursuant to this Section shall be deemed Developer's acceptance of the Phase 1 Concept Plans as revised by District's suggested revisions and a waiver of its right to terminate this Agreement pursuant to this Section. Upon District's approval or deemed approval of the Phase 1 Concept Plans as submitted to District, together with District's suggested revisions thereto, such plans shall be deemed the "Approved Phase 1 Concept Plans" and Developer shall not be required to submit further concept plans for District approval. Any significant deviations from the Approved Phase 1 Concept Plans must be approved by the District in the manner outlined in this Section and District's approval of the requested changes shall not be unreasonably withheld.

1.1.3.4. Preliminary Marketing/Presales. Developer shall begin marketing/presales activities including preparing marketing information describing the Project and soliciting expressions of interest, installing Project informational signage soliciting interest, and establishing a list of interested parties.

1.1.4. First 3-Month Contingency Period. During this Contingency Period, the following shall occur:

1.1.4.1. Earnest Money Deposit. Developer shall provide to District a \$5,000 Earnest Money Deposit to be paid by the first business day of this Contingency Period.

1.1.4.2. Preliminary Financing. Developer shall deliver to District a copy of Developer's preliminary financing letter and a general explanation of Developer's proposed equity financing structure.

1.1.4.3. Advanced Plans. Developer shall submit to District advanced architectural elevations and an advanced or completed development plan for Phase 1 that shall be in substantial conformance to the Approved Phase 1 Concept Plans as provided in **Section 1.1.3.3.**

1.1.5. Second 3-Month Contingency Period. During this Contingency Period, the following shall occur:

1.1.5.1. Earnest Money Deposit. Developer shall provide to District a \$5,000 Earnest Money Deposit to be paid by the first business day of this Contingency Period.

1.1.5.2. Construction Drawing Submittal. Developer shall submit to City construction drawings for Phase 1 of the Project.

1.1.5.3. Zoning Compliance. Developer shall obtain Mayor and Council approval of the rezoning application proposed in **Section 2.3.**

1.1.6. Third 3-Month Contingency Period. During this Contingency Period, the following shall occur:

1.1.6.1. Earnest Money Deposit. Developer shall provide to District a \$5,000 Earnest Money Deposit to be paid by the first business day of this Contingency Period.

1.1.6.2. Final Financing. Developer shall deliver to District copies of Developer's final financing commitments showing that presale requirements imposed by the lender have been met or that Developer can obtain a commitment of alternative financing adequate to finance Phase 1 of the Project.

1.1.6.3. Construction Plan Approval/Building Permit Issuance. Developer shall obtain City approval of Developer's final construction drawings and issuance of foundation building permits for Phase 1 of the Project.

1.1.7. Acceptance of District Property. By taking possession from District of any or all of the District Property, Developer accepts such District Property in the condition existing as of the Phase 1 Closing, however, District shall assign to Developer any rights and claims it has or may have against any party from whom it acquired any portion of the District Property. District makes no representation or warranty with respect to the condition of such District Property and District shall not be liable for any latent or patent defect in such Property. Developer has fully investigated the condition of such District Property, including without limitation the use or occupation that may be made of such District Property, District's title to such District Property, and any subsurface or soil or fill conditions or any latent defects of such District Property. District shall not be liable for any claims relating to the condition of such District Property. District shall not be required under this Agreement to remediate any environmental or other condition of such District Property.

1.2 *Bank Property.*

1.2.1. Purchase and Sale. Developer and the Bank may enter into an agreement for the sale of the Bank Property (the "Bank Property Purchase Agreement") within fifteen (15) months of the Effective Date or the provisions of this **Section 1.2** of the Agreement shall automatically become null and void.

1.2.2. Bank Property Development Agreement. Upon the execution of the Bank Property Purchase Agreement, Developer and District may enter negotiations for a development agreement similar to this Agreement containing mutually agreeable terms and conditions for the conveyance and development of the Bank Property (the "Bank Property Development Agreement").

2. Developer Development Rights and Obligations.

2.1 *Conditions of Conveyance and Development.* Developer shall initiate and proceed with development in accordance with this Agreement. Except as may be otherwise set out in this Agreement, Developer shall, at its expense, comply with all existing and future federal, state, county and municipal laws, ordinances, rules and regulations in connection with the use, operation, maintenance and construction of all improvements on the Property.

2.2 *Development Phases.* Developer shall construct the Project as proposed under Phase 1. Developer may also construct Phase 2 of the Project if Developer acquires the Bank Property as provided in **Section 1.2** and under the terms of the Bank Property Development Agreement referred to in **Section 1.2.1**.

2.2.1. Commercial/Retail. Phase 1 shall include approximately 10,000 square feet of commercial/retail uses.

2.2.2. Residential. Phase 1 shall include approximately 40 but no less than 27 condominium dwelling units.

2.3 *Zoning*. In order to develop the Project, the Parties acknowledge that it will be necessary to rezone that portion of Parcel No. 117-120-084A of the District Property that is currently zoned C-1 to OCR-2 and that portion of Parcel No. 117-120-083A of the District Property that is currently zoned C-2 to OCR-2 (the "Rezoning"). District herein authorizes Developer to initiate and proceed with the Rezoning as of the Effective Date and District shall fully support Developer in obtaining the Rezoning to construct the Project. City shall accept and process the application for the Rezoning in an expedited manner consistent with the LUC.

2.4 *Right of Entry*. District shall grant Developer a "Right of Entry" in the form routinely used by District for such purposes to allow Developer the right to enter the District Property at any time during the term of this Agreement and prior to the Phase 1 Closing to effect design and construction planning of the District Property.

2.5 *Standards for Construction of Property*.

2.5.1. Developer shall use and employ only licensed and qualified contractors.

2.5.2. All improvements shall be constructed in a good and workmanlike manner, and constructed and maintained in compliance with all applicable laws, rules, ordinances and regulations.

2.6 *Development Review and Approval*. In order to facilitate expeditious City processing of Development Approval or Approvals (as defined herein), Developer shall submit thorough and complete plans, permit applications and other applications, including all construction and building permit applications, to City's satisfaction.

2.7 *Governmental Approvals*. Developer shall obtain all necessary government approvals, permits or licenses that are necessary to Developer's construction, operation, use or improvement of the Property. If any certificate, permit, license or approval issued to Developer is cancelled, expires, lapses or is otherwise withdrawn by any such governmental authority, Developer shall make every effort to obtain replacement permits for the governmental approval to the satisfaction of District. Failure to do so shall constitute a default under this Agreement.

2.8 *Conformance with GSA Requirements; 68-72 East Congress Street*. Developer shall comply with the terms, conditions and restrictions imposed by that certain Quitclaim Deed between the District and the United States, by and through the Administrator of General Services ("GSA"), recorded at Docket 12165, Page 3430, on October 28, 2003, in the Official Records of Pima County, Arizona (the "Quitclaim Deed"), as it may apply to the District Property, including without limitation Quitclaim Deed, Section 4, "Historic Preservation Covenant," in connection with the building located at 68-72 East Congress Street on the District Property. Developer shall complete any work on the exterior of the building located at 68-72 East Congress Street in conformance with the Quitclaim Deed and within the same time period as completion of construction of Phase 1 of the Project.

2.9 *Mechanics' and Materialmen's Liens*. Developer shall promptly and diligently take whatever action is necessary to remove any mechanic's or materialmen's liens.

2.10 *Schedule.* "Start of Phase 1 Construction" shall be defined as the date on which work permitted by City begins on Phase 1 of the Property. Start of Phase 1 Construction shall occur and within sixty (60) days after the Phase 1 Closing. Construction of Phase 1 shall be completed within eighteen (18) months of the Phase 1 Closing pursuant to the terms and conditions of this Agreement, with reasonable delay for force majeure events permitted.

2.11 *Signs.* Prior to the Phase 1 Closing, Developer may place signs on the District Property in conformance with applicable government regulations, with District's prior written consent to design, size and location, said consent to be provided or denied by District within no more than ten (10) business days of request by Developer.

2.12 *Graffiti.* Developer shall be solely responsible for graffiti abatement on the District Property after the Phase 1 Closing.

2.13 *Taxes, Fees, and Other Developer Payables.*

2.13.1. After the Phase 1 Closing, Developer shall bear, pay and discharge all of the following (which are collectively referred to in this Agreement as "Impositions") as they apply to the District Property at least fifteen (15) days before the last day when payment may be made without penalty or interest and before the nonpayment constitutes a default under the provisions of any mortgage on the District Property after the Phase 1 Closing:

2.13.1.1. All taxes, assessments, water rents, rates and charges, sewer rents, license and permit fees and all other governmental impositions and charges of every kind and nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever, and each and every installment thereof, which shall prior to and during the term of this Agreement be charged, laid, levied, assessed, imposed, become due and payable or arise.

2.13.1.2. All taxes charged, laid, levied, assessed or imposed in lieu of or in addition to the foregoing under or by virtue of all present or future laws, ordinances, requirements, orders, directions, rules or regulations of the federal, state, county and municipal governments and of all other governmental authorities whatsoever, and in connection with the use, occupancy or possession of or grow due or payable out of or for the District Property or any part it, or any building, appurtenances or equipment on or in the District Property or any part of it, or the sidewalks or streets in front of or adjoining the District Property, or any rents or additional rents payable under this Agreement.

2.13.2. To the extent permitted by law and by any mortgage, Developer shall have the right to apply for the conversion of any special assessment for local improvements to cause the same to be payable in installments, and upon such conversion Developer shall be obligated to pay and discharge punctually only such of said installments (with interest and charges thereon) as shall become due and payable during the term of this Agreement.

2.13.3. Developer shall pay, as they become due and payable, all fees, charges, taxes and expenses required for licenses and/or permits required for or occasioned by Developer's use of the District Property.

2.14 *Utilities.* Except as otherwise provided in this Agreement, Developer shall be responsible for obtaining any utility service agreement needed for the District Property and shall pay when due all charges for utilities to the District Property.

3. District/City Development Rights and Obligations.

3.1 *Taxes, Fees, and Other Developer Payables.* District shall bear, pay and discharge the Impositions as they apply to the Property at least fifteen (15) days before the last day when payment may be made without penalty or interest and before the nonpayment constitutes a default under the provisions of any mortgage on the District Property until the Phase 1 Closing after which date Developer shall be responsible for the Impositions as provided in **Section 2.13** of this Agreement.

3.2 Utilities.

3.2.1. **Sewer Credits.** District and City shall cooperate with Developer and Pima County to obtain credits for Developer for prior or existing sewer fixtures or hook-ups located on the Property.

3.2.2. **Water Fees.** District and City shall cooperate with Developer and Tucson Water to obtain credits for Developer for prior or existing water fixtures or hook-ups located on the Property.

3.2.3. **Solid Waste.** District and City shall support Developer's proposal to dispose of solid wastes generated by the Project through the use of an on-site trash compactor.

3.3 *Building Permit Fees.* District and City shall assist Developer in obtaining City's waiver of the first \$10,000 in building permit fees incurred for both Phase 1 and Phase 2 of the Project.

3.4 *Construction Sales Tax.* District and City shall assist Developer in obtaining reimbursement of construction sales tax revenues generated by the construction of any eligible public utilities or infrastructure within or supporting the Project.

3.5 *Future Rio Nuevo and Downtown Zone Benefits.* This Agreement confers upon Developer certain assistance or benefits available for development located within the Rio Nuevo Multipurpose Facilities District and the Rio Nuevo and Downtown Zone. The Mayor and Council may approve future additional assistance or benefits for such development. In the event that the Mayor and Council approve such future assistance or benefits, Developer shall be entitled to receive such future assistance or benefits for the Project, if eligible, and the Mayor and Council may also consider making such future additional assistance or benefits available to Developer as of the Effective Date.

3.6 *Development Impact Fees.* For the purpose of the application of the City's development impact fees pursuant to Tucson Code Section 23A-71 *et seq.* ("Impact Fees"), City agrees that the following determinations will guide the calculation and assessment of Impact Fees (if any):

3.6.1. **Central Benefit District.** The Project is located in the Central Benefit District for purposes of the Impact Fees assessed under Tucson Code Section 23A-81(8).

3.6.2. **Redevelopment.** To the extent that Impact Fees for the Project are subject to Tucson Code Sections 23A-81(5) and -81(6), Developer may use the prior square footage of structures on the Project to calculate the assessment of either residential or non-residential Impact Fees. As applied to the District Property only, City and Developer have determined based on City permits that the prior square footage of the structures on the District Property for purposes of calculating Impact Fees shall be 30,200 square feet.

3.7 *Variances.* District shall fully support Developer in obtaining all variances from the City's Board of Adjustment reasonably necessary to construct the Project in conformance with the Approved Phase 1 Concept Plans including without limitation variances from certain site coverage restrictions and from on-site loading and parking requirements for commercial/retail uses.

3.8 *20 E. Congress.* The property at 20 East Congress shall be treated as part of the Project for purposes of the Rio Nuevo and Downtown Zone regulations in LUC Sec. 2.8.10.

3.9 *DRB Approval.* District shall fully support Developer in obtaining DRB approval of any and all submittals reasonably necessary for the Project in conformance with the Approved Phase 1 Concept Plans.

3.10 *GSA Compliance Assistance.* District and City shall fully support Developer and provide all necessary documentation to assist Developer in obtaining the necessary approvals from the state or federal government for development of the Property in conformance with the Approved Phase 1 Concept Plans as required under the Quitclaim Deed.

3.11 *No District Future Expenditures.* District shall not be required to make any repairs or improvements to the District Property, following conveyance of the District Property to Developer, in connection with this Agreement, the terms and conditions of all attached and referenced Agreements notwithstanding.

3.12 *Temporary Revocable Easements.* It is anticipated that development of Phase 1 of the Property will include incorporation of private improvements on the public rights-of-way. City shall process any requests for use of public rights-of-way for private purposes using a temporary revocable easement ("TRE") or permanent easement, as appropriate, and substantially in the form attached hereto as **Exhibit "D."** Annual payments for TRE's will be waived by City, but issuance of any TRE's will be subject to applicant securing right of way permits in accordance with the standards established by City's standard development review and building permit processes and approvals, as needed. Examples of the types of uses for TREs include, but are not limited to patio seating, temporary merchandise displays, beverage and food carts, portable propane heaters, portable lighting or seasonal decorative lighting, decorative displays associated with a store or business, roof drainage elements, and awnings.

3.13 *Air Right Conveyance.* It is anticipated that development of Phase 1 of the Property will include incorporation of private improvements placed above the public rights-of-way (for example, balconies and living space). City shall process any requests for conveyance of air rights pursuant to a deed above public rights-of-way as a standard Real Estate Services ("RES") request using a form developed specifically for the Property and mutually agreed to by the Parties within thirty (30) days after submittal of the first set of building plans for the Property. City shall waive all application fees associated therewith, and shall provide air right conveyance to the applicant at no cost to the applicant. As long as the request for conveyance or air right meets all standard development review and building permit requirements, City shall not unreasonably withhold approval of such request.

3.14 *Plan Review.* Developer may use third-party Building Code and LUC review of all plans for the Property and City shall cooperate with Developer and the third-party reviewers to ensure that Developer realizes the greatest possible reduction of the time required for the review of such plans. City shall, consistent with its adopted policies, expeditiously review and, if appropriate, approve all Developer's plans, permits and other applications,

including all construction and building approvals (collectively, the "Development Approval or Approvals"). City agrees to designate a project manager who shall be responsible for coordinating and expediting to the greatest extent practicable all required reviews.

3.15 *Overlapping Development Review.* City will cooperate with Developer to identify opportunities for "overlapping" development review so as to reduce the overall time required for plan review and Project construction. For example, City agrees that it may be possible to accelerate the submittal of certain construction plans – demolition and grading/excavation plans, underground site utility plans, and foundation plans – before approval of a final plat or development plan. Subject to Developer's assumption of risk in the event of design changes, the Parties will cooperate to allow the submittal of such construction plans following the second review of the development plan.

3.16 *Condominium Ownership.* City acknowledges that Developer shall be required to submit final plats in order to create a condominium form of ownership of individual residential units in the Project. Because of the specialized nature of a final plat which creates a condominium form of ownership, City will cooperate with Developer to identify how, if Developer so elects, the submittal and review of the final plat may be accelerated.

4. Default Provisions.

4.1 *Developer Default.* Developer shall be in default under this Agreement if it:

4.1.1. Developer's Actions Constituting Default:

4.1.1.1. Fails to make payment of Impositions when due and does not cure such nonpayment within ten days after written notice from District specifying the default complained of; or

4.1.1.2. Fails to perform any other covenant or condition of this Agreement and does not cure such failure within thirty (30) days after written notice from District, or such allowable longer period of time in the event Developer is, in the reasonable opinion of District, diligently attempting to cure the non-monetary default.

4.2 *District Default.* District shall be in default under this Agreement if it:

4.2.1. District Actions Constituting Default:

4.2.1.1. District fails to make payment upon receipt of valid requests when due and does not cure such nonpayment within ten days after written notice from Developer specifying the default complained of; or

4.2.1.2. District fails to perform any other covenant or condition of this Agreement and does not cure such failure within thirty (30) days after written notice from Developer, or such allowable longer period of time in the event District is, in the reasonable opinion of Developer, diligently attempting to cure the non-monetary default.

5. General Provisions.

5.1 *Damage or Destruction.* Subject to **Section 5.19**, if the District Property or any portion of it is destroyed or damaged through no fault or negligence of Developer in a way that materially hinders its effective use, Developer shall make necessary repairs within a

reasonable period of time, unless mutually deemed infeasible. District shall have no obligation to repair any damage to any portion of the District Property.

5.2 *Zoning Compliance.* District intends that Phase 1 of the Property be completed substantially as proposed by this Agreement. Construction of Phase 1 shall be in conformance with the requirements of the LUC. This provision shall not preclude or limit City, District or Developer's right to seek text amendments, rezoning, or variances as may be permissible under and in accordance with the LUC and Arizona law.

5.3 *Disclaimer of Liability.* Neither Party to this Agreement shall at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of the other Party's construction, maintenance, repair, use, management, operation, condition or dismantling of the facility or structures on the Property, except in the event of negligence or intentional acts of the other Party.

5.4 *Notices.* All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested; to the following addresses:

If to District: Rio Nuevo Multipurpose Facilities District
Attention: Greg Shelko
52 West Congress Street,
Tucson, AZ 85701

If to City: City of Tucson
City Clerk's Office
P. O. Box 27210
Tucson, AZ 85726-7210

With copies to: City of Tucson
Real Estate Division
Attention: John Updike
P. O. Box 27210
Tucson, AZ 85726-7210

City Attorney's Office
255 West Alameda, 7th Floor
P.O. Box 27210
Tucson, Arizona 85726-7210

William A. Hicks, III
Snell & Wilmer LLP
One Arizona Center
Phoenix, Arizona 85004-0001

If to Developer: BP Post Investors, LLC
Attn: Oscar Turner and Accounting
3915 E. Broadway Boulevard, 4th Floor
Tucson, AZ 85711

David Fina
FINA Companies
1800 North Stone, Suite 1105
Tucson, Arizona 85705

With copy to:

Mary Beth Savel, Esq.
Lewis and Roca LLP
One South Church Avenue, Suite 700
Tucson, AZ 85701-1611

5.5 *Successors and Assigns.* All of the provisions of this Agreement shall inure to the benefit of and be binding upon successors and assigns of the parties to this Agreement pursuant to A.R.S. § 9-500.05(D). This Agreement shall be assignable to any person or entity in any way affiliated with or controlled by Developer, or to any entity in which Developer is a member, partner or shareholder with at least a fifty (50) percent equity interest, or if to an entity in which the member of the Developer retains less than a fifty (50) percent equity interest under an agreement that gives Developer development control of the Project. In connection with the development of the Project, the Parties acknowledge that Developer and the Related Entity (as defined herein) may enter into an agreement for the marketing and sale of all or certain of the residential condominiums within the Project. Accordingly, each reference to an obligation of Developer in this Agreement with respect to the Project shall be deemed to refer to an obligation of Developer or to the Related Entity to the extent the rights with respect to a divided or undivided portion of the Property to which such obligation relates are assigned by Developer to such Related Entity pursuant to this Agreement.

5.6 *No Waiver of Strict Performance.* The failure of either Party to insist upon a strict performance of any of the agreements, terms, covenants and conditions of this Agreement shall not be deemed a waiver of any rights or remedies that either Party may have and shall not be deemed a waiver of any subsequent breach or default in any of such agreements, terms, covenants and conditions.

5.7 *Quiet Enjoyment.* District covenants that, as long as Developer shall faithfully perform the agreements, terms, covenants and conditions hereof, Developer shall and may peaceably and quietly have, hold and enjoy the Property and the rights granted by this Agreement for the Term hereby granted without molestation or disturbance by or from District or third parties, subject, however, to all of the provisions of this Agreement and all encumbrances to which this Agreement is made subject and subordinate as herein provided.

5.8 *Authority to Execute Agreement; Authority to Manage Agreement.* The individuals executing this Agreement hereby represent that they have full right, power, and authority to execute this Agreement on behalf of their respective Parties. Further, each Party to this Agreement covenants to the other Parties that such Party has the legal capacity and authority to enter into this Agreement and to consummate the transactions contemplated hereunder. District herein delegates the authority to manage this Agreement, including the authority to authorize waivers or extensions of the Contingency Periods provided for herein, to the District Manager or Director pursuant to District Resolution.

5.9 *Entire Agreement.* This Agreement constitutes the entire agreement and understanding of the parties pertaining to the subject matter of the Agreement and supersedes all offers, negotiations, and other agreements of any kind. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, including but not limited to the Offer or any prior Request for Proposal, are superseded and merged in this Agreement. There are no representations or understandings of any kind not set forth herein.

5.10 *Governing Law.* This Agreement shall be construed in accordance with the laws of the State of Arizona.

5.11 *Non-Severability.* The provisions of this Agreement shall not be given effect individually, and to this end, the provisions of this Agreement are not severable.

5.12 *Anti-Moratorium.* No moratorium, as that term is defined in A.R.S. § 9-463.06, shall be imposed on the Property unless it is imposed pursuant to an ordinance that complies with A.R.S. § 9-463.06, as it may be amended.

5.13 *Headings.* The descriptive headings of the Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the Agreement's provisions.

5.14 *Exhibits.* Any exhibit attached to this Agreement shall be deemed to have been incorporated in this Agreement by this reference with the same force and effect as if it were fully set forth in the body of the Agreement

5.15 *Further Acts.* Each of the Parties to this Agreement shall promptly and expeditiously execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

5.16 *Recordation.* The Parties shall cause an original counterpart of this Agreement to be recorded in its entirety in the official records of Pima County, Arizona not later than ten (10) days after this Agreement is executed by all Parties and an Ordinance is enacted by the Mayor and Council authorizing this Agreement.

5.17 *Amendments.* No change or addition is to be made to this Agreement except by a written amendment executed by all of the Parties. An amendment shall be recorded in the official records of Pima County, Arizona within ten days after its execution.

5.18 *Time of Essence.* Time is of the essence of this Agreement.

5.19 *Force Majeure.* Notwithstanding any other term, condition or provision of this Agreement to the contrary, if any Party to this Agreement is precluded from satisfying or fulfilling any duty or obligation imposed upon it due to labor strikes, material shortages, war, civil disturbances, weather conditions, natural disasters, acts of God, or other events beyond the control of such Party, the time period provided herein for the performance by such Party of such duty or obligation shall be extended for a period equal to the delay occasioned by such events.

5.20 *Attorneys' Fees.* In the event either Party hereto shall commence any civil action against the other to enforce or terminate this Agreement or to recover damages for the breach of any of the provisions, covenants or terms of this Agreement on the part of the other Party, the prevailing Party in such civil action shall be entitled to recover from the other Party, in addition to any relief to which such prevailing Party may be entitled, all costs, expenses and reasonable attorneys' fees incurred in connection therewith.

5.21 *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

5.22 *Effective Date.* This Agreement shall be considered effective on April 18, 2006 (the "Effective Date").

5.23 *Term/Termination Date.* The "Term" of this Agreement begins as of the Effective Date and ends upon substantial completion of the Phase 1 building and occupancy of the first Phase 1 condominium unit.

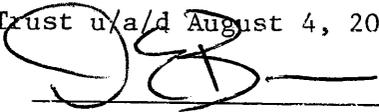
Executed this ___ day of _____, 2006.

BP POST INVESTORS, LLC,
an Arizona limited liability company

By: BP Post Managers, LLC, an Arizona limited liability company
Its: Manager

By: BP Post Partners, LLC, an Arizona limited liability company
Its: Member

By: DEB Trust u/a/d August 4, 2005, Member

By: 
Don E. Bourn, ~~Member~~ Trustee

By: Fina Ventures, LLC, an Arizona limited liability company

By: see next page
David Fina, Member

5.21 *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

5.22 *Effective Date.* This Agreement shall be considered effective on April 18, 2006 (the "Effective Date").

5.23 *Term/Termination Date.* The "Term" of this Agreement begins as of the Effective Date and ends upon substantial completion of the Phase 1 building and occupancy of the first Phase 1 condominium unit.

Executed this ___ day of _____, 2006.

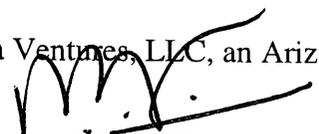
BP POST INVESTORS, LLC,
an Arizona limited liability company

By: BP Post Managers, LLC, an Arizona limited liability company
Its: Manager

By: BP Post Partners, LLC, an Arizona limited liability company
Its: Member

By: see previous page
Don E. Bourn, Member

By: Fina Ventures, LLC, an Arizona limited liability company

By: 
David Fina, Member

Accepted this ___ day of _____, 2006.

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT,
a political subdivision of the State of Arizona

By: _____

As: _____

APPROVED AS TO FORM:

By: _____

As: _____

CITY OF TUCSON an Arizona municipal corporation

By: _____
Mayor

ATTEST:

By: _____
City Clerk

Dated: _____

APPROVED AS TO FORM:

By: 

City Attorney

Dated: 4/5/06

EXHIBITS

- Exhibit "A" Offer to Purchase
- Exhibit "B" Legal Description of the District Property
- Exhibit "C" Timeline
- Exhibit "D" Form of Temporary Revocable Easement

EXHIBIT "A"
(Offer to Purchase)

"CASH SALE"
OFFER TO PURCHASE REAL ESTATE AND ACCEPTANCE

1. SUBJECT PROPERTY.

The Rio Nuevo Multipurpose Facilities District, a political subdivision of the State of Arizona ("Purchaser"), hereby offers to purchase from the United States of America, acting by and through the Administrator of General Services ("Seller"), the surplus property known as the 'Thrifty Block', also known as the former 'Tucson Courthouse/Law Enforcement Site', GSA Control No. 9-G-AZ-820, consisting of one contiguous parcel of land, approximately 0.3942 acres (17,171.43 square feet) of land improved with seven buildings containing approximately 43,800 gross square feet, on an "as is, where is" basis, all as more particularly described in the attached legal descriptions (Exhibit A) incorporated herein by this reference (collectively referred to as the "Property"). The Property is designated as a portion of Pima County Tax Parcel Nos.: 117-12-0820, 0830, 0840 & 0850. This Offer to Purchase, referred to hereinafter as the "Offer to Purchase", including the "Legal Descriptions" (Exhibit A), the "General Terms of Sale Applicable to Negotiated Sales" (Exhibit B), the "CERCLA Covenant" (Exhibit C), the "Asbestos Covenant" (Exhibit D), the PCB and Mercury Covenant (Exhibit E), the "Historic Preservation Covenant" (Exhibit F), the "Non-Discrimination Covenant" (Exhibit G), the "Security Covenant" (Exhibit H), the Temporary Building Encroachment Easement (Exhibit I), and the Security Clear Zone (Exhibit J), attached hereto and made a part hereof, is made on the following terms and conditions; if there is any conflict or inconsistency between provisions of said Exhibit B and any other provisions of this Offer to Purchase, such other provisions shall control over said Exhibit B.

2. TERMS OF PURCHASE AND SALE.

2.1 PURCHASE PRICE.

The total purchase price for the Property is One and no/100 Dollars (\$1.00).

2.2. CONDITIONS.

Upon acceptance of this Offer to Purchase, conveyance of Seller's interest shall be made by Quitclaim Deed, subject to the following:

- 2.2.1.** Any statement of facts which a physical inspection and a correct and adequate survey of the premises may disclose.
- 2.2.2.** The title to the Property will be conveyed subject to all easements, conditions and restrictions of record on the date of Purchaser's execution of this Offer to Purchase, provided Purchaser approves all such easements, conditions and restrictions and title is assured to Purchaser by such title insurance as Purchaser may itself obtain at the closing.

- 2.2.3. Purchaser may inspect, and Seller shall make available, such abstracts of title and other title papers, maps and plats, as are in Seller's custody covering the Property, but Seller will not be obligated to furnish any continuations, later title reports, or title insurance, or to pay any title expenses, escrow fees, or other charges pertaining to this transaction.
- 2.2.4. From the date of receipt by Seller of this Offer to Purchase, Seller shall not create, or permit to be created, any lien, encumbrance, restriction or easement, against the Property of any type or kind, except as may be approved by Purchaser.
- 2.2.5. All conditions to closing set forth in this Offer have been fulfilled or waived by the parties.
- 2.2.6. The Purchaser has been provided three reports ("Reports") disclosing onsite conditions: 1) Final Existing Conditions Report, Tucson Law Enforcement Site, 26-72 East Congress Street, Tucson, Arizona, Pacific General, Inc. dated February 23, 1996; 2) Phase I Environmental Site Assessment, prepared by Tecumseh Professional Associates Inc., dated January 10, 2000; and 3) Hazardous and Regulated Material Survey, GSA Facilities – Scott Avenue and Congress Street, Tucson, Arizona, Cape Environmental Management Inc., dated July 2001. The Purchaser expressly acknowledges the conditions described in the reports.

2.3. NOTICE REGARDING HAZARDOUS SUBSTANCE ACTIVITY.

Pursuant to 40 GFR 373.2 and Section 120(h)(3)(A)(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA)(42 U.S.C. §9620(h)(3)(A)(i)), and based upon a complete search of agency files, the United States gives notice that no hazardous substances have been released or disposed of or stored for one year or more on the Property.

A CERCLA covenant (Exhibit C) will be included in the Quitclaim Deed.

2.4. NOTICE OF THE PRESENCE OF ASBESTOS.

- (a) Purchaser is warned that the Property offered for sale may contain asbestos-containing materials. Unprotected or unregulated exposure to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related disease, which include certain cancers and which can result in disability or death.

- (b) Purchaser is invited, urged, and cautioned to inspect the Property to be sold prior to submitting an application. More particularly, applicants are invited, urged, and cautioned to inspect the Property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. The General Services Administration will assist Purchaser in obtaining any authorization(s) which may be required in order to carry out any such inspection(s). Purchaser shall be deemed to have relied solely on their own judgment in assessing the overall condition of all or any portion of the Property including, without limitation, any asbestos hazards or concerns.
- (c) No warranties either expressed or implied are given with regard to the condition of the Property including, without limitation, whether the Property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of Purchaser to inspect, or to be fully informed as to the condition of all or any portion of the Property offered, will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid after its opening or tender.
- (d) The description of the Property set forth in this Offer to Purchase and any other information provided herein with respect to said Property is based on the best information available to the Government, and is believed to be correct; but any error or omission, including but not limited to the omission of any information available to the agency having custody over the Property and/or any other Federal agency, shall not constitute grounds or reason for nonperformance of the contract of sale, or any claim by Purchaser against the Government including without limitation, any claim for allowance, refund, or deduction from the purchase price.
- (e) By virtue of this transaction, the Government assumes no liability for damages for personal injury, illness, disability or death, to Purchaser, or to Purchaser's successors, assigns, employees, invitees, or any other person subject to Purchaser's control or direction, or to any person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property which is the subject of this sale, whether Purchaser, its successors or assigns has or have properly warned or failed to properly warn the individual(s) injured.
- (f) Purchaser further acknowledges that in its use and occupancy of the Property, it is responsible for compliance with Federal, State and local laws relating to asbestos.
- (g) An asbestos covenant (Exhibit D) will be included in the Quitclaim Deed.

2.5. NOTICE OF LEAD-BASED PAINT FOR NON-RESIDENTIAL REAL PROPERTY CONSTRUCTED PRIOR TO 1978.

Every purchaser of any interest in real property on which a building was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to converting the Property to a residential dwelling.

2.6. NOTICE OF POLYCHLORINATED BIPHENYLS AND MERCURY

- (a) Buildings C, D, E and F on the Property contain a total of 275 fluorescent light fixtures with ballasts containing PCBs. Building G contains fluorescent light fixtures that may also contain PCBs. The lamps associated with these light fixtures are assumed to be mercury containing. The Purchaser has been provided with the Reports disclosing these and other onsite environmental conditions. Pursuant to regulations issued by EPA under 40 CFR 761, the Seller certifies that there are known PCB's on the property, and certifies that it is, and will continue to be, up to the time of disposal, in compliance with 40 CFR 761, to include maintenance of PCB containing equipment.
- (b) By virtue of this transaction, the Government assumes no liability for damages for personal injury, illness, disability or death, to Purchaser, or to Purchaser's successors, assigns, employees, invitees, or any other person subject to Purchaser's control or direction, or to any person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with PCBs and mercury on the Property which is the subject of this sale, whether Purchaser, its successors or assigns has or have properly warned or failed to properly warn the individual(s) injured.
- (c) A PCB and mercury covenant will be included in the Quitclaim Deed as Exhibit E.

2.7. FAA REQUIREMENTS.

Based upon coordination between the General Services Administration and the Federal Aviation Administration (FAA) as recommended in House Report Number 95-1053, entitled "FAA Determination of 'No Hazard' for Structures Near Airports," it has been

determined that the Property is located within six (6) nautical air miles of an airport. The Government's Quitclaim deed will contain a provision that the grantee, its successors and assigns and every successor in interest to the Property herein described, or any part thereof, acknowledge that they may be prohibited from allowing any construction or alteration on the Property unless a determination of no hazard to air navigation is issued by FAA in accordance with 14 CFR Part 77, "Objects Affecting Navigable Airspace," or under the authority of the Federal Aviation Act of 1958, as amended.

2.8. HISTORIC PRESERVATION COVENANTS.

Purchaser shall comply with and use the Property in accordance with the terms and conditions of the Historic Preservation Covenant contained in the attached Exhibit "F".

2.9. NON-DISCRIMINATION COVENANT.

A Non-Discrimination Covenant shall be incorporated in the deed as Exhibit G.

2.10. SECURITY COVENANT AND RESTRICTION.

The Security Covenant set forth in Exhibit H shall be incorporated in the deed.

2.11. TEMPORARY REVOCABLE EASEMENT FOR BUILDING ENCROACHMENT.

The Government hereby grants to the Purchaser a temporary revocable easement for use of adjacent property retained by Grantor, as described in Exhibit I ("Building Encroachment Zone"), for the purpose of retaining existing improvements, and allowing an identified building encroachment into the Building Encroachment Zone, subject to the terms and conditions contained in Exhibit I, incorporated herein.

2.12. TEMPORARY REVOCABLE EASEMENT FOR DEMOLITION PURPOSES WITHIN SECURITY CLEAR ZONE.

As the Government requires setback around its adjoining property retained by Grantor, the former Walsh Courthouse, as described, and shown on the map referenced, in Exhibit J ("Security Clear Zone"), the Government hereby grants to Purchaser a temporary revocable easement for use of the adjacent Security Clear Zone, for the purpose of conducting demolition operations, subject to the terms and conditions contained in Exhibit J, incorporated herein.

2.13. ASSIGNMENT AND ASSUMPTION OF OCCUPANCY AGREEMENTS.

As of the close of sale, Seller hereby assigns to Purchaser all of its interest in the Revocable License for Non-Federal Use of Real Property No. 09-OL-01AZ0001, dated October 23, 2000 between Seller and the City of Tucson, and any other licenses, tenancies and permits encumbering any portion of the Property ("Occupancy Agreements"). Purchaser accepts and assumes all obligations of the Seller under the Occupancy Agreements.

2.14. ACCEPTANCE.

This Offer to Purchase shall be firm and continuing for a period of thirty (30) days from the date of its receipt by Seller in accordance with paragraph 5 of the "General Terms of Sale Applicable to Negotiated Sales" (Exhibit B). To accept this Offer to Purchase, Seller shall execute Section 4 of this document entitled "Acceptance of the United States Government", and return one original of the executed contract to Purchaser. This receipt by Purchaser of the executed contract shall constitute "Notice of Acceptance". If Seller does not accept this Offer to Purchase within thirty (30) days of receipt by Seller, or such longer period as may be mutually agreed upon, the earnest money deposit shall be promptly returned to Purchaser without interest and without further liability on the part of either to the other.

2.15. CLOSING.

Close of sale shall take place within a reasonable period, and not later than thirty (30) days from Purchaser's receipt of Acceptance of the United States Government, pursuant to paragraph 2.14 above.

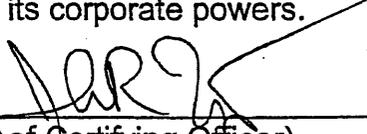
2.16. DELAYED CLOSING.

The Purchaser shall pay interest on the outstanding balance of the purchase price if the closing of sale is delayed, and the delay is caused directly or indirectly, by the Purchaser's action and not by any fault of the Seller. This rate to be computed is based on the yield of 10-year United States Treasury maturities as reported by the Federal Reserve Board in "Federal Reserve Statistical Release H.15" plus 1-1/2 % rounded to the nearest 1/8% as of the date the Offer to Purchaser is accepted by the Seller.

3. CERTIFICATE OF AUTHORIZATION OF PURCHASER

I, John R. Updike, certify that I am the Senior Project Manager of the Rio Nuevo Multipurpose Facilities District, named as Purchaser herein; that Karen Thoreson, who signed this Offer to Purchase on behalf of Purchaser was then Acting Project Director; and that said Offer to Purchase was duly signed for and on behalf of said Rio Nuevo

Multipurpose Facilities District, by authority of its governing body and the purchase is within the scope of its corporate powers.



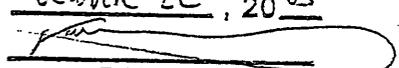
(Signature of Certifying Officer)

Date: 10/23/03



(Signature of Purchaser's Authorized Representative)

Date: 10/23/03

Approved as to form
OCTOBER 22, 2003

Tobin Rosen
Principal Asst. City Attorney

4. ACCEPTANCE OF THE UNITED STATES GOVERNMENT.

The Rio Nuevo Multipurpose Facilities District Offer to Purchase, as set forth
(Corporation)

in the foregoing "Offer to Purchase," is hereby ACCEPTED by and

on behalf of the United States of America this 24th day of

October, 2003.

UNITED STATES OF AMERICA
Acting by and through the ADMINISTRATOR
OF GENERAL SERVICES

BY:

Clark Va Spps

TITLE: Director, GSA Real Property Disposal

EXHIBIT "A"

LEGAL DESCRIPTION (contains 3 parcels)

PARCEL 1:

Part of Lot 1 in Block 208 of THE CITY OF TUCSON, Pima County, Arizona, according to the official Field Notes, Map and Survey made by S. W. Foreman and approved and adopted by the Mayor and Common Council of said City (then Village) of Tucson, on June 26, 1872, a certified copy of map is recorded in Book 3 of Maps and Plats at Page 70, described as follows, to-wit:

COMMENCING at the Northeast corner of said Lot 1 at the intersection of Congress and Scott Streets, being South 85 degrees 36 minutes 54 seconds West, 0.915 feet from a copper plug set in the sidewalk;

Thence South 85 degrees 36 minutes 54 seconds West along the North line of said Lot 1, a distance of 50.785 feet to a line between the walls of the Ivancovich Building and former United Bank building, being the TRUE POINT OF BEGINNING;

Continue thence South 85 degrees 36 minutes 54 seconds West along the North line of said Lot 1, a distance of 75 feet, more or less, to a point distant 22.5 feet Easterly from the Northwest corner of said Lot 1;

Continue thence South 85 degrees 36 minutes 54 seconds West along said North line, a distance of 22.50 feet to the Northwest corner of Lot 1;

Thence South 12 degrees 29 minutes 20 seconds East along the East line of said Lot 1 a distance of 100.98 feet, to the Southwest corner of said Lot 1;

Run thence North 77 degrees 17 minutes 7 seconds East along the South line of said Lot 1 (also being the North line of Lot 6 in Block 208 of the City of Tucson, as described in Deed to the United States of America, recorded in Book 56 of the Deeds at Page 429), a distance of 132.65 feet, to the Easterly line of Block 208;

Thence Northerly along the Easterly line of Block 208, to a point North 2 degrees 12 minutes West, distant 10.45 feet from the Northeast corner of the property described in Deed recorded in Book 56 of Deeds at Page 429 and which point is North 2 degrees 12 minutes West, 159.55 feet from its Southeast corner at the northwest corner of Scott and Broadway;

Thence South 77 degrees 2 minutes 52 seconds West, along the South wall of the former United Bank Building, a distance of 48.81 feet;

Thence North 4 degrees 16 minutes 6 seconds West, a distance of 77.34 feet to the TRUE POINT OF BEGINNING.

PARCEL 2:

That portion of Lot 1 in Block 208 of THE CITY OF TUCSON, Pima County, Arizona, according to the official Survey, Map and Field Notes of said City made by S. W. Foreman and approved and adopted by the Mayor and Common Council of said City (then Village) of Tucson, on June 26, 1872, a copy of which map is of record in the Office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats at Page 70 thereof (also known as Parcel 2 in Deed recorded in Docket 8689, Page 2126, Pima County Recorder's Office, Pima County, Arizona), described as follows:

Commencing at the Northeast corner of said Block 208, and as established by City of Tucson Plan No. R-83-07, said point being also the TRUE POINT OF BEGINNING;

Thence South 2 degrees 16 minutes 41 seconds East (South 2 degrees 15 minutes, 35 seconds East, per City of Tucson Plan No. R-83-07), along the Easterly line of said Block 208, as shown on said City of Tucson Plan No. R-83-07, a distance of 70.32 feet to the Southeast corner of said parcel. Said point being also the Northwesterly corner of parcel 5 as described in Docket 8689, Page 2126, Pima County Recorder's Office;

Thence South 77 degrees 8 minutes 14 seconds West, a distance of 48.48 feet;

Thence North 4 degrees 15 minutes 36 seconds West, a distance of 77.38 feet to a point on the Southerly right of way line of Congress Street as established by City of Tucson Plan No. R-83-07;

Thence North 85 degrees 34 minutes 8 seconds East, along said Southerly right of way line, a distance of 50.78 feet to the True Point of Beginning.

PARCEL 3:

All of Lot 2 in Block 208 of the CITY OF TUCSON, Pima County, Arizona, according to the official Survey, Field Notes and Map made and executed by S. W. Foreman and approved and adopted by the Mayor and Common Council of the City of Tucson (then Village) on June 26, 1872, a certified copy of which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats at Page 70, described as follows:

BEGINNING at the Northeast corner of said Lot 2;

Thence Westerly along the North line of said Lot 2, 67.5 feet;

Thence Southerly at right angles to said North line of said Lot 2, to a point in the South line of said Lot 2;

Thence Easterly along the South line of said Lot 2 to the Southeast corner of said Lot 2;

Thence Northerly along the East line of said Lot 2, to the Northeast corner of said Lot 2 and the PLACE OF BEGINNING.

Excepting Therefrom, from Parcels 1 and 3 above, those portions of the following described property lying within Parcels 1 and 3 above:

Commencing at the Northeast corner of Block 208 of the City of Tucson, as recorded in Book 3 of Maps and Plats, at Page 70, Pima County Recorder's Office, and as established by City of Tucson Plan No. R-83-07;

Thence South 2 degrees 16 minutes 41 seconds East (South 2 degrees 15 minutes 35 seconds East, per City of Tucson Plan No. R-83-07), along the Easterly line of said Block 208, as shown on said City of Tucson Plan No. R-83-07, a distance of 70.32 feet to the TRUE POINT OF BEGINNING. Said point being also the Southeasterly corner of Parcel 2 as described in Docket 8689, Page 2126, Pima County Recorder's Office;

Thence continue South 2 degrees 16 minutes 41 seconds East, along the Easterly line of said Block 208, a distance of 42.88 feet to a point on the Easterly projection of the Northerly face of the Walsh Building, located at 55 East Broadway Boulevard;

Thence South 83 degrees 11 minutes 41 seconds West, along said projection of the Northerly face of said Walsh Building, a distance of 9.06 feet to the Northeasterly corner thereof;

Thence continue South 83 degrees 11 minutes 41 seconds West, along the Northerly face of said Walsh Building, a distance of 141.35 feet to the Northwesterly corner thereof;

Thence North 6 degrees 48 minutes 19 seconds West, perpendicular to the previous line, a distance of 16.33 feet to a point on the Southerly line of Parcel 3 as described in said Docket 8689, at Page 2126;

Thence South 77 degrees 17 minutes 7 seconds West, along the Southerly line of said Parcel 3, a distance of 26.00 feet;

Thence South 77 degrees 1 minute 42 seconds West, continuing along the Southerly line of said Parcel 3, a distance of 14.45 feet to a point of curvature of a non-tangent curve concave to the Southeast, from which point the radius bears South 80 degrees 3 minutes 32 seconds East, said radius point being the aforementioned Northwesterly corner of the Walsh Building;

Thence Northeasterly, along the arc of a curve having a radius of 42.00 feet and a central angle of 73 degrees 15 minutes 13 seconds, for an arc distance of 53.70 feet to a point of tangency;

Thence North 83 degrees 11 minutes 41 seconds East, parallel with and 42.00 feet distant from said Northerly face of the Walsh Building, a distance of 105.77 feet to a point on the Westerly line of said Parcel 2 as recorded in Docket 8689, at Page 2126;

Thence South 4 degrees 15 minutes 36 seconds East, along the Westerly line of said Parcel 2, a distance of 4.38 feet to the Southwesterly corner thereof;

Thence North 77 degrees 8 minutes 14 seconds East, along the Southerly line of said Parcel 2, a distance of 48.48 feet to the TRUE POINT OF BEGINNING.

EXHIBIT "B"

GENERAL TERMS OF SALE APPLICABLE TO NEGOTIATED SALES (Surplus Real Property)

1. CONDITION OF PROPERTY.

The Property is offered "As Is" and "Where Is" without representation, warranty, or guaranty as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose for which intended, and no claim for any allowance or deduction upon such grounds will be considered.

2. DESCRIPTIONS IN OFFER TO PURCHASE.

The descriptions of the Property set forth in the Offer to Purchase and any other information provided therein with respect to said Property are based on information available to the GSA sales office and are believed to be correct, but any error or omission, including but not limited to the omission of any information available to the agency having custody over the Property and/or any other Federal Agency, shall not constitute ground or reason for nonperformance of the contract of sale, or claim by Purchaser for allowance, refund, or deduction from the purchase price.

3. INSPECTION.

Purchaser are invited, urged, and cautioned to inspect the Property to be sold prior to submitting an offer. The failure of any Purchaser to inspect, or to be fully informed as to the condition of all or any portion of the Property offered, will not constitute grounds for any claim or demand for adjustment or withdrawal of an offer after it has been tendered.

4. EARNEST MONEY DEPOSIT

The offer must be accompanied by an earnest money deposit in the amount required by this Offer to Purchase in the form of a certified check, cashier's check, or postal money order (or as otherwise provided for in this offer) made payable to the order of the General Services Administration. Failure to so provide such earnest money deposit shall require rejection of the offer. Upon acceptance of the offer the deposit shall be applied toward payment of the Purchaser's obligation to the Seller. In the event the offer is rejected, the deposit will be returned, without interest, as promptly as possible after offer rejection.

5. CONTINUING OFFER.

The offer shall be deemed to be a firm and continuing offer from the date of receipt until accepted or rejected by the Seller: provided, however, that after 30 days have elapsed from the date of receipt, the Purchaser not having received notice of rejection may consider his offer rejected, and if the Seller desires to accept the offer after such 30-day period, the consent of the Purchaser thereto shall be obtained.

6. NOTICE OF ACCEPTANCE OR REJECTION.

Notice by the Seller of acceptance or rejection of the offer shall be deemed to have been sufficiently given when telegraphed or mailed to the Purchaser or his duly authorized representative at the address indicated in the offer.

7. CONTRACT

These General Terms Applicable to Negotiated Sales, the offer, and the acceptance thereof, shall constitute an agreement between the Purchaser and the Seller. Such agreement shall constitute the whole contract to be succeeded only by the formal instruments of transfer, unless modified in writing and signed by both parties. No oral statements or representations made by, or for, or on behalf of either party shall be a part of such contract. Nor shall the contract, or any interest therein, be transferred or assigned by the Purchaser without consent of the Seller, and any assignment transaction without such consent shall be void.

8. REVOCATION OF OFFER AND DEFAULT.

In the event of revocation of the offer prior to acceptance, or in the event of any default by the Purchaser in the performance of the contract created by such acceptance, the deposit, together with any payments subsequently made on account shall be forfeited at the option of the Seller, in which event the Purchaser shall be relieved from further liability, and the Seller may avail itself of any legal or equitable rights which it may have under the offer or contract.

9. GOVERNMENT LIABILITY.

If this Offer to Purchase is accepted by the Seller and: (1) Seller fails for any reason to perform its obligation as set forth herein; or (2) Title does not transfer or vest in the Purchaser for any reason although Purchaser is ready, willing, and able to close, Seller shall promptly refund to Purchaser all amounts of money Purchaser has paid without interest whereupon Seller shall have no further liability to Purchaser.

10. OTHER TERMS APPLICABLE TO A SALE.

a. As of the date of conveyance, the Purchaser shall assume responsibility for care and handling and all risks of loss or damage to the Property and have all obligations and liabilities of ownership.

b. Any title evidence which may be desired by the Purchaser will be procured by him at his sole cost and expense. The Seller will, however, cooperate with the Purchaser or his authorized agent in this connection, and will permit examination and inspection of such deeds, abstracts, affidavits of title, judgments in condemnation proceedings, or other documents relating to the title of the premises and the Property involved, as it may have available. It is understood that the Seller will not be obligated to pay for any expense incurred in connection with title matters or survey of the Property.

c. Upon conveyance of the Property, the Purchaser shall assume responsibility for all general and special real and personal property taxes which may have been or may be assessed on the Property, and sums paid, or due to be paid, by the Seller in lieu of taxes pursuant to statutory authority shall be prorated.

d. If a bid for the purchase of the Property is accepted, the Seller's interest will be conveyed by a quitclaim deed or deed without warranty and/or, where appropriate, a bill of sale in conformity with local law and practice.

e. The Purchaser shall on a mutually agreeable date not later than 30 days after acceptance of the offer, or within such additional time as may be granted by the Seller, tender to the Seller the balance of the purchase price. Upon such tender being made by Purchaser, the Seller shall deliver to the Purchaser the instrument or instruments of conveyance.

f. The Purchaser shall pay all taxes and fees imposed on this transaction and shall obtain at his own expense and affix to all instruments of conveyance and security documents such revenue and documentary stamps as may be required by Federal and local law. All instruments of conveyance and security documents shall be placed on record in the manner prescribed by local recording statutes at the Purchaser's expense.

EXHIBIT "C"

CERCLA COVENANT

COVENANT. United States warrants that all remedial action necessary to protect human health and the environment has been taken before the date of this conveyance. United States warrants that it shall take any additional response action found to be necessary after the date of this conveyance regarding hazardous substances located on the Property on the date of this conveyance.

This covenant shall not apply:

- (a) in any case in which Purchaser, its successor(s) or assign(s), or any successor in interest to the Property or part thereof is a Potentially Responsible Party (PRP) with respect to the Property immediately prior to the date of this conveyance; **OR**
- (b) to the extent but only to the extent that such additional response action or part thereof found to be necessary is the result of an act or failure to act of the Purchaser, its successor(s) or assign(s), or any party in possession after the date of this conveyance that either:
 - (i) results in a release or threatened release of a hazardous substance that was not located on the Property on the date of this conveyance; **OR**
 - (ii) causes or exacerbates the release or threatened release of a hazardous substance the existence and location of which was known and identified to the applicable regulatory authority as of the date of this conveyance.

In the event Purchaser, its successor(s) or assign(s), seeks to have United States conduct any additional response action, and, as a condition precedent to United States incurring any additional cleanup obligation or related expenses, the Purchaser, its successor(s) or assign(s), shall provide United States at least 45 days written notice of such a claim and provide credible evidence that:

- (a) the associated contamination existed prior to the date of this conveyance; and
- (b) the need to conduct any additional response action or part thereof was not the result of any act or failure to act by the Purchaser, its successor(s) or assign(s), or any party in possession.

ACCESS. United States reserves a right of access, at reasonable times and upon reasonable advance written notice to Grantee, to all portions of the Property for environmental investigation, remediation or other corrective action. This reservation includes the right of access to and use of available utilities at reasonable cost to United States. These rights shall be exercisable in any case in which a remedial action, response action or corrective action is found to be necessary after the date of this conveyance, or in which access is necessary to carry out a remedial action, response action, or corrective action on adjoining property. United States shall exercise reasonable efforts to minimize any interference with the operations of any then existing tenants on the Property or any then ongoing development activity in carrying out such response or corrective actions. Pursuant to this reservation, the United States of America, and its respective officers, agents, employees, contractors and subcontractors shall have the right (upon reasonable advance written notice to the record title owner) to enter upon the Property and conduct investigations and surveys, to include drilling, test-pitting, borings, data and records compilation and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary, including but not limited to the installation and operation of monitoring wells, pumping wells, and treatment facilities. Any such entry, including such activities, responses or remedial actions, shall be coordinated with record title owner and shall be performed in a manner that minimizes interruption with activities of authorized occupants.

EXHIBIT "D"

ASBESTOS COVENANT

GRANTEE covenants and agrees, on behalf of themselves, their successors and assigns, that in their use and occupancy of the Property, or any part thereof, they are responsible for compliance with all Federal, state and local laws relating to asbestos; and that, by virtue of this deed, GRANTOR assumes no liability for damages for personal injury, illness, disability or death, to the GRANTEE, or to GRANTEE's successors, assigns, employees, invitees, or to any other person subject to the control or direction of GRANTEE, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property described in this deed, whether the GRANTEE, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.

EXHIBIT "E"

PCB and MERCURY COVENANT

GRANTEE covenants and agrees, on behalf of themselves, their successors and assigns, that in their use and occupancy of the Property, or any part thereof, they are responsible for compliance with all Federal, state and local laws relating to PCB and mercury; and that, by virtue of this deed, GRANTOR assumes no liability for damages for personal injury, illness, disability or death, to the GRANTEE, or to GRANTEE's successors, assigns, employees, invitees, or to any other person subject to the control or direction of GRANTEE, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase; transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with PCB and mercury on the Property described in this deed, whether the GRANTEE, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.

EXHIBIT "F"

HISTORIC PRESERVATION COVENANT

1. The Grantee shall preserve and maintain Building F, located at 68-72 East Congress Street, Tucson, Arizona (see attached "East Congress" map), in accordance with the Secretary of the Interior's Standards for Rehabilitation and guidelines for Rehabilitating Historic Buildings (National Park Service, 1983), in order to preserve and enhance those qualities that make Building F eligible for listing in the National Register of Historic Places.
2. The Grantee shall not undertake nor permit to be undertaken any construction, alteration, or remodeling of Building F without first consulting the Arizona State Historic Preservation Office regarding the scope of work to be performed, and taking into account the Arizona State Historic Preservation Office's comments thereon.
3. The Arizona State Historic Preservation Office shall be permitted at all reasonable times to inspect Building F to make certain if the above conditions are being observed.
4. In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, the Arizona State Historic Preservation Office, following reasonable notice to the Grantee, shall notify the General Services Administration.
5. In the event of a violation of this covenant, the General Services Administration or the Arizona State Historic Preservation Office may institute a suit to enjoin such violation or for damages by reason of any breach thereof.
6. The Grantee agrees that the Arizona State Historic Preservation Office may at its discretion, with prior notice to the Grantee, convey and assign all or part of its rights and responsibilities contained herein to a third party.
7. Restrictions, stipulations, and covenants contained herein shall be inserted by Grantee verbatim or by express reference in the deed, lease agreement, or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in Building F or any part thereof.
8. This covenant is binding upon Grantee, its successors, and assigns in perpetuity; however, the Arizona State Historic Preservation Office may, for good cause, modify or cancel any or all of the foregoing restrictions upon written application to, and acceptance by, the Grantee, its successors or assigns.
9. The acceptance of the delivery of this (Deed/Title) shall constitute conclusive evidence of the agreement of the Grantee to be bound by the conditions, restrictions, and limitations, and to perform the obligations herein set forth.
10. The failure of the Arizona State Historic Preservation Office to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

ATTACHMENT "1" TO EXHIBIT "F"

Thrifty Block
Former Courthouse & Law Enforcement Site
Tucson, Arizona
GSA Control No. 9-G-AZ-820

EXHIBIT 'C'

EAST CONGRESS

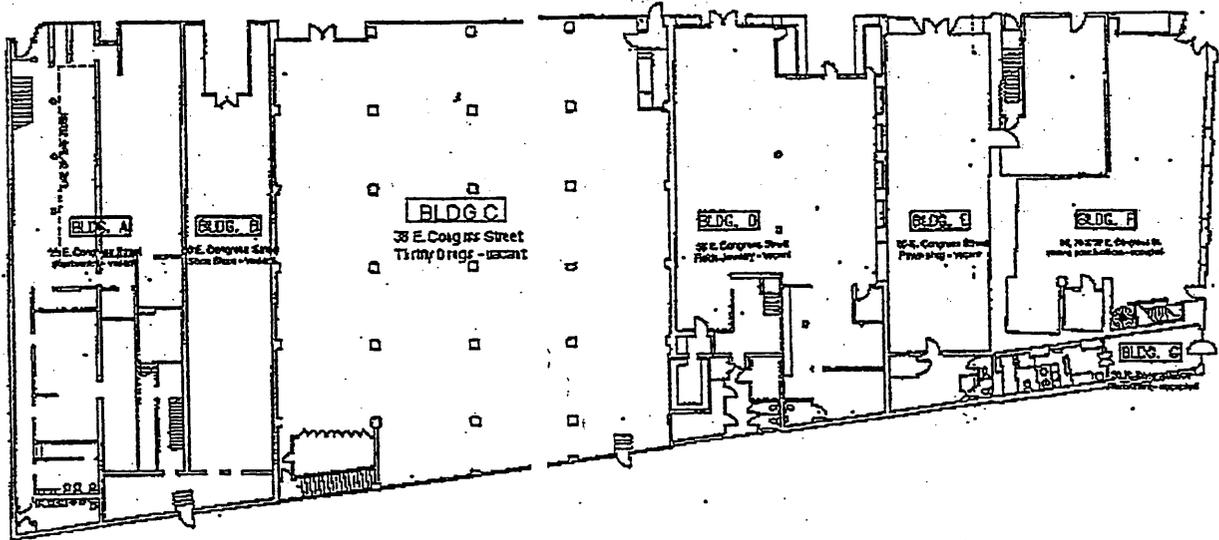


EXHIBIT "G"

NON-DISCRIMINATION COVENANT

The GRANTEE covenants for itself, and its assigns and every successor in interest to the Property hereby conveyed, or any part thereof, that the said GRANTEE and such assigns shall not discriminate upon the basis of race, color, religion, sex, or national origin in the use, occupancy, sale, or lease of the Property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land of interest therein in the locality of the Property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

EXHIBIT "H"
(Exhibit H does not exist)

**EX H TO EX A TO
ATTACHMENT 1 TO
RESOLUTION NO. 20320**

EXHIBIT "I"

TEMPORARY REVOCABLE EASEMENT FOR BUILDING ENCROACHMENT

For and in consideration of future demolition of existing improvements on the Property, the United States of America, acting by and through the Administrator of General Services, hereinafter called Grantor, grants to the Rio Nuevo Multipurpose Facilities District, a political subdivision of the State of Arizona, hereinafter called Grantee, a temporary revocable easement (the "Encroachment Easement") for use of property of the Grantor for the purpose of retaining existing improvements within that area designated as the "Demolition Easement" on Attachment 1 to Exhibit "J".

and subject to the following terms and conditions:

1. The term of this Encroachment Easement is twenty-four (24) months, beginning on the date of conveyance, or as otherwise terminated pursuant to these terms and conditions.

2. There shall be no fee for this Easement.

3. The granting of this Encroachment Easement by the Grantor is not a representation by the Grantor of the practicability, safety or use of the area, and shall create no liability upon or cause of action against the Grantor.

4. In addition to the liability imposed by law upon the Grantee's negligence, which liability is not impaired or otherwise affected hereby, the Grantee hereby agrees to defend, indemnify and hold harmless the Grantor, its officers, boards, commissions, employees, and agents against and from any and all claims, demands, causes of action, complaints, suits, losses, damages (including damage to Grantor's property) injuries and liabilities whatsoever (including those for costs, expenses, and attorney's fees), or any part thereof which arise by reason of injury to any person or persons, including death, or property damage, resulting from any act or omission of the Grantee or anyone directly or indirectly employed by it in the prosecution of any work and maintenance and use of the Encroachment Easement.

5. This Encroachment Easement shall be revocable upon the completion of removal of the improvements within the area of the easement, said removal to occur no later than upon the termination of the Encroachment Easement as set forth in Section 1 herein. By no later than the expiration of this Encroachment Easement, Grantee shall perform the following tasks at no cost to Grantor:

(a) Grantor shall remove from the Encroachment Easement area all improvements, including all items and materials associated with such improvements, .

(b) Grantor shall fill in the Encroachment Easement area to the level of the pavement on Grantor's property adjacent to the Encroachment Easement. The fill shall be done in accordance with Attachment 1 to this Exhibit.

If Grantee fails to do so, Grantor shall have the right, but not the obligation, to perform Grantee's obligations for Grantee at Grantee's expense. In such event, Grantor shall have the right to enter Grantor's property and demolish all (or such portion as Grantor finds necessary or convenient) of

the encroaching buildings. Grantor may, but shall not be obligated to, fill in any cavities created by removal of improvements and take such measures as Grantor deems to be desirable for safety. Grantee acknowledges that the cost of removing the encroaching structures is part of the consideration for conveyance of the Property from Grantor to Grantee. Grantee covenants for itself, its successors and assigns to reimburse Grantor for all expenses incurred by Grantor in exercising its rights under this paragraph. Grantor hereby reserves a lien against the Property for all such costs. Grantor shall not be liable for any damage to Grantee's property.

6. The Grantee shall be barred from collecting damages from the Grantor for the loss, removal or destruction of all items or any improvements and/or materials, or for any resulting or residual damage or injury to Grantee's premises or uses thereof occasioned by the removal of said improvements and/or materials.

7. This Encroachment Easement shall be assignable by Grantee to any third party, however, in the event of an assignment, Grantee shall remain responsible for all obligations stated herein, and all assignments shall be subject to prior written approval of the Grantor.

8. Grantee, and its respective officers, agents, employees, assigns, contractors and subcontractors shall have the right to enter upon the Encroachment Easement area, subject to reasonable advance written notice to Grantor. Any such entry shall be subject to compliance with security requirements of Grantor, as may be established by Grantor from time to time, and shall be performed in a manner that minimizes interruption with activities of the Grantor.

9. Grantee shall cooperate with Grantor and Grantor's contractor to assure that Grantor's contractors have convenient access during demolition activities. Grantee shall not interfere with access any more than is necessary to accomplish the purpose of this easement.

ATTACHMENT "1" TO EXHIBIT "I"

EARTHWORK

PART 1 - GENERAL

1.1 SUMMARY

A. This Section includes the following:

1. Backfilling.
2. Soil stabilization.

1.2 DEFINITIONS

A. Backfill: Soil material used to fill an excavation.

1.3 PROJECT CONDITIONS

A. Existing Utilities: Do not interrupt utilities serving facilities occupied by the Government unless permitted in writing by Government Contracting Officer and then only after arranging to provide temporary utility services according to requirements indicated.

PART 2 - PRODUCTS

2.1 SOIL MATERIALS

A. Engineered Fill: Naturally or artificially graded mixture of natural or crushed gravel, Crushed stone, and natural or crushed sand: ASTM D 2940; with at least 90 percent passing a 1-1/2-inch (37.5-mm) sieve and not more than 12 percent passing a No. 200 (0.075-mm) sieve.

2.2 SOIL EROSION CONTROL

A. Provide erosion-control measures to prevent erosion or displacement of soils and water runoff to adjacent properties and pavements.

1. Enkamat Turf Reinforcement Mat - Colbond Geosynthetics (www.geosynthetics.colbond.com), or approved equal.
2. Anti-wash/Geojute - Belton Industries Inc. (www.beltonindustries.com), or approved equal

PART 3 - EXECUTION

3.1 PREPARATION

- A. Protect structures, utilities, sidewalks, pavements, and other facilities from damage caused by settlement, lateral movement, undermining, washout, and other hazards created by earthwork operations.

3.2 STORAGE OF SOIL MATERIALS

- A. Stockpile soil materials offsite, not on Government property, and cover to prevent windblown dust at conclusion of each workday.

3.2 SOIL FILL

- A. Place and compact fill material in layers as follows:
 - 1. Use engineered fill.

3.3 SOIL MOISTURE CONTROL

- A. Uniformly moisten or aerate each subsequent fill or backfill soil layer before compaction to within 2 percent of optimum moisture content.
 - 1. Do not place backfill or fill soil material on surfaces that are muddy, frozen, or contain frost or ice.
 - 2. Remove and replace, or scarify and air dry otherwise satisfactory soil material that exceeds optimum moisture content by 2 percent and is too wet to compact to specified dry unit weight.

3.4 COMPACTION OF SOIL BACKFILLS AND FILLS

- A. Place backfill and fill soil materials in layers not more than 8 inches (200 mm) in loose depth for material compacted by heavy compaction equipment, and not more than 4 inches (100 mm) in loose depth for material compacted by hand-operated tampers.
- B. Place backfill and fill soil materials evenly on all sides of structures to required elevations, and uniformly along the full length of each structure.
- C. Compact soil materials to not less than the following percentages of maximum dry unit weight according to ASTM D 698, or ASTM D 1557 as applicable:
 - 1. Scarify and re-compact top 12 inches (300 mm) below sub-grade and compact each layer of backfill or fill soil material at 95 percent.

3.5 GRADING

- A. General: Uniformly grade areas to a smooth surface, free of irregular surface changes. Comply with compaction requirements. Provide a smooth transition between adjacent existing pavement and new grades.
- B. Site Grading: Slope grades to direct water away from buildings and to prevent ponding, and drain to existing open gutter.
- C. Install erosion control fabric material in accordance with manufacturer's written recommendations and instructions.

3.6 FIELD QUALITY CONTROL

- A. Testing Agency: Engage a qualified independent geo-technical engineering testing agency to perform field quality control testing.
- B. Allow testing agency to inspect and test sub-grades and each fill or backfill layer. Proceed with subsequent earthwork only after test results for previously completed work comply with requirements.
- C. Testing agency will test compaction of soils in place according to ASTM D 1556, ASTM D 2167, ASTM D 2922, and ASTM D 2937, as applicable.
- D. When testing agency reports that fills, or backfills have not achieved degree of compaction specified, scarify and moisten or aerate, or remove and replace soil to depth required; re-compact and retest until specified compaction is obtained.

3.7 PROTECTION

- A. Protecting Graded Areas: Protect newly graded areas from traffic, and erosion. Keep free of trash and debris.
- B. Repair and reestablish grades to specified tolerances where completed or partially completed surfaces become eroded, rutted, settled, or where they lose compaction due to subsequent construction operations or weather conditions.
- C. Where settling occurs remove finished surfacing, backfill with additional soil material, compact, and reconstruct surfacing.
 - 1. Restore appearance, quality, and condition of finished surfacing to match adjacent work, and eliminate evidence of restoration to greatest extent possible.

3.8 DISPOSAL OF SURPLUS AND WASTE MATERIALS

- A. Disposal: Remove surplus satisfactory soil and waste material, including unsatisfactory soil, trash, and debris, and legally dispose of it off the Government's property.

EXHIBIT "J"

TEMPORARY REVOCABLE EASEMENT FOR DEMOLITION PURPOSES
WITHIN SECURITY CLEAR ZONE

For and in consideration of future demolition of improvements, the United States of America, acting by and through the Administrator of General Services, hereinafter called Grantor, grants to the Rio Nuevo Multipurpose Facilities District, a political subdivision of the State of Arizona, hereinafter called Grantee:

- A. A temporary, revocable, nonexclusive easement for use of the property designated as "Demolition Easement" on Attachment "1", attached hereto and made a part hereof together with that portion of the property designated on Attachment "1" as "Access Easement" which lies north of the rear line of the Walsh Building, for the purpose of loading demolition debris and unloading new fill for basement area within the Encroachment Easement ("Demolition Easement").
- B. A 12 foot wide temporary, revocable, nonexclusive easement located on the west side of the Walsh Building in such area as Grantor may designate from time to time, for the purpose of ingress and egress between the Demolition Easement and Broadway Boulevard ("Access Easement").

The Demolition Easement and the Access Easement (collectively, the "Easements") are subject to the following terms and conditions:

1. The term of the Easements is twenty-four (24) months, beginning on the date of conveyance, or as otherwise terminated pursuant to these terms and conditions.

2. There shall be no fee for the Easements.

3. The granting of the Easements by the Grantor is not a representation by the Grantor of the practicability, safety or use of the area, and shall create no liability upon or cause of action against the Grantor.

4. In addition to the liability imposed by law upon the Grantee's negligence, which liability is not impaired or otherwise affected hereby, the Grantee hereby agrees to defend, indemnify and hold harmless the Grantor, its officers, boards, commissions, employees, and agents against and from any and all claims, demands, causes of action, complaints, suits, losses, damages (including damage to Grantor's property) injuries and liabilities whatsoever (including those for costs, expenses, and attorney's fees), or any part thereof which arise by reason of injury to any person or persons, including death, or property damage, resulting from any act or omission of the Grantee or anyone directly or indirectly employed by it in the prosecution of any work and maintenance and use of the Easements.

5. The Easements shall be revocable upon the completion of removal of the improvements within the area immediately to the north of the Demolition Easement, said removal to occur no later than upon the termination of the Easements as set forth in Section 1 herein. The Grantee shall remove any and all items adjacent to, within, and any improvements and/or materials used therefore from the Demolition Easement area, all at no cost to the Grantor, by no later than the expiration of the Easements.

6. The Grantee shall be barred from collecting damages from the Grantor for the loss, removal or destruction of all items or any improvements and/or materials, or for any resulting or

residual damage or injury to Grantee's premises or uses thereof occasioned by the removal of said improvements and/or materials.

7. The Easements shall be assignable by Grantee to any third party, however, in the event of an assignment, Grantee shall remain responsible for all obligations stated herein, and all assignments shall be subject to prior written approval of the Grantor.

8. Grantee, and its respective officers, agents, employees, assigns, contractors and subcontractors shall have the right to enter upon the Easements, subject to reasonable advance written notice to Grantor. Any such entry shall be subject to compliance with security requirements of Grantor, as may be established by Grantor from time to time, and shall be performed in a manner that minimizes interruption with activities of the Grantor. Upon Occupancy (as defined below), Grantor's security requirements may include, without limitation, background checks for all personnel with access to the Easements.

9. Grantee shall leave a path through the Demolition Easement unobstructed at all times in order to allow vehicular access around the Walsh Building and to the loading dock of the Walsh Building. The path shall be at least 12 feet wide and suitable for use by trucks. The intended location of this pathway is the portion of the area shown as "Access Easement" on Attachment 1 to this Exhibit which is within the Demolition Easement. Grantee and Grantor will cooperate in the event either party needs to have the location moved.

10. The Demolition Easement and Access Easement shall not be used for storage of equipment or materials.

11. Grantee acknowledges that contractors employed by Grantor will be using the grounds of the Walsh Building, including without limitation, the area of the Easements. Grantee shall cooperate with Grantor's contractors in order to assure that Grantor's contractors are not impeded in their work.

12. When Grantor's renovation of the Walsh Building has progressed sufficiently to allow occupancy, Grantor intends to occupy the building ("Occupancy"). Grantor currently estimates that Occupancy will occur approximately January 2005. However, Grantor reserves the right to adjust the schedule to meet its needs. After Occupancy, Grantee shall perform all work in the area of the Easements outside the hours of 6:00 am through 6:00 pm, Monday through Friday ("Grantor's Business Hours").

13. Grantee shall take any steps necessary to prevent damage to any part of Grantor's property. In the event any damage occurs, Grantee shall restore Grantor's property to the condition it was in at the time Grantee first used the Easements.

Attachment "1" TO EXHIBIT "J"

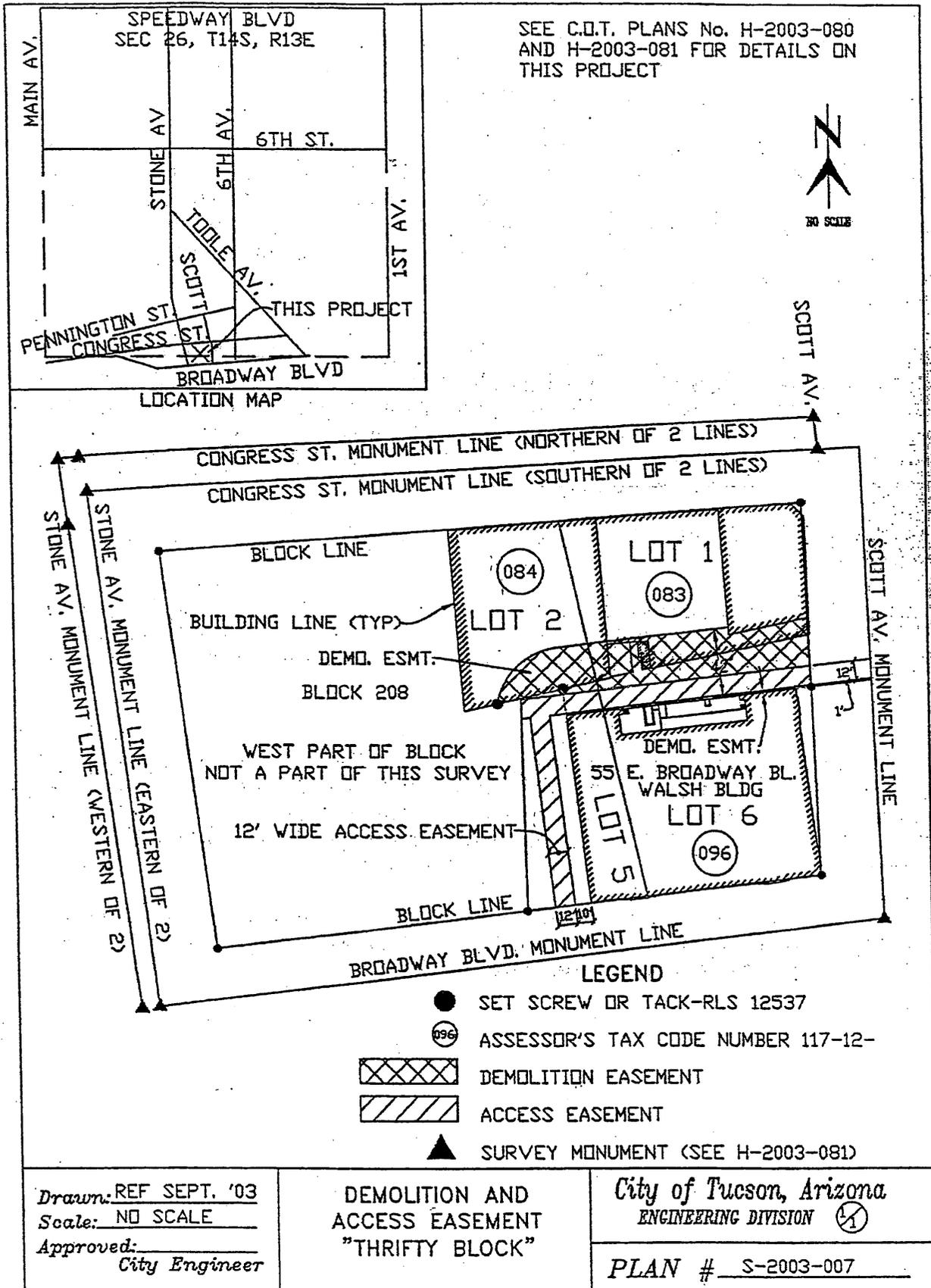


EXHIBIT "B"
(Legal Description)

{A0013160.DOC}195063.6

EX B TO ATTACHMENT 1 TO
RESOLUTION NO. 20320

**Thrifty Block
Former Courthouse & Law Enforcement Site
Tucson, Arizona
GSA Control No. 9-G-AZ-820**

EXHIBIT

LEGAL DESCRIPTION (contains 3 parcels)

PARCEL 1:

Part of Lot 1 in Block 208 of THE CITY OF TUCSON, Pima County, Arizona, according to the official Field Notes, Map and Survey made by S. W. Foreman and approved and adopted by the Mayor and Common Council of said City (then Village) of Tucson, on June 26, 1872, a certified copy of map is recorded in Book 3 of Maps and Plats at Page 70, described as follows, to-wit:

COMMENCING at the Northeast corner of said Lot 1 at the intersection of Congress and Scott Streets, being South 85 degrees 36 minutes 54 seconds West, 0.915 feet from a copper plug set in the sidewalk;

Thence South 85 degrees 36 minutes 54 seconds West along the North line of said Lot 1, a distance of 50.785 feet to a line between the walls of the Ivancovich Building and former United Bank building, being the TRUE POINT OF BEGINNING;

Continue thence South 85 degrees 36 minutes 54 seconds West along the North line of said Lot 1, a distance of 75 feet, more or less, to a point distant 22.5 feet Easterly from the Northwest corner of said Lot 1;

Continue thence South 85 degrees 36 minutes 54 seconds West along said North line, a distance of 22.50 feet to the Northwest corner of Lot 1;

Thence South 12 degrees 29 minutes 20 seconds East along the East line of said Lot 1 a distance of 100.98 feet, to the Southwest corner of said Lot 1;

Run thence North 77 degrees 17 minutes 7 seconds East along the South line of said Lot 1 (also being the North line of Lot 6 in Block 208 of the City of Tucson, as described in Deed to the United States of America, recorded in Book 56 of the Deeds at Page 429), a distance of 132.65 feet, to the Easterly line of Block 208;

Thence Northerly along the Easterly line of Block 208, to a point North 2 degrees 12 minutes West, distant 10.45 feet from the Northeast corner of the property described in Deed recorded in Book 56 of Deeds at Page 429 and which point is North 2 degrees 12 minutes West, 159.55 feet from its Southeast corner at the northwest corner of Scott and Broadway;

Thence South 77 degrees 2 minutes 52 seconds West, along the South wall of the former United Bank Building, a distance of 48.81 feet;

Thence North 4 degrees 16 minutes 6 seconds West, a distance of 77.34 feet to the TRUE POINT OF BEGINNING.

PARCEL 2:

That portion of Lot 1 in Block 208 of THE CITY OF TUCSON, Pima County, Arizona, according to the official Survey, Map and Field Notes of said City made by S. W. Foreman and approved and adopted by the Mayor and Common Council of said City (then Village) of Tucson, on June 26, 1872, a copy of which map is of record in the Office of the County Recorder of Pima County,

**Thrifty Block
Former Courthouse & Law Enforcement Site
Tucson, Arizona
GSA Control No. 9-G-AZ-820**

Arizona, in Book 3 of Maps and Plats at Page 70 thereof (also known as Parcel 2 in Deed recorded in Docket 8689, Page 2126, Pima County Recorder's Office, Pima County, Arizona), described as follows:

Commencing at the Northeast corner of said Block 208, and as established by City of Tucson Plan No. R-83-07, said point being also the TRUE POINT OF BEGINNING;

Thence South 2 degrees 16 minutes 41 seconds East (South 2 degrees 15 minutes, 35 seconds East, per City of Tucson Plan No. R-83-07), along the Easterly line of said Block 208, as shown on said City of Tucson Plan No. R-83-07, a distance of 70.32 feet to the Southeast corner of said parcel. Said point being also the Northwestern corner of parcel 5 as described in Docket 8689, Page 2126, Pima County Recorder's Office;

Thence South 77 degrees 8 minutes 14 seconds West, a distance of 48.48 feet;

Thence North 4 degrees 15 minutes 36 seconds West, a distance of 77.38 feet to a point on the Southerly right of way line of Congress Street as established by City of Tucson Plan No. R-83-07;

Thence North 85 degrees 34 minutes 8 seconds East, along said Southerly right of way line, a distance of 50.78 feet to the True Point of Beginning.

PARCEL 3:

All of Lot 2 in Block 208 of the CITY OF TUCSON, Pima County, Arizona, according to the official Survey, Field Notes and Map made and executed by S. W. Foreman and approved and adopted by the Mayor and Common Council of the City of Tucson (then Village) on June 26, 1872, a certified copy of which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats at Page 70, described as follows:

BEGINNING at the Northeast corner of said Lot 2;

Thence Westerly along the North line of said Lot 2, 67.5 feet;

Thence Southerly at right angles to said North line of said Lot 2, to a point in the South line of said Lot 2;

Thence Easterly along the South line of said Lot 2 to the Southeast corner of said Lot 2;

Thence Northerly along the East line of said Lot 2, to the Northeast corner of said Lot 2 and the PLACE OF BEGINNING.

Excepting Therefrom, from Parcels 1 and 3 above, those portions of the following described property lying within Parcels 1 and 3 above:

Commencing at the Northeast corner of Block 208 of the City of Tucson, as recorded in Book 3 of Maps and Plats, at Page 70, Pima County Recorder's Office, and as established by City of Tucson Plan No. R-83-07;

Thence South 2 degrees 16 minutes 41 seconds East (South 2 degrees 15 minutes 35 seconds East, per City of Tucson Plan No. R-83-07), along the Easterly line of said Block 208, as shown on said City of Tucson Plan No. R-83-07, a distance of 70.32 feet to the TRUE POINT OF

**Thrifty Block
Former Courthouse & Law Enforcement Site
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BEGINNING. Said point being also the Southeasterly corner of Parcel 2 as described in Docket 8689, Page 2126, Pima County Recorder's Office;

Thence continue South 2 degrees 16 minutes 41 seconds East, along the Easterly line of said Block 208, a distance of 42.88 feet to a point on the Easterly projection of the Northerly face of the Walsh Building, located at 55 East Broadway Boulevard;

Thence South 83 degrees 11 minutes 41 seconds West, along said projection of the Northerly face of said Walsh Building, a distance of 9.06 feet to the Northeasterly corner thereof;

Thence continue South 83 degrees 11 minutes 41 seconds West, along the Northerly face of said Walsh Building, a distance of 141.35 feet to the Northwesterly corner thereof;

Thence North 6 degrees 48 minutes 19 seconds West, perpendicular to the previous line, a distance of 16.33 feet to a point on the Southerly line of Parcel 3 as described in said Docket 8689, at Page 2126;

Thence South 77 degrees 17 minutes 7 seconds West, along the Southerly line of said Parcel 3, a distance of 26.00 feet;

Thence South 77 degrees 1 minute 42 seconds West, continuing along the Southerly line of said Parcel 3, a distance of 14.45 feet to a point of curvature of a non-tangent curve concave to the Southeast, from which point the radius bears South 80 degrees 3 minutes 32 seconds East, said radius point being the aforementioned Northwesterly corner of the Walsh Building;

Thence Northeasterly, along the arc of a curve having a radius of 42.00 feet and a central angle of 73 degrees 15 minutes 13 seconds, for an arc distance of 53.70 feet to a point of tangency;

Thence North 83 degrees 11 minutes 41 seconds East, parallel with and 42.00 feet distant from said Northerly face of the Walsh Building, a distance of 105.77 feet to a point on the Westerly line of said Parcel 2 as recorded in Docket 8689, at Page 2126;

Thence South 4 degrees 15 minutes 36 seconds East, along the Westerly line of said Parcel 2, a distance of 4.38 feet to the Southwesterly corner thereof;

Thence North 77 degrees 8 minutes 14 seconds East, along the Southerly line of said Parcel 2, a distance of 48.48 feet to the TRUE POINT OF BEGINNING.

Parcel 4:

Lot 2 in Block 208 of the City of Tucson, Pima County, Arizona, according to the official survey, field notes and map made and executed by S.W. Foreman and approved and adopted by the Mayor and Common Council of the City of Tucson (then Village) on June 26, 1872, a certified copy of which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats at Page 70;

Except that portion described as follows:

Beginning at the Northeast corner of said Lot 2;

Thence Westerly along the North line of said Lot 2, 67.5 feet (67.13 (M));

Thence Southerly, at right angles to said North line of said Lot 2 (89 degrees 59 minutes 01 seconds (M)), to a point on the south line of said Lot 2;

Thence Easterly along the South line of said Lot 2 to the Southeast Corner of said Lot 2;

Thence Northerly along the East line of said Lot 2, to the Northeast Corner of said Lot 2 and the Place of Beginning.

EXHIBIT "D"
(Form of TRE)

TEMPORARY REVOCABLE EASEMENT

For and in consideration of the sum of \$0.00 and other valuable consideration, the City of Tucson, a municipal corporation, hereinafter called City, grants to XXXXXXXXXXXXXXXXXX, hereinafter called Grantee:

A temporary revocable easement for XXXXXXXXXXXXXXXXXX within the XXXXXXXXXXXX right of way, the location of said easement being shown on the sketch and legal description attached as EXHIBIT "A" and made a part hereof

and subject to the following terms and conditions:

1. The purpose of this easement is for placement of a XXXXXXXXXXXXXXXXXX in the XXXXXXXXXXXX right of way, in connection with the Grantee's business known as XXXXXXXXXXXX. [SPECIAL CONDITIONS IMPOSED ON THE EASEMENT] The area shall be Blue Staked in accordance with the provisions of State law prior to any construction activities.
2. The term of this Temporary Revocable Easement is one year, unless otherwise revoked, beginning on the date of approval. This Temporary Revocable Easement shall automatically renew for successive one-year periods unless revoked by the Real Estate Administrator according to the terms of paragraph 7 below.
3. The annual fee for renewal is \$0.00 per year from the date of approval.
4. The granting of said Temporary Revocable Easement by the City for use of portions of said public right-of-way is not a representation by the City of either the practicability, safety or use of the area, and shall create no liability upon or cause of action against the City.
5. In addition to the liability imposed by law upon the Grantee's negligence, which liability is not impaired or otherwise affected hereby, the Grantee hereby agrees to defend, indemnify and hold harmless the City, its officers, boards, commissions, employees, and agents against and from any and all claims, demands, causes of action, complaints, suits, losses, damages (including damage to City property) injuries and liabilities whatsoever (including those for costs, expenses, and attorney's fees), or any part thereof which arise by reason of injury to any person or persons, including death, or property damage, resulting from any act or omission of the Grantee or anyone directly or indirectly employed by it in the prosecution of any work and maintenance and use of said Temporary Revocable Easement.

6. For so long as said Temporary Revocable Easement shall be in force and effect, the Grantee shall maintain public liability and bodily injury insurance in the amount of \$1,000,000.00 for each occurrence and shall cause the City to be named as co-insured for all purposes under such insurance. Grantee shall require that the insurance carrier shall provide the City with a certificate of coverage containing a provision for a 30-day notice of cancellation. The certificate of insurance shall be kept current and mailed to the City at:

City of Tucson/Real Estate Division
ATTN: Property Management
P O Box 27210
Tucson Arizona 85726-7210

Please reference "TRE XXXX-XXX" in the description area of the insurance certificate.

7. This Temporary Revocable Easement shall be revocable at will of the Real Estate Administrator of the City of Tucson. Revocation shall be effected by, and be effective upon giving notice in writing to the Grantee. The Grantee shall remove any and all items within, and any improvements and/or materials used therefore from said Temporary Revocable Easement Area, all at no cost to the City, within 30 days following the request by the City to do so, or the City may remove and dispose of and charge the cost to the Grantee, should Grantee fail to effect such removal.
8. The Grantee shall be barred from collecting damages from the City for the loss, removal or destruction of all items or any improvements and/or materials, or for any resulting or residual damage or injury to Grantee's premises or uses thereof occasioned by the removal of said improvements and/or materials.
9. The proposed construction and TRE area shall be Blue Staked in accordance with the provisions of State law prior to any construction activities. The Grantee and its assignees or successors will assume full responsibility and cost for any damage to existing utility franchise that may be caused by the installation of encroachments by the Grantee or developer that include, but are not limited to, walls, fences or landscaping within the right of way.
10. If any of the said improvements/materials are required to be removed in order for any utility to perform regular maintenance duties/functions, said removal and any replacement of the aforementioned improvements/materials will be accomplished by Grantee at no cost to the utility or the City of Tucson.
11. In the event that this TRE is canceled by the City for failure of the Grantee to comply with any of its terms or conditions, the fee to reinstate this TRE will be \$200.00.
12. Grantee shall not sublet all or any portion of the Premises without the Grantor's prior written consent which shall not be unreasonably withheld. Grantee may assign all of its rights, duties and obligations under this Agreement to any entity which acquires all or substantially all of Grantee's assets in Tucson by reason of a merger, acquisition or other business reorganization, which shall not be deemed a third party assignment. A third party assignment shall require Grantor's consent, and Grantor agrees not to withhold or

{A0013160.DOC}195063.6

delay such consent if to do so would be commercially unreasonable. In the event of any valid assignment of this Agreement by Grantee, Grantee shall be and is hereby relieved of all liability under any and all of its covenants and obligations contained in or derived from this Agreement arising out of any act, occurrence or omission occurring after said assignment.

Grantee (Applicant):

DATED this _____ day of _____,
20__.

COMPANY: _____

By (Print): _____

Signature: _____

Title: _____

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

This instrument was acknowledged before me
this ____ day of _____, 20____,
by _____.
(Grantee)

MY COMMISSION EXPIRES:
(seal)

Notary Public Signature

Grantor (City of Tucson):

DATED this _____ day of _____,
20__.

APPROVED AS TO FORM:

By: _____
Principal Assistant City Attorney

CITY OF TUCSON, a municipal corporation

By: _____
John R. Updike, Real Estate Administrator
For Mike Hein, City Manager

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

This instrument was acknowledged before me
this ____ day of _____, 20____,
by John R. Updike.

MY COMMISSION EXPIRES:
(seal)

Notary Public Signature

F. ANN RODRIGUEZ, RECORDER
RECORDED BY: JLW
DEPUTY RECORDER
1541 PE3



ATTACHMENT 2
DOCKET: 12165
PAGE: 3430
NO. OF PAGES: 20
SEQUENCE: 20032080698
10/28/2003
QCDEED 15:48

TFNTI
CITY OF TUCSON
52 W CONGRESS 2ND FLOOR
PO BOX 27210
TUCSON AZ 85726

MAIL

AMOUNT PAID \$ 25.00

Attn: John Updike, Senior Project Manager
Office of The City Manager
52 W. Congress, 2nd Floor
P.O. Box 27210
Tucson, AZ 85726-7210

60009242 SJ

*Affidavit Exempt
per ARS 11-1134 A-3*

DOCUMENT TITLE: Quitclaim Deed

20032080698

**Thrifty Block
Former Courthouse & Law Enforcement Site
Tucson, Arizona
GSA Control No. 9-G-AZ-820**

Mail Tax Statement To:

John R. Updike, Project Manager
City of Tucson
52 W. Congress
Tucson, Arizona 85701

QUITCLAIM DEED

THIS INDENTURE is made as of the 24th day of October, 2003 between the UNITED STATES OF AMERICA, acting by and through the Administrator of the General Services ("Grantor"), under and pursuant to the powers and authority contained in the provisions of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and regulations and orders promulgated thereunder, and the Rio Nuevo Multipurpose Facilities District, a political subdivision of the State of Arizona ("Grantee").

GRANTOR, for and in consideration of the sum of ONE DOLLAR (\$1.00), in lawful money of the United States of America, receipt of which is hereby acknowledged, hereby remises releases and quitclaims unto the Grantee, and to their successors and assigns, all of its right title and interest in that certain real property, consisting of approximately 0.3942 acres of land (17,171.43 square feet), situated in the City of Tucson, County of Pima, State of Arizona, all as more particularly described in the attached legal descriptions (**Exhibit A**) incorporated herein (collectively referred to as the "Property").

GRANTOR HEREBY ASSIGNS TO GRANTEE all of its interest in the Revocable License for Non-Federal Use of Real Property No. 09-OL-01AZ0001, dated October 23, 2000 between Grantor and the City of Tucson, and any other licenses, tenancies and permits encumbering any portion of the Property ("Occupancy Agreements"). Grantee accepts and assumes all obligations of the Grantor under the Occupancy Agreements.

GRANTOR HEREBY GRANTS TO GRANTEE a temporary revocable easement for use of adjacent property retained by Grantor, subject to the terms and conditions contained in, and as described in, **Exhibit B** incorporated herein, for the purpose of retaining existing improvements.

GRANTOR HEREBY RESERVES unto itself, its successors and assigns, and by acceptance of this instrument and as further consideration for this conveyance, Grantee covenants and agrees for itself, its successors and assigns as follows, all of which shall be covenants running with the land:

1. HAZARDOUS SUBSTANCE ACTIVITY.

Notice. Pursuant to 40 CFR 373.2 and Section 120(h)(3)(A)(i) of the Comprehensive Environmental Response, Compensation and Liability Act of

1980, as amended (CERCLA)(42 U.S.C. §9620(h)(3)(A)(i)), and based upon a complete search of agency files, the United States gives notice that no hazardous substances have been released or disposed of or stored for one year or more on the Property.

Covenant. United States warrants that all remedial action necessary to protect human health and the environment has been taken before the date of this conveyance. United States warrants that it shall take any additional response action found to be necessary after the date of this conveyance regarding hazardous substances located on the Property on the date of this conveyance.

This covenant shall not apply:

(a) in any case in which Grantee, its successor(s) or assign(s), or any successor in interest to the Property or part thereof is a Potentially Responsible Party (PRP) with respect to the Property immediately prior to the date of this conveyance; **OR**

(b) to the extent but only to the extent that such additional response action or part thereof found to be necessary is the result of an act or failure to act of the Grantee, its successor(s) or assign(s), or any party in possession after the date of this conveyance that either:

(i) results in a release or threatened release of a hazardous substance that was not located on the Property on the date of this conveyance; **OR**

(ii) causes or exacerbates the release or threatened release of a hazardous substance the existence and location of which was known and identified to the applicable regulatory authority as of the date of this conveyance.

In the event Grantee, its successor(s) or assign(s), seeks to have United States conduct any additional response action, and, as a condition precedent to United States incurring any additional cleanup obligation or related expenses, the Grantee, its successor(s) or assign(s), shall provide United States at least 45 days written notice of such a claim and provide credible evidence that:

(A) the associated contamination existed prior to the date of this conveyance; and

(B) the need to conduct any additional response action or part thereof was not the result of any act or failure to act by the Grantee, its successor(s) or assign(s), or any party in possession.

ACCESS. United States reserves a right of access, at reasonable times and upon reasonable advance written notice to Grantee, to all portions of the Property or to any adjoining properties, for environmental investigation, remediation or other corrective action. This reservation includes the right of access to and use of available utilities at reasonable cost to United States. These rights shall be exercisable in any case in which a remedial action, response action or corrective action is found to be necessary after the date of this conveyance, or in which access is necessary to carry out a remedial action, response action, or corrective action on adjoining property. United States shall exercise reasonable efforts to minimize any interference with the operations of any then existing tenants on the Property or any then ongoing development activity in carrying out such response or corrective actions. Pursuant to this reservation, the United States of America, and its respective officers, agents, employees, contractors and subcontractors shall have the right (upon reasonable advance written notice to the record title owner) to enter upon the Property and conduct investigations and surveys, to include drilling, test-pitting, borings, data and records compilation and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary, including but not limited to the installation and operation of monitoring wells, pumping wells, and treatment facilities. Any such entry, including such activities, responses or remedial actions, shall be coordinated with record title owner and shall be performed in a manner that minimizes interruption with activities of authorized occupants.

2. ASBESTOS COVENANT.

GRANTEE covenants and agrees, on behalf of themselves, their successors and assigns, that in their use and occupancy of the Property, or any part thereof, they are responsible for compliance with all Federal, state and local laws relating to asbestos; and that, by virtue of this deed, Grantor assumes no liability for damages for personal injury, illness, disability or death, to the GRANTEE, or to GRANTEE's successors, assigns, employees, invitees, or to any other person subject to the control or direction of GRANTEE, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property described in this deed, whether the GRANTEE, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.

3. PCB and MERCURY COVENANT.

GRANTEE covenants and agrees, on behalf of themselves, their successors and assigns, that in their use and occupancy of the Property, or any part thereof, they are responsible for compliance with all Federal, state and local laws relating to PCB and mercury; and that, by virtue of this deed, GRANTOR assumes no liability for damages for personal injury, illness, disability or death, to the GRANTEE, or to GRANTEE's successors, assigns, employees, invitees, or to any other person subject to the control or direction of GRANTEE, its successors or assigns, or to any other person, including

- I. The acceptance of the delivery of this (Deed/Title) shall constitute conclusive evidence of the agreement of the Grantee to be bound by the conditions, restrictions, and limitations, and to perform the obligations herein set forth.
- J. The failure of the Arizona State Historic Preservation Office to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

5. NON-DISCRIMINATION COVENANT.

The GRANTEE covenants for itself, and its assigns and every successor in interest to the Property hereby conveyed, or any part thereof, that the said GRANTEE and such assigns shall not discriminate upon the basis of race, color, religion, sex, or national origin in the use, occupancy, sale, or lease of the Property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land of interest therein in the locality of the Property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

6. SECURITY COVENANT AND RESTRICTION.

Grantee covenants for itself, its successors and assigns that:

- A. No improvement shall be constructed on the Property that affords a potential perch for attacks aimed at the Walsh Building. Features that are prohibited include, without limitation:
 - (1) Balconies that are on or near the south side of a building on the Property.
 - (2) Gardens, patios or other public use occupancies on the roof.
- B. Grantor shall be permitted review, throughout the process of site development, in order to apprise the selected developer of the Grantor's security concerns. The security concerns relate to improvements that are visible from any part of the Walsh Building.

Such review may consist of, but is not limited to:

- (1) Grantor shall have the opportunity to meet with potential developers, prior to award, to present Grantor's security concerns.

- (2) After award, Grantor shall have the opportunity to meet with the selected developer to review security concerns in detail, enhancing Grantee's appreciation of Grantor's concerns.
 - (3) Prior to construction or modification of any improvements that are visible from any part of the Walsh Building, Grantee shall provide Grantor with four copies of 75% construction drawings. Grantor may reasonably ask Grantee to supplement the Concept Documents and Construction Documents with additional information. Grantor shall have 45 calendar days before construction, from receipt of the Concept Drawings and Construction Documents respectively, to review the Concept Drawings and Construction Documents for their impact on the security of the Walsh Building.
- C. Upon completion of demolition, Grantee shall construct on the Property a wall or fence along the entire southern border of the Property. This wall or fence must be opaque and at least 8 feet tall. Grantee shall repair, maintain and replace the wall or fence as necessary to keep it in good condition.
- D. This covenant shall run with the Property for as long as Grantor's remaining land continues to be owned or occupied by the United States Government.

7. FAA COVENANT.

GRANTEE covenants and agrees, on behalf of it, its successors and assigns and every successor in interest to the PROPERTY herein described, or any part thereof, that any construction or alteration is prohibited unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with Title 14, Code of Federal Regulations, Part 77, entitled "Objects Affecting Navigable Airspace," or under the authority of the Federal Aviation Act of 1958, as amended.

THIS CONVEYANCE IS MADE SUBJECT TO all covenants, easements, reservations and encumbrances, whether or not of record, and any facts which a physical inspection or accurate survey of the premises may disclose. Failure of Grantor or his successor to insist in any one or more instances upon complete performance of any of the covenants or conditions of this indenture will not be construed as a waiver or a relinquishment of the future performance of such covenants or conditions, but the obligations of the Grantee, its successors and assigns, with respect to such future performance shall continue in full force and effect.

SAID PROPERTY transferred by this indenture was duly determined to be surplus, and was assigned to the General Services Administration for disposal

**Thrifty Block
Former Courthouse & Law Enforcement Site
Tucson, Arizona
GSA Control No. 9-G-AZ-820**

pursuant to the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and applicable rules, orders and regulations.

IN WITNESS WHEREOF, Grantor has caused this indenture to be executed as of the day and year first written above.

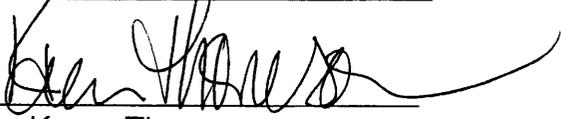
UNITED STATES OF AMERICA
Acting by and through the
ADMINISTRATOR OF GENERAL SERVICES

By: Clark Van Epps
Clark Van Epps
Contracting Officer
Property Disposal Division (9PR)
General Services Administration
450 Golden Gate Ave., 4th Floor East
San Francisco, CA 94102-3434

ACCEPTANCE of QUITCLAIM DEED

GRANTEE, through its authorized representative, hereby accepts title to the conveyed PROPERTY and accepts and agrees to all of the terms, conditions, and restrictions contained in the QUITCLAIM DEED set forth above. Executed on behalf of the GRANTEE this 27th day of October, 2003, at PIMA County.

**CITY OF TUCSON, RIO NUEVO
MULTIPURPOSE FACILITIES DISTRICT**


By: Karen Thoreson
Acting Project Director

ATTEST

By: John R. Updike
Senior Project Manager

APPROVED AS TO FORM:

By: 
Michael Rankin
Title: Senior Assistant City Attorney
Dated: 10-27-03

**Thrifty Block
Former Courthouse & Law Enforcement Site
Tucson, Arizona
GSA Control No. 9-G-AZ-820**

EXHIBIT "A"

LEGAL DESCRIPTION (contains 3 parcels)

PARCEL 1:

Part of Lot 1 in Block 208 of THE CITY OF TUCSON, Pima County, Arizona, according to the official Field Notes, Map and Survey made by S. W. Foreman and approved and adopted by the Mayor and Common Council of said City (then Village) of Tucson, on June 26, 1872, a certified copy of map is recorded in Book 3 of Maps and Plats at Page 70, described as follows, to-wit:

COMMENCING at the Northeast corner of said Lot 1 at the intersection of Congress and Scott Streets, being South 85 degrees 36 minutes 54 seconds West, 0.915 feet from a copper plug set in the sidewalk;

Thence South 85 degrees 36 minutes 54 seconds West along the North line of said Lot 1, a distance of 50.785 feet to a line between the walls of the Ivancovich Building and former United Bank building, being the TRUE POINT OF BEGINNING;

Continue thence South 85 degrees 36 minutes 54 seconds West along the North line of said Lot 1, a distance of 75 feet, more or less, to a point distant 22.5 feet Easterly from the Northwest corner of said Lot 1;

Continue thence South 85 degrees 36 minutes 54 seconds West along said North line, a distance of 22.50 feet to the Northwest corner of Lot 1;

Thence South 12 degrees 29 minutes 20 seconds East along the East line of said Lot 1 a distance of 100.98 feet, to the Southwest corner of said Lot 1;

Run thence North 77 degrees 17 minutes 7 seconds East along the South line of said Lot 1 (also being the North line of Lot 6 in Block 208 of the City of Tucson, as described in Deed to the United States of America, recorded in Book 56 of the Deeds at Page 429), a distance of 132.65 feet, to the Easterly line of Block 208;

Thence Northerly along the Easterly line of Block 208, to a point North 2 degrees 12 minutes West, distant 10.45 feet from the Northeast corner of the property described in Deed recorded in Book 56 of Deeds at Page 429 and which point is North 2 degrees 12 minutes West, 159.55 feet from its Southeast corner at the northwest corner of Scott and Broadway;

Thence South 77 degrees 2 minutes 52 seconds West, along the South wall of the former United Bank Building, a distance of 48.81 feet;

Thence North 4 degrees 16 minutes 6 seconds West, a distance of 77.34 feet to the TRUE POINT OF BEGINNING.

PARCEL 2:

That portion of Lot 1 in Block 208 of THE CITY OF TUCSON, Pima County, Arizona, according to the official Survey, Map and Field Notes of said City made by S. W. Foreman and approved and adopted by the Mayor and Common Council of said City (then Village) of Tucson, on June 26, 1872, a copy of which map is of record in the Office of the County Recorder of Pima County,

2025 JUN 10 10 10 AM

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Arizona, in Book 3 of Maps and Plats at Page 70 thereof (also known as Parcel 2 in Deed recorded in Docket 8689, Page 2126, Pima County Recorder's Office, Pima County, Arizona), described as follows:

Commencing at the Northeast corner of said Block 208, and as established by City of Tucson Plan No. R-83-07, said point being also the TRUE POINT OF BEGINNING;

Thence South 2 degrees 16 minutes 41 seconds East (South 2 degrees 15 minutes, 35 seconds East, per City of Tucson Plan No. R-83-07), along the Easterly line of said Block 208, as shown on said City of Tucson Plan No. R-83-07, a distance of 70.32 feet to the Southeast corner of said parcel. Said point being also the Northwesterly corner of parcel 5 as described in Docket 8689, Page 2126, Pima County Recorder's Office;

Thence South 77 degrees 8 minutes 14 seconds West, a distance of 48.48 feet;

Thence North 4 degrees 15 minutes 36 seconds West, a distance of 77.38 feet to a point on the Southerly right of way line of Congress Street as established by City of Tucson Plan No. R-83-07;

Thence North 85 degrees 34 minutes 8 seconds East, along said Southerly right of way line, a distance of 50.78 feet to the True Point of Beginning.

PARCEL 3:

All of Lot 2 in Block 208 of the CITY OF TUCSON, Pima County, Arizona, according to the official Survey, Field Notes and Map made and executed by S. W. Foreman and approved and adopted by the Mayor and Common Council of the City of Tucson (then Village) on June 26, 1872, a certified copy of which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats at Page 70, described as follows:

BEGINNING at the Northeast corner of said Lot 2;

Thence Westerly along the North line of said Lot 2, 67.5 feet;

Thence Southerly at right angles to said North line of said Lot 2, to a point in the South line of said Lot 2;

Thence Easterly along the South line of said Lot 2 to the Southeast corner of said Lot 2;

Thence Northerly along the East line of said Lot 2, to the Northeast corner of said Lot 2 and the PLACE OF BEGINNING.

Excepting Therefrom, from Parcels 1 and 3 above, those portions of the following described property lying within Parcels 1 and 3 above:

Commencing at the Northeast corner of Block 208 of the City of Tucson, as recorded in Book 3 of Maps and Plats, at Page 70, Pima County Recorder's Office, and as established by City of Tucson Plan No. R-83-07;

Thence South 2 degrees 16 minutes 41 seconds East (South 2 degrees 15 minutes 35 seconds East, per City of Tucson Plan No. R-83-07), along the Easterly line of said Block 208, as shown on said City of Tucson Plan No. R-83-07, a distance of 70.32 feet to the TRUE POINT OF

11/11/2010 10:00 AM

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Former Courthouse & Law Enforcement Site
Tucson, Arizona
GSA Control No. 9-G-AZ-820**

BEGINNING. Said point being also the Southeasterly corner of Parcel 2 as described in Docket 8689, Page 2126, Pima County Recorder's Office;

Thence continue South 2 degrees 16 minutes 41 seconds East, along the Easterly line of said Block 208, a distance of 42.88 feet to a point on the Easterly projection of the Northerly face of the Walsh Building, located at 55 East Broadway Boulevard;

Thence South 83 degrees 11 minutes 41 seconds West, along said projection of the Northerly face of said Walsh Building, a distance of 9.06 feet to the Northeasterly corner thereof;

Thence continue South 83 degrees 11 minutes 41 seconds West, along the Northerly face of said Walsh Building, a distance of 141.35 feet to the Northwesterly corner thereof;

Thence North 6 degrees 48 minutes 19 seconds West, perpendicular to the previous line, a distance of 16.33 feet to a point on the Southerly line of Parcel 3 as described in said Docket 8689, at Page 2126;

Thence South 77 degrees 17 minutes 7 seconds West, along the Southerly line of said Parcel 3, a distance of 26.00 feet;

Thence South 77 degrees 1 minute 42 seconds West, continuing along the Southerly line of said Parcel 3, a distance of 14.45 feet to a point of curvature of a non-tangent curve concave to the Southeast, from which point the radius bears South 80 degrees 3 minutes 32 seconds East, said radius point being the aforementioned Northwesterly corner of the Walsh Building;

Thence Northeasterly, along the arc of a curve having a radius of 42.00 feet and a central angle of 73 degrees 15 minutes 13 seconds, for an arc distance of 53.70 feet to a point of tangency;

Thence North 83 degrees 11 minutes 41 seconds East, parallel with and 42.00 feet distant from said Northerly face of the Walsh Building, a distance of 105.77 feet to a point on the Westerly line of said Parcel 2 as recorded in Docket 8689, at Page 2126;

Thence South 4 degrees 15 minutes 36 seconds East, along the Westerly line of said Parcel 2, a distance of 4.38 feet to the Southwesterly corner thereof;

Thence North 77 degrees 8 minutes 14 seconds East, along the Southerly line of said Parcel 2, a distance of 48.48 feet to the TRUE POINT OF BEGINNING.

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EXHIBIT "B"

TEMPORARY REVOCABLE EASEMENT FOR BUILDING ENCROACHMENT

For and in consideration of future demolition of existing improvements on the Property, the United States of America, acting by and through the Administrator of General Services, hereinafter called Grantor, grants to the Rio Nuevo Multipurpose Facilities District, a political subdivision of the State of Arizona, hereinafter called Grantee, a temporary revocable easement (the "Encroachment Easement") for use of property of the Grantor for the purpose of retaining existing improvements within that area designated as the "Demolition Easement" on Attachment 2 to this Exhibit "B".

and subject to the following terms and conditions:

1. The term of this Encroachment Easement is twenty-four (24) months, beginning on the date of conveyance, or as otherwise terminated pursuant to these terms and conditions.

2. There shall be no fee for this Easement.

3. The granting of this Encroachment Easement by the Grantor is not a representation by the Grantor of the practicability, safety or use of the area, and shall create no liability upon or cause of action against the Grantor.

4. In addition to the liability imposed by law upon the Grantee's negligence, which liability is not impaired or otherwise affected hereby, the Grantee hereby agrees to defend, indemnify and hold harmless the Grantor, its officers, boards, commissions, employees, and agents against and from any and all claims, demands, causes of action, complaints, suits, losses, damages (including damage to Grantor's property) injuries and liabilities whatsoever (including those for costs, expenses, and attorney's fees), or any part thereof which arise by reason of injury to any person or persons, including death, or property damage, resulting from any act or omission of the Grantee or anyone directly or indirectly employed by it in the prosecution of any work and maintenance and use of the Encroachment Easement.

5. This Encroachment Easement shall be revocable upon the completion of removal of the improvements within the area of the easement, said removal to occur no later than upon the termination of the Encroachment Easement as set forth in Section 1 herein. By no later than the expiration of this Encroachment Easement, Grantee shall perform the following tasks at no cost to Grantor:

(a) Grantor shall remove from the Encroachment Easement area all improvements, including all items and materials associated with such improvements.

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(b) Grantor shall fill in the Encroachment Easement area to the level of the pavement on Grantor's property adjacent to the Encroachment Easement. The fill shall be done in accordance with Attachment 1 to this Exhibit.

If Grantee fails to do so, Grantor shall have the right, but not the obligation, to perform Grantee's obligations for Grantee at Grantee's expense. In such event, Grantor shall have the right to enter Grantor's property and demolish all (or such portion as Grantor finds necessary or convenient) of the encroaching buildings. Grantor may, but shall not be obligated to, fill in any cavities created by removal of improvements and take such measures as Grantor deems to be desirable for safety. Grantee acknowledges that the cost of removing the encroaching structures is part of the consideration for conveyance of the Property from Grantor to Grantee. Grantee covenants for itself, its successors and assigns to reimburse Grantor for all expenses incurred by Grantor in exercising its rights under this paragraph. Grantor hereby reserves a lien against the Property for all such costs. Grantor shall not be liable for any damage to Grantee's property.

6. The Grantee shall be barred from collecting damages from the Grantor for the loss, removal or destruction of all items or any improvements and/or materials, or for any resulting or residual damage or injury to Grantee's premises or uses thereof occasioned by the removal of said improvements and/or materials.

7. This Encroachment Easement shall be assignable by Grantee to any third party, however, in the event of an assignment, Grantee shall remain responsible for all obligations stated herein, and all assignments shall be subject to prior written approval of the Grantor.

8. Grantee, and its respective officers, agents, employees, assigns, contractors and subcontractors shall have the right to enter upon the Encroachment Easement area, subject to reasonable advance written notice to Grantor. Any such entry shall be subject to compliance with security requirements of Grantor, as may be established by Grantor from time to time, and shall be performed in a manner that minimizes interruption with activities of the Grantor.

9. Grantee shall cooperate with Grantor and Grantor's contractor to assure that Grantor's contractors have convenient access during demolition activities. Grantee shall not interfere with access any more than is necessary to accomplish the purpose of this easement.

ATTACHMENT "1" TO EXHIBIT "B"

EARTHWORK

PART 1 - GENERAL

1.1 SUMMARY

A. This Section includes the following:

1. Backfilling.
2. Soil stabilization.

1.2 DEFINITIONS

A. Backfill: Soil material used to fill an excavation.

1.3 PROJECT CONDITIONS

A. Existing Utilities: Do not interrupt utilities serving facilities occupied by the Government unless permitted in writing by Government Contracting Officer and then only after arranging to provide temporary utility services according to requirements indicated.

PART 2 - PRODUCTS

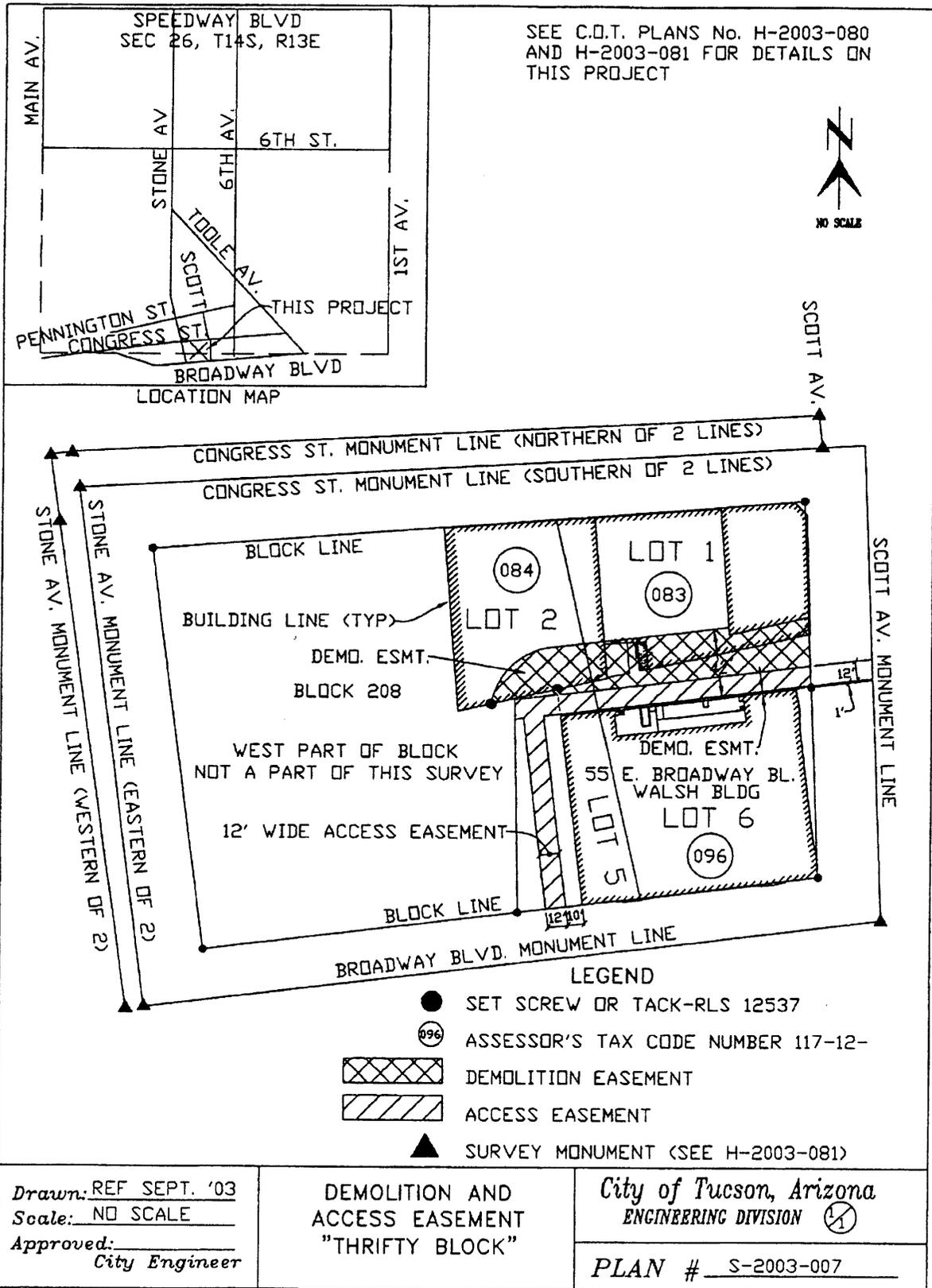
2.1 SOIL MATERIALS

A. Engineered Fill: Naturally or artificially graded mixture of natural or crushed gravel, Crushed stone, and natural or crushed sand: ASTM D 2940; with at least 90 percent passing a 1-1/2-inch (37.5-mm) sieve and not more than 12 percent passing a No. 200 (0.075-mm) sieve.

2.2 SOIL EROSION CONTROL

- A. Provide erosion-control measures to prevent erosion or displacement of soils and water runoff to adjacent properties and pavements.
1. Enkamat Turf Reinforcement Mat - Colbond Geosynthetics (www.geosynthetics.colbond.com), or approved equal.
 2. Anti-wash/Geojute - Belton Industries Inc. (www.beltonindustries.com), or approved equal

ATTACHMENT "2" TO EXHIBIT "B"



CITY OF TUCSON, ARIZONA

Thrifty Block
Former Courthouse & Law Enforcement Site
Tucson, Arizona
GSA Control No. 9-G-AZ-820

EXHIBIT 'C'

EAST CONGRESS

