ADOPTED BY THE RIO NUEVO
MULTIPURPOSE FACILITIES DISTRICT
BOARD OF DIRECTORS
July 13, 2005

RESOLUTION NO. 2005-09

AUTHORIZING THE RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT TO BORROW UP TO $6,100,000 FROM THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF TUCSON, ARIZONA, AND APPLY THE PROCEEDS THEREOF TO THE RENOVATION AND EQUIPPING OF THE HISTORIC FOX THEATRE; AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER TRUST INDENTURE, A JUNIOR LIEN MASTER NOTE, A LOAN AGREEMENT AND RELATED DOCUMENTS AND AGREEMENTS SETTING FORTH THE TERMS OF SUCH LOAN AND PROVIDING FOR THE REPAYMENT THEREOF; AND PLEDGING STATE TRANSACTION PRIVILEGE TAX REVENUES RECEIVED BY THE DISTRICT ON A JUNIOR LIEN BASIS AS SECURITY THEREFOR

WHEREAS, the Rio Nuevo Multipurpose Facilities District (the "*District*") was organized on July 19, 1999, as a tax-levying public improvement district and a political subdivision of the State of Arizona (the "*State*") for the purpose of acquiring, constructing and developing certain multipurpose facilities (the "*Multipurpose Facilities*") on real property located in the City of Tucson, Arizona (the "*Multipurpose Facility Site*"); and

WHEREAS, pursuant to Section 42-5031 of the Arizona Revised Statutes ("*A.R.S.*"), the District is entitled to receive from the State and, pursuant to A.R.S. Section 48-4203, the District is authorized to use, certain excise tax revenues (the "*State Transaction Privilege Tax Revenues*") to construct, finance, furnish, maintain, improve, operate, market and promote the use of multipurpose facilities and other structures necessary for full use of the multipurpose facilities, including pledging the State Transaction Privilege Tax Revenues to secure the District's bonds or other financial obligations issued or incurred for the construction of all or part of the Multipurpose Facilities; and

WHEREAS, as provided in A.R.S. Section 48-4201, a multipurpose facility means any facility that constitutes either a primary or a secondary component, located on the Multipurpose Facility Site that is owned or leased by the District and is used to accommodate sporting events and entertainment, cultural, civic, meeting, trade show or convention events or activities, together with parking garages and parking lots; and

WHEREAS, the historic Fox Theatre in Tucson, Arizona (the "*Fox Theatre*") constitutes a secondary component of a multipurpose facility within the meaning of A.R.S. Section 48-4201, inasmuch as (i) it is located on the Multipurpose Facility Site, (ii) it is owned or leased by the

District, and (iii) it is used to accommodate artistic components and has been the site of various entertainment, cultural and civic events and activities; and

WHEREAS, The Industrial Development Authority of the City of Tucson, Arizona (the "*Authority*"), is a nonprofit corporation designated by law as a political subdivision of the State of Arizona (the "*State*"), incorporated with the approval of the City of Tucson, Arizona (the "*City*"), pursuant to the provisions of the Constitution of the State and A.R.S. Title 35, Chapter 5 (the "*Act*"), and is authorized and empowered, among other things (a) to issue its revenue bonds for the purpose of financing the costs of a "project" (as defined in A.R.S. Section 35-701); and (b) to loan the proceeds thereof to finance any such project and to pledge all or any part of the revenues and receipts to be received by the Authority from or in connection with such loans in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, for the purposes of the Act, the term "project" includes within its meaning any land, any building, or other improvement, and all real and personal properties which are suitable for commercial enterprises located or to be located in a designated area; and

WHEREAS, the District has submitted an application to the Authority requesting that the Authority issue its Junior Lien Excise Tax Revenue Bonds (Rio Nuevo Multipurpose Facilities District - Fox Theatre Project), Taxable Series 2005 (the "*Bonds*") and loan the proceeds thereof to the District to finance the renovation and equipping of the Fox Theatre (the "*Project*"), in cooperation and conjunction with the Fox Theatre Tucson Foundation, an Arizona nonprofit corporation (the "*Foundation*") and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "*Code*"), pursuant to that certain Intergovernmental, Development and Lease Agreement for Restoration, Operation and Management of the Historic Fox Theatre, recorded December 18, 2002, as thereafter amended (the "*Intergovernmental Agreement*"), among the City, the District, and the Foundation, and to pay certain costs and expenses incidental thereto; and

WHEREAS, on May 12, 2005, the Authority adopted its resolution granting preliminary approval for the financing of the Project and the Authority and the City will consider granting final approvals for the financing of the Project at meetings scheduled to be held on or after July 28, 2005, and August 2, 2005, respectively; and

WHEREAS, the District has determined that a portion of the Project can be financed on an advantageous basis by borrowing up to $6,100,000 from the Authority on the terms and conditions to be set forth in the loan agreement (the "*Loan Agreement*") to be entered into between the District and the Authority; and

WHEREAS, the District's obligation to repay the loan made pursuant to the Loan Agreement will be evidenced and secured by the Loan Agreement and by the issuance and delivery to the Authority of the District's junior lien promissory note (the "*Junior Lien Master Note*") issued pursuant to a Master Trust Indenture, dated as of August 1, 2005 (the "*Master Indenture*"), between the District and Wells Fargo Bank, N.A., as master trustee (the "*Master*

Trustee"), and Supplemental Indenture No. 1, dated as of August 1, 2005 ("*Supplement No. 1*"), between the District and the Master Trustee, and payable, together with any obligations of the District hereafter issued on a parity therewith, from and secured by a pledge of the State Transaction Privilege Tax Revenues on a basis junior or subordinate to any obligations of the District payable from and secured by a senior pledge of the District's State Transaction Privilege Tax Revenues as security for any senior lien promissory notes ("*Senior Lien Master Notes*") that may hereafter be issued by the District pursuant to the Master Indenture; and

WHEREAS, pursuant to the Master Indenture the District will pledge its receipts of State Transaction Privilege Taxes pursuant to A.R.S. Section 42-5031 to the Master Trustee as security for Senior Lien Master Notes and Junior Lien Master Notes issued pursuant thereto for the benefit of the holders of such notes according to their priority,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT:

Section 1. The Board of Directors of the District hereby finds and determines that it will be beneficial and consistent with the purposes and authority of the District to undertake the Project and, for such purposes, to enter into, execute, deliver, approve and/or perform the Master Indenture, Supplement No. 1, the Junior Lien Master Note, the Loan Agreement and other related agreements with the Authority, the City, the Foundation and the Trustee pursuant to which the District will borrow not to exceed $6,100,000 to finance a portion of the Project and to pay all costs, necessary bond insurance premiums, legal and financial advisory fees and contingent costs of the District, including, without limitation, required deposits into any reserve fund to be established in connection with such loan or, in lieu of such deposit, the purchase of a surety bond in the amount of any required reserve for such purpose, purchase of and payment of a premium not to exceed $150,000 for a municipal bond insurance policy from a recognized municipal bond insurer (the "*Insurer*") insuring the payment when due of principal and interest with respect to the Authority's Bonds or the Junior Lien Master Note in accordance with their respective terms, and payment of certain costs of the Authority pursuant to the Loan Agreement, all in furtherance of the purposes of the District.

Section 2. Each of the Chairman, the Treasurer, the Secretary and the Executive Director of the District is hereby authorized and empowered, for and on behalf of the District, to negotiate, execute and deliver (and, to the extent necessary or appropriate, the Secretary to attest) the Master Indenture, Supplement No. 1, the Junior Lien Master Note, the Loan Agreement, with any changes required by the Authority or any bond insurer, the requirements of the Federal government, or this Resolution, as shall be approved by the officer or officers of the District executing and delivering the Master Indenture, Supplement No. 1, the Junior Lien Master Note, and the Loan Agreement on behalf of the District, such execution and delivery to evidence conclusively such approval. In addition, each of the officers of the District is hereby authorized and empowered to sign (and, to the extent necessary or appropriate, the Secretary to attest) all other documents, agreements and certificates necessary or appropriate in connection with entry into the Master Indenture, issuance of the Junior Lien Master Note, obtaining the loan pursuant to the Loan Agreement and financing of the Project; provided, however, that the principal

amount of the loan shall not exceed $6,100,000, the principal repayments on the loan shall commence on or about July 1, 2006 and end on or about July 1, 2013 and the stated interest rate, together with related fees, shall not exceed nine percent (9.0%) per annum. The interest on the Bonds will be taxable for Federal income tax purposes.

Section 3. For the payment of the principal, premium, if any, and interest on the loan pursuant to the Loan Agreement, the District agrees to pay the Junior Lien Master Note in accordance with the terms and conditions set forth therein, and further agrees to pay all other amounts required to be paid by the District in connection with the loan from the Authority and the financing of the Project.

Section 4. The Junior Lien Master Note will be payable solely from and secured solely by a pledge of and a lien on the State Transaction Privilege Tax Revenues on a parity with any obligations hereafter issued on a parity therewith and on a basis junior and subordinate to any obligations of the District payable on a senior lien basis from the District's State Transaction Privilege Tax Revenues pursuant to a Senior Lien Master Note.

Section 5. The District hereby approves the purchase from the Insurer of municipal bond insurance insuring the payment when due of the Authority Bonds or the Junior Lien Master Note in accordance with their terms and the payment of the premium, not to exceed $150,000, with respect thereto.

Section 6. Each officer of the District is each hereby authorized and empowered, for and on behalf of the District, to negotiate with providers of a surety bond and, if a surety bond can be obtained at an acceptable premium, such officer is hereby authorized and empowered for and on behalf of the District to cause the District to purchase and pay for such surety bond, to cause any such surety bond to be delivered to a depository acceptable to the Authority and to complete, execute and deliver, on behalf of the District, customary and appropriate agreements with the provider of the surety bond in connection therewith.

Section 7. The appropriate officers of the District are hereby authorized and empowered, for and on behalf of the District, to take all actions necessary or reasonably required by the Master Indenture, Supplement No. 1, the Junior Lien Master Note and the Loan Agreement, and any other document or agreement executed in connection with the Authority's Bonds and the loan and the financing of the Project, in order to carry out, give effect to and consummate the transactions contemplated herein and in the Master Indenture, Supplement No. 1, the Junior Lien Master Note, and the Loan Agreement, including, without limitation, the execution and delivery of any closing and other documents and certificates reasonably required or appropriate to be delivered in connection therewith or in connection with the Bonds issued by the Authority to fund the Authority's obligations pursuant to the Loan Agreement.

Section 8. Following the execution and delivery of the Loan Agreement and the Junior Lien Master Note and receipt of the proceeds of the loan contemplated thereby, this Resolution will be and remain irrevocable until the loan and interest thereon, and the obligations of the District pursuant to the Loan Agreement and the Junior Lien Master Note, have been fully paid, canceled and discharged.

Section 9. If any section, paragraph, clause or provision of this Resolution is for any reason held or determined to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision will not affect any of the remaining provisions hereof.

Section 10. The provisions of any ordinances and resolutions of the District, or parts thereof, inconsistent with the provisions of this Resolution, as heretofore and hereafter amended, are hereby waived to the extent of such inconsistency.

PASSED, ADOPTED, AND APPROVED by the Board of Directors of the Rio Nuevo Multipurpose Facilities District on July 13, 2005.

APPROVED:

Ruben Suarez 07-13-05

Chair
Rio Nuevo Multipurpose Facilities
District Board

ATTEST:

Margaret C. Hardy 7.13.05

Secretary
Rio Nuevo Multipurpose Facilities
District Board

APPROVED AS TO FORM:

William A. Hicks III

Counsel
Rio Nuevo Multipurpose Facilities
District Board

REVIEWED BY:

Director
Rio Nuevo Multipurpose Facilities
District

ADOPTED BY THE
MAYOR AND COUNCIL

July 6, 2005

RESOLUTION NO. 20136

RELATING TO INTERGOVERNMENTAL AGREEMENTS; AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF TUCSON THE AMENDED INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY, THE RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT, AND THE FOX TUCSON THEATRE FOUNDATION ENTITLED INTERGOVERNMENTAL DEVELOPMENT AND LEASE AGREEMENT FOR RESTORATION, OPERATION AND MANAGEMENT OF THE HISTORIC FOX THEATRE; AND DECLARING AN EMERGENCY.

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

SECTION 1. The amended Intergovernmental Development and Lease Agreement for Restoration, Operation and Management of the Historic Fox Theatre ("IGA"), attached to this Resolution as Exhibit 1, is approved.

SECTION 2. The Mayor shall execute, and the City Clerk shall attest to, the amended IGA.

SECTION 3. The various City officers and employees shall perform all acts necessary or desirable to give effect to this Resolution.

SECTION 4. The City Manager may execute such other documents as may be required to give effect to this Resolution and the amended IGA.

SECTION 5. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this resolution become immediately 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, July 6, 2005.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED BY:

CITY MANAGER

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AMENDED INTERGOVERNMENTAL, DEVELOPMENT AND LEASE AGREEMENT FOR RESTORATION, OPERATION AND MANAGEMENT OF THE HISTORIC FOX THEATRE

THIS AGREEMENT is entered into by and among the City of Tucson ("**Tucson**"), the Río Nuevo Multipurpose Facilities District ("**District**"), and the Fox Tucson Theatre Foundation ("**Fox**"). Tucson, District and Fox are sometimes collectively referred to in this Agreement as the "**Parties**".

RECITALS

A. Tucson is a municipal corporation of the State of Arizona.

B. District is a multipurpose facilities district established pursuant to Arizona Revised Statutes (A.R.S.) § 48-4201 *et seq.* to revitalize Río Nuevo, the heart of downtown Tucson, financed in part with tax increment financing in accordance with A.R.S. § 42-5031 and § 48-4237.

C. Fox is an IRS-recognized 501(c)(3) Arizona non-profit organization governed by a volunteer Board of Directors and a paid professional Executive Director.

D. Fox owned the historic Fox Theatre located at the northeast corner of Congress Street and Church Avenue in downtown Tucson (the "**Historic Fox Theatre**"), and more particularly described in paragraph 1 below, prior to conveyance to the District.

E. Fox desires to restore the Historic Fox Theatre to approximately its original appearance and function, and has requested District funding to assist in accomplishing this restoration.

F. District and Tucson desire to provide funding and assistance in support of the restoration of the Historic Fox Theatre.

G. District's financial participation in the restoration of the Historic Fox Theatre requires compliance with A.R.S. § 48-4204(B), which provides that facilities funded by a multipurpose facilities district must be owned by the district or publicly owned.

H. Due to Fox's non-profit status, the Historic Fox Theatre is currently exempt from property taxes. District ownership will continue the Historic Fox Theatre's exemption from property taxes, and Fox's non-profit status will cause its lease of the Historic Fox Theatre from District to be exempt from payment of government property lease excise taxes ("GPLET") prescribed by Arizona Revised Statutes section (A.R.S. §) 42-6201 *et. seq.* However, Fox's assignment of its interests or exercise of its repurchase option could affect the Historic Fox Theatre's property tax or GPLET exemption, and Fox may be responsible for payment of other government impositions, such as the business improvement district ("BID") taxes.

I. This Agreement is intended to be all of the following:

(1) An intergovernmental agreement pursuant to A.R.S. § 11-952 for purposes of the joint exercise of governmental powers by Tucson and District; and

(2) A development agreement between Tucson and Fox pursuant to A.R.S. § 9-500.05 for purposes of determining development rights and obligations; and

(3) [Intentionally Deleted]

(4) A lease of the Historic Fox Theatre from District to Fox or an entity which is owned or controlled by Fox with an option to purchase; and

(5) An operation and management agreement between District and Fox or an entity which is owned or controlled by Fox concerning the use and operation of the Historic Fox Theatre.

J. District has the authority to acquire and dispose of property and interests in property pursuant to A.R.S. § 48-4203.

K. The Parties hereby expressly find and determine that the terms of this Agreement are justified based on the other considerations provided under this Agreement, including without limitation the rights and liabilities conferred and imposed on the Parties and the economic development benefits to the community resulting from this Agreement.

L. This Agreement amends and restates and supercedes in its entirety that certain Intergovernmental, Development and Lease Agreement for Restoration, Operation and Management of the Historic Fox Theatre, entered into among the parties on or about December 4, 2002, as modified by First and Second Amendments thereto (collectively, the "Initial Agreement").

M. The District paid Fox Three Million Dollars out of the District's tax increment financing received pursuant to A.R.S. § 42-5031 and § 42-4237 which was used for costs of acquisition and initial rehabilitation work performed by Fox respecting the Historic Fox Theatre premises.

AGREEMENT

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

1. *Premises.* The property and improvements which are the subject of this Agreement are the premises located at 17 and 27 West Congress Street and a vacant lot at or about 38 N. Church, Tucson, Arizona, more particularly described in Exhibit 1 attached to this Agreement (collectively the "Historic Fox Theatre premises"), and the Star Building (collectively referred to as the "Star Building"), located at 30 North Church Avenue, more particularly described in Exhibit 2 attached to this Agreement, which is not part of the Fox Theatre premises. The Historic Fox Theatre consist of the land and all improvements existing or to be constructed on the land described in Exhibit 1, and any additional adjacent land and improvements acquired by Fox during the term of the Lease and used as an integral part of the Historic Fox Theatre. Any such acquisitions by Fox shall not increase the financial obligations of District or Tucson beyond the funding provided by this Agreement. Fox shall pay any financial obligations imposed by operation of law on District or Tucson as a result of such acquisitions.

2. *Duration of Intergovernmental Agreement.* The portions of this Agreement that constitute an intergovernmental agreement between Tucson and District shall continue until District ceases to exist or until the one year anniversary of the end of the Lease Term (as hereafter defined), whichever occurs first.

3. *Effect of District Dissolution.* If District is dissolved, District's rights and obligations under this Agreement shall automatically transfer to Tucson, and Fox and Tucson shall thereafter be "the Parties" for purposes of this Agreement.

4. *Tax Increment Financing and Funding Obligations.*

(a). After Fox has complied with Subparagraph (b) and the District receives an adequate amount of such tax increment funding, proceeds of a sale of taxable bonds secured by such tax increment funding, or borrows from the Tucson Industrial Development Authority, for the purposes of funding this Agreement, District shall:

(i) provide Fox Five Million Six Hundred Thousand Dollars ($5,600,000.00) out of any tax increment financing received by District pursuant to A.R.S. § 42-5031 and § 48-4237, which shall be used or contributed (directly or indirectly) only for actual costs of Historic Fox Theatre restoration and tenant improvements conducted under the construction contract with Concord Companies, Incorporated ("Concord"). Fox shall repay this investment as follows:

(A) Fox shall pay the District Four Million Five Hundred Thousand Dollars ($4,500,000.00) over a fifteen (15) year period beginning on the date Tucson issues a final certificate of occupancy as follows:

(I) One year after such date and each year thereafter for fifteen (15) years, Fox shall pay the District an amount equal to the excess of all revenues Fox has received from its operations and fund raising over expenses, less a percentage of such amount to be determined by the District for cash on hand to be retained by Fox.

(II) If in the five (5) year period beginning on such date, and in each 5 (five) year period thereafter for fifteen (15) years, the annual amount of funds Fox has paid the District pursuant to Paragraph 4(a)(i)(A)(I) does not equal One Million Five Hundred Thousand Dollars ($1,500,000.00), Fox shall pay the District the difference between One Million Five Hundred Thousand Dollars ($1,500,000.00) and the amount Fox has actually paid the District.

(B) At the end of the fifteen (15) year period, Fox shall pay to the District an amount to be determined by the District based on the outstanding balance of the amount paid to Fox pursuant to Paragraph 4(a)(i) less the amount paid by Fox to the District pursuant to Paragraph 4(a)(i)(A) plus the interest accumulated on the debt service of the funds provided by the District pursuant to Paragraph 4(a)(i).

(ii) establish an account in an amount not less than Five Hundred Thousand Dollars ($500,000.00), to be called the "Construction Contingency Account", that will be provided by the District to Fox to be used or contributed (directly or indirectly) to pay for significant construction costs that are not contemplated by the construction contract with Concord. The balance, if any, of such account to be paid to

Fox after a certificate of occupancy is issued by Tucson for the Historic Fox Theatre, to be deposited in the Operating Reserve Fund.

(b) Prior to funding the amount provided by Subparagraph (a)(i), Fox shall perform the following:

(i) Deliver to the tenant under the Lease an irrevocable assignment of the contracts it has with Concord and Erickson, Leader, and Associates.

(ii) In a form acceptable to the District, assign and subordinate all construction management rights and responsibilities of the Historic Fox Theatre contained in its contracts with Concord and Erickson, Leader, & Associates to the tenant under the Lease.

(iii) Hire and retain a development director approved by the District.

(iv) In a form acceptable to the District and Tucson, provide a conditional tax credit equity investor commitment letter from National Trust Community Investment Fund LLC to the District acceptable to the District to fund the renovation of the Theatre, such amount to be determined by the District.

(v) Deliver in a form acceptable to the District a written commitment requiring Fox to transfer ownership of the Star Building to District by special warranty deed, subject to all liens and encumbrances and those title matters set forth in Exhibit 2, upon the earlier of Fox's refinancing of the mortgage financed by Bank One and secured by a deed of trust on the Star Building or eighteen (18) months after the date of Fox's receipt of the funds described in Subparagraph (a)(i), which Star Building is not part of the Historic Fox Theatre Premises, but an adjacent vacant lot is part of the Historic Fox Theatre and such adjacent vacant parcel will be transferred to the District free from the Bank One mortgage. Upon transfer of the Star Building, Fox shall continue to, and the written commitment shall require that Fox, pay all amounts required pursuant to any liens and encumbrances and shall hold the District and Tucson harmless should Fox default on any such liens and encumbrances. Payments on all indebtedness secured by the Star Building shall be considered to be a financial obligation of Fox pursuant to Paragraph 32. Fox may use and occupy the Star Building pursuant to the terms of this Agreement. The District shall transfer ownership of the Star Building back to Fox upon Fox's successful repayment of the funds provided under Paragraph 4(a)(i). For a period of ten (10) years after the date the District transfers ownership of the Star Building back to Fox, in the event that Fox desires to sell or lease this property, Fox shall first offer such sale or lease to the District.

(c) Not later than 3 (three) months after the funds described by Subparagraph (a)(i) are provided to Fox, Fox shall complete the following:

(i) Provide proof to the District that all vacancies on its board of directors have been filled.

(ii) Fox shall amend its Articles of Incorporation, Bylaws, or both if necessary, in a form satisfactory to the District, to require the following:

(1) That the Board demonstrates to the satisfaction of the District that Board membership has qualifications in capital campaign and fund raising, historic restoration management, long range business programming or entertainment

operations and that Fox provide the City Manager of Tucson, serving as the Executive Director of the District, with the names and qualifications of prospective nominees to the Board.

(2) Not less than two (2) members of the Fox Board and not less than one (1) member of Fox's executive committee, nominated by the District, shall be appointed to represent the District.

(3) The amendments required by Clauses (ii)(1) and (2) shall remain in effect until the funds provided by Paragraph 4(a)(i) are satisfactorily repaid.

(iii) Provide to the District, two (2) months after the funds provided by Paragraph 4(a)(i) are paid to Fox and every two (2) months thereafter for four (4) months, a report of the then current situation regarding the implementation and progress of its strategic fundraising campaign. Such report shall contain, at a minimum, copies of applications for grants or other forms of financial aid to qualified institutional, governmental, trade, and philanthropic institutions and proof that at least One Hundred Thousand Dollars in cash, fixtures and equipment, or a combination of both has been received by Fox. The District may require changes in the plan, its implementation, or both.

(iv) Provide to the District a comprehensive business plan for the Historic Fox Theatre in a form satisfactory to the District and Tucson that supports Fox's general business plan and booking schedule and the debt service projections for the funds provided by Paragraph 4(a)(i). This plan shall be updated by Fox every four (4) months after the first plan is approved for one (1) year and once a year each year thereafter until the loan is satisfactorily repaid. The District may require changes in the plan, its implementation, or both.

(d) The District shall provide to Fox an amount not to exceed Four Hundred and Thirty Thousand Dollars ($430,000.00) upon proof satisfactory to the District that the Fox shall receive a like amount as a grant from the U.S. Department of Housing and Urban (HUD) Development. The Fox shall repay the District this amount immediately upon receipt of the grant from HUD or, in the event such grant is rescinded or otherwise not funded by HUD or other federal governmental agency, by July 1, 2006.

(e) In consideration for the funding provided for in this Agreement, Fox shall not:

(i) allow the Theatre to be closed and Fox or its applicable affiliate shall endeavor to have not less than an average of 2 revenue-generating events per week over any 6-month period; or

(ii) allow any encumbrances or liens against the property referred to in Paragraph 1 or on improvements on such property without express written consent from the District.

(f) The obligations of Fox under Section 4(a) will be guarantied by its applicable affiliates, as determined by the District and as evidenced by separate guaranties, in form and substance acceptable to the District.

5. *Procedure for Release of Tax Increment Funding.* Any and all amounts paid by District under paragraph 4 shall be paid into an account established at a national banking institution with District as the named owner. Funds shall be released from the account for payment to a person or

entity that has provided services or funding for the acquisition or improvement of the Historic Fox Theatre, or for reimbursement of payments for the acquisition or improvement of the Historic Fox Theatre, based on evidence satisfactory to the District. No payments shall be made from the account without the authorization of a District or Tucson employee designated by District for that purpose.

6. [Intentionally Deleted.]

7. *Lease to Fox.* District has leased the Historic Fox Theatre premises referred to in Paragraph 1 (the "**Lease**") to Fox or to an entity which is owned or controlled by Fox for a period of fifty years beginning on the day that Fox first receives any funds pursuant to Paragraph 4 (referred to in this Agreement as the "**Lease Commencement**"). The fifty-year period of time from Lease Commencement to the end of the Lease is referred to in this Agreement as the "**Lease Term**".

8. *Rent.* This is what is commonly referred to as a "triple-net" lease, in which Fox shall make the following payments, all of which shall be collectively referred to in this Agreement as "**Rent**":

a. Base rent, payable to District, of ten dollars for the term of the Lease, due and payable at Lease Commencement.

b. Any and all property taxes or payments in lieu of taxes including any possessory interest taxes (for example, GPLET) required or contributed to as a result of the lease entered into by this Agreement.

c. All taxes, fees and other monies payable for or in connection with the Historic Fox Theatre including without limitation the following (which are collectively referred to in this Agreement as "Impositions") at least fifteen 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:

i. 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 be charged, laid, levied, assessed, imposed, become due and payable or arise,

ii. 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

iii. All fees and charges of public and governmental authorities for construction, maintenance, occupation or use, of any sidewalk, street or other publicly owned property adjacent to the Historic Fox Theatre in connection with the use, occupancy or possession of the Historic Fox Theatre, including without limitation any encroachment or use for signage, marquis, sidewalk stars, ticket booths and other uses and activities.

9. *Conversion of Special Assessments.* To the extent permitted by law and by any mortgage, Fox 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 Fox

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, but such assessments may not be payable over a period longer than ten years.

10. *Evidence of Fox Payment.* Upon District or Tucson's request, Fox shall promptly furnish District or Tucson satisfactory evidence that any payment required under paragraph 8 has been timely made.

11. *Deposit of Impositions.* Unless Fox makes advance monthly deposits of property taxes and other Impositions with a mortgagee, District or Tucson may require Fox on the first day of each month to deposit with Tucson an amount equal to each of the Impositions next becoming due (based on the most recent available billing information), less all sums already deposited (plus interest earned thereon not theretofore paid out), divided by the number of months until the month preceding the date upon which each such Imposition is due and payable, which deposits shall be held in escrow in an interest-bearing account by District or Tucson and, to the extent so held, shall be applied to the payment of each Imposition for which made. Any default by Fox in making any such deposit shall be treated as default in the payment of Rent.

12. *District's Optional Conveyance of Fee Title.* At District's option, District may at its option terminate this Agreement by executing a special warranty deed, conveying fee title to the Historic Fox Theatre, free and clear of all liens and encumbrances except those title matters set forth on Exhibit 1, subject to the Lease and all subleases thereunder, and any additional matters authorized by agreement of the Parties, to Fox or to an entity owned or controlled by Fox. If District chooses to terminate the Agreement pursuant to this paragraph, Fox shall have no further obligations in consideration for the tax increment funding provided under this Agreement (see paragraph 4).

13. *Fox's Repurchase Option.*

(a) Except as provided in Subparagraph (b), from the fifteenth anniversary of Lease Commencement to the one-year anniversary of the termination of this Agreement (see Paragraph 65), Fox may at its option repurchase the fee title to the Historic Fox Theatre from District, subject to the Lease and subleases thereunder, by paying the appraised fair market value but not less Three Million Five Hundred Thousand Dollars ($3,500,000.00) divided by four hundred twenty (420) and multiplied by the number of months remaining in the Lease Term plus ten dollars.

(b) The repurchase option shall not be available until the funds provided by Paragraph 4(a) are satisfactorily repaid or while Fox is in default under this Agreement (see paragraph 32). This Agreement shall terminate upon Fox's exercise of the repurchase option.

14. *Operation and Management of the Historic Fox Theatre.* Fox or its applicable affiliate shall operate and manage the Historic Fox Theatre in accordance with the terms, conditions, limitations and requirements set forth in this Agreement.

15. *Use and Operation of Historic Fox Theatre.* Fox shall use the Historic Fox Theatre solely for the restoration, operation, management and maintenance of the Historic Fox Theatre facility. The Historic Fox Theatre shall be operated in a manner consistent with other commercial Tucson movie and stage theaters, and all activities and events shall be open to the public without discrimination (see paragraph 48); provided, however, that nothing in this paragraph shall prevent the Historic Fox Theatre from being offered and made available to the public without

discrimination for private gatherings and parties. During the Lease Term (see paragraph 7), Fox shall keep the Historic Fox Theatre in operation with events open to the general public, except during temporary closures to accommodate reasonable renovations and repairs. Fox shall not use or occupy, nor permit or suffer, the Historic Fox Theatre or any part thereof to be used or occupied for any unlawful or illegal business, use or purpose, nor for any hazardous business use or purpose, nor in such a manner as to constitute a nuisance of any kind, nor for any purpose or in any way in violation of any present or future governmental laws, ordinances, requirement, orders, directions, rules or regulations. Fox shall immediately upon the discovery of any such unlawful, illegal or hazardous use take all necessary steps, legal and equitable, to compel the discontinuance of such use and to oust and remove any subtenants, occupants or other persons of such unlawful, illegal or hazardous use.

16. *Programming.* The quality and nature of programming and the subject matter of any movie, show, display or activity at the Historic Fox Theatre shall not give rise to or constitute a default under this Agreement unless the movie, show, display or activity constitutes a public nuisance or a violation of laws or ordinances of general application within the Tucson city limits.

17. *Restoration Plans and Schedule of Values.* Fox shall present the plans and schedule of values for the Historic Fox Theatre restoration to District and Tucson for concurrence. The schedule of values shall provide a breakdown of the anticipated or actual cost of each item of anticipated construction, which shall be used to determine the payments to be made in accordance with paragraphs 4 and 5 of this Agreement.

18. *Standards for Construction of the Historic Fox Theatre.*

a. The Historic Fox Theatre shall be restored in accordance with all of the following:

i. Standards for historic preservation promulgated by the Secretary of the Interior of the United States.

ii. Standards for construction of public buildings adopted by Tucson and implemented by the Tucson Facilities Management department.

iii. All applicable provisions of the Tucson Code.

b. Construction of the Historic Fox Theatre restoration or any other construction on the premises of the Historic Fox Theatre has commenced and Fox has submitted construction plans and specifications to District and Tucson and obtained their written concurrence.

c. Construction has commenced and Fox presented to District and Tucson for concurrence Concord as the name of the contractor selected for the work, which has been approved.

d. [Intentionally Deleted.]

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

19. *Regulatory Compliance and Approvals.* Fox or its applicable affiliate 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 restoration of the Historic Fox Theatre. Fox or its applicable affiliate shall obtain all necessary government approvals,

permits or licenses that are necessary to Fox's restoration, construction, operation, use or improvement of the Historic Fox Theatre. If any certificate, permit, license or approval issued to Fox or its applicable affiliate is cancelled, expires, lapses or is otherwise withdrawn or terminated by any governmental authority, Fox shall make every effort to effect necessary remedies to the satisfaction of Tucson and District. Failure to do so shall constitute default under this Agreement.

20. *Tucson Code Compliance.* Construction of all improvements on the premises of the Historic Fox Theatre shall conform to the requirements of the Tucson Code. This provision shall not preclude or limit Fox's right to seek text amendments, rezoning, or variances as may be permissible under and in accordance with the Tucson Code and Arizona law. This Agreement shall not in any way limit or preclude Tucson or any of its boards, commissions, agencies or officers from exercising such discretion as it or they may have with respect to any such relief requested by Fox.

21. [Intentionally Deleted.]

22. *Mechanics' and Materialmens' Liens.* No mechanics and materialmens' liens shall be recorded against the Historic Fox Theatre, and Fox shall promptly and diligently take whatever action is necessary to ensure that no such lien is recorded, and if it is, to remove any such lien.

23. *Statutory Compliance for Construction.* Construction of all improvements on the premises of the Historic Fox Theatre which are funded all or in part with public funds, including the funds provided in accordance with paragraph 4, shall be accomplished in conformance with the requirements of A.R.S. Title 34 and A.R.S. § 48-4204(C). These provisions generally require publicly funded construction projects to be put out to bid and awarded to the lowest qualified bidder and the parties acknowledge that Concord and Erickson, Leader & Associates satisfy these requirements.

24. *Construction Schedule.* Construction of the Historic Fox Theatre restoration shall be substantially completed and the contract with Concord requires substantial completion not later than December 31, 2005. District and Tucson may grant reasonable extensions in their sole discretion so long as the District and Tucson are satisfied that substantial and diligent progress has been and is being made in the restoration and fundraising. For purposes of this Paragraph, the Historic Fox Theatre restoration shall be substantially complete when Tucson issues a temporary certificate of occupancy for a place of assembly at the Historic Fox Theatre for 1000 persons.

25. *Ownership of Improvements.* Fee title to the Historic Fox Theatre shall be and remain held by District, subject to the Lease (see paragraph 7) and repurchase option (see paragraph 13).

26. *No District or Tucson Expenditures.* Neither District nor Tucson shall be required to make any repairs or improvements to the Historic Fox Theatre in connection with this Agreement.

27. *Signs.* Fox may place signs on the Historic Fox Theatre in conformance with applicable government regulations, with District and Tucson's prior written consent to design, size and location, which shall not be unreasonably withheld. Tucson's consent shall not waive any applicable provision of the Tucson Sign Code. Tucson acknowledges that the currently existing Fox sign and marquis have been permitted in accordance with variances issued in accordance with the Tucson Sign Code.

28. *Graffiti.* Fox shall be solely responsible for graffiti abatement on the Historic Fox Theatre. Should Fox fail to perform graffiti abatement within five days of notification that graffiti exists on the Historic Fox Theatre, District or Tucson at any time thereafter may abate or remove the graffiti from the Historic Fox Theatre. Fox shall reimburse all reasonable costs incurred by District or Tucson in connection with such abatement or removal. Reimbursement shall be made within thirty days after District or Tucson presents Fox with a statement of such costs.

29. *Maintenance.*

a. Fox shall at its own cost and expense put, keep, replace, and maintain in meticulous repair and in good, safe and substantial order and clean and first class condition, all improvements on the Historic Fox Theatre or forming a part thereof, and their full equipment and appurtenances, both inside and outside, structural and nonstructural, extraordinary and ordinary, foreseen or unforeseen, no matter how the need or desirability for repairs may occur, and whether or not made necessary by wear, tear or defects, latent or otherwise; and shall use all reasonable precautions to prevent, and shall promptly repair or restore, any waste, damage or injury. Fox shall also at its own cost and expense put, keep, replace and maintain in meticulous repair and in good, safe and substantial order and condition, and free from dirt, mud, ice, rubbish and any and all other obstructions or encumbrances, the sidewalks, areas and curbs in front of and adjacent to the Historic Fox Theatre.

b. Fox expressly waives the right to make repairs at District's expense, and agrees that District shall not be required to furnish or provide to Fox any facilities or services of any kind whatsoever during the term of this Agreement, such as, but not limited to, water, steam, heat, air conditioning, gas, hot water, electricity, light and power, or to make any repairs, replacements, renewals or restorations of any kind. However, District agrees to cooperate, without cost to it, to enable Fox to obtain such services to the Historic Fox Theatre.

30. *Access.* District and Tucson and their agents shall have the right upon twenty-four hours notice to enter the Historic Fox Theatre at reasonable times to examine and inspect the Historic Fox Theatre. Fox reserves the right to accompany District or Tucson and their agents during such examination and inspection. In case of emergency, District or Tucson may immediately access the Historic Fox Theatre, provided that District or Tucson shall notify Fox of such emergency access as soon as is reasonably practicable.

31. *Utilities.* Fox or its applicable affiliate shall be responsible for obtaining any utility service needed for the Historic Fox Theatre and shall pay when due all charges for utilities to the Historic Fox Theatre.

32. *Fox Default.* Fox shall be in default under this Agreement if it:

a. fails to pay any financial obligation imposed by this Agreement when due; or

b. fails to perform any other material covenant or condition of this Agreement; or

c. if the tenant under the Lease abandons or vacates the Historic Fox Theatre; or

d. is adjudicated a bankrupt entity or makes any assignment for the benefit of creditors.

33. *Procedure and Remedies upon Fox Default.* In the event of Fox's material breach of its obligations under this Agreement, District shall give Fox written notice of default, identifying

the facts and circumstances constituting default and providing a reasonable time, not less than sixty days after the date of the notice, for Fox to begin to cure the default. Fox shall thereafter diligently pursue the cure to completion. If for any reason Fox fails to cure its default as required by this Paragraph, District shall be entitled, at its option, in addition to and not exclusive of any other remedy District may have by operation of law, to terminate this Agreement and declare Fox's rights under this Agreement at an end. Fox shall pay all sums owing under this Agreement through the date of termination.

34. *Ownership Upon Taking Possession.* Upon any default under the Lease, not cured within applicable cure or grace periods thereunder, the District shall have the right to enter the Historic Fox Theatre premises and eject the tenant therefrom. Any and all personal property, equipment or other improvements on the premises of the Historic Fox Theatre which are not removed within sixty days after District takes possession of the Historic Fox Theatre as a result of a default under the Lease shall become the property of District, at District's option, or shall be removed by District and the cost of removal shall be charged to Fox.

35. *Forebearance.*

(a) During either the five (5) year period beginning on the date of the Lease Commencement or the seven (7) year period beginning on the date the last tax credit investment is funded, pursuant to the letter referred to in Paragraph 4(b)(iv), which ever period terminates at a later date, neither District nor Tucson shall seek to terminate the Lease unless Fox abandons or vacates the Historic Fox Theatre premises, or permits or threatens to permit an action that could result in the demolition or destruction of all or a substantial portion of the Historic Fox Theatre premises.

(b) Paragraph (a) shall not apply to any default by Fox under this Agreement, including without limitation, Fox's obligations under Paragraph 4, other than a Lease Obligation (see paragraph 67).

36. *Cure by District.* If Fox defaults under this Agreement, District may, after prior written notice, cure the default for the account of and at the reasonable expense of Fox. If District is compelled to pay or elects to pay any sum of money or to do any act which will require the payment of any sum of money or is compelled to incur any expense, including reasonable attorney fees in instituting, prosecuting or defending any action to enforce District's rights under this Agreement, the sums so paid by District, with all interest, costs and damages shall be deemed to be additional Rent (see paragraph 8) which shall be due from Fox to District on the first day of the month following the incurring of the respective expenses.

37. *Damage or Destruction.* If the Historic Fox Theatre or any portion of it is destroyed or damaged in a way that materially hinders its effective use, Fox shall make necessary repairs within a reasonable period of time, to the extent of available insurance proceeds or other available funds. Neither District nor Tucson shall have any obligation to repair any damage to any portion of the Historic Fox Theatre.

38. *Effect of Condemnation.* If the Historic Fox Theatre is taken by eminent domain, this Agreement shall terminate when title to the Historic Fox Theatre vests in the condemning authority or when the condemning authority takes physical possession of the Historic Fox Theatre, whichever occurs first. If a portion of the Historic Fox Theatre is taken by eminent domain so that the operation of the Historic Fox Theatre is materially hindered, District and Fox

shall have the right to terminate this Agreement by giving thirty days' written notice to the other Parties. The right to terminate vests when title to the Historic Fox Theatre vests in the condemning authority or when the condemning authority takes physical possession of the Historic Fox Theatre, whichever occurs first. This Agreement shall continue unabated if a partial taking of the Historic Fox Theatre by eminent domain leaves the Historic Fox Theatre reasonably able to be used in a manner consistent with paragraph 15).

39. *Proceeds in Condemnation.* All proceeds and damages awarded in any condemnation action or in any acquisition under threat of condemnation, whether awarded as compensation for diminution in value of the leasehold or to the fee of the Historic Fox Theatre, shall be paid as set forth in the Lease, in form and substance acceptable to the District:

40. Indemnity and Insurance.

a. Disclaimer of Liability. Neither District nor Tucson shall at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Fox's construction, maintenance, repair, use, management, operation, condition or dismantling of the Historic Fox Theatre.

b. Indemnification. Fox shall, at its sole cost and expense, indemnify, defend and hold harmless Tucson, District, the City of South Tucson, and the officers, employees, boards, commissions, agents, attorneys, and contractors of the foregoing entities (hereinafter referred to as "Indemnitees"), from and against:

i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of Fox, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of the Historic Fox Theatre or Fox's failure to comply with any federal, state or local statute, ordinance or regulation.

ii. Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and other consultants), which are imposed upon, incurred by or asserted against the Indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to Fox, its contractors or subcontractors, for the installation, construction, operation, maintenance or use of the Historic Fox Theatre and, upon the written request of District or Tucson, Fox shall cause such claim or lien covering the Historic Fox Theatre property to be discharged or bonded within thirty (30) days following such request.

iii. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or

be asserted against the Indemnitees by reason of any financing or securities offering by Fox or its affiliates for violations of the common law or any laws, statutes, or regulations of the State of Arizona or United States, including those of the Federal Securities and Exchange Commission, whether by Fox or otherwise.

c. Assumption of Risk. Fox undertakes and assumes for its officers, agents, affiliates, contractors and subcontractors and employees (collectively "Fox" for the purpose of this section), all risk of dangerous conditions, if any, on or about the Historic Fox Theatre, and Fox hereby agrees to indemnify and hold harmless the Indemnitees against and from any claim asserted or liability imposed upon the Indemnitees for personal injury or property damage to any person (other than from Indemnitees' gross negligence) arising out of Fox's installation, operation, maintenance, condition or use of the Historic Fox Theatre or Fox's failure to comply with any federal, state or local statute, ordinance or regulation.

d. Defense of Indemnitees. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Fox shall, upon notice from any of the Indemnitees, at Fox's sole cost and expense, resist and defend the same with legal counsel mutually selected by Fox, District and Tucson; provided however, that Fox shall not admit liability in any such matter on behalf of the Indemnitees without the written consent of District and Tucson and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Fox.

e. Notice, Cooperation and Expenses. District or Tucson shall give Fox prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this paragraph. Nothing herein shall be deemed to prevent District and Tucson from cooperating with Fox and participating in the defense of any litigation by District or Tucson's own counsel. Fox shall pay all expenses incurred by District or Tucson in response to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the reasonable value of any services rendered by District's and Tucson's attorneys, and the actual expenses of District's and Tucson's agents, employees or expert witnesses, and disbursements and liabilities assumed by District or Tucson in connection with such suits, actions or proceedings but shall not include attorneys fees for services that are unnecessarily duplicative of services provided by Fox. If Fox requests District or Tucson to assist it in such defense then Fox shall pay all expenses incurred by District and Tucson in response thereto, including District and Tucson defending themselves with regard to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the costs of any services rendered by District's and Tucson's attorneys, and the actual expenses of District's and Tucson's agents, employees or expert witnesses, and disbursements and liabilities assumed by District or Tucson in connection with such suits, actions or proceedings.

f. Insurance. Fox shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:

i. Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of One Hundred Thousand Dollars for each accident.

ii. Comprehensive commercial general liability insurance with minimum limits of Three Million Dollars as the combined single limit for each occurrence of bodily injury, personal injury and property damage. The policy shall provide blanket contractual liability insurance for all written contracts, and shall include coverage for products and completed operations liability, independent contractor's liability; coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.

iii. Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Fox, its employees and agents, to comply with the provisions of state law with minimum limits of One Million Dollars as the combined single limit for each occurrence for bodily injury and property damage.

iv. At the start of and during the period of any Fox construction, builders all-risk insurance, together with an installation floater or equivalent property coverage covering cables, materials, machinery and supplies of any nature whatsoever which are to be used in or incidental to the construction of the rehabilitation. Upon completion of the Improvements, Fox shall substitute for the foregoing insurance policies of fire, extended coverage and vandalism and malicious mischief insurance on the Historic Fox Theatre. The amount of insurance at all times shall be representative of the insurable values installed or constructed.

v. Business interruption insurance coverage in an amount sufficient to cover such loss of revenues, for the period of time which it would take, under normal circumstances, to repair or replace that part(s) of the Historic Fox Theatre which is damaged and caused the loss of revenue.

vi. All policies shall be written on an occurrence and not on a claims made basis.

vii. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

g. Additional Insureds. All policies, except for business interruption, worker's compensation and all risk property, shall include Tucson, District, the City of South Tucson, and the officers, employees, boards, commissions, agents, attorneys, and contractors of the foregoing entities, as their respective interests may appear, as additional insureds (herein referred to as the "Additional Insureds"). Each policy which is to be endorsed to add Additional Insureds hereunder, shall contain the following cross-liability wording: "In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder." However, this condition does not operate to increase the insurance company's limit of liability.

h. Evidence of Insurance. Certificates of insurance for each insurance policy required to be obtained by Fox in compliance with this paragraph, along with written evidence of payment of required premiums shall be filed and maintained with District and Tucson annually. Fox shall immediately advise District and Tucson of any claim or litigation that may result in liability to District or Tucson.

i. Cancellation of Policies of Insurance. All insurance policies maintained pursuant to this Agreement shall contain the following endorsement: "At least sixty days prior written notice by registered mail shall be given to District and Tucson by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same."

j. Insurance Companies. All insurance shall be effected under valid and enforceable policies, insured by insurers licensed to do business by the State of Arizona or surplus line carriers on the State of Arizona Department of Insurance approved list of companies qualified to do business in the State of Arizona. All insurance carriers and surplus line carriers shall be rated A or better by A.M. Best Company.

k. Deductibles/Self Insurance or Retentions. All insurance policies may be written with deductibles not to exceed Five Hundred Thousand Dollars, unless a different amount is approved in advance by District and Tucson, as long as Fox retains in a separate account an amount sufficient to cover the cumulative amount of all such deductibles and provides District and Tucson with written confirmation of the financial institution, account number and amount of the account where the funds are held. Fox shall indemnify and hold harmless District, Tucson, the Indemnitees and Additional Insureds from and against the payment of any deductible and from the payment of any premium on any Fox insurance policy required to be furnished by this Agreement.

l. [Intentionally Deleted.]

m. Review of Limits. Once during each calendar year, District and Tucson may review the insurance coverages to be carried by Fox. If District or Tucson determines that higher limits of coverage are reasonably necessary to protect the interests of District and Tucson or the Additional Insureds, Fox shall be so notified and shall obtain the additional limits of insurance, at its sole cost and expense; provided, however, that any such increase in coverages shall not increase Fox's cost of coverage in any year by more than five percent over the previous year's cost.

41. *Hazardous Substance Indemnification.* Fox or its applicable affiliate represents and warrants that its use of the Historic Fox Theatre herein will not generate any hazardous substance, and Fox or its applicable affiliate will not store or dispose on the Historic Fox Theatre nor transport to or over the Historic Fox Theatre any hazardous substance not required for the proper operation of the facility. Fox further agrees to hold District and Tucson harmless from and indemnify District and Tucson against any release of any hazardous substance by Fox or its applicable affiliate or its contractors and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the sole negligence of District or Tucson, its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

42. *Mortgage or Security Interest.* The Historic Fox Theatre shall not be pledged as security in any deed of trust or mortgage or other document creating a security interest without the prior written consent of Fox, District and Tucson.

43. *Acceptance of Historic Fox Theatre.* Neither District nor Tucson makes any representation or warranty with respect to the condition of the Historic Fox Theatre and neither District nor Tucson shall be liable for any latent or patent defect in the Historic Fox Theatre.

44. *Estoppel Certificate.* District shall, at any time and from time to time upon not less than ten days prior request by Fox, deliver to Fox a statement in writing certifying that (a) the leasehold interest created by this Agreement is unmodified and in full force (or if there have been modifications, that the lease is in full force as modified and identifying the modifications); (b) the dates to which rent and other charges have been paid; (c) so far as the person making the certificate knows, Fox is not in default under any provisions of this Agreement; and (d) such other matters as Fox may reasonably request.

45. *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, which may be changed by written notice to each of the Parties and their representatives listed in this paragraph:

If to District, to:	Río Nuevo Multipurpose Facilities District Attention: City of Tucson, City Manager's Office P. O. Box 27210 Tucson, AZ 85726-7210
With a copy to:	William A. Hicks III SNELL & WILMER, LLP 400 E Van Buren Phoenix, AZ 85004-2202
If to Tucson, to:	City of Tucson, City Manager's Office Attention: Río Nuevo Project Director P. O. Box 27210 Tucson, AZ 85726-7210
With a copy to:	City of Tucson, City Clerk's Office P. O. Box 27210 Tucson, AZ 85726-7210
If to Fox, to:	Fox Tucson Theatre Foundation Attention: Herb Stratford, Executive Director P.O. Box 1008 Tucson, Arizona 85702

46. *Assignment and Subletting.* Fox shall not sublet all or any portion of the Historic Fox Theatre without District's prior written consent. Fox may assign all of its rights, duties, and obligations under the Lease to any entity which acquires all or substantially all of Fox's assets by reason of a merger, acquisition, or other business reorganization, which shall not be deemed a

third party assignment so long as such successor entity continues to manage and operate the Historic Fox Theatre in a manner consistent with this Agreement. A third party assignment shall require District's consent and District agrees not to withhold or delay such consent if to do so would be commercially unreasonable. Consent by District to any assignment or subletting shall not constitute a waiver of the necessity of such consent to any subsequent assignment or subletting. If the Historic Fox Theatre or any part thereof is sublet or occupied by anyone in addition to Fox, District may, following an uncured default by Fox, collect rent from the assignee, sublessee, or occupant and apply the net amount collected to the financial obligations of Fox under this Agreement, but no such assignment, subletting, occupancy, or collection shall be deemed a waiver or release of Fox from the further performance by Fox of the covenants on the part of Fox contained in the Lease. If Fox enters into a sublease or assignment of this Agreement, District reserves the right to hold Fox jointly and severally liable along with the assignee or sublessee under any and all of the Lease terms, covenants, conditions, and obligations contained in or derived from this Agreement, including those arising out of any act, occurrence, or omission occurring after said assignment. District expressly agrees to permit assignment of Fox's interest under this Agreement to a partnership or limited liability company formed for the purpose of raising equity through investment in the Historic Fox Theatre, generating historic preservation tax credits and to one or more subleases required to effectuate the tax-credit investment. An agreement between Fox and a performing troupe using the Historic Fox Theatre for a show or series of shows shall not be considered an assignment or sublease for purposes of this paragraph..

47. *Bankruptcy.* Any person or entity to which this Agreement is assigned pursuant to the provisions of the Bankruptcy Code, 11 USC sections 101, *et seq.*, shall be deemed without further act to have assumed all of the obligations of Fox arising under this Agreement on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to District an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to District, shall be the exclusive property of District, and shall not constitute property of Fox or of the estate of Fox within the meaning of the Bankruptcy Code. Any monies or other considerations constituting District's property under the preceding sentence not paid or delivered to District shall be held in trust for the benefit of District and be promptly paid to District.

48. *Nondiscrimination.* In its employment policies and practices, public accommodations and provision of services, Fox shall not discriminate on the basis of race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status or marital status. Nothing in this paragraph shall preclude Fox or its applicable affiliate from complying with applicable minimum age requirements for the viewing of movies and other entertainment.

49. *Successors and Assigns.* This Agreement shall be binding upon and inure to the benefit of the Parties, their respective heirs, personal representatives, successors and assigns.

50. *No Waiver of Strict Performance.* The failure of District or Tucson 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 District or Tucson may have and shall not be deemed a waiver of any subsequent breach or default in any of such agreements, terms, covenants and conditions.

51. *Authority to Execute 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.

52. *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, are superseded and merged in this Agreement. There are no representations or understandings of any kind not set forth herein.

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

54. *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. If any material provision of this Agreement is determined to be illegal, invalid or unenforceable, the Parties (and if necessary any court) shall fashion a remedy that accomplishes the following, in the following order of importance:

a. Returns to the District the funding set forth in paragraph 4 or provides legally adequate consideration for it.

b. Returns to Fox the fee ownership of the Historic Fox Theatre, to the extent it is possible to do so while also satisfying subparagraph 54.a. subject to the Lease.

55. *No Brokers.* The Parties acknowledge that no brokers were involved in this transaction, and no other parties are thus eligible for compensation as a result of this Agreement.

56. *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.

57. *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

58. *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.

59. *Recordation.* This Agreement shall be recorded in its entirety in the official records of Pima County, Arizona not later than ten days after its execution by all Parties and after resolutions are adopted by District's Board of Directors and Tucson's Mayor and Council adopting this Agreement.

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

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

62. *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.

63. *Attorneys' Fees.* If any Party brings a civil action against another Party to enforce or terminate this Agreement or to recover damages for the breach of any of the provisions, covenants or terms of this Agreement, the prevailing party shall be entitled to recover, in addition to any relief to which such prevailing party may be entitled, all costs, expenses and reasonable attorneys' fees incurred in connection the civil action.

64. *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.

65. *Effective Date and Duration.* This Agreement is effective when it has been executed on behalf of all of the Parties, and shall terminate on the last day of the Lease Term, unless terminated earlier by (a) District's optional termination and reconveyance of its fee interest in the Historic Fox Theatre to Fox, subject to the Lease (see paragraph 12) or (b) the exercise of Fox's repurchase option, subject to the Lease (see paragraph 13) or (c) District's election after Fox's default (see paragraph 33). Anything to the contrary notwithstanding, Fox's repurchase option (see paragraph 13) may be exercised until the first anniversary of the last day of the Lease Term.

66. *Obligations While Agreement is Effective.* Unless otherwise provided, each and every obligation set forth in this Agreement shall apply at all times while this Agreement is in effect (see paragraph 65).

67. *Lease Obligations.* Notwithstanding anything to the contrary set forth in this Agreement, Fox shall have the right to transfer its interest in the Lease to an affiliate which is the managing member or the general partner of a limited liability company or a limited partnership to be contributed to such partnership or company, and the District shall have the right to enter into the Lease directly with, any partnership or limited liability company in which an affiliate of Fox is the general partner or managing member, and upon such Lease, all of the obligations respecting the Lease set forth in Sections 4(e), 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 26, 27, 28, 29, 30, 31, 34, 35, 37, 38, 39, 40, 41, 42, 43 and 46 of this Agreement (collectively the "**Lease Obligations**"), as modified, to the extent deemed necessary or appropriate by the District pursuant to the Lease, shall be the sole and separate obligations of the tenant thereunder during the Lease Term, and shall be separately set forth in the Lease. Further, the tenant under the Lease shall have the right to enter into a master sublease to a limited liability company in which National Trust Community Fund, LLC, the federal historic tax credit investor, is the member, and such master tenant shall have the right to enter into a master sublease to an entity affiliated with Fox, which will operate and manage the Historic Fox Theatre, all of which are approved by the District, Tucson and Fox. The remainder of the rights and obligations of Fox set forth in this Agreement shall be and remain the sole rights and obligations of Fox. Title to the Historic Fox Theatre was transferred by Fox to the District to comply with the applicable requirements of Arizona law, which requires that fee ownership of the Historic Fox Theatre remain vested in the District. Nevertheless, both Fox and the District intend for Fox to enjoy the benefits and suffer

the burdens relating to the Historic Fox Theatre for the period beginning with the date Fox originally acquired the Historic Fox Theatre until the expiration of the Lease, subject to any subsequent transfer of the Lease by Fox in accordance with this Section 67, because at the time of transfer of title to the District, the District was obligated to lease the Historic Fox Theatre back to Fox for a lease term in excess of the useful life of the Historic Fox Theatre. The District and Tucson acknowledge that for state and federal income tax purposes, Fox intends to treat the Historic Fox Theatre as having been acquired on the date Fox originally acquired the Historic Fox Theatre and having been held by the Fox continuously thereafter through the date of any such subsequent transfer of the Lease pursuant to this Section 67.

"Tucson"
CITY OF TUCSON

July 6, 2005
Mayor

ATTEST:

July 6, 2005
City Clerk Date

This agreement has been submitted to the undersigned attorney for the City of Tucson, who has determined that this agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the City of Tucson.

Assistant City Attorney Date

"District"
RÍO NUEVO MULTIPURPOSE FACILITIES DISTRICT

07/13/05
Chairman

ATTEST:

7.13.05
Clerk Date

This agreement has been submitted to the undersigned attorney for the Río Nuevo Multipurpose Facilities District, who has determined that this agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Board.

Attorney to District Date

"Fox"
FOX TUCSON THEATRE FOUNDATION

Ellie Patterson, President

STATE OF ARIZONA)
County of Pima) ss.

SUBSCRIBED AND SWORN TO BEFORE ME this 27 day of June, 2005 by ER Patterson, on behalf of the corporation.

My commission expires: 6/15/08

Official Seal
NOTARY PUBLIC
STATE OF ARIZONA
County of Pima
CYNTHIA L. DHUEY
My Commission Expires June 15, 2008

Cynthia L. Dhuey
Notary Public

EXHIBITS

1. Legal description of the Historic Fox Theatre (see paragraph 1)
2. Legal description of Star Building (see paragraph 1)

November 20, 2000
RSE Job No. 0038

Legal Description

PARCEL I

All that part of Block 196 of the City of Tucson, Pima County, Arizona, according to the official Survey, field notes, and map as made and executed 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 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

COMMENCING at the present established southeast corner of said Block 196, being at the Northwest corner of North Stone Avenue and Congress Street;

THENCE Westerly upon the North line of Congress Street, a distance of 12.74 feet,;

THENCE continuing upon said North line of Congress Street, S 83°08'39" W a distance of 64.09' to a point;

THENCE N 06°51'21" W a distance of 19.84 feet to **THE POINT OF BEGINNING**;

THENCE S 83°07'47" W a distance of 32.53 feet to a point;

THENCE N 07°02'46" W a distance of 48.33 feet to a point;

THENCE S 82°39'12" W a distance of 107.15 feet to a point;

THENCE N 09°45'49" W a distance of 91.31 feet to a point;

THENCE N 81°11'21" E a distance of 24.25' feet to a point;

THENCE S 07°39'30" E a distance of 15.72 feet to a point;

THENCE N 82°52'35" E a distance of 50.08 feet to a point;

THENCE N 79°53'10" E a distance of 78.81 feet to a point;

THENCE S 10°07'24" E a distance of 6.50 feet to a point;

THENCE S 79°52'36" W a distance of 9.98 feet to a point;

THENCE S 07°18'46" E a distance of 13.12 feet to a point;

THENCE S 82°41'14" W a distance of 4.00 feet to a point;

THENCE S 11°57'03" E a distance of 26.83 feet to a point;

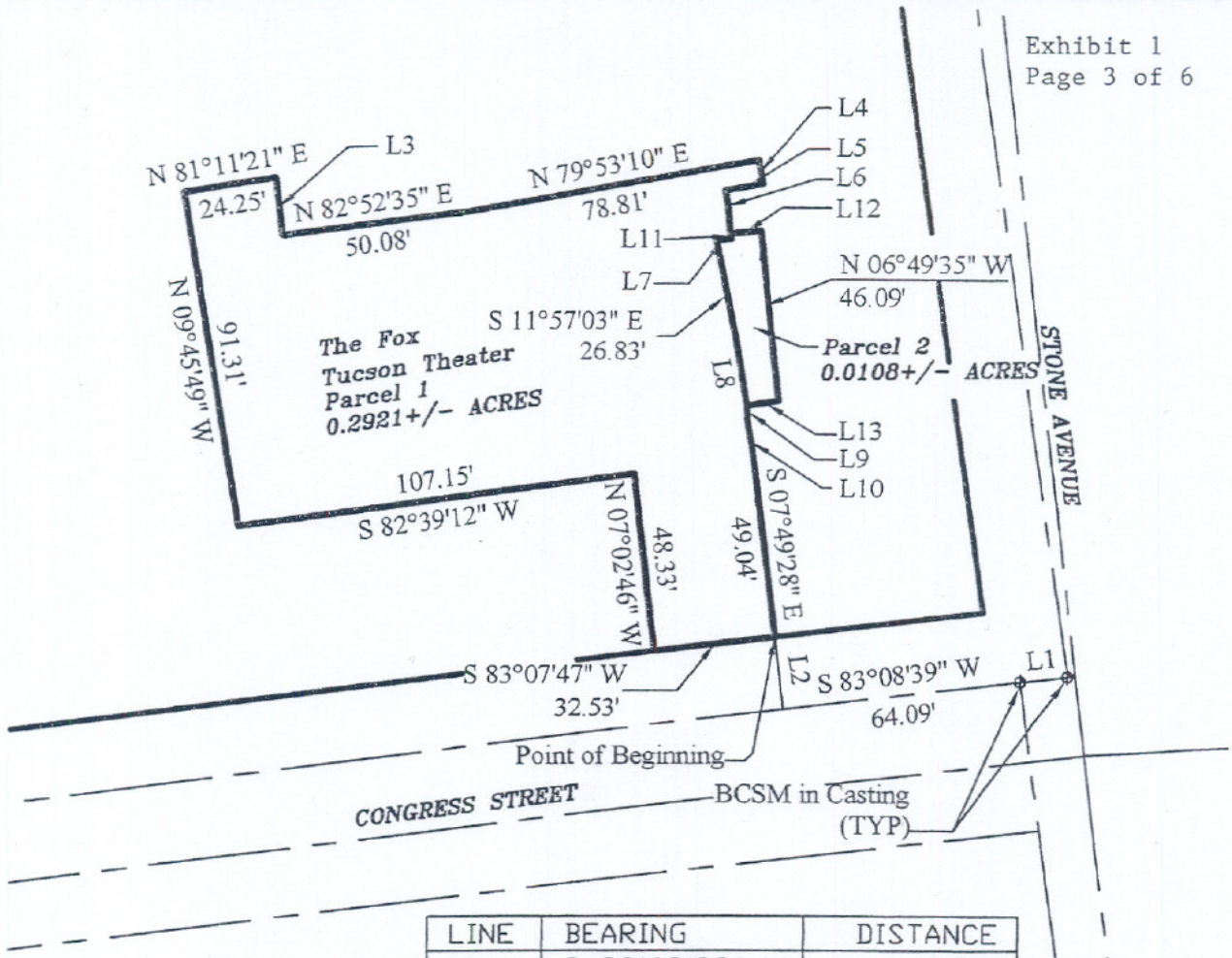
THENCE S 10°00'05" E a distance of 18.50 feet to a point;

THENCE S 04°09'32" E a distance of 3.80 feet to a point;

THENCE S 10°41'22" E a distance of 10.20 feet to a point;

THENCE S 07°49'28" E a distance of 49.04 feet to the **POINT OF TERMINATION.**

LAND SURVEYOR
CERTIFICATE NO.
18547
PATRICK R.
LAIRD
Date Signed 11-20-20
ARIZONA U.S.A.



LINE	BEARING	DISTANCE
L1	S 83°08'39" W	12.74'
L2	N 06°51'21" W	19.84'
L3	S 07°39'30" E	15.72'
L4	S 10°07'24" E	6.50'
L5	S 79°52'36" W	9.98'
L6	S 07°18'46" E	13.12'
L7	S 82°41'14" W	4.00'
L8	S 10°00'05" E	18.50'
L9	S 04°09'32" E	3.80'
L10	S 10°41'22" E	10.20'
L11	N 07°18'46" W	1.28'
L12	N 83°30'14" E	8.15'
L13	N 80°39'22" E	8.73'

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
18547
PATRICK R.
LAIRD
Date Signed 11-20-00
ARIZONA, U.S.A.

0' 50' 100' 150'

Use or alteration of the information in this instrument for other than the specific purpose for which it was intended and for other than the client for whom it was prepared is forbidden unless expressly permitted in writing in advance by R.S. ENGINEERING INCORPORATED, and R.S. ENGINEERING INCORPORATED shall have no liability to any use of this information without their written consent.

R S ENGINEERING
Consulting Engineers
2445 N. TUCSON BOULEVARD, TUCSON, ARIZONA 85716 (520) 791-3933 FAX: (520) 791-9405
© RS ENGINEERING

The Fox Tucson Theater
Tucson, Az.
Fox Theater Boundry

(Kitchen Parcel)

All that part of Block 196 of the City of Tucson, Pima County, Arizona, according to the official survey, field notes, and map as made and executed 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 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, and of that certain strip lying between the original South line of said Block and the North line of Congress Street, described as follows:

BEGINNING at the present established Southeast corner of said Block 196, being at the Northwest corner of North Stone Avenue and Congress Street;

THENCE Westerly along the North line of Congress Street, a distance of 118 feet, to the Southeast corner of parcel described in Book 34 of Deeds at page 848, said point being the TRUE POINT OF BEGINNING;

THENCE Northerly to a point on a Southerly line of that certain parcel conveyed to Fox Tucson Theatre Foundation by Deed recorded in Docket 11476 at page 4594;

THENCE Westerly along said Southerly line, North 82 degrees 39 minutes 12 seconds West, a distance of 28.73 feet to a Southwest corner of said Fox Tucson Theatre Foundation parcel;

THENCE South 07 degrees 02 minutes 46 seconds East, along a Westerly line of said Fox Tucson Theatre Foundation parcel, a distance of 48.33 feet to a point on the North line of Congress Street;

Thence Westerly, along the North line of Congress Street, to the TRUE POINT OF BEGINNING.
(Portion of JV Arb 44)

12065482

Sales History

Professional appraisal standards require that prior market activity affecting the subject property be analyzed. This includes current or recent offers to purchase, agreements of sale, options or listings of the subject property, and any conveyance within at least the three years of the date of valuation, if such are known to the appraiser (S.R. 1-1 (b) and 1-5 (a) and (b)).

The property was purchased by Reliance Centro Ltd, on 11/26/87 for $25,380, cash, during the assemblage and development of the Reliance towers. Subsequently, mortgages encumbered the entire package, including the subject site. Reliance remains on the mortgage, which is being paid by the current owners, Lerdal Ltd. Partnership. Mr. Robert Schwartz purchased the two adjoining parcels to the north and south together with the adjacent Arizona Daily Star building. Mr. Schwartz contacted the then current owner of the property, Lerdal Ltd. Partnership, Cummings-Baccus Interests, LC, to negotiate a purchase of the strip. However no sale was effected as, at that time, as the adjoining properties had buildings on them and the owner of those buildings had no use for the strip. The property is currently offered to the recent purchaser of those parcels.

LEGAL DESCRIPTION:

Per Survey:

All that part of Lot 9 in Block 196 of the City of Tucson, Pima County, AZ, according to the official survey, field notes, and map as made and executed 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 which map is of record in the office of the County Recorder of Pima County, AZ in Book 3 of Maps and Plats at page 70, more particularly described as follows, to-wit:

Beginning at the Southwest corner of said Lot 9;

Thence Northerly along the West boundary line of said Lot 9, a distance of 54.16 feet to a point, the TRUE POINT OF BEGINNING;

Thence Easterly and parallel with the South boundary line of said Lot 9 to a point on the West boundary line of that portion of Lot 9, conveyed to the Lyric Realty Company by Deed recorded in Book 137 of Deeds of Real Estate at page 110 thereof;

Thence Northerly along the West boundary line of said portion of Lot 9 conveyed to the said Lyric Realty Company to the North boundary line of Lot 9;

Thence Westerly along the North boundary line of Lot 9 to the Northwest corner of said Lot 9;

Thence Southerly along the West boundary line of said Lot 9 to the TRUE POINT OF BEGINNING.

Fox Theatre: Vacant Lot
Approx 38 N Church

That portion of Lot 9 in Block 196 of City of Tucson, Pima County, Arizona, according to the official survey, field notes, and map as made and executed 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 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, described as follows:

BEGINNING at the Southwest corner of Lot 9; thence Northerly along the West boundary thereof a distance of 54.16 feet to the POINT OF BEGINNING;

THENCE Easterly and parallel with the South boundary line of Lot 9 to the West boundary of that portion of Lot 9 conveyed to Lyric Realty Company by Deed recorder in Book 137 of Deeds of Real Estate at page 110;

THENCE Northerly along the Westerly boundary line of said property to the Northwest corner of said property and being on the North line of Lot 9;

THENCE Westerly along the Northerly line of Lot 9 to the Northwest corner thereof;

THENCE Southerly along the Westerly line of Lot 9 to the POINT OF BEGINNING.
(JV Arb 92)

CASE NO. 424867

All that portion of Lot 9, Block 196 of the CITY OF TUCSON, Pima County, Arizona, according to the official survey, field notes, and map as made and executed 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 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 Southwest corner of Lot 9;

thence Northerly along the West boundary of said Lot 9, a distance of 29.5 feet;

thence Easterly and parallel with the South boundary line of said Lot 9 to a point on the West boundary line of the property described in Deed recorded in Book 137 of Deeds at page 110;

thence Southerly and along the West boundary line of aforesaid property, a distance of 29.5 feet, said point being the Southeast corner of said Lot 9;

thence Westerly a distance of 83 feet to the POINT OF BEGINNING.

(JV ARB 93)

11884 3727

EXHIBIT 2 TO

EX 1 TO RESOLUTION NO. 20136

LEGAL DESCRIPTION FOR ELECTRIC EASEMENT

A **10'** Wide Strip Of Land For Electrical Transmission Purposes, Lying 5 Feet To Either Side Of The **Centerline**, Further Described As Follows.

All That Portion Of Lot 8 Of Block 196 Of The City Of Tucson, Pima County, Arizona, According To The Official Survey, Field Notes And Map As Made And Executed 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 Which Map Is Of Record In The Office Of The County Recorder Of Pima County, Arizona, In Book Three Of Maps And Plats At Page 71, More Particularly Described As Follows:
Commencing At The Northwest Corner Of Said Lot 8;
Thence Southerly Along The West Line Of Said Lot 8, A Distance Of 15 Feet To The Point Of Beginning;
Thence Easterly Along A Line Parallel To The North Line Of Said Lot 8, A Distance Of 75 Feet To **The Point Of Terminus.**

Together With An Easement For An Electrical Transformer, More Particularly Described As Follows:
Commencing At The Southwest Corner Of Lot 9 Of Said Block 196 Of City Of Tucson;
Thence Northerly, Along The West Line Of Said Lot 9, A Distance Of 54.16 Feet To A Point;
Thence Easterly, Along A Line Parallel To The South Line Of Said Lot 9 To A Point On The West Boundary Line Of The Property Described In Deed Recorded In Book 137 Of Deeds At Page 110. Said Point Being **The Point Of Beginning.**
Thence Southwesterly, A Distance Of 8 Feet To A Point;
Thence Northwesterly, A Distance Of 15 Feet To A Point;
Thence Northeasterly, A Distance Of 13.90 Feet, More Or Less, To A Point On The South Line Of The North 7 Feet Of The East 7 Feet Of Said Lot 8;
Thence Easterly, Along Said South Line A Distance Of 6.43' More Or Less To A Point On The East Line Of Said Lot 8 Which Is 7 Feet Southerly Of The Northeast Corner Of Said Lot 8;
Thence Southerly, Along The East Line Of Said Lot 8, A Distance Of 14.78 Feet, More Or Less, To **The Point Of Beginning.**

REGISTERED LAND SURVEYOR
CERTIFICATE NO. 31031
EDGAR BRADFORD REYNOLDS JR.
DATE SIGNED 8-15-02
ARIZONA U.S.A.

30 N. Church