

CONTRACT
NO. <u>04-00-0-100206-0173</u>
AMENDMENT NO. <u>07</u>
This number must appear on all invoices, correspondence and documents pertaining to this contract.

**Amended and Restated Lease
Old Tucson
Fourth Amendment to the Lease**

This Amended and Restated Lease (the "Restated Lease") is made by and between **Pima County**, a political subdivision of the State of Arizona, (the "County" or "Landlord") and **Old Tucson Company**, an Arizona corporation ("OTC" or "Tenant").

Recitals

A. On December 18, 1973, County entered into a Lease Agreement (the "Original Lease"), Pima County Contract No. 04-00-0-100206-0173, with OTC's predecessors in interest, Old Tucson Development Company, Inc., an Arizona corporation, and Old Tucson Corporation, a Delaware corporation, to lease the premises located upon approximately 360 acres owned by County and described as follows:

W 1/2 of Section 16, Township 14S, Range 12E, G. & S.B. & M.,
and that portion of the NE 1/4 of Section 17, Township 14S, Range
12E, G. & S.B. & M., which lies east of Kinney Road, as that road
was originally established on 9/3/37.

B. Old Tucson is a Western Frontier-type recreational and amusement area for the benefit of the people of Pima County. In 1985, the Original Lease, as amended, was assigned to OTC.

C. County and OTC (or OTC's predecessors in interest) amended the Original Lease by the following six (6) amendments and riders:

1. First Amendment to Lease, dated January 7, 1980;
2. Second Amendment to Lease, dated October 2, 1984;
3. Lease Maintenance Rider, dated May 24, 1988;
4. Addendum to Lease Maintenance Rider, dated March 21, 1995;
5. Third Amendment to Lease, dated February 20, 1996; and
6. Second Amendment to Lease Maintenance Rider, dated July 16, 1996.

These six amendments, riders and addendum are collectively referred to herein as the "Prior Amendments."

D. Pima County and OTC are now in litigation concerning past due rent (the "Past Due Rent"), in *Pima County v. Old Tucson Company*, Superior Court Case No. C20031503, and desire to settle the litigation and other disputes regarding the operations of Old Tucson.

- E. The parties intend for this Restated Lease to entirely replace the Original Lease, as amended by the Prior Amendments.
- F. In consideration for this Restated Lease, OTC will release any claim to future rent credits, will release Pima County from any obligation to reimburse OTC for any leasehold improvements, will limit its right to use approximately 180 acres of the 360 acres covered by the lease, will begin to pay Pima County for water consumed at Old Tucson, and will agree to an increase in the percentage rent structure.
- G. In consideration for this Restated Lease, Pima County will agree to let OTC pay delinquent rent over a ten year period, will agree to a decrease in the minimum rent, will waive reimbursement of previously withheld rent credits, will permit OTC to close the facility for 215 days each year, and will dismiss the litigation filed against OTC.

Now Therefore, Pima County and OTC, in consideration of the mutual covenants set forth herein and in consideration of the release of rights and obligations set forth in the Original Lease as amended by the Prior Amendments, agree and covenant as follows:

1. **Lease.** Pima County hereby leases the land described in Exhibit A and all buildings and improvements thereon (collectively "Old Tucson" or the "Premises") to OTC, and OTC hereby leases Old Tucson from Pima County. A portion of the Premises has been developed with buildings and improvements (the "Developed Area") and a portion of the Premises has not yet been developed with buildings or improvements (the "Native Area"). The Native Area is described on Exhibit B and is subject to certain limitations set forth in Paragraph 6 below. The Developed Area consists of all of the Premises which are not included in the Native Area.
2. **Term.** The term of this Restated Lease originally commenced on January 1, 1973 for a term of 25 years, ending on December 31, 1998. Pursuant to the terms of the Original Lease and pursuant to Arizona Revised Statutes § 11-256, the Original Lease was renewed and the term was extended to end on December 31, 2023. The term for this Restated Lease as amended and restated shall be effective on July 1, 2003, and shall terminate on December 31, 2023. The term of this Restated Lease may not be extended or renewed.
3. **Rent.** OTC shall pay to County, without demand or right of offset, rent as follows:
 - 3.1. **Payment of Past Due Rent.** OTC shall pay to County, as a component of the rent due hereunder, the Past Due Rent in the amount of \$225,109 (being \$217,609 rent and \$7,500 late fees) which the parties stipulate was due and payable to County at the time this Restated Lease was executed. The payment for the Past Due Rent shall be amortized over ten (10) years, and payable, together with interest thereon at the rate of six percent (6%) per annum from July 1, 2003, in equal monthly installments of not less than \$2,649.12 (based on a balance at July 1, 2004 of \$238,615 calculated by adding \$13,506 to the \$225,109 for the accrual of interest during the one year delay in making the first payment). Payments shall commence on July 1, 2004 and shall be payable on the first of each month thereafter until paid in full.

3.2. **Minimum Rent.** Commencing effective July 1, 2003, OTC shall pay to County as minimum rent \$50,000 annually ("Minimum Rent"), payable in monthly payments of \$4,166.66 commencing on October 1, 2003 and shall be payable on the first of each month thereafter; provided, however, that the payment for July 2003, August 2003 and September 2003 shall also be due and payable on October 1, 2003 along with the October 2003 payment. On July 1, 2008, on July 1, 2013, and on July 1, 2018, the annual Minimum Rent shall be adjusted every five years based on the percentage increase, if any, in the Consumer Price Index-Urban (CPI-U) for the previous five year period. The first adjustment will be effective on July 1, 2008 and will be based on the CPI-U percentage increase from June 30 2003 to June 30, 2008. The 2013 adjustment will be based on the CPI-U percentage increase from June 30 2008 to June 30, 2013. The 2018 adjustment will be based on the CPI-U percentage increase from June 30 2013 to June 30, 2018.

3.3. **Percentage Rent.** In addition to the Minimum Rent and the Past Due Rent, OTC shall pay Percentage Rent calculated using the following rates and benchmarks:

- 3.3.1. 0% on annual Gross Revenues up to \$5,000,000.
- 3.3.2. 2% on annual Gross Revenues from \$5,000,000 to \$6,000,000.
- 3.3.3. 4% on annual Gross Revenues from \$6,000,001 to \$7,000,000.
- 3.3.4. 6% on annual Gross Revenues from \$7,000,001 to \$8,000,000.
- 3.3.5. 8% on annual Gross Revenues from \$8,000,001 to \$9,000,000.
- 3.3.6. 10% on annual Gross Revenues from \$9,000,001 to \$15,000,000.
- 3.3.7. 5% on annual Gross Revenues exceeding \$15,000,000.

For purposes of this Restated Lease, the term "Gross Revenues" means all income receipts from any source arising out of operations or activities conducted on the Premises, whether such revenue is revenue directly to OTC or to any subtenant of OTC or other person or entity receiving revenue for activities conducted at Old Tucson, subject to the limitation hereinbelow relating to the area subleased or used by third parties. It is the intent of the parties that Gross Revenues be interpreted as broadly as possible to include revenue derived from use of the Premises regardless of the recipient of such revenue. Gross Revenue would not include direct taxes charged on admissions or other monies collected for and paid to a taxing authority as sales or excise taxes and would not include normal charge-backs such as rebates to charities using the Premises, refunds, returns, credit card fees or uncollected amounts. Percentage Rent benchmarks shall not be subject to adjustment for the CPI. Within 45 days after the end of each month, Tenant shall report to Landlord all Gross Revenues and charge-backs. On or before 45 days after the end of each quarter, beginning for the quarter ending December 31, 2003, Tenant shall pay to Landlord the estimated Percentage Rent year-to-date based upon an estimate determined

by annualizing Gross Revenues year-to-date. On or before March 31st of each year of this Restated Lease and on or before 45 days after the termination of this Restated Lease, Tenant shall provide to Landlord a reconciliation of the Percentage Rent due for the preceding calendar year and shall pay any balance of Percentage Rent for that preceding year or shall deduct any overpaid Percentage Rent from the next payment of Rent. Tenant shall require, as part of all contracts with any subtenant, or other entity or person using the Premises, that such concessionaire, subtenant, or other entity or person using the Premises report to Tenant and to Landlord gross revenues received from activities at the Premises.

The Past Due Rent, Minimum Rent, and Percentage Rent are collectively referred to herein as the "Rent".

4. **Termination of Rent Credit Programs and of Reimbursement of Improvements.** The Original Lease, as amended by the Prior Amendments, authorized Tenant to withhold certain portions of the rent under various "rent credit" programs. The parties acknowledge that all of the rent credit programs set forth in the Original Lease, as amended by the Prior Amendments, are terminated and Tenant shall not be entitled to withhold any portion of rent payments. Prior rent credits withheld by Tenant, in the approximate amount of \$520,000 as of July 1, 2003, are hereby waived by Landlord in exchange for Tenant releasing and waiving any claim for reimbursement for improvements to the Premises paid for by Tenant at any time, whether paid for under the provisions of the Original Lease, as amended by the Prior Amendments or expended subsequent to the effective date of this Restated Lease. *
5. **Taxes.** Tenant shall be responsible for payment of all taxes, whether real property taxes, personal property taxes, income taxes, or any other taxes, if any, that are or may be assessed relating to the Premises or any use of the Premises by Tenant.
6. **Uses and Fees.**
 - 6.1 **Developed Area.** Tenant may use the Developed Area of the Premises to operate a Western-Frontier recreational and amusement area for the benefit of the people of Pima County consistent with the historic use of the Premises, including using the Premises. Old Tucson is located within the boundaries of Tucson Mountain Park Preserve (the "Preserve") and the activities at Old Tucson shall not unreasonably interfere with or disturb the intended public use of the surrounding Preserve. The parties acknowledge that the current and historic uses of the Premises by Tenant do not unreasonably interfere with the Preserve. Any activities of Tenant which are unique or high risk special events not covered by Tenant's insurance policies may be conducted on the Premises only if Tenant provides insurance for such event as specified in Paragraph 11.7.
 - 6.2 **Native Area.** Tenant may use the Native Area of the Premises for filming motion pictures, television, or related theatrical productions, provided that Tenant gives Landlord five (5) day advance written notice of any activity in the Native Area and takes appropriate measures to protect native vegetation. Landlord may inspect and

monitor such activities to assure protection of native vegetation. Tenant shall revegetate any portion of the Native Area damaged by such activities.

6.3 Alcohol. Tenant may serve and sell alcoholic beverages for consumption on the Premises provide Tenant comply with applicable liquor laws and provides Landlord with the required insurance set forth herein.

6.4 Fees. Tenant currently charges \$14.95 for adults and \$7.45 for children (ages 3 to 11) as regular full price general admission fees to enter Old Tucson, excluding fees for Special Events. Tenant may, from time to time and upon sixty (60) day prior notice to Landlord, adjust fees for admission to the Premises to reflect market conditions. Tenant shall provide residents of Pima County with not less than a 15% discount on the published admission fee schedule.

6.5 Security and Safety. Tenant shall be responsible for all security and safety relating to the Premises and shall provide such security personnel and security and safety features sufficient to adequately protect the Premises and persons on the Premises from property damage or bodily injury.

7. Hours of Operation. Old Tucson shall be open to the general public at least eight (8) consecutive hours per day between the hours of operation may range from 7:00 a.m. to 10:00 p.m. (the "Normal Hours of Operation") for not less than 150 days per year. On those 150 days of the year Tenant shall operate substantially all of the attractions, rides and games within Old Tucson. On other days of the year, Tenant may either close the Premises to the general public or conduct limited activities on site, such as shortened hours or limited activities (including but not limited to concerts, guided tours, private events, etc.) Subject to the provisions of Paragraph 8 below, in addition to the Normal Hours of Operation, Old Tucson may be open additional hours of the day but shall in no event be open later than 1:00 a.m. On or before the 15th of July and the 15th of January each year, Tenant shall provide Landlord with a projected operating calendar for the following 12 month period, including projected hours of operation, planned Special Events, and the dates on which Old Tucson will be open for Normal Hours of Operation. ✓

8. Extended Hours. In the event Tenant wishes to have Old Tucson open after 10:00 p.m. for any reason, Tenant shall give Landlord fifteen (15) days advance written notice of Tenant's intent and provide Landlord, at the time of such notice, with a description of the function to be held after the Normal Hours of Operation, together with a traffic control plan for the roads leading to and from Old Tucson and a safety and security plan for the Special Event. Landlord may impose reasonable traffic control, safety and noise restrictions on the planned activity to promote the health and safety of the participants and of the traveling public. Tenant may submit a general plan for traffic control, safety, security and noise restrictions for Landlord's approval which plan, if approved, may be used by Tenant without further approval; provided, however, such general plan shall be effective for no more than 24 months before being subject to review and approval by Landlord again. The noise restrictions Landlord may impose shall relate to limiting noise after 10:00 p.m. which may be heard at the Gilbert Ray Campground located within the Preserve during the months of November to

March, inclusive. To that end, Tenant shall not conduct activities after 10:00 p.m. during the months of November through March, inclusive, without the prior written consent of Landlord. The implementation of any traffic control, safety and noise restrictions shall be at the sole cost of Tenant.

9. **Prohibited Activities.** Tenant shall not conduct any activity on the Premises which is not covered by the insurance policies provided pursuant to Paragraph 12 herein without first obtaining the written consent of Landlord and without providing additional insurance with coverage limits and carriers acceptable to Landlord. Tenant shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein which is not within the permitted use of the Premises or which will in any way increase the existing rate of or affect any fire or other insurance upon the Premises or any of its contents or cause a cancellation of any insurance policy covering the Premises or any part thereof or any of its contents. Tenant shall not do or permit anything to be done in or about the Premises which materially obstruct or interfere with the rights of other users of Landlord's property adjacent to the Premises or allow the Premises to be used for any unlawful purpose; nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or allow to be committed any waste in or upon the Premises. Tenant shall not store within the Premises equipment other than that to be used in the Premises or used in connection with the operation of Tenant's business at the Premises.
10. **Indemnification.** Tenant shall indemnify, defend, and hold harmless Landlord, its officers, employees and agents from and against any damages to property or injuries to persons, including death, and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any act, omission, fault or negligence by the Tenant, its agents, employees, invitees or anyone under its direction or control or on its behalf, or anyone permitted by Tenant to conduct any activity on the Premises, or in connection with any use of the Premises under the terms of this Restated Lease.
11. **Insurance.** Tenant shall, at Tenant's expense, obtain and maintain during the term of this Restated Lease and any renewals thereof, the following insurance policies:
 - 11.1. Commercial General Liability insurance with coverage at least as broad as ISO form CG 00 01 in an amount not less than \$1,000,000 per occurrence and \$5,000,000 aggregate, covering the Premises furnished to the Tenant for exclusive use, endorsed to include Pima County as an additional insured with coverage at least as broad as ISO form CG 20 10.
 - 11.2. Commercial Automobile Liability insurance with coverage at least as broad as ISO form CA 00 01 in an amount not less than \$1,000,000 for vehicles actually used in the operations at Old Tucson (as compared to used for simple commuting).
 - 11.3. Workers' Compensation insurance with statutory limits, with Employers' Liability coverage in an amount not less than \$500,000 per injury, illness, or disease.

- 11.4. Commercial Property, Boiler and Machinery insurance with coverage at least as broad as ISO forms CP 00 01 and BM 00 20, covering the full replacement cost of real property, including tenant improvements and betterments, and personal property located at the Premises, endorsed to include Pima County as an additional insured. Tenant shall include coverage for earthquake and flood damage. On an annual basis, Tenant shall provide a listing of the replacement costs of real property, including tenant improvements and betterments, for review and approval to ensure that sufficient coverage is secured to pay for the reconstruction or replacement of the improvements as required in Paragraph 23.
- 11.5. Business Interruption insurance sufficient to permit Tenant to continue services required under this Restated Lease in the event of serious loss or damage to the Premises.
- 11.6. Liquor Liability insurance in an amount not less than \$5,000,000 per occurrence if alcohol is sold or provided on the Premises, endorsed to include Pima County as an additional insured.
- 11.7. Special Events insurance in an amount acceptable to the Pima County Risk Manager for any event held at the Premises not covered by other insurance provided as required above. Landlord reserves the right to increase the limits on coverage for unique or high risk special events.

Tenant shall provide Landlord with current certificates of insurance. All certificates of insurance must provide for guaranteed thirty (30) days written notice of cancellation, non-renewal or material change. Each party waives its claims and subrogation rights against the other for losses typically covered by property insurance coverage.

12. **Inclusion of Improvements in Landlord's Insurance Policies.** In any year in which Tenant gives Landlord a timely written request to include the improvements located on the Premises in Landlord's fire, casualty, and extended coverage insurance, Landlord shall include the replacement value of the buildings, as jointly determined by Tenant and Landlord, in Landlord's next regular request for quotes from insurers. Landlord currently seeks quotes on an annual basis for insurance for periods from October 1 of each year to September 30 of the following year and currently has a \$100,000 deductible for such insurance. Landlord reserves the right to alter the dates of coverage and the amount of the deductible in its sole and absolute discretion. Landlord shall notify Tenant of the amount of the increase to Landlord's insurance premiums caused by the inclusion of the improvements located on the Premises in Landlord's policy coverage. Within ten (10) business days following the date such notice is sent, Tenant shall give Landlord written notice of Tenant's intent to either (i) procure and pay for Tenant's own insurance directly with an insurance carrier, in which case Landlord may delete Old Tucson from Landlord's coverage, or (ii) reimburse Landlord for the amount of the increased premiums, in which event such reimbursement shall become due and payable and shall be considered delinquent and a default under Paragraph 22.4 if not received by Landlord within five (5) business days of Tenant's notice of intent to have Landlord insure the improvements at Old Tucson. If the

improvements at Old Tucson are included in Landlord's policies, Tenant shall be responsible for and shall pay to Landlord within five (5) business days of demand by Landlord the deductible amount for each incident. Prior to inclusion any building or improvement in Landlord's policy, Tenant must provide Landlord with adequate assurance, in the form of a letter of credit, cash deposit with Landlord, or similar security satisfactory to Landlord, that Tenant shall have not less than the amount set as the deductible available to be paid in the event of a claim. Tenant acknowledges that Landlord shall have absolute discretion in determining the coverage Landlord secures and that Landlord shall not obtain coverage for Tenant's personal property or for business interruption.

13. Hazardous Materials.

13.1. Tenant shall not cause or permit any Hazardous Material (as hereinafter defined) to be brought upon, kept, or used in or about the Premises by Tenant, its agents, employees, contractors or invitees, without the prior written consent of Landlord, other than such Hazardous Materials which are necessary or useful to Tenant's business and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Materials. If (i) Tenant breaches the obligations stated in the preceding sentence, (ii) the presence (whether consented to by Landlord or otherwise) of Hazardous Material on the Premises or on or in the soil or ground water under or adjacent to the Premises is caused or permitted by Tenant, its agents, employees, contractors or invitees results in contamination of the Premises or such soil or ground water, (iii) contamination of the Premises or such soil or ground water by Hazardous Material otherwise occurs for which Tenant is legally liable to Landlord for damage resulting therefrom, or (iv) contamination occurs elsewhere in connection with the transportation by Tenant of Hazardous Material to or from the Premises, then Tenant shall indemnify, protect, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, expenses, liabilities or losses (including, without limitation, diminution in value of the Premises or any part thereof, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises or any part thereof, damages arising from any adverse impact on marketing of space with respect to the Premises or any part thereof, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the term of this Restated Lease as a result of such contamination. The foregoing obligation of Tenant to indemnify, protect, defend and hold Landlord harmless includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, restoration or other response work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present, as a result of any action or inaction on the part of Tenant, its agents, employees, contractors or invitees, in the Premises or the soil or ground water on, under or adjacent to the Premises, or elsewhere in connection with the transportation by Tenant of Hazardous Material to or from the Premises. Without limiting the foregoing, if the presence of any Hazardous Material on or in the Premises, or the soil or ground water under or adjacent to the Premises caused or permitted by Tenant, or its agents, employees, contractors or invitees results in any suspected contamination of the Premises, the soil or ground water under or adjacent to the Premises, Tenant shall

promptly notify Landlord in writing and take all actions at its sole expense as are necessary to return the Premises, or such soil or ground water to the condition existing prior to the introduction of any such Hazardous Material to the Premises, or to such soil or ground water; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises. Landlord agrees that any Hazardous Materials contaminating the Premises prior to possession of the Premises by Tenant's predecessor in interest in 1973 shall not result in liability for Tenant under this Paragraph except to the extent such contamination is aggravated by the action or inaction of Tenant.

- 13.2. Tenant shall, within ten (10) business days following receipt thereof, provide Landlord with a copy of (i) any notice from any local, state or federal governmental authority of any violation or administrative or judicial order or complaint having been filed or about to be filed against Tenant or the Premises alleging any violation of any local, state or federal environmental law or regulation or requiring Tenant to take any action with respect to any release on or in the Premises or the soil or ground water under or adjacent to the Premises of Hazardous Material, or (ii) any notices from a federal, state or local governmental agency or private party alleging that Tenant may be liable or responsible for cleanup, remedial, removal, restoration or other response costs in connection with Hazardous Material on or in the Premises or the soil or ground water under or adjacent to the Premises or any damages caused by such release.
- 13.3. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Arizona or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) defined as a "hazardous waste" under NRS 459.400 et. seq., (ii) petroleum, (iii) asbestos, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601) or (vii) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. 6991 et. seq.
- 13.4. Tenant's operations on the Premises shall comply with applicable provisions of the Clean Air Act, 42 U.S.C. 7401 et seq. and Arizona Revised Statutes, Title 49, Chapter 3.
- 13.5. Tenant's and Landlord's obligations under this Section shall survive the expiration or earlier termination of this Restated Lease and vacation of the Premises.
- 13.6. The parties acknowledge that some of the buildings located on the Premises were built many years ago and may contain asbestos containing materials ("ACMs") in the

building or roofing materials. To the extent such ACMs were placed onto the Premises prior to federal laws banning the use of asbestos, Tenant shall not be responsible for the abatement of the ACMs. Tenant shall, however, be responsible for any ongoing maintenance protocol to encase or otherwise confine such ACMs and shall otherwise comply with all federal, state or local governmental law, regulation, or orders relating to the proper handling or disposition of ACMs.

14. **Compliance with Laws.** Tenant shall not use the Premises, or permit anything to be done in or about the Premises, which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated (herein referred to as a "Law" or collectively as "Laws"). Except as otherwise set forth herein, Tenant shall, at its sole cost and expense, promptly comply with all Laws in connection with its use of the Premises. Any changes in the governing laws, rules and regulations during the terms of this Restated Lease shall apply but do not require an amendment. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any Law shall be conclusive of that fact as between Landlord and Tenant.
15. **Signs.** Tenant may affix and maintain upon the Premises such signs relating to the services provided on the Premises as Tenant deems appropriate; provided, however, if such signs are visible outside of the Premises, such signs must first received the written approval of Landlord as to type, size, color, location, copy nature and display qualities; provide further, however, that all signs utilized by Tenant on or about the Premises, whether visible outside the Premises or not, shall at all times comply with the Pima County Sign Code and shall be installed and maintained at Tenant's sole cost. Any and all signs placed by Tenant on the Premises shall be immediately removed by Tenant upon termination of this Restated Lease for any reason, and any damage resulting from such removal shall be repaired immediately by Tenant at its sole cost. Tenant shall pay all costs for construction, erection, installation, maintenance, and repair of any sign either currently in existence or to be erected or installed or otherwise placed on the Premises. Tenant shall identify the Premises as belonging to Pima County in signs placed at the entrances to the Premises and shall acknowledge Pima County in Tenant's publications.
16. **Alterations and Temporary Construction.** Except for temporary alterations describe at the end of this Paragraph 16, Tenant may not make any improvements, alterations, additions, or changes to the Premises (the "Alterations") without first obtaining the written consent of the County Administrator or his designee if the cost of the Alterations is \$25,000 or less and written consent of the Board of Supervisors if the cost of the Alterations is more than \$25,000. Notwithstanding the cost of Alterations, Tenant shall provide Landlord with written notice of the proposed Alterations not less than thirty (30) days before such Alterations are made and shall provide Landlord with "as-built" plans as set forth below. If the cost of the proposed Alterations is less than \$10,000 and are non-structural in nature, Landlord shall provide approval or disapproval within five (5) business days. If the cost of the proposed Alterations is more than \$10,000 or are structural in nature, Landlord shall provide approval or disapproval within thirty (30) business days. Landlord shall not

unreasonably withhold consent; provided, however, it shall be reasonable for Landlord to withhold consent if the Alterations:

- adversely affect the integrity of any structural, mechanical, or electrical system of any portion of the Premises;
- result in Landlord being required to perform any work that Landlord could otherwise avoid or defer;
- result in an increase in the premiums for any hazard or liability insurance carried by Landlord;
- result in an increase in the demand for utilities or services that Landlord is required to provide; or
- adversely affect the Landlord's use of the remaining property owned by Landlord adjacent to the Premises.

All plans and specifications for any Alteration shall be subject to Landlord's approval pursuant to the terms set forth below. Landlord's review of the plans and specifications shall be solely for Landlord's purposes and shall not imply Landlord's review for quality, design, laws, compliance or other like matters. Accordingly, notwithstanding that any construction drawings are reviewed by Landlord or its architects, engineers, or consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in any construction drawings, and Tenant's indemnity set forth in Paragraph 10 of this Restated Lease shall specifically apply to the construction drawings. Landlord's review shall be to determine that the proposed improvements are consistent with the purposes of this Restated Lease of providing recreational opportunities for the benefit of the people of Pima County. Tenant agrees that upon construction any building on the Premises constructed by Tenant shall become the property of Landlord. All work relating to any improvements or buildings shall be done in a good and workmanlike manner, using appropriate materials and shall be diligently prosecuted to completion. Within twenty (20) days after completion of any buildings or improvements Tenant shall deliver to Landlord a reproducible copy of the drawings of any improvements or buildings as built.

Tenant shall comply with all applicable regulations, including but not limited to building codes, fire codes, zoning codes, and other laws, regulations and orders (the "Construction Regulations") for any construction, whether of a permanent Alteration or a temporary alterations, and obtain all applicable permits from regulatory agencies, including but not limited to the Pima County Development Services Department, the Pima County Flood Control District, and the State Fire Marshall.

For purposes of this Paragraph 16, "temporary alterations" shall mean temporary improvements or temporary alterations to existing structures used for filming motion pictures, television, or related theatrical productions; provided such temporary alterations are removed within one (1) year of installation or construction and provided such temporary alterations comply with the Construction Regulations.

- 17. Repairs and Maintenance.** Tenant shall, at Tenant's sole cost and expense, keep the buildings and improvements located on the Premises and all exterior and interior portions

thereof in good condition and repair, including without limitation, any doors, window casements, glazing, plumbing, pipes, electrical wiring and lighting fixtures and conduits, all fire suppressant systems and related equipment, all heating and air conditioning systems, all foundations, walls (exterior and interior), sidewalks, corridors and roofs. Tenant shall, upon the expiration or sooner termination of this Restated Lease, surrender the above-described areas of the Premises to Landlord in good condition and broom clean, ordinary wear and tear and damage from causes beyond the reasonable control of Tenant excepted. To the extent that any repair or maintenance is required to the above-described portions of the Premises as the result of the negligence or intentional misconduct of the Landlord, its agents, employees, or contractors, Landlord shall conduct such maintenance and repair at its sole expense. Tenant shall further make all repairs to the Premises made necessary by reason of the negligence or intentional misconduct of Tenant, its employees, sublessees, licensees, invitees, servants or agents. If Tenant fails to perform its obligations hereunder, Tenant shall be in default hereunder and Landlord, without notice, may, but not shall be obligated to, perform Tenant's obligations and the cost of the same, which shall accrue interest at a per annum rate of twelve percent (12%), shall be paid by Tenant to Landlord within thirty (30) days of notice thereof. Any such default by Tenant shall not be considered cured until Tenant has fully reimbursed Landlord for the costs incurred in performing Tenant's obligation hereunder plus interest. Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant. Notwithstanding any other provision herein, Tenant may, for any three lease years within the ten-year period from July 1, 2003 through and including June 30, 2013, offset against payment of Minimum Rent the actual amount of expenditures, up to a maximum amount of \$50,000 per year during any of the three years selected, for repair or replacement of foundations, roofs, and structural elements of the buildings and improvements. Such offsets shall be limited to the year in which the expenditure was made, shall be non-cumulative and shall not carry forward from year to year.

18. **Financing.** Tenant may encumber its leasehold interest in this Restated Lease. The leasehold interest of Tenant is currently subject to a Leasehold Deed of Trust recorded in Docket 10424 at Page 1983 in the office of the Pima County Recorder (the "Deed of Trust"). The beneficiaries of this Deed of Trust to Bank One, N.A. are currently Cornerstone Capital Management, Ltd., and Southwest Holdings, Ltd. (the "Beneficiaries"). This Restated Lease is subject to the approval of the Beneficiaries, which approval is evidenced on the signature page hereof. Landlord shall execute consent, estoppel, non-disturbance and similar instrument reasonably requested by Tenant's lenders; provided, however, Landlord shall not be required to amend this Restated Lease or consent to additional notice or cure provisions as part of any such consent, estoppel, non-disturbance and similar instruments.
19. **Assignment and Subletting.** Tenant shall not either voluntarily, or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Restated Lease or any interest therein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld; provided, however, Tenant may sublet not more than 2,000 square feet of space in aggregate to any one subtenant or affiliate of Tenant or of a subtenant upon written notification to Landlord but without prior approval by Landlord, it

being the intent of the parties to permit minor subleases of space for activities relating to and supporting the purpose of this Restate Lease. Consent to one assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any other assignment, subletting, occupation, or use by another person. Consent to any such assignment or subletting shall in no way relieve Tenant of any liability under this Restated Lease and shall not impose any additional burden or obligation on Landlord. Any such assignment or subletting without such consent shall be void, and shall, at the option of Landlord, constitute a default under the terms of this Restated Lease. All gross receipts received by any subtenant, licensee, or other person in connection with their use of the Premises using in excess of 2,000 square feet of space shall be included in the calculation of the Percentage Rent due under Paragraph 3.3 hereof.

20. Utilities and Services.

20.1. Subject to the limitation set forth in subparagraph 20.2, Tenant shall be responsible to pay for all gas, heat, light, power, water, sewer charges, telephone service, garbage removal, pest and termite service, security services and all other services and utilities supplied to the Premises and any buildings located within the Premises, together with any taxes thereon.

20.2. Potable water delivered to the Premises is currently provided by the Landlord. Tenant acknowledges that Landlord has limited infrastructure and limited water resources within Tucson Mountain Park Preserve, within which the Premises are located, and that Landlord provides water to the Gilbert Ray Campground and to the Arizona Sonoran Desert Museum from the same water source. Landlord may reasonably allocate water among these users in Landlord's sole discretion. Rent shall abate in the event an insufficient supply of water to the Premises to permit Tenant to have the Premises open to the public. Landlord shall not be liable for any consequential damages arising out of insufficient supply of water to the Premises.

20.3. Landlord shall not be liable to Tenant if any utilities or services, whether or not furnished by Landlord hereunder, are interrupted or terminated because of necessary repairs, installation or improvements, or any other cause beyond Landlord's reasonable control, nor shall any such termination relieve Tenant of any of its obligations under this Restated Lease. Landlord shall have no liability to Tenant if any utility service is interrupted by the utility provider or otherwise.

20.4. In the event potable water is provided to the Premises by Tucson Water or another water company, Tenant shall pay the monthly utility fees for such water.

21. Entry by Landlord. Landlord reserves the right to enter the Premises to inspect the same; provided that if such entry is not during normal business hours, Landlord provide Tenant with at least twenty-four (24) hours advance written notice. Landlord shall use its reasonable best efforts to not interrupt Tenant's business at the Premises. Landlord at any and all times shall have the right to use any and all means which Landlord may deem proper to

open doors in an emergency in order to obtain entry to the Premises without liability to Tenant, except for any failure to exercise due care for Tenant's property, and any entry to the Premises obtained by Landlord by any such means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof.

22. Default and Remedies. The occurrence of any one or more of the following events shall constitute a default and breach of this Restated Lease by Tenant or Landlord:

22.1. The vacating or abandonment of the Premises, or any portion thereof, by Tenant where such failure shall continue for a period of ten (10) calendar days after notice of such default is sent by Landlord to Tenant.

22.2. Tenant's failure to maintain hours of operations as set forth above where such failure shall continue for a period of ten (10) calendar days after notice of such default is sent by Landlord to Tenant.

22.3. The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of ten (10) calendar days after such payment is due. Landlord is not required to give Tenant notice of failure to pay rent, and Tenant acknowledges that all rent, whether Past Due Rent, Minimum Rent, or Percentage Rent is due and payable without demand or offset. In the event Tenant fails to timely pay any portion of the Past Due Rent, and such failure is not cured within said ten (10) day period, the entire unpaid balance of the Past Due Rent shall immediately become due and payable in full.

22.4. The failure by Tenant to maintain insurance policies as set forth above for any time; in which event Tenant must immediately cease all operations at the Premises until such insurance is obtained. In the event of such a default, Landlord may, in Landlord's sole discretion, obtain necessary insurance coverage in which event Tenant shall, within 5 days of demand, reimburse and pay to Landlord the full amount of any costs and premiums expended by Landlord to obtain such coverage.

22.5. The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Restated Lease to be observed or performed by Tenant, other than described in (a), (b), (c) and (d), above, where such failure shall continue for a period of thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion provided such cure is completed within one hundred and twenty (120) days of the notice by Landlord.

22.6. Landlord's failure to perform any obligation of Landlord set forth in this Restated Lease.

Either party may pursue any remedies provided by law and in equity for the breach of this Restated Lease. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this Restated Lease, including without limitation, the right to recover all future rent payments subject to the duty to mitigate.

23. Reconstruction. In the event the Premises or any portion thereof are damaged by fire or other perils covered by extended coverage insurance, Tenant shall forthwith repair same restoring the Premises to the condition which existed prior to the casualty, and this Restated Lease shall remain in full force and effect without abatement of rent. Tenant's obligation shall be only to restore the Premises to the condition which existed prior to the casualty or to a comparable facility subject to compliance with all applicable building codes. Tenant's obligation to restore the Premises shall be limited to the availability of insurance coverage whether the proceeds of such insurance is paid directly to Tenant or to another entity. In the event of any such casualty which damages Tenant's furniture, fixtures and/or equipment at the Premises, Tenant shall proceed with reasonable diligence and at Tenant's sole cost and expense to restore, repair or replace all of Tenant's leasehold improvements, fixtures, and other personal property of Tenant to the same condition which existed prior to the casualty. Tenant shall continue the operation of its business within the Premises to the extent practicable during any period of reconstruction or restoration. To the extent any insurance proceeds covering such loss to the Premises are received by Landlord, Landlord shall make available such proceeds from insurance to reimburse Tenant for such reconstruction.

24. Arbitration Relating to Approvals and Consents. When a conflict develops between the parties relating to the request by Tenant for Landlord's approval or consent as required by this Restated Lease, Landlord and Tenant shall expeditiously meet at a mutually agreed upon place, date, and time within ten (10) days following the disapproval or refusal to consent in order to work diligently and faithfully to resolve the conflict. When the parties cannot agree upon a solution to the disagreement during the ten-day period, the following resolution process shall be followed:

24.1. In an effort to reduce friction and facilitate resolution, an arbitrator shall be appointed in one of the following ways:

- a. By mutual concurrence by the County Administrator and by the CEO of Tenant from a list of arbitrators mutually prepared.
- b. If no arbitrator is satisfactory to both parties, each may submit three names of acceptable arbitrators. If the same name appears on both lists, that arbitrator shall act as the Arbitrator.
- c. A three-arbitrator panel may be selected. Each party to this Agreement shall select one; the two Arbitrators selected shall select a third.
- d. If there can be no agreement under provisions a., b., or c. above, the arbitrators

shall be selected by the chief presiding judge of the Superior Court of Pima County.

- 24.2. The Arbitrator(s) shall reach a decision upon review of the documents submitted by each party, or upon request of the parties, hold a hearing within 30 days of the appointment as Arbitrator(s). The proceeding for the arbitration shall be informal, but all parties must cooperate or provide information or witnesses requested by the Arbitrator(s). If a hearing is held, Landlord and Tenant may each be represented by counsel, and each party shall bear its own cost for such counsel. A written decision must be made within ten days of the hearing or within ten days after receipt of the record if a decision is to be made on the record without a hearing. The Arbitrator's written decision shall be sent to all parties. The decision of the Arbitrator is non-binding. The parties shall, other than the expense of counsel representing each party at an arbitration hearing, share equally in the expense of the arbitration.

25. General Provisions.

- 25.1. **Conflict of Interest.** This Restated Lease is subject to cancellation pursuant to Arizona Revised Statutes § 38-511 which is incorporated herein by reference.

- 25.2. **Waiver.** The waiver by Landlord or Tenant of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained by the subject party. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding default by Tenant of any term, covenant or condition of this Restated Lease, other than the failure of Tenant to pay the particular rental so accepted regardless of Landlord's knowledge of such preceding default at the time of the acceptance of such rent. Failure of Landlord or Tenant to insist upon strict performance of any provision or to exercise any remedy hereunder shall not be deemed to be a waiver by such party of any breach relating to such provision or giving rise to such remedy. No provision of this Restated Lease shall be deemed to have been waived unless such waiver shall be in writing signed by the party against whom such waiver is sought to be enforced.

- 25.3. **Marginal Headings.** The marginal headings and section titles to the sections of this Restated Lease are not a part of this Restated Lease and shall have no effect upon the construction or interpretation of any part hereof.

- 25.4. **Time.** Time is of the essence of this Restated Lease and each and all of its provisions in which performance is a factor.

- 25.5. **Successors and Assigns.** The covenants and conditions herein contained, subject to the provisions as to assignment, apply to and bind the successors and assigns of the parties hereto.

- 25.6. **Recordation.** Either this Restated Lease or a short form memorandum hereof may be recorded at the request of either party.

25.7. **Quiet Possession.** Upon Tenant's paying the rent and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire term of this Restated Lease, subject to all the provisions of this Restated Lease.

25.8. **Prior Agreements, Amendments, and Modifications.** This Restated Lease constitutes the entire agreement between the parties and contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Restated Lease, and no prior or contemporaneous agreements or understanding pertaining to any such matters shall be effective for any purpose. The parties expressly intend for this Restated Lease to replace and substitute for the Original Lease, as amended by the Prior Amendments, in its entirety. No provision of this Restated Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Restated Lease shall not be effective or binding on any party until fully executed by both parties hereto.

25.9. **Partial Invalidity.** Any provision of this Restated Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provision shall remain in full force and effect unless an essential purpose of this Restated Lease would be defeated by loss of the invalid, void, or illegal provision.

25.10. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

25.11. **Choice of Law and Venue.** This Restated Lease shall be governed by the laws of the State of Arizona and the venue for any action in regard hereto shall be the Pima County Superior Court.

25.12. **Attorneys' Fees.** In the event of any action or proceeding brought by either party against the other under this Restated Lease the prevailing party shall be entitled to recover its expenses and costs, including its attorneys' fees and expert witness fees in such action or proceeding, including costs of appeal, if any, in such amount as the court may adjudge reasonable.

25.13. **Approvals.** Unless otherwise provided herein, whenever the approval of a party is required by this Restated Lease, such approval shall be given within thirty (30) days. If such approval is not given with such time period, the request shall be deemed disapproved and denied. If approval is denied or deemed denied, the provisions of Paragraph 24 shall apply.

25.14. **Notices.** Wherever this Restated Lease requires or permits notice or demand to be given by either party to the other, such notice or demand shall be in writing and given or served either personally or in writing forwarded by either regular mail or by certified

mail, return receipt requested, addressed to the parties at the addresses specified below and to the following individuals. Either party may change such address by written notice to the other as herein provided.

If notice is to Landlord: Pima County
Attention: County Administrator
130 W. Congress, Tenth Floor
Tucson, Arizona 85701
Telephone Number: (520) 740-8661
Fax Number: (520) 740-8171

And to

Pima County Natural Resources Parks and
Recreation Department
Attention: Director
3500 W. River Road
Tucson, Arizona 85741
Telephone Number: (520) 877-6000
Fax Number: (520) 877-6206

If notice is to Tenant: Old Tucson Company
Attention: Chief Executive Officer
201 South Kinney Road
Tucson, Arizona 85746
Telephone Number: (520) 883-0100
Fax Number: (520) 578-1269

25.15. **Authority of Tenant.** Each individual executing this Restated Lease on behalf of Tenant represents and warrants that he or she has full authority to do so and that this Restated Lease binds the corporation. If any court or administrative agency determines that Landlord does not have authority to enter into this Restated Lease, Landlord shall not be liable to Tenant or any third party by reason of such determination or by reason of this Restated Lease.

25.16. **Partial Payment and Performance; Non-Waiver.** Nothing herein shall require or obligate Landlord to accept any partial payment of the then current and owed rent or additional rent due or partial performance of obligations under this Restated Lease. Landlord may, in its sole discretion, accept partial payments of amounts due or partial performance of obligations hereunder, such acceptance of partial payments of rent or additional rent due or partial performance of obligations hereunder shall in no way be considered or constitute a waiver by Landlord of any failure on the part of Tenant to timely pay rent or additional rent due or perform the obligations hereunder nor shall such acceptance be considered an accordance satisfaction of the rentals then due under this Restated Lease. The failure of either party to insist in any one or more instances upon the full and complete performance of any of the terms and conditions of this Restated Lease to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon

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contract executed and on file with Pima County.

full and complete performance of the same, or any other covenant or condition, either in the past or in the future.

- 25.17. **Books and Records.** Pursuant to ARS 35-214, the Tenant shall retain, and require all subcontractors to retain, for inspection and audit by the Landlord and the Arizona Auditor General, all books, accounts, reports, files and other records relating to performance of the Restated Lease for a period of five years after its completion or if later, until any related proceedings initiated during the five (5) year period are completed. Upon request by the Landlord or the Auditor General, a legible copy or the original of all such records shall be produced by the Tenant at the administrative office of the Landlord or the office of the Auditor General.
- 25.18. **Audits.** For each fiscal year of this Restated Lease, Tenant shall, at Tenant's expense, provide Landlord with financial statements relating to capital expenditures and maintenance expenses and relating to Gross Revenues prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant. Audits shall be submitted to Landlord within four (4) months of the close of the fiscal year being audited. Landlord may require Tenant to provide an audit at any time by providing written notice to Tenant, but any such special audit shall be conducted at Landlord's expense. Such notice shall specify the period to be covered by the audit, the type of audit and the time for completion and submission of the audit.
- 25.19. **No Subsidy by Landlord.** Tenant acknowledges that Landlord does not intend to and cannot under the terms of this Restated Lease pay, subsidize or otherwise contribute to Tenant for the operation of the Premises.
- 25.20. **Compliance with ADA.** Tenant shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
- 25.21. **Non-Discrimination In Employment.** Tenant shall not discriminate against any County employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out Tenant's duties pursuant to this Restated Lease. Tenant shall comply with the provisions of Executive Orders 75-5, as amended by Executive Order 99-4, which are incorporated into this Restated Lease by reference as if set forth in full herein.
- 25.22. **Non-Appropriation.** Notwithstanding any other provision in this Restated Lease, if there are not sufficient appropriated and available monies for the purpose of maintaining Landlord's obligations under this Restated Lease, including but not limited to Landlord's obligation to include the improvements on the Premises in Landlord's insurance policies, Landlord shall have no further obligation to Tenant; provided, however, Tenant may continue to occupy the Premises if Tenant provides adequate insurance and performs all of Tenant's obligations under this Restated Lease.

25.23. **Independent Contractor.** The status of the Tenant shall be that of an independent contractor. Neither Tenant, nor Tenant's officers, agents or employees shall be considered an employee of Pima County or be entitled to receive any employment-related fringe benefits under the Pima County Merit System. Tenant shall be responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Contract and shall indemnify and hold Landlord harmless from any and all liability which Landlord may incur because of Tenant's failure to pay such taxes. Tenant shall be solely responsible for program development and operation.

26. **Settlement of Lawsuit.** Upon execution of this Restated Lease by all parties and by the Beneficiaries, Landlord shall dismiss with prejudice, Landlord's lawsuit against Tenant for the Past Due Rent, *Pima County v. Old Tucson Company*, Superior Court Case No. C20031503.

IN WITNESS WHEREOF: The parties hereto duly authorized have executed this Restated Lease to be effective as of July 1, 2003.

LANDLORD

Pima County

Sharon Brinson
Chair, Board of Supervisors

TENANT

Old Tucson Company, Inc.

Helaine Levy
Name: Helaine Levy
Title: President

Approved as to form:

John Burke 9/18/2003
Deputy County Attorney

Approved as to content:

Rafael Payan 9/23/2003
Rafael Payan, Director, Natural Resources
Parks and Recreation

ATTEST:

Lolita Brigade, Deputy
Clerk of the Board

CONSENT BY BENEFICIARIES:

The Beneficiaries of the Deed of Trust described in Paragraph 18 above consent to the modification and restatement of the Original Lease, as amended by the Prior Amendments, accomplished by this Amended and Restated Lease for Old Tucson.

Cornerstone Capital Management, Ltd.

Theo Smith
By: Theo Smith
Its: Sec/Treas

Southwest Holdings, Ltd.

DAVID GOLDSTEIN
By: DAVID GOLDSTEIN
Its: V.P.

EXHIBIT A

**Legal Description of the Premises
(Including both the Developed Area and the Native Area)
Being approximately 330 Acres**

Parcel 1, Parcel 2, and Parcel 3 on the attached legal description.

EXHIBIT B

**Legal Description of the Native Area
Being approximately 180 Acres**

Parcel 3 on the attached legal description.



Pima
County
Survey

PCPCCV SEP12'03AM11:26

12 September 2003

LEGAL DESCRIPTION OLD TUCSON

Portions of the west one half of Section 16, a portion of the northeast quarter of Section 17 and a portion of the southwest quarter of Section 9, Township 14 South, Range 12 East, Gila and Salt River Meridian, Pima County, Arizona, more particularly described as follows:

PARCEL 1:

BEGINNING at the northwest quarter corner of said Section 16, a found US General Land Office disk dated 1926;

THENCE North 89° 30' 25" East, 2642.56 feet along the north line of that parcel as described in Book 1871 of Dockets at Page 64, records of Pima County, Arizona, also being the north line of the west one half of said Section 16, said line being the basis of bearing as established from the Arizona Coordinate System, 1983 (HARN 92), Central Zone 0202, to the north one quarter corner of said Section 16, a found US General Land Office disk dated 1926;

THENCE South 00° 27' 05" East, 1820.00 feet along the east line of the west one half of said Section 16;

THENCE South 89° 30' 25" West, 1100.00 feet;

THENCE South 00° 22' 45" East, 1090.00 feet;

THENCE North 89° 30' 25" West, 800.00 feet;

THENCE North 41° 24' 28" West, 1134.83 feet to a point on the line common to said Sections 16 and 17;

THENCE North 41° 24' 28" West, 4.08 feet to a point of curvature;

THENCE northwesterly along a curve concave to the northeast, having a radius of 481.28 feet, through a central angle of 23° 31' 51", an arc distance of 197.66 feet to a point of tangency;

THENCE North 89° 30' 25" East, 2642.56 feet;

THENCE North 17° 52' 37" West, 400.34 feet;

THENCE North 89° 30' 25" East, 120.80 feet;

THENCE North 21° 28' 40" West, 71.82 feet;

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Old Tucson

THENCE North 33° 31' 29" West, 157.19 feet;

THENCE North 19° 20' 03" West, 74.78 feet;

THENCE North 04° 33' 34" West, 251.31 feet;

THENCE North 06° 13' 50" West, 96.32 feet;

THENCE North 00° 34' 44" East, 85.92 feet;

THENCE North 12° 46' 47" East, 323.95 feet;

THENCE North 18° 32' 14" East, 229.53 feet;

THENCE North 02° 00' 55" West, 86.40 feet;

THENCE North 22° 51' 51" West, 174.32 feet to a point on the north line of the northeast quarter of said Section 17;

THENCE North 89° 26' 07" East feet along the north line of the northeast quarter of said Section 17 a distance of, 181.96 to the POINT OF BEGINNING.

PARCEL 2:

COMMENCING at the southwest corner of said Section 9, a found US General Land Office disk dated 1926;

THENCE North 89° 30' 25" East, 322.48 feet along the south line of that parcel as described in Book 3875 of Dockets at Page 259, records of Pima County, Arizona, also being the south line of the southwest quarter of Section 9, said line being the basis of bearing as established from the Arizona Coordinate System, 1983 (HARN 92), Central Zone 0202, to the POINT OF BEGINNING, said point bears South 89° 30' 25" West, 2320.08 feet from the south one quarter corner of said Section 9, a found US General Land Office disk dated 1926;

THENCE North 00° 29' 35" West, 50.00 feet;

THENCE North 89° 30' 25" East, 200.00;

THENCE South 00° 29' 35" East, 50.00 feet to a point on the south line of the southwest quarter of said Section 9;

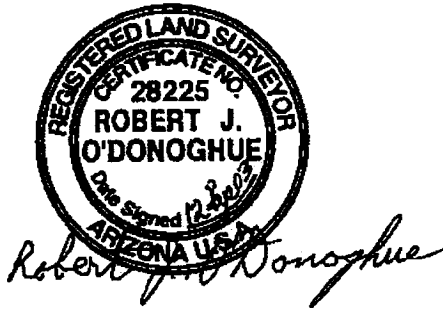
THENCE South 89° 30' 25" West along the south line of the southwest quarter of said Section 9, a distance of 200.00 feet to the POINT OF BEGINNING;

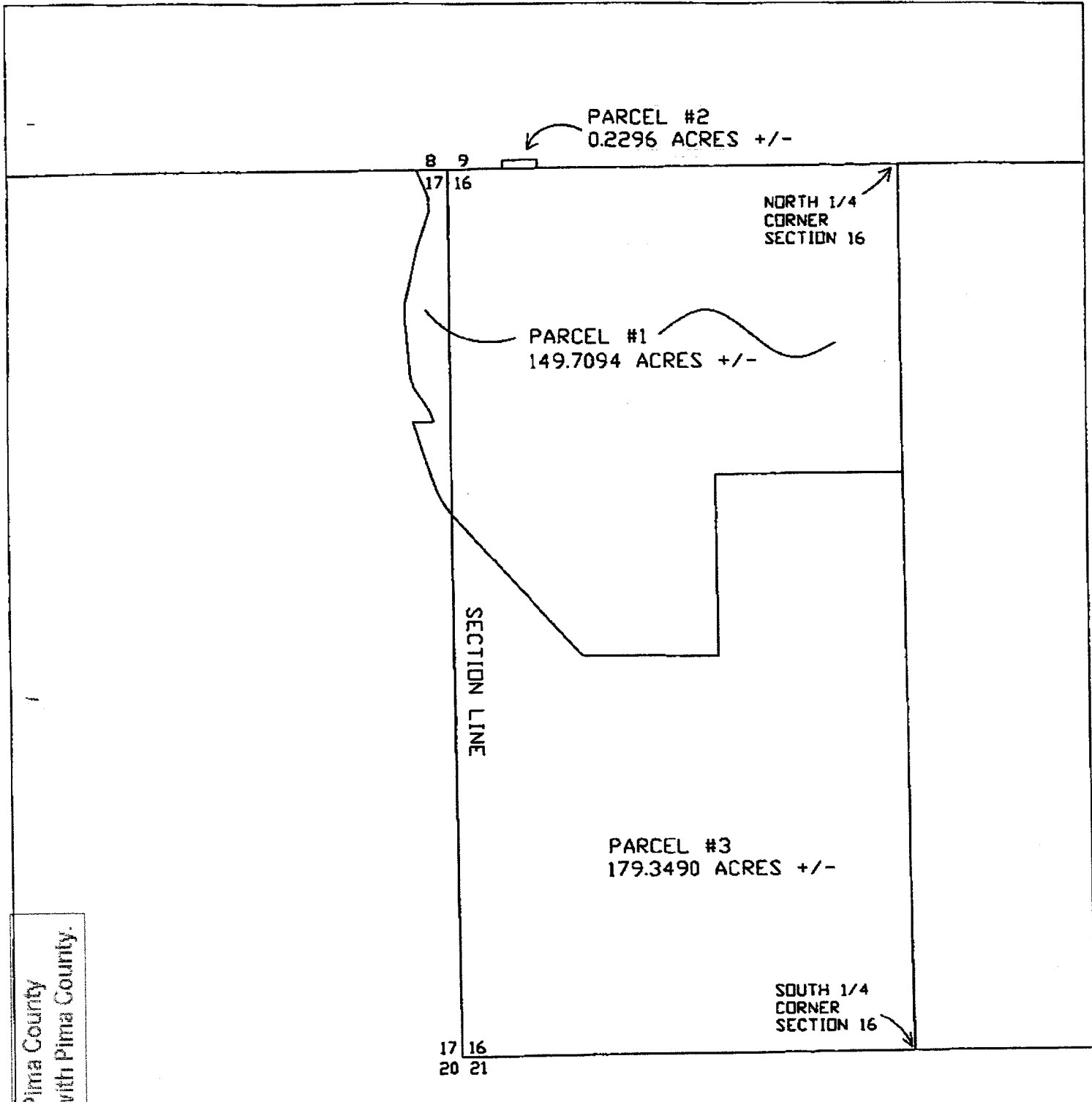
Page 3
Old Tucson

PARCEL 3:

The west one half of said Section 16.

EXCEPT that portion of PARCEL 1 described above lying within said Section 16.





This is an Official Copy of the Pima County
contract executed and on file with Pima County.



PIMA COUNTY SURVEY

PORTIONS OF SECTIONS 9, 16 AND 17
TOWNSHIP 14 SOUTH, RANGE 12 EAST,
GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA.

SCALE: 1IN = 800 FT

DRAWN BY: MCM

DATE: SEPT. 12, 2003