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ARIZONA SUPERIOR COURT
PIMA COUNTY

Richard Rodgers, et al., Plaintiffs, vs. Charles H. Huckelberry, et al., Defendants.	Case No. C20161761 **JOINT PRETRIAL STATEMENT** (The Honorable Paul E. Tang)

The parties respectfully submit this Joint Pretrial Statement:

A. Stipulations of material fact.

Plaintiffs

1. Plaintiffs (collectively, "Taxpayers") are Pima County residents and taxpayers. They have standing to maintain their Gift Clause challenge in this lawsuit (Count 1 of their Complaint).

The World View Agreements

2. On January 19, 2016, the Pima County Board of Supervisors (voting 4-1) approved a Lease-Purchase Agreement and an Operating Agreement (collectively, "**the Agreements**") between Pima County and World View Enterprises, Inc. ("**World View**"), a Tucson-based private company that had developed and was planning to

commercialize a unique near-space balloon technology. World View serves commercial customers around the world.

3. The Agreements were entered into by the Board of Supervisors for economic development purposes under A.R.S. § 11-254.04, based on the Board's findings that the World View transaction would benefit the local economy and that World View would have relocated its operation to a different state but for the County's willingness to enter into the Agreements.
4. The Lease-Purchase Agreement required the County to construct a building (the "**Building**"), approximately 135,000 square feet in size, on a 12-acre parcel of County-owned land (the "**Building Parcel**" and, together with the Building, the "**Improved Parcel**") and lease it to World View for use as a headquarters and balloon manufacturing.
5. Under the Lease-Purchase Agreement, World View has an option to purchase the Improved Parcel at the end of the 20-year lease term for $10.
6. Under the Lease-Purchase Agreement, World View is required to insure the Building, maintain and repair it, and pay all applicable taxes on the Building as well as the 0.5% transactional privilege tax levied by the Regional Transportation Authority, which the County pays with respect to its rental income.
7. Because the leased property is owned by the County, it is constitutionally exempt from property taxes. Governmentally owned property leased to a private entity is subject to the Government Property Lease Excise Tax ("**GPLET"**), A.R.S. §§ 42-6201 through 42-6210.
8. Property used for aviation-related purposes is exempt from the GPLET under A.R.S. § 42-6208(5). The County acknowledged in the Lease-Purchase Agreement that it believes this exemption applies to the leased property, but did not warrant or promise that this is legally correct. The County agreed that, if this exemption were

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to be challenged, the County would "cooperate with World View in pursuing any defense of the GPLET exemption, and participate as needed in such defense, at no out-of-pocket cost to County." If the GPLET *does* apply to the leased property, World View is required to pay it.

9. The Agreements also required the County to build a "publically available" launch pad (the "**Launchpad**") "for launching of high-altitude balloons" on an adjacent 16-acre parcel of County-owned land (the "**Launchpad Parcel**").

10. Under the Operating Agreement, World View is required to maintain and operate the Launchpad at its own expense. World View reported that it may spend $12,800 annually to maintain the Launchpad. The Launchpad "may only be used by World View, and by others with World View's oversight, for launching of high-altitude balloons and associated payloads," and "World View will make the [Launchpad] available to others for the permitted uses whenever [it] is not being actively utilized by World View itself." World View can charge other users a fee, but the fee cannot exceed a reasonable portion of its cost of maintaining and operating the Launchpad. Further, "World View will have sole but commercially reasonable discretion to issue criteria…for the use by third parties of the [Launchpad]." Title to the Launchpad does not transfer to World View at the end of the Operating Agreement term, but instead remains in the County.

11. World View has entered into a letter of intent regarding possible use of the Launch Pad by Vector Launch, another aerospace company in Pima County, and has discussed use of the Launch Pad by Raytheon. County staff have also discussed possible uses for the Launch Pad with representatives of the University of Arizona Aerospace and Mechanical Engineering department as well as collaborating with the Vice President of Strategic Business Initiatives to fund a Deloitte study on the Space Ecosystem in Arizona.

12. To date, World View has been the only user to launch balloons from the Launch Pad.

The Project

13. The Building Parcel and Launchpad Parcel were part of a larger parcel acquired by the County for approximately $16,000 per acre.

14. The County paid approximately $192,000 for the Building Parcel and spent a total of $13,107,722 to design, build, and equip the Building. This includes $1,171,178 of off-site utility improvements, for $584,049 of which the County was reimbursed by utility providers. The cost of the land plus the cost of designing, building, and equipping the Building Parcel, *including* the cost of off-site utility improvements for which the County was not reimbursed, equals $12,715,673.

15. The County spent a total of $2,179,369 to design, build and equip the Launchpad and a total of $256,000 to acquire the Launchpad Parcel, for a total expenditure of $2,435,369.

16. The County issued Certificates of Participation, Series 2016 B Taxable, in the principal amount of $15,185,000 ("**COPs**") to pay for project costs, and it will pay an additional $4,259,134 in interest on the COPs, repaying a total of $19,444,134 over a 15-year repayment period. (The County restructured its existing public debt, which relies on public facilities as collateral, to obtain the $15,185,000 from U.S. Bank National Association and will repay the $19,444,134 through "rent payments the County makes on the [County's own] facilities.")

17. The County stated that it is "front-ending the capitalization of the building and facilities" and "will finance this facility to be repaid by World View through annual lease and/or rent payments" over a 20-year period.

18. World View's rental payments are "designed to ensure that Pima County [will] get back its investment in the construction of the World View Building."

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19. In a memo dated November 2, 2015, County Administrator Huckelberry stated: "[W]e need to review the various financing mechanisms that could be made available to finance this project and enter into a lease/purchase agreement with World View over a 20-year period where we would recover our capital outlay with interest."

20. The Building received a temporary certificate of occupancy on December 23,2016, on which date World View took occupancy and began paying rent, and a permanent certificate of occupancy on February 8, 2017.

21. World View and the County amended the Lease-Purchase Agreement, as required by § 5.9 of that agreement, to reflect the actual square footage of the completed facility (142,000), and hence the actual rent amounts due under the Lease Purchase Agreement, as well as the commencement date of the term. The Lease-Purchase Agreement, as amended, requires World View to pay the County $24,850,000 in rent over the 20-year term of the agreement, which commenced on December 23, 2016. The current rent is $710,000 per year, or $59,166.67 per month.

Taxpayers' Valuation Evidence

22. Taxpayers engaged a certified general real estate appraiser, James S. Bradley, ("**Bradley**") to conduct an appraisal of the property involved in the County-World View transaction. Bradley's principal valuation conclusions can be summarized as follows:

Property Appraised	**Interest Appraised**	**Valuation Date**	**Total Value**	**Unit Value**
Improved Parcel and Launchpad Parcel	Fee Simple[1]	April 19, 2019	$14,700,000	$1.75 per square foot (land only)

[1]Using traditional Sales Comparison, Cost, and Income Approaches. Mr. Bradley afforded the Cost Approach the most weight.

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Property Appraised	**Interest Appraised**	**Valuation Date**	**Total Value**	**Unit Value**
Improved Parcel	Baker's Present Value of Income Stream plus Bradley's Present Value of Net Reversionary Value[2]	April 19, 2019[3]	$13,815,519[4]	N/A
Improved Parcel	Rental Value	April 19, 2019		$8.40 per building square foot per year (assumed to increase 2.5% per year)
Improved Parcel	Net Reversionary Value	December 2036	$16,800,000	N/A
Improved Parcel	Net Reversionary Value (Present Value)	April 19, 2019[5]	$3,077,163[6]	N/A

23. Bradley gave the following opinions regarding the fee-simple fair market value of the Improved Parcel, which also includes the value of the unimproved Launchpad Parcel (i.e., the value of the land only):

- Sales-Comparison Approach: $14,000,000
- Cost Approach: $14,767,000
- Income Approach: $14,645,000

[2] See stipulated fact ¶ 44.
[3] Not expressly stated, but assumed based on original appraisal effective date.
[4] Using highest discount rate, which Mr. Bradley said was best.
[5] Not expressly stated, but assumed based on original appraisal effective date.
[6] Using the highest discount rate, which Mr. Bradley said is best.

24. Based on those three values, Mr. Bradley then offered a final opinion of the fee-simple fair-market value of the Improved Parcel, plus the value of the unimproved Launchpad Parcel, as stated above: $14,700,000. This value, less Bradley's value for the unimproved Launchpad Parcel ($1,235,000), equals $13,465,000.

25. Bradley also opined, as noted above, that the fair-market rental rate for the Improved Parcel is $8.40 per square foot per year, for 2019, with 2.5% annual increases. He stated in his deposition that there are typically some concessions made for a tenant in a commercial lease such as free rent for some period of time or a tenant-improvement allowance.

26. Bradley initially opined that it would be appropriate to add an additional $0.70 per square foot to the Improved Parcel's market rental rate to account for the value of the Launchpad Parcel as excess land. But, in his supplemental report, he used the $8.40 rate for his calculations. Bradley assigned no other value to the Launchpad, because no one would want to purchase a launch pad. Bradley opined that the Launchpad is a "special use improvement" that is "beneficial to one [user and potentially others]," not "to the community at large." He opined that is has "a use value to World View."

27. In his supplemental opinion, Bradley opined that the Improved Parcel would have a value (a "net reversionary value" or "**NRV**"), in December 2036, at the end of the World View lease term, of $16.8 million. Bradley stated, in his deposition, that there is no market for reversionary interests; they are not a property interest that is sold separately. An NRV is normally discounted to present value (with the discount rate being higher the further out the reversion is) and then added to the present value of the property's market-rate rent stream to determine the present value of the rental property. This was the first time Bradley had been asked to determine an NRV without discounting it to present value as part of such a discounted cash flow

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analysis.

28. Bradley's supplemental calculations, provided at his second deposition, showed a present value of between $3,323,790 and $3,077,163, for the NRV, depending on the discount rate used. It also showed a total present value of the Improved Parcel—based on the above present value of the NRV plus the present value of a stream of rent payments using his $8.40 per square foot value, with 2.5% annual increases—of between $13,815,519 and $14,423,311. Bradley stated that the highest discount rate, which rendered the lowest present values for the income stream and reversion, was the best one. Notwithstanding his more recent supplemental calculations, Mr. Bradley did not retreat from the opinions he stated in his April 19, 2019, report.

29. Mr. Bradley estimated that property taxes for the Improved Parcel, if it were privately owned, would be $191,782 in 2018 and $201,271 in 2019. He did not estimate what the GPLET would be if the leased property were not statutorily exempt from that tax.

County's Valuation Evidence

30. The County also engaged a certified general real estate appraiser, Tom Baker ("**Baker**"), to conduct an appraisal of the property involved in the County-World View transaction. Baker's principal valuation conclusions can be summarized as follows:

Property Appraised	Interest Appraised	Valuation Date	Total Value	Unit Value
Improved Parcel	Fee Simple[7]	December 23, 2016	$14,000,000	$1.95 per square foot (land only)

[7]Using traditional Sales Comparison, Cost, and Income Approaches.

Property Appraised	Interest Appraised	Valuation Date	Total Value	Unit Value
Improved Parcel	Leased Fee[8]	December 23, 2016	$11,725,000	N/A
Improved Parcel	Actual Cost to the County[9]	December 23, 2016	$12,885,000	N/A
Improved Parcel	Rental Value	December 23, 2016		$6.90 per square foot per year
Improved Parcel	Net Reversionary Value	December 2036	$16,800,000	N/A
Improved Parcel	Net Reversionary Value (Present Value)	December 23, 2016[10]	Approx. $2,500,000	N/A

31. In his original report, Baker opined that the Building Parcel has a value (in an unimproved state) of $1.95 per square foot, which results in a total value of $1,016,000.

32. Baker opined that the County's leased-fee interest in the Improved Parcel had a market value, as of December 23, 2016, of $11,725,000. This is the value for which the County could sell its interest in the Improved Parcel, as encumbered by the actual World View Lease Purchase Agreement, in the commercial market. Because World View obtains title to the Building Parcel at the end of the Lease-Purchase

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[8]This represents the value for which the County could sell its interest in the Improved Parcel, as encumbered by the actual World View Lease Purchase Agreement, in the commercial market. It is the value of the stream of rent payments, discounted to present value using a discount rate of 7% (accounting for market risk), with no net reversionary value.

[9]*Includes* furniture, fixtures, and equipment, but *excludes* entrepreneurial incentive/profit. This amount reflects what the County actually spent to build and furnish the Building, along with the increased land value. *Does not include* the Launchpad Parcel or Launchpad.

[10]Not expressly stated, but assumed based on original date of value.

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term, this value is the value of the stream of rent payments, discounted to present value using a discount rate of 7%, with no net reversionary value. This discount rate reflects market risks.

33. Baker gave the following opinions regarding the fee-simple fair market value of the Improved Parcel:
    - Sales-Comparison Approach: $14,200,000.
    - Cost Approach: $13,940,000.
    - Income Approach: $14,000,000.
34. Baker gave a final opinion of the fee-simple market value of the Improved Parcel of $14,000,000. This opinion gave heaviest weight to the cost approach.
35. Baker opined that the market rental rate for the Improved Parcel, as of the valuation date, was $6.90 per square foot per year. Baker explained that the rent paid by World View starts out below this rate, but is later increased above market, so that the present-value of rent stream under the Lease-Purchase Agreement would probably be similar to the present value of a stream of market-rate rent.
36. The County's Finance Director performed additional present-value calculations, yielding the following results. If the stream of rent payments under the Lease-Purchase Agreement is discounted using a discount rate of 1.27%—the monthly yield on the State Treasurer's Long Term Local Government Investment Pool (LGIP 500) for December 2016—the present value of those payments, at the commencement of the lease term, would be $21,370,435. If a discount rate of 1.42%, the median rate for the Treasurer's LGIP 5 pool over the last 20 years, is used, the present value would be $21,002,318. If a discount rate of 3.5% is used, the present value of the payments would be $16,661,662 at lease commencement. This means that, if the County had received a lump-sum payment of the specified amount in December 2016, and invested it for 20 years at a rate of return equal to the

specified discount rate, that would be sufficient to generate the stream of rent payments. Both experts agreed that it would be inappropriate to use a discount rate any lower than 6% or 7% to arrive at a fair-market-value conclusion.

Appraiser Areas of Agreement

37. Both appraisers used all three of the standard approaches to valuation (sales-comparison, cost, and income), and both agreed that because the Building was new, the cost approach should be afforded the most weight.

38. When valuing a fee simple interest using the cost approach, both appraisers agree that an “entrepreneurial incentive” or “entrepreneurial profit” (essentially the profit that the seller/developer would expect to receive on the sale, over and above their capital investment) equal to 10% of the costs should be included. But the amounts spent by the County on furniture, fixtures, and equipment (“**FF&E**”) should not be included because that is not considered part of the real property.

39. Neither appraiser included the value of off-site utility costs because such costs benefit more than just the subject property, and they are reflected in the increased land value.

40. Both appraisers agree that, for a given parcel of leased real property, the sum of the present value of the net reversionary interest (the market value of real property at the end of a lease term) and the present value of a stream of income from rent payments (the leased-fee interest) during the lease term, assuming a market-rate rent, should approximate the present fair market value of the parcel.

41. Only Baker analyzed the leased-fee interest, which yielded a present value of $11,725,000 for the stream of income from World View’s rent payments, and Bradley did not dispute Baker’s leased-fee conclusion.

42. Adding Baker’s present value of the stream of income from rent ($11,725,000) to Bradley’s present value of the net reversionary interest ($3,077,163) yields the sum

of $13,815,519, which is just $184,481 less than Baker's estimate of the present market value of the Improved Parcel, $14,000,000. (Because Bradley's fee-simple valuation of $14,700,000 includes the land value of the unimproved Launchpad Parcel, it is not an apples-to-apples comparison. But using Bradley's fee-simple valuation of $14,000,000 yields an apples-to-apples comparison.)

43. With respect to fair market rental rates, it is appropriate to assume that rent will rise annually somewhere between 1.5% and 2.5%.

Market Value of the Improved Parcel

44. The parties agree that the fair market value of the Improved Parcel, as of December 23, 2016, is $14 million.

B. Stipulations of applicable law.

1. The overarching issue is whether the Lease Purchase Agreement or Operating Agreement violate the Arizona Constitution's "gift clause," art. IX, § 7:

> Neither the state, nor any county, city, town, municipality, or other subdivision of the state shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the state by operation or provision of law or as authorized by law solely for investment of the monies in the various funds of the state.

2. Arizona courts apply a two-part test (**"the *Turken* test"**) in determining whether an expenditure of public money satisfies the gift clause: "The expenditure will be upheld if (1) it has a public purpose, and (2) the consideration received by the government is not 'grossly disproportionate' to the amounts paid to the private entity." *Cheatham v. DiCiccio*, 240 Ariz. 314, 318, ¶ 10 (2016) (quoting *Turken v. Gordon*, 223 Ariz. 342, 347, ¶ 22 (2010)).

3. This Court must take "'[a] panoptic view of the facts of each transaction,'" "'must not be overly technical[,] and must give appropriate deference to the findings of [the

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Pima County Board of Supervisors].'" *Cheatham*, 240 Ariz. at 318, ¶ 10 (quoting *Wistuber v. Paradise Valley Unified Sch. Dist.*, 141 Ariz. 346, 349 (1984)). But the Court must not merely rubber-stamp the Board's decision.

4. Courts "find a public purpose absent only in those rare cases in which the governmental body's discretion has been 'unquestionably abused.'" *Turken*, 223 Ariz. at 349, ¶ 28 (quoting *City of Glendale v. White*, 67 Ariz. 231, 237 (1948)).
5. As for "gross disproportionality," "[t]he Gift Clause is violated when th[e] consideration [received by the public entity] is 'so inequitable and unreasonable that it amounts to an abuse of discretion, thus providing a subsidy to the private entity.'" *Turken*, 223 Ariz. at 349, ¶ 30 (quoting *Wistuber v. Paradise Valley Unified Sch. Dist.*, 141 Ariz. 346, 349 (1984)).
6. There are no published Arizona appellate opinions that construe exactly how to quantify "gross disproportionality" in the Gift Clause context.
7. The "analysis of adequacy of consideration for Gift Clause purposes focuses . . . on the objective fair market value of what the private party has promised to provide in return for the public entity's payment." *Turken v. Gordon*, 223 Ariz. 342, 350 ¶ 33 (2010).
8. "[A]nticipated indirect benefits may well be relevant in evaluating whether spending serves a public purpose, [but] when not bargained for as part of the contracting party's promised performance, … such benefits are not consideration under contract law" and therefore are not included in the consideration prong of the gift clause test." *Turken v. Gordon*, 223 Ariz. 342, 350, ¶ 33 (2010). "Indirect benefits" includes a party's anticipated fulfilment of an obligation that arises under statute, such as the obligation to pay taxes. *Id*. ¶ 38.
9. Whether the Court may adopt the "actual cost plus land value" ($12,885,000) instead of the "fee simple value" ($14 million) of the World View Building Parcel for purposes of weighing consideration values under *Turken* is purely a question of law.

C. Agreed contested issues of fact.

1. What is the fair market rental rate of the Improved Parcel as of December 23, 2016?

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D. Agreed contested issues of law.

1. Do the Lease-Purchase and SpacePort Operating Agreements serve a "public purpose"?
2. Is the fair market value of what Pima County receives under the Agreements "grossly disproportionate" to the fair market value of what World View receives under those Agreements?
3. Should either of the following be included in the consideration analysis:
   a. The value, as of lease commencement, of World View's use of the Launchpad Parcel and Launchpad over the term of the Operating Agreement?
   b. The value, as of lease commencement, of the GPLET that World View would be required to pay over the term of the Lease Purchase Agreement but for the Building Parcel's presumed statutory exemption from GPLET?

E. Facts and legal issues that only one party deems material or applicable.

Taxpayers – Issues of Fact[11]

1. At the time of its negotiations with the County, in addition to the use of its technology for commercial and research purposes, World View intended to charge passengers $75,000 to travel to near space in its specialized balloons.
2. During negotiations with World View, the County explained that it "is taking a big risk for the first ten years of the lease," that the "lease payments for the first five years will be about *half* of the County's expected debt service on" the $15 million COPs, that for "the next five years, there's still an annual deficit," and that during the next five years "the lease payments at least cover the annual debt service, but the County is still in the hole until virtually the end of the 20 year term." Jan. 11, 2016, Email chain between R. Nassen and D. Crawford.[12]

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[11]The County does not dispute these facts but does dispute their materiality or applicability to the issues to be tried. Therefore, they are placed in this Section E rather than in Section A.

[12]The County objects to this statement because it erroneously attributes to the County its lawyer's characterization of a proposed transaction made during negotiations. The terms

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3. The County and World View agreed to make the Launchpad "publically available" so that the County could qualify for a grant from the Arizona Department of Revenue ("**ADOT**") to reimburse itself for the cost of the Launchpad. The County did not receive this grant because, among other reasons, "ADOT representatives expressed concern that the Launch Pad was not sufficiently 'public' for purposes of grant eligibility."
4. The County did not intend to construct any launch pad before its negotiations with World View and would have not have built the Launchpad if World View had not required it.
5. The County did not do a formal appraisal of market lease rates prior to execution of the World View Agreement.

Taxpayers – Issues of Law

1. Is the Lease-Purchase Agreement invalid because it violates the credit prohibition of the Gift Clause? (Taxpayers contend this is a separate ground on which to invalidate the Lease-Purchase Agreement; Pima County contends the *Turken* test is the only test applicable in a Gift Clause challenge.)
2. Does *Turken* allow the Court to adopt the "actual cost plus land value" ($12,885,000) instead of the "fee simple value" ($14 million) in its findings of fact regarding the

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of the Lease-Purchase Agreement are what matters, not what a lawyer said about those terms before the Agreement was finalized. Moreover, key aspects of the transaction changed after the statement was made—the interest rate on the COPs ended up being lower than anticipated and World View's rent payments ended up higher than anticipated. If Taxpayers' point is that the County is not made whole until too close to the end of the deal, while we still fail to see the relevance, they could just as easily (and more accurately) make that point by referring to the actual debt-service payments and rent payments over the life of the Lease-Purchase Agreement. By instead insisting on referring to a lawyer's characterization of the transaction during negotiations, Taxpayers are relying on evidence that is both irrelevant because it does not make any fact of consequence more or less probable, see Ariz. R. Evid. 401, and unnecessarily cumulative and unfairly prejudicial, see Ariz. R. Evid. 403.

objective fair market value of the Improved Parcel? (Taxpayers contend that it does not because *Turken* states that courts must analyze the objective fair market value of what the private party receives, and both parties' experts agree that the "fee simple value" represents the fair market value of the building and that the "actual cost plus land value" does not represent the market value of the building. Pima County contends that considering the actual cost to County taxpayers is appropriate under a "not overly technical" application of the test.)

3. Should the value of World View's option to purchase the Building for $10 at the end of the lease, as of December 2036, be included as a separate component within the consideration analysis? (Taxpayers contend that it should be included when the lease is analyzed as a subsidy (rather than as a credit transaction) because World View gets the benefits of a lease—e.g., it has the option of walking away from the lease without exercising the option to purchase or it can buy a building for only $10 at the end of the lease. Pima County contends that this value is accounted for in the experts' analysis of present fair market value and that the $10 option price cannot be considered without regard to the amount World View has paid for the Improved Parcel in the form of rent.)

Taxpayers – applicable legal principles

1. "Every word of a statute or constitutional provision is to be given meaning." *Indus. Dev. Auth. of County of Pima v. Maricopa County*, 189 Ariz. 558, 560 (App. 1997).
2. "The essential distinction between a deposit and a loan of public funds hinges on the right to demand the return of the money. If the money must remain for a fixed period there is a loan in the strict legal sense and not a deposit in the sense the term is ordinarily used." *Valley Nat. Bank of Phoenix v. First Nat. Bank of Holbrook*, 83 Ariz. 286, 294 (1958).
3. "When used in the frame of reference under discussion, it has connotations of the city receiving less than the fair market value for its property, thus resulting in aid or support of BFI. Stated conversely, obviously, if BFI was paying the fair market rental for the property involved, it could not be the recipient of a gift or donation in

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the form of a subsidy for it would be receiving no aid or support from the city." *City of Tempe v. Pilot Properties, Inc.*, 22 Ariz. App. 356, 362–63 (1974).

4. "Of course, either objective may be violated by a transaction even though that transaction has surface indicia of public purpose. The reality of the transaction both in terms of purpose and consideration must be considered." *Wistuber v. Paradise Valley Unified Sch. Dist.*, 141 Ariz. 346, 349 (1984)

F. List of witnesses, including those testifying by deposition designation.

As discussed at the telephonic conference held July 8, 2020, the parties agree to present the testimony of the witnesses by deposition designation.

1. *Taxpayers* – James A. Bradley, MAI, Appraiser
2. *County* – Thomas A. Baker, MAI, Appraiser

G. Exhibits

The parties have cooperated to submit a single set of sequentially numbered exhibits. The parties hereby stipulate to their admission:

#	**Description**
1	Memo from County Administrator C.H. Huckelberry to Pima County Board of Supervisors, dated January 19, 2016 (without exhibits)
2	Lease-Purchase Agreement
3	Amendment to Lease-Purchase Agreement
4	Axia Real Estate Appraisers Appraisal Report
5	Baker, Peterson, Baker & Associates Appraisal Report
6	Letter Re Appraisal from Axia Real Estate Appraisers (June 26, 2019)
7	Corrected Letter Re Appraisal from Axia Real Estate Appraisers (Sept. 20, 2019)
8	Appraisal Review Report by Baker, Peterson, Baker & Assocs (August 27, 2019)
9	Bradley Supplemental Present Value Calculations
10	James A. Bradley – Deposition Designations (June 17, 2019 depo.)
11	James A. Bradley – Deposition Designations (Sept. 19, 2019 depo.)
12	Thomas A. Baker – Deposition Designations

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H. Deposition summaries and designations.

NOTE: Transcripts with designated testimony highlighted are filed as attachments to this Joint Pretrial Statement

1. *Taxpayers – James A. Bradley*

   a. Deposition summary (bracketed citations refer to the deposition transcript and page number cited)

James S. Bradley is a certified general real estate appraiser in Arizona. He holds a CCIM designation and also holds the designations MAI and AI-GRS through the Appraisal Institute. Plaintiff Taxpayers retained him to provide valuation opinions in this case. Bradley testified at deposition about his principal valuation conclusions and compared them with those of the County's appraiser, Thomas A. Baker.

As the County explains in its prefatory note, Baker valued only the 12-acre parcel on which the World View building sits (the "Improved Parcel"), while Bradley also valued the 16-acre parcel on which the launch pad sits (the "Launch Pad Parcel"), valuing all 28 acres as a single parcel. This resulted in a *lower* valuation of **$1.75 per square foot of land** versus Baker's higher valuation of **$1.95 per square foot of land** because smaller parcels of land tend to have higher per-square-foot values than larger parcels. [Baker deposition 69–70]

And while both appraisers used the three main approaches (cost[13], income, and sales comparison) to arrive at their opinions of market value, Bradley's valuation of the entire 28 acres resulted in a *higher* market value for the World View building and land **($14.7 million** for the building and *28 acres*) than Baker's valuation of the World View building and land (**$14 million** for the building and *12 acres*) because the value of the 16-acre Launch Pad Parcel ($1,235,000) was combined with the value of the12-acre Improved Parcel ($13,465,000). [Baker deposition 8, 26–27]

Nevertheless, the parties agree that the fair market value of the Improved Parcel as of December 23, 2016, is $14 million. *See* § A, ¶ 44, above.[14]

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[13]Mr. Baker clarified that the cost approach he used to calculate the fair market value of the building ($14 million) is not the same as the *actual* cost approach he performed. The latter uses the actual costs ($12,885,000) but does not include the entrepreneurial profit that would be necessary to arrive at an estimate of fair market value to a private buyer ($13,940,000). [Baker deposition 46–48]

[14]Mr. Bradley valued both parcels as of April 19, 2019.

A main area of disagreement between the experts concerns the market rent of the Improved Parcel. Mr. Bradley opines that the market rent of the World View building in 2019 is **$8.40 per square foot**, and the lease rate should also have an escalator of **2.5%**. [6/17/19 Bradley deposition 38, 49] Mr. Baker opines that the market rent of the building in 2016 is **$6.90 per square foot** and that a rent escalator of **2%** is reasonable. [Baker deposition 15, 18–19, 44] Nevertheless, Mr. Baker agrees that the World View lease is below market for "the first close to 10 years." [Baker deposition 31–32. *See also* Plaintiffs' Cross-Motion for Summary Judgment, Appendix 2.]

Regardless of the experts' disagreement over the market rent rate of the building, both experts agree that the fair market value of World View's lease payments is **$11,725,000**. [6/17/19 Bradley deposition 76; 9/19/19 Bradley deposition 36–39; Baker deposition 29] Both experts also agree that it would be inappropriate to use a discount rate any lower than 6 or 7% to calculate the present value of World View's lease payments for purposes of determining their market value. [9/19/19 Bradley deposition 39–42; Baker deposition 38]

The experts also agree that the World View building has a net reversionary value ("NRV") at the end of the lease, though Bradley believes the present value of the NRV is **$3 million** [9/19/19 Bradley deposition 35], and Baker believes that value is approximately **$2.5 million**. [Baker deposition 24–25] Additionally, Bradley believes the future value of the World View building at the end of the lease is **$16.8 million** [9/19/19 Bradley deposition 44], but Baker believes that value is approximately **$14 million**. [Baker deposition 22, 26]

b. Deposition designations (County has **no objection** to any of the designated testimony but asks that all designated testimony be reviewed by the Court)

Description	Page /Line
6/17/19 Bradley deposition	
The market rent of the World View building in 2019 is $8.40 per square foot, and the lease rate should also have an escalator of 2.5%.	38:11–24; 49:7–10
World View ("WV") building will have at least 30 years of remaining utility at the end of the lease.	83:13–21
The launch pad is a special use improvement and beneficial to one user, WV, and not to Pima County at large, though it has a use value to WV.	76:24–77:23

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The market value WV's lease payments is around $11,725,000.	76:4–8
9/19/19 Bradley deposition	
When the seller holds the note, that basically means the seller has lent the money to the purchaser, who is paying the seller back over time.	62:22–63:14
The future value of the World View building at the end of the lease is $16.8 million.	44:8–10.
Present value of the NRV (reversionary value of the WV building at the end of the lease) is about $3 million.	35:1–15
The market value WV's lease payments is around $11,725,000.	36:4–39:21
It would be inappropriate to use a discount rate any lower than 6 or 7% to calculate the present value of the lease payments for purposes of determining their market value.	39:22–42:14
9/20/19 Baker deposition	
The market rent of the building in 2016 is $6.90 per square foot, and a rent escalator of 2% is reasonable.	15:14–15; 18:1–19; 44: 1–7
The fair market value of the WV building at the end of the lease (future value) is about $14 million.	22:3–17; 26:1–12
Present value of the NRV (reversionary value of the WV building at the end of the lease) is about $2.5 million.	24:10–25:7
The lease is below market for the first ten years of the lease.	31:24–32:1
The market value of the building is $14 million, but the market value of WV's lease payments is $11,725,000.	29:2–18
The market value WV's lease payments is $11,725,000.	35:1–7
It would be inappropriate to use a discount rate any lower than 6 or 7% to calculate the present value of the lease payments for purposes of determining their market value.	38:6–12
The market supports a rent escalator of 1.5 to 2.5%.	17:24–18:19

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The actual cost approach that Mr. Baker calculated ($12,885,000) is not the same as a cost approach reflecting fair market value.	46:21–48:14

2. County – Thomas A. Baker

a. Deposition summary (bracketed numbers indicate pages of deposition transcript)

Thomas A. Baker is a certified general real estate appraiser in Arizona, and holds the designations MAI and SRA through the Appraisal Institute. The County retained him to provide valuation opinions in this case. Baker testified at deposition about his principal valuation conclusions and compared them with those of Taxpayers' appraiser, James A. Bradley.

A prefatory note will help make this summary easier to understand. Baker valued only the 12-acre parcel on which the World View headquarters sits ("Improved Parcel"), which World View can take title to at the end of the 20-year term of its Lease-Purchase Agreement with the County. He did not value the adjacent 16-acre Launchpad Parcel, which is improved with a Launchpad and remains owned by the County even after the Lease-Purchase Agreement expires. Bradley, however, valued the entire 28-acres as a single parcel, though he ascribed no market value to the Launchpad itself.

Baker described the three main approaches to arriving at an opinion of market value. The **cost approach** involves the appraiser estimating the cost of the building new less depreciation, and adding to that number an entrepreneurial profit and the fair market value of the underlying land (which is established using comparable market sales). [56] Under the cost approach applied here, Baker included an entrepreneurial profit and soft costs, but did not include the costs of furniture, fixtures, and equipment. [53]

The **sales-comparison approach** involves looking at comparable market sales and adjusting for differences to come up with an indication of value for the subject property. [57] Baker did that here by selecting several sales comparable to the Improved Parcel and adjusting them as he believed appropriate based on his experience. [53-55]

And finally, the **income approach** derives a market value based on income generated by the property. [57] This can be done one of two different ways: (1) direct capitalization of net operating income and (2) discounted cash flow analysis. [10, 12-13, 58-60] Baker described the first method—which involves simply capitalizing one year's net operating income (here, the rent paid by World View)—as the preferred method. [12-13, 60-61] He also described the full discounted cash flow analysis, in which an income stream over a period of time and the property's value at the end of that period (the "reversionary value") are both discounted to present value and added to one another. [10] Both of these methods account for the reversionary value at the end of the lease term, and the sum of those numbers should be in the "reasonable range" of any other estimate of market value using a different approach. [13-14, 31, 40-41, 59]

Baker described his three principal conclusions as to the Improved Parcel. First, the **leased-fee value ($11,725,000)** is the market value of the Improved Parcel as encumbered by the Lease-Purchase Agreement, recognizing that World View gets the building at the end, so there is no value to the owner remaining at the end of the term. [27-28, 30, 65] Baker did this using an income approach, projecting out the actual income stream and discounting it to present value. [30, 33] The difference between the leased-fee conclusion and a market value based on the income approach (see below) results from World View's ability to obtain title essentially for free at the end of the Lease-Purchase Agreement. [*See* 40-41, 46]

Second, Mr. Baker calculated the **actual cost to the County ($12,885,000)**, which reflects the Improved Parcel's land value plus the County's actual cost of constructing and furnishing the Building. [27-28] This was done using a cost approach, adding actual costs to market land value. [33] It does not include entrepreneurial profit because the County did not have a profit motive. [47-48, 51] It does, however, include the cost of the furniture, fixtures, and equipment the County furnished the Building with. [27-28, 48] Also, although the County incurred costs to bring utilities to the property and otherwise render it developable, those are not included because they are reflected in the increased market value of the land itself. [50-51, 77-78] Baker's conclusion here provides an estimate of return *of* investment, without return *on* investment. [61-62]

Third, the **fair-market value ($14 million)** represents the market value as if the Improved Parcel were owned and developed by a private developer with a profit motive. [27-28] This was done using all three approaches to value—sales-comparison, income, and cost. [33] Given the Building's new condition, the cost approach was based on actual cost and resulted in a very reliable value conclusion. [57-58] Baker's conclusion here provides an estimate of *both* return *of* investment and return *on* investment. [63-64]

Baker did the leased-fee analysis because he believed it was the best estimate of the market value of the County's interest in the Improved Parcel as encumbered by the Lease-Purchase Agreement. [29, 35] The actual-cost analysis was the best estimate of what the County actually expended. [29]

With respect to a fair-market rental rate, Baker testified that the rental rate under the Lease-Purchase Agreement starts out below market but is above market for the latter half of the term. [31-32, 44-45] Baker concluded that the fair market rental rate as of December 2016 was $6.90 per building square foot. [41-45] He reached this conclusion by researching comparable leases and adjusting for characteristics of those buildings, some of which were superior and some of which were inferior to the World View Building. [66-67]

Baker also testified about his review of Bradley's work. Baker's and Bradley's land-valuations were similar, with Baker at $1.95 per square foot and Bradley at $1.75 per square foot. [69] Indeed, had Bradley not also included the Launchpad Parcel in his analysis (more than doubling the land area being valued), it is likely they would have reached the same conclusion, because smaller parcels of land tend to have higher per-square-foot values than larger parcels. [69-70] Their ultimate market-value conclusions were similar, as well. In fact, Baker noted Bradley—unlike Baker—included the Launchpad parcel in his valuation, and that if Bradley had only valued the Improved Parcel, his conclusion would have been $13,465,000, lower than Baker's $14 million conclusion for the Improved Parcel. [8, 26-27]

With respect to rental rate, he explained that he would be concerned if a set of comparable leases had all been adjusted up substantially because that would not provide a good "bracket[]" of both inferior and superior properties, and might indicate an inflated valuation conclusion. [67] Baker explained his opinion that Bradley's conclusion as to the fair market rental rate was too high. [14] He explained that, notwithstanding that disagreement, he and Bradley reached similar valuation conclusions using the income approach because of other differences in their methodology. [14-15] If Bradley had used a lower rental rate, it would necessarily have resulted in a lower reversionary value. [20-22] Baker believes it is speculative to estimate a 2.5% rent escalator over a 20-year term. [17] He would not use more than 2%. [18] Baker believes 2%-2.5% is appropriate for the Tucson market based on his discussions with market participants and review of Tucson-area leases. [18-19]

He explained that calculating the reversionary value, which Bradley had done separately, is only part of the discounted cash flow analysis. [11] Baker essentially did a discounted cash flow analysis as part of his leased-fee analysis, but in his analysis the reversionary value was zero. [6-7,11] Based on the risk associated with a long-term investment, the reversionary value would be discounted to present value using a higher discount rate, resulting in a lower present value. [22-23] Although Baker did not agree with Bradley's reversionary value of $16.8 million nor Bradley's 17-year term, he did the math and discounted the conclusion to a present value of $3,323,790. [24] Baker's opinion of the present value of the reversion is lower, about $2.5 million, based on a reversionary value in 20 years of $14 million. [25]

b. Deposition designations (Taxpayers have **no objection** to any of the testimony designated below)

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Baker Depo. - Page and Line
5:13-24
8:1-5
8:16-9:3
10:7-11:9
12:3-15:19
16:10-13
17:6-12
18:20-19:22
22:18-23:20
24:10-25:3
26:16-27:10
27:15-29:4
29:15-30:20
31:6-32:3
32:23-33:18
35:1-5
36:1-24
40:20-45:6
46:5-13
46:21-48:14
49:19-50:11
50:18-51:25
53:3-14
53:24-55:12

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56:9-58:8
58:13-60:20
61:3-63:17
63:21-64:13
65:12-67:16
69:16-70:13
77:18-78:2
Bradley Depo (June 17, 2019) – Page and Line
13:10-20
19:24-20:4
20:8-11
31:6-25
32:14-20
42:20-43:3

I. A brief statement of the case to be read to the jury.

Not applicable.

J. Requested technical equipment.

The parties propose to present both direct and cross-examination of the experts through deposition designations, to be followed by a telephonic/videoconference closing argument and proposed findings of fact and conclusions of law submitted by both parties. No special technical equipment is necessary.

K. Requested interpreters.

None.

L. Number of jurors and alternates, whether alternates may deliberate, and the number of jurors required to reach a verdict.

Not applicable. This is a bench trial.

M. A brief description of settlement efforts.

None. The parties agree that this case will not settle and requires judicial decision.

N. How a verbatim record of the trial will be made.

The parties propose to present evidence solely through exhibits and deposition designations. The parties have agreed to admit the appraisers reports and designated portions of depositions into evidence, subject to the Court's ruling on any noted objections. If the Court agrees to hold a telephonic/videoconference closing argument, the parties request a court reporter.

RESPECTFULLY SUBMITTED August 14, 2020.

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PIMA COUNTY ATTORNEY

By *<u>/s/ Andrew L. Flagg</u>*
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