

GROUND AND AIR LEASE

This Ground and Air Lease ("Lease") is made as of the ____ day of _____ 2018 ("Effective Date") , by and between the City of Mesa, Arizona, an Arizona municipal corporation ("Landlord"), and _____, a(n) _____ ("Tenant"). Landlord and Tenant may be referred to herein individually as a "Party" or collectively as the "Parties."

RECITALS

As background to this Lease, the Parties state, recite, acknowledge and agree as follows, each of which will be a material term of this Lease:

A. Landlord is the owner of certain real property and real property interests located near the intersection of South Pomeroy and Main Street in Mesa, Arizona (collectively, the "Premises"). Landlord wishes to cause the development of the Premises by Tenant for the construction of mixed-use residential, commercial and office improvements, additional structured parking, and certain public improvements, all in accordance with that certain "Development Agreement" dated _____ and entered into between Landlord (as "City" named in the Development Agreement) and Tenant (as "Developer" named in the Development Agreement), and to cause the construction of certain other improvements on the appurtenant Licensed Area as defined in the Development Agreement (collectively, the "Project").

B. Pursuant to the Development Agreement, Landlord has agreed to lease the Premises to Tenant, and Tenant has agreed to lease the Premises from Landlord and thereafter to construct the Project on the Premises (and the Licensed Area).

C. The Premises consists of (i) portions of the parcel of land on which the Pomeroy Garage (the "Pomeroy Garage") is located as legally described in Exhibit A-1 to this Lease (the "Pomeroy Parcel"); (ii) certain property formerly in the public right-of-way, but which has been abandoned ("ROW") as legally described in Exhibit A-2 to this Lease; (iii) air rights immediately above the Pomeroy Garage ("Air Rights") as legally described in Exhibit A-3 to this Lease; and (iv) certain adjacent unimproved real property ("Land") as legally described in Exhibit A-4 to this Lease. The Premises is generally depicted in Exhibit A-5 to this Lease.

D. The Parties now agree to enter into this Lease on the terms and conditions set forth in this Lease.

SECTION 1 – FUNDAMENTAL LEASE PROVISIONS

Commencement Date: _____, 2018.

Landlord: City of Mesa, Arizona, an Arizona municipal corporation, and any successor, assign or person or entity hereafter acquiring the Landlord's interest in all or a portion of this Lease.

Tenant: _____, a(n) _____, and any permitted successors, assigns or persons or entities hereafter acquiring all of Tenant's interest in this Lease.

Premises: As defined in Recital C and Section 2.2.

Project: Any and all buildings, structures, facilities, infrastructure and improvements erected, constructed or situated by Tenant on, over, under and upon the Premises or any part thereof during the Term, including any site improvements or temporary improvements, including improvements to the Licensed Area, and all as more particularly described in, and required to be constructed in accordance with, the Development Agreement (including, but not limited to, the Minimum Improvements and the Minimum Public Improvements, as defined in the Development Agreement).

Lease Term: As defined in Section 3.

Rent: As defined in Section 4.

Permitted Uses: As defined in Section 8.1.

Prohibited Uses: As defined in Section 8.2.

Project Documents: This Lease, the Development Agreement, and the License Agreement

The foregoing Fundamental Lease Provisions are an integral part of this Lease, and each reference in the body of this Lease to any Fundamental Lease Provision will be construed to incorporate all of the terms set forth above with respect to such Provisions. In the event there is any conflict between any provisions contained in this Section 1 and the balance of this Lease, the balance of this Lease will control. All of the foregoing Recitals and all Exhibits to this Lease are fully incorporated into this Lease, and are made a part of this Lease for all purposes.

SECTION 2 - LEASE OF PREMISES

2.1. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the promises, terms and conditions contained in this Lease, Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises

from Landlord. Tenant acknowledges that, as of the Commencement Date, it has inspected the Premises, is familiar with the condition of the Premises and the condition of title to the Premises, and accepts the same “as is” in its present condition, with no representation by, of or from Landlord, except as expressly set forth in Subsection 28.1.

2.2. The Premises do not include any improvements presently existing; nor do the Premises include any improvements to be constructed on the Premises by Tenant during the Term of the Lease. The Parties agree and acknowledge that no “government property improvement” as defined in A.R.S. §42-6201 is included in this Lease.

2.3. In connection with its development and use of the Premises, Tenant requires access into the Garage for the construction of certain required improvements and, subsequently, the right to use certain parking spaces within the Garage (the “Licensed Area”). Tenant agrees and acknowledges that the Licensed Area is not being leased to Tenant by Landlord, and is not subject to this Lease; however, Tenant’s use of the Licensed Area will be in accordance with a separate “License Agreement” executed by Landlord (as Licensor) and Tenant (as Licensee) concurrently with this Lease and in the form attached to this Lease as Exhibit B (the “License Agreement”).

2.4 Tenant is permitted to maintain projections from the Premises onto or over certain Landlord-owned real property, as shown on the Approved Plans (as defined in the Development Agreement).

2.5 Notwithstanding the lease of the Premises to Tenant, Tenant agrees and acknowledges that, during the Term of this Lease, the public shall have access to certain sidewalks, walkways stairs and elevators as generally depicted on Exhibit A-6. This public access will not be a breach by Landlord of Tenant’s right of quiet enjoyment of the Premises.

SECTION 3 - TERM

3.1. The term of this Lease (“Term”) commences on the Commencement Date and will continue thereafter for a period of fifty (50) years, unless the Term is sooner terminated [or extended as permitted in this Lease]. Provided Tenant is not then in default hereunder beyond the expiration of any applicable cure period, Tenant may exercise its option to extend the lease term for one (1) additional term of forty-nine (49) years upon the same terms and conditions set forth in this Lease. In order to exercise such option to extend the lease term, Tenant will give to Landlord written notice of its election to do so not more than sixty (60) months, and not less than twenty-four (24) months, prior to the commencement date of any applicable extension period. If this Lease is extended in accordance with this Section 3.1, the Term will include any applicable extension period.

3.2. “Commencement Date” means the date set forth in Section 1 (Fundamental Lease Provisions).

3.3. This Lease will terminate automatically with no further action or notice necessary if Tenant fails to have met any of the Compliance Dates (as defined in the Development Agreement) required by Development Agreement with respect to the phased Commencement of Construction (as defined in the Development Agreement) of the Minimum

Improvements and the Public Improvements (each as defined in the Development Agreement) as set forth in Section 4.12(d), Section 4.12(e) or Section 4.12(f) of the Development Agreement (or such later date as may be permitted by the terms of the Development Agreement). If this Lease terminates pursuant to this Section 3.3, both Landlord and Tenant acknowledge and agree that they will have no claims of any kind, whether legal, equitable or otherwise, against the other Party related to the Lease termination or the Project Documents, and each Party will bear its respective fees and costs incurred in connection with the Project and this Lease.

SECTION 4 – RENT

4.1. Beginning on the Lease Commencement Date and continuing throughout the term of the Lease, Tenant will pay “Rent” to Landlord, without notice or demand, for the use and occupancy of the Premises during the Term of this Lease, as set forth on Exhibit C.

4.2. Rent and any Additional Charges (as defined and provided for in Section 5), will be paid in lawful money of the United States of America to the “City of Mesa, Arizona” payable at 20 East Main Street, Mesa, Arizona 85211, Attn: Real Estate Administrator, or to such other place or person as Landlord may designate in writing to Tenant from time to time.

4.3. If Tenant fails or neglects to pay any amount due and payable to Landlord hereunder, and the delinquency continues for five (5) days after such amount is due (or in the case of payments other than Rent, within fifteen (15) days after Tenant receives written notice of such amount), then beginning on the sixteenth (16th) day, Tenant will pay to Landlord a late payment charge in the amount of ten percent (10%) of the delinquent amount; and said late payment charge will be in addition to, and not in lieu of, any other rights Landlord may have, including (but not limited to) Landlord’s rights granted in Section 20 of this Lease.

4.4 Pursuant to the Development Agreement, Tenant is entitled to a credit against Rent (“Rent Credit”) for its Reimbursable Public Improvement Costs (as defined in the Development Agreement), in accordance with the PI Cap Credit described on Exhibit C. At any time that Tenant is not in default of any term or condition of this Lease, and provided that a portion of the PI Cap Credit remains available for offset, Tenant may offset, against any applicable monthly charge of Rent then owing (but not against Additional Charges, or any other amounts owing under or in connection with this Lease), the amounts shown in Exhibit C. Notwithstanding the foregoing, (i) in the event of a Default, the Rent Credit will be deemed fully extinguished; (ii) the Rent Credit is not transferrable to any leasehold mortgagee that succeeds to the interest of Tenant pursuant to Section 17 of this Lease, and will be deemed fully extinguished in such event; (iii) the Rent Credit will not reduce any obligation of Tenant owing to Landlord as a result of Tenant’s Default pursuant to Section 18 of this Lease; and (iv) any unutilized portion of the Rent Credit will not reduce the Purchase Price for the Premises in the event Tenant exercises its Purchase Option pursuant to Section 30 of this Lease.

SECTION 5 - ADDITIONAL CHARGES

All taxes, including the City transaction privilege tax, assessments, insurance premiums, charges, costs and expenses which Tenant assumes, agrees or is obligated by law to

pay hereunder, together with all interest and penalties that may accrue thereon in the event of Tenant's failure to pay the same as herein provided, and all other damages, costs and expenses which Landlord may suffer or incur for which Tenant is liable under this Lease, and any and all other sums which may become due, by reason of any default of Tenant or failure on Tenant's part to comply with the agreements, terms, covenants and conditions of this Lease on Tenant's part to be performed, will be referred to herein as "Additional Charges" and, in the event of their nonpayment, Landlord will have, with respect thereto, all rights and remedies herein provided and available in law or equity in the event of nonpayment of Rent. If not paid when due, all Rent and any Additional Charges payable to Landlord will accrue interest at ten percent (10%) per annum from their due date until paid.

SECTION 6 – NO COUNTERCLAIM OR ABATEMENT OF RENT

Except for the Rent Credit, Rent and Additional Charges and all other sums payable by Tenant hereunder will be paid without notice, demand, counterclaim, setoff, recoupment, deduction or defense of any kind or nature and without abatement, suspension, deferment, diminution or reduction.

SECTION 7 - TAXES, ASSESSMENTS AND UTILITIES

7.1. It is the intention of the Parties hereto that, insofar as the same may be lawfully done, Landlord will be free from all costs, expenses, obligations and all such taxes, assessments and all such other governmental impositions and charges, and that this Lease will yield net to Landlord not less than the Rent reserved hereunder, throughout the Term. Tenant will pay and discharge, as and when the same become due and payable without penalty, all real estate, personal property, business, transaction privilege, occupation and occupational license taxes and assessments (including, but not limited to, amounts that would customarily be assessed by SID 228 and paid [whether as a required or a voluntary payment] by a private property owner) and all other governmental taxes, impositions and charges of every kind and nature, general or special, foreseen or unforeseen, whether similar or dissimilar to any of the foregoing, which at any time during the Term of this Lease be or become due and payable by Landlord or Tenant and which are levied, assessed or imposed:

a. Upon or with respect to, or will be or become liens upon, the Premises and the Garage, or any portion thereof or any interest of Landlord or Tenant therein or under this Lease (other than liens created or granted by Landlord in its capacity as the fee owner of the real property constituting the Premises, as opposed to liens created by Landlord in its capacity as a municipality, which are subject to this Section 7);

b. Upon or with respect to the possession, operation, management, maintenance, alteration, repair, rebuilding, use or occupancy of the Premises and the Garage, or any portion thereof; and

c. Upon this transaction or any document to which Tenant is a party or is bound, creating or transferring an interest or an estate in the Premises, under or by virtue of any present or future law, statute, charter, ordinance, regulation, or other requirement of any governmental authority.

7.2. Tenant has the right to contest any claim, tax or assessment levied against the Premises or any interests therein and property thereon during the term of the Lease or from Tenant's activities by posting bonds to prevent enforcement of any lien resulting therefrom. Tenant agrees to protect and hold Landlord harmless (and all interest of Landlord in the Premises) and all interests therein and improvements thereon for, from and against any and all claims, taxes, assessments and like charges and from any lien therefor or sale or other proceedings to enforce payment thereof, and all costs in connection therewith, but only as to those that arise or occur during the Term of this Lease. Landlord agrees to cooperate with Tenant and will promptly execute and deliver for filing any appropriate documents with reference to any such contest when so requested by Tenant.

7.3. Tenant, upon Landlord's written request, will furnish to Landlord, within twenty (20) days thereafter, proof of the payment of any taxes, impositions or charges which Tenant and not Landlord has the obligation to pay under the provisions of this SECTION 7.

7.4. Tenant will be solely responsible for, and will pay the cost of, constructing or installing utility hookups from existing utility installations to the Premises and will be solely responsible for, and will pay the cost of, all utility services consumed by Tenant on the Premises.

SECTION 8 – USE OF PREMISES

8.1. Permitted Uses. Subject to Section 8.2, the Project and Premises will be developed in accordance with the Development Agreement and used in accordance with Applicable Laws, including the Zoning (collectively, the "Permitted Uses"). Tenant will use the Premises solely for the Permitted Uses and not for any other purpose without the prior written consent of Landlord, which consent may be withheld, conditioned or delayed in Landlord's sole, absolute and unfettered discretion. Tenant will not use or permit the Premises to be used in violation of the Regulatory Requirements as defined in Section 11, below. Use of the Premises in violation of the terms of this Section 8 will cause Tenant to be in default hereunder; however, Tenant will have the right to cure said default pursuant to the provisions of Section 18 of this Lease.

8.2. Prohibited Uses. Tenant will not use, or permit the use of, the Premises for any use or purpose listed in Exhibit D to this Lease (the "Prohibited Uses").

SECTION 9 – CONSTRUCTION OF IMPROVEMENTS

Tenant, at its sole cost and expense, will cause to be constructed and completed the Minimum Improvements, the Public Improvements, and all other buildings, structures, facilities and other leasehold improvements, fixtures, and equipment constituting the Project (collectively, the "Improvements") on the Premises in compliance with the Development Agreement, the City-approved Site Plan, the Zoning, and all generally applicable City requirements which are consistent with the use of the Premises as permitted by the Development Agreement. During the Term, Tenant will operate and maintain, at its sole cost and expense, all Improvements on the Premises in compliance with all Applicable Laws, including but limited to, the Americans with Disabilities Act. Tenant will pursue diligently the construction of all Improvements to completion. For purposes of this Lease, the term "Applicable Laws" means the federal, state,

county and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City of Mesa, as they may be amended from time to time, which apply to the development, use and operation of the Premises and the Improvements during the Term of this Lease.

SECTION 10 – MAINTENANCE AND REPAIRS

10.1. Tenant at all times during the Term of this Lease, and at Tenant's sole cost and expense, will keep and maintain the Premises in good order and repair and in a clean and sanitary condition, including but not limited to all buildings, facilities, structures, driveways, landscaped areas, and other improvements included within the Premises (including all exterior painted surfaces of all buildings, structures and improvements included within the Premises), and all equipment and appurtenances, both interior and exterior, structural and non-structural, ordinary or extraordinary, howsoever the necessity or desirability of repairs may occur, but excluding any Public Improvements (as defined in the Development Agreement) located on or within the Premises. All repairs, replacements and renewals will be made promptly and be equal in quality and class to the original work. Tenant waives any right created by any legal requirement (now or hereafter in force) to make repairs to the Premises at Landlord's expense, it being understood that Landlord will in no event be required to make any alterations, improvements or repairs during the Term; except that if any damage to the buildings, facilities, structures, or improvements on the Premises, or to any equipment or appurtenances located thereon, will have been solely as a result of Landlord's grossly negligent or intentional actions (but expressly excluding any matter pertaining to or arising from the condition of the Premises as of the Effective Date), Landlord will pay the cost therefore to Tenant.

10.2. Tenant will provide and maintain a solid waste compactor to benefit the Premises at a location within the Licensed Area set forth in the Approved Plans, in which to place any solid waste, and cause such solid waste to be removed for recycling or disposal as often as is required to maintain a sanitary condition. Tenant (and any subtenants) are obligated to utilize City of Mesa commercial solid waste services at rates established by the City Council, for so long as the City is willing to continue to provide such services.

SECTION 11 – REGULATORY REQUIREMENTS

11.1. Tenant will promptly observe and comply with all present and future laws, ordinances, requirements, rules and regulations of all governmental authorities having or claiming jurisdiction over the Premises or any part thereof and of all requirements in written insurance policies covering the Premises or any part thereof required in Section 15 below (the "Regulatory Requirements"). Without limiting the generality of the foregoing, Tenant will also procure each and every permit, license, certificate or other authorization required in connection with the lawful and proper use of the Premises or required in connection with any building, structure or improvement hereafter erected thereon.

11.2. Tenant covenants and agrees not to use, generate, release, manage, treat, manufacture, store, or dispose of, on, under or about, or transport to or from (any of the foregoing hereinafter described as "Use") the Premises any Hazardous Materials (other than De Minimis Amounts). Tenant further covenants and agrees to pay all costs and expenses

associated with enforcement, removal, remedial or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to Use of any Hazardous Materials in any amount by Tenant, its employees, agents, invitees, subtenants, licensees, assignees or contractors. For purposes of this Lease (1) the term “Hazardous Materials” includes but not be limited to asbestos, urea formaldehyde, polychlorinated biphenyls, oil, petroleum products, pesticides, radioactive materials, hazardous wastes, biomedical wastes, toxic substances and any other related or dangerous, toxic or hazardous chemical, material or substance defined as hazardous or regulated or as a pollutant or contaminant in, or the Use of or exposure to which is prohibited, limited, governed or regulated by, any Hazardous Materials Laws; (2) the term “De Minimis Amounts” means, with respect to any given level of Hazardous Materials, that such level or quantity of Hazardous Materials in any form or combination of form (i) does not constitute a violation of any Hazardous Materials Laws and (ii) is customarily employed in, or associated with, similar facilities; and (3) the term “Hazardous Materials Laws” means any federal, state, county, municipal, local or other statute, law, ordinance or regulation now or hereafter enacted which may relate to or deal with the protection of human health or the environment, including but not be limited to the Comprehensive Environment Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, et seq.; the Toxic Substances Control Act of 1976, 15 U.S.C. Section 2601, et seq.; Ariz. Rev. Stat. Ann., Title 49 (the “Arizona Environmental Quality Act of 1986”); and any rules or regulations legally adopted or promulgated pursuant to any of the foregoing as they may be amended or replaced from time to time.

11.3. Either party has the right, at its sole cost and expense, to contest the validity of any Regulatory Requirements applicable to the Premises by appropriate proceedings diligently conducted in good faith provided, however, that no such contest will subject the other party to any liability, cost or expense.

11.4. Landlord agrees to join in the execution of any instruments which may reasonably be required in order for Tenant to procure the issuance of any licenses, occupational permits, building permits or other government approvals required by Tenant in its use, occupancy or construction of the Premises in accordance with the Development Agreement. Tenant will indemnify, defend, pay and hold harmless Landlord for, from and against any expense or loss whatsoever occasioned by Landlord’s presence as a party to any such instrument, application or permit, except to the extent caused solely by the grossly negligent or intentional bad acts of Landlord, its agents, representatives, officers, directors, elected and appointed officials and employees.

SECTION 12 – LIENS

12.1. Subject to Section 17 of this Lease, Tenant has no authority to do any act or make any contract that may create or be the basis for any lien, mortgage or other encumbrance upon any interest of Landlord in the real property included within the Premises, provided however that Tenant is not prohibited from entering into any contracts in Tenant’s capacity as a tenant, rather than as the title holder of said real property. Should Tenant cause any construction, alterations, rebuildings, restorations, replacements, changes, additions, improvements or repairs

to be made on the Premises, or cause any labor to be performed or material to be furnished thereon, therein or thereto, neither Landlord nor the real property included within the Premises will under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished, and Tenant will be solely and wholly responsible to contractors, laborers and materialmen performing such labor and furnishing such material.

12.2. If, because of any error, act, or omission (or alleged error, act or omission) of either Tenant or Landlord, any mechanics', materialmen's or other lien, charge or order for the payment of money will be filed or recorded against the real property included within the Premises or against Landlord (whether or not such lien, charge or order is valid or enforceable as such), Tenant or Landlord, as the case may be, will, at its own expense, either cause the same to be discharged of record or bonded over pursuant to A.R.S. § 33-1004 within thirty (30) days after either has received from the other a written notice requesting such discharge.

12.3. Landlord will keep the fee title free and clear of all liens and encumbrances that may adversely affect Tenant's leasehold interest in this Lease.

SECTION 13 – PROPERTY AND PUBLIC LIABILITY INSURANCE

Tenant will at all times, throughout the Term of this Lease, keep the Premises insured pursuant to the requirements set forth in Exhibit E.

SECTION 14 – DAMAGE OR DESTRUCTION

14.1. In the event of damage to or destruction of any of the buildings, structures or improvements included within the Premises by fire or other casualty, Tenant will give Landlord and any mortgagee immediate notice thereof and will at its own expense and whether or not the insurance proceeds are sufficient for the purpose, promptly commence and thereafter diligently pursue completion of the repair, restoration or rebuilding of the same so that upon completion of such repairs, restoration or rebuilding, the value and rental value of the buildings, structures or improvements will be substantially equal to the value and rental value thereof immediately prior to the occurrence of such fire or other casualty.

14.2. Notwithstanding anything to the contrary contained herein, if the buildings, structures or improvements included within the Premises should be rendered untenable by fire or other casualty during the last five (5) years of the Lease to the extent of fifty percent (50%) or more of the replacement cost of said buildings, structures or improvements, Tenant may, at Tenant's option, terminate this Lease, provided however, that Tenant will pay all casualty insurance proceeds received or receivable by reason of the destruction of said buildings, structures or improvements in the following order of priority: (1) to any leasehold mortgagees in the order of their priority for the outstanding balances of said mortgages; (2) to Tenant for the costs of restoring the Premises substantially to its condition on the Lease commencement Date; (3) to Landlord for any unpaid Rent; and (4) any residual to Tenant. Tenant's option to terminate will be evidenced by a written notice given to Landlord within sixty (60) days after the occurrence of such damage or destruction.

SECTION 15 – INDEMNIFICATION

15.1. Tenant will indemnify, defend, pay and hold Landlord, its agents, representatives, officers, directors, elected and appointed officials and employees harmless for, from and against any and all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and court costs associated with such matters; all of the foregoing, collectively, "Claims") imposed upon or asserted against Landlord, its agents, representatives, officers, directors, elected or appointed officials, and employees, by reason of any of the following: (i) any act or omission by Tenant, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Tenant's obligations under this Lease; (ii) any use or nonuse of, or any condition created by Tenant on the Premises or any part thereof; (iii) any accident, injury to or death of persons (including workmen) or loss of or damage to property occurring on or about the Premises or any part thereof; (iv) performance of any labor or services or the furnishing of any materials or other property with respect to the Premises or any part thereof; (v) any failure on the part of Tenant to comply with any of the matters set forth in Section 11 of this Lease, including but not limited to any failure by Tenant to clean up any Hazardous Materials; and (iv) all Claims relating to or arising from design, construction and structural engineering acts or omissions related in any way to, of or in connection with, the existing Garage, and all subsequent design, construction, engineering and other work and improvements by or on behalf of Tenant (collectively, "Indemnity").

15.2. In the event Landlord, its agents, representatives, officers, directors, elected and appointed officials, and employees should be made a defendant in any action, suit or proceeding brought by reason of any the occurrences described in this Section 15, Tenant will at its own expense resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by Landlord. Except for the negligent or intentional acts of Landlord, its agents, representatives, officers, directors, elected and appointed officials, and employees, if any such action, suit or proceeding should result in a final judgment against Landlord, Tenant will promptly satisfy and discharge such judgment or will cause such judgment to be promptly satisfied and discharged. .

15.3. Notwithstanding the terms and conditions contained in Subsection 15.2 above, Tenant is required to indemnify, defend, pay and hold harmless Landlord, its agents, representatives, officers, directors, elected and appointed officials, and employees in the event negligence is imputed by operation of law against Landlord, its agents, representatives, officers, directors, elected and appointed officials, and employees as a result of the actions or non-action of Tenant, its agents, servants, employees, directors, representatives, officials, customers, vendors, guests, licensees or invitees on the Premises.

15.4. Tenant's obligations of Indemnity will survive the expiration or earlier termination of this Lease.

SECTION 16 – ASSIGNMENT AND SUBLETTING

16.1. Assignment.

a. Prior to Completion of Construction (as defined in the Development Agreement) of all of the Minimum Improvements and Minimum Public Improvements (each as defined in the Development Agreement), no assignment or similar transfer of Tenant's interest in the Premises or this Lease, or in the current management, ownership or control of Tenant (each, a "Transfer") may occur without the prior written consent of Landlord, which consent may be given or withheld in Landlord's sole and unfettered discretion; provided, however, that the foregoing restriction will not apply to a one-time Transfer to an Affiliate (as defined in the Development Agreement) of Tenant upon Landlord's reasonable determination that the management and control of the Affiliate transferee is materially the same as the management and control of Tenant as of the Effective Date. The restrictions on Transfer set forth in this Section 16.1(a) will terminate automatically, and without further notice or action, upon Completion of Construction (as defined in the Development Agreement); provided, however, that no Transfer will release or discharge Tenant from any of its obligations arising in or under this Lease, including but not limited to the obligations of Indemnity set forth in Section 15; and further provided that, upon a Transfer, the transferee (without further act or writing required) is deemed fully, automatically and unconditionally to have assumed all obligations of Tenant arising in or under this Lease, including but not limited to all obligations of Indemnity set forth in Section 15. No voluntary or involuntary successor in interest to Tenant will acquire any rights or powers under this Lease, except as expressly set forth herein, and any Transfer in violation of this Lease will be void, and not voidable.

b. Notwithstanding any term or provision of Section 16.1(a) or Section 17 to the contrary, this Lease (and Tenant's interest in the Premises) may not be transferred, assigned or hypothecated separately or apart from Tenant's (as Developer) interest in, and rights and obligations under, the Development Agreement, and Tenant's (as Licensee) interest in, and rights and obligations under, the License; and any transfer, assignment or hypothecation in violation of this Section 16.1(b) will be void, and not voidable.

c. Tenant has the right at any time and from time to time during the Term of this Lease to assign or otherwise encumber by way of mortgages, deeds of trust or other documents or instruments, all or any part of its right, title and interest in and to this Lease to any person or entity for the purpose of obtaining financing in accordance with the terms and conditions of Section 17.

16.2. Subleases. Tenant may sublet all or any portion of the Premises and all, any portion of or any space within any buildings or structures located on the Premises, for any Permitted Use without first obtaining the written consent of Landlord, but Landlord is hereby given the right to inspect all subleases upon reasonable notice to Tenant. A sublease will (i) not relieve Tenant of its liability for the full performance of all of the terms, agreements, covenants and conditions of this Lease unless otherwise agreed to by Landlord; (ii) not grant any rights to the subtenant which are inconsistent with the rights of Tenant under this Lease; (iii) be expressly subject and subordinate to each and every provision of this Lease; (iv) have a term that expires on or before the expiration of the Term; and (v) provide that if Landlord succeeds to Tenant's position, Landlord will not be liable to subtenant for any prepayment of more than one (1) month's Base Rent, or for deposits or other payments which have not been actually delivered to Landlord by the subtenant, provided however, that the rent and common area maintenance (CAM) charges may be allocated in differing amounts between each sublease. Any and all

sublease agreements will also provide that in the event of termination, re-entry, or dispossession by Landlord under this Lease, Landlord may, at its option, take over all of the right, title and interest of Tenant as sublessor under such sublease, and such subtenant will, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of the sublease, except that Landlord will not (a) be liable for any previous act or omission of Tenant under the sublease; (b) be subject to any offset not expressly provided in the sublease, that theretofore accrued to the subtenant against Tenant; or (c) be bound by any previous modification of such sublease or by any previous prepayment of more than one (1) month's Base Rent.

SECTION 17 – HYPOTHECATION OF LEASEHOLD ESTATE

17.1. Subject to Section 16.1(b), Tenant has the right to mortgage its interest in this Lease (but in no event the fee interest of the real property included within the Premises and the Licensed Area) to a bank, insurance company or other bona fide institutional lender without first obtaining the written consent of Landlord, provided that any leasehold mortgage will be subject and subordinate to the rights of Landlord hereunder. As used in this Section 17 and throughout this Lease, the noun “mortgage” includes a deed of trust, the verb “mortgage” includes the creation of a deed of trust, and the word “mortgagee” includes the beneficiary under a deed of trust. Within five (5) days of entering into a leasehold mortgage, Tenant will provide written notice to Landlord of such leasehold mortgage.

17.2. If Tenant mortgages this Lease in accordance with Subsection 17.1 and has furnished Landlord the name and mailing address of the mortgagee, then Landlord will not be empowered to terminate this Lease by reason of the occurrence of any default hereunder (except as expressly provided in Section 3.3), unless Landlord has given the mortgagee under such leasehold mortgage a copy of its notice to Tenant of such default and the default has continued for ninety (90) days after the mortgagee has been given such notice.

17.3. The leasehold mortgagee will have the right to remedy any Default under this Lease and Landlord will accept such performance by or at the instance of such leasehold mortgagee as if the same had been made by Tenant.

17.4. In case of Default, Landlord may not terminate this Lease by reason of the occurrence of such Default if leasehold mortgagee, within ninety (90) days after the giving of notice of such Default as provided in Subsection 17.2, has commenced foreclosure or similar proceedings under the mortgage for the purpose of acquiring Tenant's interest in this Lease and thereafter diligently prosecutes the same; provided that during the pendency of such foreclosure proceedings and the period of redemption, the leasehold mortgagee remedies any existing Defaults under this Lease that are capable of being remedied by the leasehold mortgagee, pays to Landlord, when due, all Rent, Additional Charges and other sums due hereunder and performs or causes to be performed all other agreements, terms, covenants and conditions arising out of or contained herein in this Lease.

17.5. The leasehold mortgagee, or a third-party purchaser, may become the legal owner or successor and holder of the leasehold estate under this Lease without first obtaining the written consent of Landlord, by foreclosure of its leasehold mortgage or as a result of the assignment of this Lease in lieu of foreclosure. Upon becoming the owner or successor and

holder of the leasehold estate, leasehold mortgagee or third party purchaser may have all rights, privileges, obligations and liabilities of the original Tenant, except that leasehold mortgagee or third party purchaser may have the right to assign its interest under this Lease and, provided the assignee assumes and agrees to perform and be bound by all of the terms hereof, to be relieved of further liability hereunder.

17.6. Landlord agrees that the name of the leasehold mortgagee may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant under this Lease, and provided the leasehold mortgagee remains a mortgagee or becomes the legal owner and holder of the leasehold estate under this Lease, it may receive and hold insurance proceeds thereunder on the condition that the insurance proceeds be applied in the manner specified in this Lease.

17.7. Landlord agrees that in the event of termination of this Lease by reason of the bankruptcy of Tenant or any Default by Tenant, that Landlord will enter into a new lease for the Premises with the leasehold mortgagee or its nominee for the remainder of the Term effective as of the date of such termination, at the Rent, and upon the terms, provisions, covenants and agreement contained in this Lease, subject to the rights, if any, of the parties then in possession of any part of the Premises, provided:

a. The mortgagee or its nominee must make written request upon Landlord for the new lease agreement within thirty (30) days after the date the mortgagee receives written notice from Landlord of such termination and the Rent due and unpaid. The written request must be accompanied by any then due payments of Rent under this Lease and the satisfaction of all uncured defaults of Tenant (expressly including all matters required in Section 17.7(c) below); and the mortgagee or nominee must execute and deliver the new lease agreement within thirty (30) days after Landlord has delivered it.

b. The mortgagee or its nominee must pay to Landlord, at the time of execution and delivery of the new lease agreement, any and all sums which would then be due pursuant to this Lease but for such termination and, in addition thereto, any reasonable expenses, including reasonable attorney's fees, which Landlord has incurred by reason of such default, including the costs of negotiation, approval and recording the new lease agreement.

c. In order to succeed to Tenant's interest under this Lease, and to receive a new lease agreement pursuant to Section 17.7(c), the mortgagee or its nominee must perform and observe all covenants in this Lease to be performed by Tenant and must further remedy any other defaults under covenants which Tenant was obligated to perform under the terms of this Lease. If there are any continuing or past defaults that the mortgagee cannot cure due solely to the circumstances of the default, then the performance requirement will be waived.

d. The new lease agreement will be expressly made subject to the rights that survive, if any, of Tenant under this Lease and the rights of any subtenants.

e. The tenant under the new lease agreement will have the same right, title and interest in and to the Premises as Tenant has under this Lease.

f. If, after receiving a notice of default under this Lease, the leasehold mortgagee decides to foreclose or otherwise exercise remedies against Tenant, Landlord agrees to forebear from the exercise of any remedies available to Landlord under this Lease for so long as the leasehold mortgagee pays all Rent hereunder, and otherwise performs or causes to be performed the obligations of Tenant hereunder, as and when due, and diligently pursues the exercise of such remedies, including without limitation, any period during which the leasehold mortgagee seeks possession of the Premises pursuant to judicial proceedings (including any period during which the leasehold mortgagee is subject to a stay imposed by any court). Notwithstanding anything to the contrary, Landlord agrees to recognize as "Tenant" under this Lease the leasehold mortgagee, its nominee or any purchaser at a foreclosure sale or by assignment in lieu of foreclosure.

17.8. Except in connection with a leasehold mortgagee's exercise of any right it may have to obtain a new lease under Subsection 17.6 above, or any purchase, assumption or other acquisition in Subsection 17.6 above, a leasehold mortgagee will not, as a condition to the exercise of its rights hereunder, be required to assume any personal liability for the payment and performance of the obligations of Tenant hereunder, and any such payment or performance or other act by the leasehold mortgagee hereunder will not be construed as an undertaking by such leasehold mortgagee to assume such personal liability.

SECTION 18 – DEFAULTS BY TENANT

18.1. Each of the following occurrences will be a default ("Default") of this Lease:

a. If Tenant fails to pay any Rent, Additional Charges or any other sum due hereunder promptly when due (a "Payment Breach") and such Payment Breach continues for twenty (20) days after notice thereof in writing to Tenant.

b. If Tenant fails to perform or comply with any of the other covenants, agreements, conditions or undertakings herein to be kept, observed and performed by Tenant other than a Payment Breach (but expressly not including the occurrence of any event referred to in subparagraphs (c) and (d) of this Subsection 18.1, for which no cure period is given) and such failure continues for thirty (30) days after notice thereof in writing to Tenant (or such longer period as may be specified in this Lease, e.g., Section 19.2); provided, however, that no period to cure will be permitted with respect to the defaults listed in Section 3.3.

c. If Tenant voluntarily files any petition, or has an involuntary petition filed on its behalf, under any chapter or section of the Federal Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing, or files an answer admitting insolvency or inability to pay its debts; provided however, that Tenant shall not remain in Default if Tenant continues timely to pay all Rent and Additional Charges and otherwise fully comply with all other terms and conditions of this Lease.

d. If Tenant makes an assignment for the benefit of its creditors.

e. If Tenant breaches any term or provision of the Development Agreement, beyond any applicable cure period granted in the Development Agreement.

f. If Tenant breaches any term or provision of the License, beyond any applicable cure period granted in the License.

18.2. Upon the occurrence of any Default, Landlord will have the right, at its election, to reenter the Premises and the buildings, structures and improvements then situated thereon, or any part thereof, and to expel, remove and put out Tenant and all persons occupying or upon the same under Tenant, using such force as may be necessary in so doing, and again to possess the Premises and enjoy the same as in their former estate and to take full possession of and control over the Premises and the buildings, structures and improvements thereon and to have, hold and enjoy the same and to receive all rental income of and from the same. No reentry by Landlord will be deemed an acceptance of a surrender of this Lease, nor will it absolve or discharge Tenant from any liability under this Lease. Upon such reentry, all rights of Tenant to occupy or possess the Premises will cease and terminate.

18.3. Upon the occurrence of any Default, Landlord may give written notice to Tenant stating that this Lease will terminate on the date specified by such notice, and upon the date specified in such notice this Lease and the real property hereby demised and all rights of Tenant hereunder will terminate. Upon such termination, Tenant will quit and peacefully surrender to Landlord the Premises and the buildings, structures and improvements then situated thereon.

18.4. Notwithstanding the foregoing, in the event of a Default specified in Section 3.3, this Lease, all rights of Tenant under this Lease, will automatically and without notice terminate. Upon such termination, Tenant will quit and peacefully surrender to Landlord the Premises and the buildings, structures and improvements then situated thereon.

18.5. At any time and from time to time after such reentry, Landlord may re-let the Premises and the buildings, structures and improvements thereon, or any part thereof, in the name of Landlord or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Lease), and on such conditions (which may include concessions or free rental) as Landlord, in its reasonable discretion, may determine and may collect and receive the rental therefore. Even though it may re-let the Premises, Landlord will have the right thereafter to terminate this Lease and all of the rights of Tenant in or to the Premises.

18.6. Unless Landlord has notified Tenant in writing that it has elected to terminate this Lease, no such reentry or action in lawful detainer or otherwise to obtain possession of the Premises will relieve Tenant of its liability and obligations under this Lease; and all such liability and obligations will survive any such reentry. In the event of any such reentry, whether or not the Premises and the buildings, structures and improvements thereon, or any part thereof, have been relet, Tenant will pay to Landlord the entire Rent and all other Additional Charges required to be paid by Tenant up to the time of such reentry under this Lease, and thereafter Tenant, until the end of what would have been the Term of this Lease in the absence of such reentry, will be liable to Landlord and will pay to Landlord, as and for liquidated and agreed damages for Tenant's Default:

a. The amount of Rent and Additional Charges which would be payable under this Lease by Tenant if this Lease were still in effect, less

b. The net proceeds of any reletting, after deducting all of Landlord's reasonable expenses in connection with such reletting, including without limitation all reasonable repossession costs, brokerage commissions, legal expenses, attorneys' fees, alteration costs and expenses of preparation for such reletting.

18.7. In the event of any Default by Tenant, Landlord will have, in addition to any specific remedies provided in this Lease, the right to invoke any right or remedy allowed by law or in equity or by statute or otherwise, including the right to enjoin such breach.

18.8. Each right and remedy of Landlord provided for in this Lease will be cumulative and in addition to every other right or remedy provided for in this Lease now or hereafter existing at law or in equity or by statute or otherwise; and the exercise or beginning of the exercise by Landlord of any one or more of such rights or remedies will not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

18.9. Any violation of any covenant or provision of this Lease, whether by act or omission, by any subtenant or any other persons occupying any portion of the Premises or any buildings, structures or improvements thereon under the rights of Tenant will be deemed a violation of such provision by Tenant and a Default under this Lease; provided, however, that any such violation will not be deemed to be a Default under this Lease if and so long as Tenant in good faith and at its own expense takes and diligently pursues any and all steps it is entitled to take and which steps if completed will cure said Default and otherwise fully and timely performs all of Tenant's obligations under this Lease.

18.10. Notwithstanding any other provision of this Section 18, but expressly subject to Section 3.3, Landlord agrees that if the Default complained of (other than for (i) a Payment Breach; (ii) the occurrence of any event referred to in subparagraphs (c) and (d) of this Subsection 18.1; (iii) a Default specified in Section 3.3 of this Lease; or (iv) a breach of Section 19.2 of this Lease), is of such a nature that the same cannot reasonably be cured within the thirty (30) day period for curing as specified in the written notice given to Tenant in connection with such default, then such default will be deemed to be cured if Tenant, within such period of thirty (30) days, will have commenced the curing of the default and will continue with all due diligence to effect such curing and completes such cure; but no extension of time permitted by this Section 18.10 may exceed ninety (90) days.

SECTION 19 – OPERATING COVENANT

19.1. Tenant covenants and agrees that following completion of the Improvements contemplated by this Lease and for the remainder of the Term, it will continuously and without interruption offer for sublease, at "market" rent, any vacant space within the Improvements and will have available to the Premises competent personnel (who may be employees or independent contractors) to sublease and maintain the improvements in a manner which conforms to commercially reasonable management practices for comparable facilities, ("Operating Covenant"); provided, however, that the Operating Covenant will not apply during any period when the Premises are untenable by reason of fire or other casualty or by eminent domain. The Parties acknowledge that the occurrence of vacancies from time to time

will not constitute a breach of the Operating Covenant. Notwithstanding the foregoing, Tenant may request of Landlord a waiver of the provisions of this Section 19 if it determines that economic factors and conditions make it impractical to comply therewith.

19.2. Subject to the rights of any leasehold mortgagee otherwise set forth herein, if Tenant fails to use commercially reasonable efforts to fulfill the Operating Covenant and such failure is not cured within the applicable cure period, then, as Landlord's exclusive remedy for such failure, Landlord may terminate this Lease upon ninety (90) days prior written notice to Tenant after which all obligations of Tenant and Landlord under this Lease will terminate and be of no further force and effect.

SECTION 20 – ASSIGNMENT OF RENTS, INCOME AND PROFITS

Subject to the rights of its leasehold mortgagee, Tenant hereby absolutely and irrevocably assigns to Landlord all rents, income and profits accruing to Tenant from permitted subtenants of all or a portion of the Premises and the buildings, structures or improvements thereon, together with the right to collect and receive the same; provided that so long as Tenant is not in default hereunder, Tenant will have the right to collect and retain such rents, income and profits. Landlord will apply to rent and other monies due hereunder the net amount (after deducting all costs and expenses incident to the collection thereof and the operation and maintenance, including repairs, of the Premises) of any rents, income and profits so collected and received by it. Notwithstanding the foregoing, if Tenant mortgages its leasehold interest pursuant to Subsection 17.1 and the mortgagee requires an assignment of rents, income and profits as part of its security, then during the Term of this Lease, the assignment herein will be junior to the assignment in favor of the mortgagee.

SECTION 21 – WAIVER OF PERFORMANCE

No failure by Landlord or Tenant to insist upon the strict performance of any term or condition hereof or to exercise any right, power or remedy consequent upon a breach thereof and no submission by Tenant or acceptance by Landlord of full or partial Rent or Additional Charges during the continuance of any such breach will constitute a waiver of any such breach or of any such term. No waiver of any breach will affect or alter this Lease, which will continue in full force and effect, nor the respective rights of Landlord or Tenant with respect to any other then existing or subsequent breach.

SECTION 22 – REMEDIES CUMULATIVE

Each right, power and remedy provided for in this Lease or now or hereafter existing at law, in equity or otherwise is cumulative and concurrent and will be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law, in equity or otherwise; and the exercise or beginning of the exercise of any one or more of the rights, powers or remedies provided in this Lease will not preclude the simultaneous or later exercise of any or all such other rights, powers or remedies.

SECTION 23 – TITLE TO BUILDINGS AND IMPROVEMENTS

23.1. During the Term, title to all Improvements constructed on the Premises by Tenant (except the Public Improvements constructed by Tenant pursuant to the Development Agreement and dedicated to Landlord) will be in the Tenant.

23.2. Subject to the exercise by Tenant of its Purchase Option pursuant to Section 30, on the expiration or sooner termination of this Lease term, title to all Improvements which constitute or are a part of the Premises, exclusive of trade fixtures and personal property of Tenant and subtenants, will (without the payment of compensation to Tenant or others) vest in Landlord free and clear of all claims and encumbrances on such Improvements by Tenant, and anyone claiming under or through Tenant. The Improvements will be surrendered to Landlord in “as is” condition. Upon request, Tenant will then quitclaim to Landlord its possessory interest in the Improvements. Tenant agrees to and will defend, indemnify and hold Landlord harmless from and against all liability and loss which may arise from the assertion of any claims and any encumbrances on such Improvements that arose during the Lease Term; provided, however, such duty to indemnify and hold harmless will not apply to any claims or encumbrances which are attributable to the acts or conduct of the Landlord. Additionally, Tenant will assign to Landlord without representation or warranty of any kind, and Landlord will be entitled to the benefit of, any licenses, warranties or guarantees applicable to equipment, systems, fixtures or personal property conveyed or otherwise transferred to, or for the benefit of, Landlord under this Lease. The foregoing notwithstanding, Tenant will not quitclaim its possessory interest in the aforementioned Improvements to Landlord until such Improvements have been inspected by Landlord and they have been determined not to present a potential environmental hazard. This Section 23 will survive the expiration or earlier termination of this Lease. Notwithstanding anything contained herein to the contrary, while this Lease remains in effect, Tenant alone will be entitled to claim depreciation on the buildings, structures, improvements, additions and alterations therein included within the Premises, and all renewals and replacements thereof, for all taxation purposes.

SECTION 24 – ATTORNEYS FEES

In the event Landlord should bring suit for possession of the Premises, for the recovery of any sum due hereunder, or for any other relief against Tenant, declaratory or otherwise, arising out of a breach of any term or condition of this Lease, or in the event Tenant should bring any action for any relief against Landlord, declaratory or otherwise, arising out of this Lease, the prevailing Party will be entitled to receive from the other Party reasonable attorneys’ fees and reasonable costs and expenses, which have accrued on the commencement of such action and will be enforceable whether or not such action is prosecuted to judgment.

SECTION 25 – PROVISIONS SUBJECT TO APPLICABLE LAW

All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law and are intended to be limited to the extent necessary so that they will not render this Lease invalid or unenforceable under any applicable law. If any term or condition of this Lease is held to be invalid, illegal or unenforceable or against public policy, such provision will be deemed stricken from this Lease

and the validity of the other terms of this Lease will in no way be affected thereby and this Lease, absent the stricken provision, will otherwise remain in full force and effect.

SECTION 26 – RIGHT TO CURE TENANT’S DEFAULTS

Except with respect to Tenant’s failure to operate its business, in the event Tenant is in default of this Lease, which default remains uncured after the expiration of any applicable cure period provided herein, and if such default continues for thirty (30) days after written notice from Landlord of the default and of Landlord’s intent to cure such default, Landlord may at any time, without further notice, cure such breach for the account and at the expense of Tenant. If Landlord at any time, by reason of such breach, is compelled to pay or elects to pay any sum of money or to do any act that will require the payment of any sum of money, or is compelled to incur any expense, including reasonable attorneys’ fees, in instituting, prosecuting or defending any actions or proceedings to enforce Landlord’s rights under this Lease or otherwise, the sum or sums so paid by Landlord, with all interest, costs and damages, will be deemed to be Additional Charges and will be due from Tenant to Landlord on the first day of the month following the incurring of such expenses or the payment of such sums.

SECTION 27 – NOTICES

All notices, demands, requests, consents, approvals and other communications required or permitted hereunder will be in writing and will be deemed to have been given upon personal delivery to the respective Party, after delivery by personal service or a nationally recognized overnight courier service (e.g., UPS, Federal Express), or within three (3) days after the same has been mailed by registered or certified mail, postage prepaid and return receipt requested, at the address shown below:

To Tenant:

Attn: _____

With a copy to:

AZ Strategies LLC
Attn: Karrin Taylor Robson
3344 East Camelback Road, Suite 100
Phoenix, Arizona 85018

With a copy to:

Gallagher & Kennedy, P.A.
Attn: Dana Stagg Belknap
2575 East Camelback Road
Phoenix, Arizona 85016

With a copy to:

3W Management, LLC
Attn: Tony Wall
7349 N. Via Paseo del Sur, Suite 515
Scottsdale, Arizona 85258

To Landlord: City of Mesa
Attn: City Manager
20 East Main Street
Mesa, Arizona 85211

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

and
City of Mesa
Attn: Downtown Transformation Manager
20 East Main Street
Mesa, Arizona 85211

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

With a copy to: City of Mesa
Attn: City Attorney
20 East Main Street, Suite 850
Mesa, Arizona 85201

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

or at such other address as either Party may from time to time designate in writing to the other.

SECTION 28 – WARRANTIES OF THE PARTIES

28.1. Landlord hereby makes the following representations and warranties, each of which (i) is material and is being relied upon by Tenant in entering into this Lease, and (ii) is true in all respects as of the date hereof:

- a. Landlord owns the real property included within the Premises.
- b. Landlord has the full right, power and authority to enter into and perform Landlord's obligations pursuant to this Lease and to lease the real property included within the Premises to Tenant in the manner contemplated in this Lease subject only to the consent and approval of the Mesa City Council.
- c. Except as otherwise disclosed in this Lease, no other person or entity other than Tenant has a right to possession of all or any part of the real property included within the Premises.

d. To the extent of Landlord's actual knowledge, this Lease does not violate any contract, agreement or instrument to which Landlord is a party, or is otherwise subject.

e. No third party has any option or preferential right to purchase all or any part of the Premises.

f. Landlord has not received or given any written notice that the Premises or the operations thereon are in violation of any governmental law or regulation, including, without limitation, any Hazardous Materials Laws or the Americans with Disabilities Act, nor is Landlord aware of any such violation.

For the purposes of this Section 28.1, the actual knowledge of Landlord will be and mean the actual knowledge, without further duty of inquiry, of the Downtown Transformation Manager of the City of Mesa.

28.2. Upon Tenant performing all covenants of this Lease to be performed by Tenant, and upon compliance with all of the requirements of Tenant (as Developer) set forth in the Development Agreement, Tenant will have quiet, exclusive and undisturbed use, possession and enjoyment of the Premises, together with all appurtenances thereto without hindrance or ejection by any person lawfully claiming by, through or under Landlord.

28.3. Tenant hereby makes the following representations and warranties to Landlord, each of which (i) is material and is being relied upon by Landlord in entering into this Lease, and (ii) is true in all respects as of the date hereof:

a. Tenant is a duly formed and validly existing _____, formed under the laws of the State of _____.

b. Tenant has the full right, power and authority to enter into and perform Tenant's obligations pursuant to this Lease and to lease the real property included within the Premises from Landlord in the manner contemplated in this Lease.

c. To the extent of Tenant's actual knowledge, neither this Lease nor Tenant's contemplated use of the Premises, as contemplated by this Lease, violates any contract, agreement or instrument to which Tenant is a party, or is otherwise subject.

For the purposes of this Subsection 28.3, the actual knowledge of Tenant will be and mean the actual knowledge, without further duty of inquiry, of _____, the _____ of Tenant.

SECTION 29 – UNSUBORDINATED LEASE

This is an unsubordinated lease. Landlord is not and will not be obligated to subordinate its rights and ownership interest in the real property included within the Premises to any loan, encumbrance or other lien that Tenant may place against Tenant's leasehold interest.

SECTION 30 – PURCHASE OPTION

30.1. Option to Purchase. Landlord hereby grants to Tenant the exclusive option to purchase the entirety of the Premises ("Purchase Option") according to the terms and conditions hereinafter set forth.

30.2. Exercise of Purchase Option. The Purchase Option granted herein will become effective and Tenant will have the right to exercise the Purchase Option hereunder at any time during the Term after the Completion of Construction of the Minimum Improvements and Minimum Public Improvements as defined in the Development Agreement ("Option Period"), provided that Tenant's right to exercise the Purchase Option will be conditioned upon Tenant curing any default then existing under this Lease. The Purchase Option granted herein may be exercised by Tenant at any time during the Option Period by Tenant delivering written notice of exercise to Landlord.

30.3. Conveyance of Premises.

a. Purchase Price. The Purchase Price for the Premises will be the fair market value of the Premises as unimproved at the time of Tenant's exercise of its Purchase Option. In the event that Landlord and Tenant are unable to agree on the fair market value of the Premises, then Landlord and Tenant will select an appraiser who is a member of MAI or AIA and has at least twenty years' experience in appraising commercial properties ("Appraiser"), and then deliver to the Appraiser each of such Party's determination of the fair market value of the Premises. The Appraiser will then select one value that the Appraiser reasonably determines to be the closer to the fair market value of the Premises, and that value will be the Purchase Price. In the event one Party does not submit its determination of fair market value of the Premises to the Appraiser, then the Purchase Price will be the fair market value of the Premises as determined and submitted by the other Party.

b. Conveyance of Title and Delivery of Possession. Landlord and Tenant agree to perform all acts necessary for conveyance in sufficient time for the Premises to be conveyed within ninety (90) days after delivery to Landlord of Tenant's notice of exercise of the Purchase Option or on the last day of the Rental Period, whichever first occurs. Landlord's entire interest in the Premises will be conveyed by Special Warranty Deed in the form of Exhibit F. The Premises will be conveyed to Tenant in its "as-is, where-is" condition, with no representation of Landlord with respect to any matter regarding the physical condition of the Premises, including but not limited to the presence or absence of Hazardous Materials or compliance with any Regulatory Requirements. All expenses in connection with conveyance of the Land to Tenant including, but not limited to, title insurance (if requested by Tenant), recordation and notary fees and all other closing costs (including escrow fees if use of an escrow is requested by Tenant), will be paid by Tenant. Notwithstanding Tenant's actual possession of the Premises pursuant to this Lease, possession of the Premises will be deemed formally delivered to Tenant concurrently with the conveyance of title, although Tenant will bear all risk of loss or damage.

c. In addition to the foregoing, Tenant's exercise of the Purchase Option is conditioned upon Tenant's assumption, in perpetuity, of all of the obligations of Licensee of the License.

d. Concurrently with the delivery of the Special Warranty Deed to Tenant, Tenant will grant to Landlord, in a form reasonably satisfactory to Landlord, a permanent, non-exclusive easement for the benefit of the public, on and over all private walks and walkways along the street known as East Pomeroy. In the alternative, Landlord may elect to reserve such easement in the Special Warranty Deed.

e. In the event of a breach of Landlord of its obligations arising under this Section 30, Tenant's sole remedy will be to seek specific enforcement (or comparable equitable remedy) of this Lease. Any such action must be commenced by Tenant within ninety (90) days of the alleged breach, and any action commenced later than such date will be deemed barred. Tenant waives all right to seek damages (whether actual, consequential, special, exemplary, speculative, or punitive) from or against Landlord in the event of a breach by Landlord of this Section 30.

SECTION 31 - ESTOPPEL CERTIFICATE

Landlord or Tenant, as the case may be, will execute, acknowledge and deliver to the other, within fifteen (15) days following request therefor, a written certificate in a recordable form certifying (a) that this Lease is in full force and effect without modification except as to those specified in said certificate, and (b) the dates, if any, to which Rent, Additional Charges and other sums payable hereunder have been paid, (c) that no notice has been received by Landlord or Tenant of any default which has not been cured, except as to defaults specified in said certificate, and (d) any other matters as may be reasonably so requested. Any such certificate may be relied upon by any prospective purchaser, assignee, subtenant or encumbrancer of the Premises or any part thereof. Either Party's failure to deliver such certificate within the time permitted hereby will be conclusive upon such Party that this Lease is in full force and affect, except to the extent any modification has been represented by the requesting Party, that there are no uncured defaults in such Party's performance, and that not more than one years rent has been paid in advance.

SECTION 32 – COOPERATION

To further the cooperation of the Parties in implementing the provisions of this Lease, Landlord and Tenant each will designate and appoint a representative to act as a liaison between the Landlord and its various departments and Tenant. The initial representative for Landlord (the "Landlord Representative") will be the Downtown Transformation Manager of the City of Mesa (or equivalent employee); and the initial representative for the Tenant (the "Tenant Representative") will be _____, the Tenant's _____. The representatives will be available at all reasonable times to discuss and review the performance of the Parties to this Lease and the development and maintenance of the Premises and the Licensed Area.

SECTION 33 – MEMORANDUM FOR RECORDING

Within ten (10) days after the Commencement Date of this Lease, Landlord and Tenant will execute and cause to be recorded with the Maricopa County Recorder's Office, and any other public or private official, a Memorandum of Ground Lease in substantially the form set forth in Exhibit G evidencing the existence of this Lease.

SECTION 34 – PARTIES BOUND

This Lease will be binding upon and inure to the benefit of and be enforceable by the Parties hereto, their personal representatives, their respective successors in office and permitted assigns of the Parties hereto for the entire Term of this Lease.

SECTION 35 – TIME OF ESSENCE

Time is declared to be of the essence of this Lease.

SECTION 36 -- SECTION HEADINGS; REFERENCES; INTERPRETATION

The section headings contained in this Lease are for purposes of convenience and reference only and will not limit, describe or define the meaning, scope or intent of any of the terms or provisions hereof. All grammatical usage herein will be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require. If the last day of any time period stated herein falls on a Friday, Saturday, Sunday or legal holiday in the State of Arizona, then the duration of such time period will be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday in the State of Arizona.

SECTION 37 – IMPASSE

The Parties agree that if at any time Tenant reasonably believes an impasse has been reached with Landlord on any issue affecting the Premises, Tenant will have the right to immediately appeal the issue to the City Manager for an expedited decision pursuant to this Section 37. If the issue on which an impasse is reached is an issue where a final decision can be reached by City staff, the City Manager will give Tenant a final decision within 30 days after Tenant's request for an expedited decision. If the issue is one where a final decision requires action by the City Council, the City Manager will schedule a City Council hearing on the issue within 30 days after Tenant's request for an expedited decision; provided, however, that if the issue is appropriate for review by City's Planning and Zoning Commission, the matter will be first submitted to the Planning and Zoning Commission within 30 days, and then to the City Council.

SECTION 38 – SEVERABILITY

If any provision of this Lease is declared void, unenforceable or against public policy, such provision will be deemed stricken and severed from this Lease, with the remainder of the Lease to remain in full force and effect.

SECTION 39 – GOVERNING LAW AND CHOICE OF FORUM

This Lease will be governed by and construed in accordance with the substantive laws of the State of Arizona without giving effect to the principles of conflict of laws. Any action brought to interpret, enforce or construe any provision of this Lease will be commenced and maintained solely and exclusively in the Superior Court of Maricopa County, Arizona (or, as

may be appropriate, in the Justice Courts of Maricopa County or in the United States District Court for the District of Arizona if, and only if, the Maricopa County Superior Court lacks or declines jurisdiction over such action).

SECTION 40 – PAYMENT OF COSTS AND EXPENSES

Whenever, in this Lease, anything is to be done or performed by Tenant or Landlord, unless otherwise expressly provided to the contrary, it will be done or performed at the sole cost and expense of Tenant or Landlord as the case may be.

SECTION 41 – NO WARRANTIES

Tenant acknowledges and covenants to Landlord that it has made a complete investigation of the real property included within the Premises, the surface and sub-surface conditions thereof, the present and proposed uses thereof, and agrees to accept all the same “as is” except as expressly provided in Section 2. Tenant further agrees that, except as expressly provided herein, no representation or warranty, expressed or implied, in fact or by law, has been made by Landlord or anyone else, as to any matter, fact, condition, prospect or anything else of any kind or nature.

SECTION 42 – BROKERS OR AGENTS

Each party represents and warrants to the other that such party has had no dealings or discussions with any broker or agent (licensed or otherwise) in connection with this Lease and each party covenants to pay, hold harmless and indemnify the other party from and against any and all losses, liabilities, damages, costs and expenses (including reasonable legal fees) arising out of or in connection with any breach of this representation and warranty.

SECTION 43 – CONSENT OR APPROVAL

Except as otherwise expressly provided herein, any consent or approval required in this Lease will not be unreasonably withheld, conditioned or delayed, and if neither approval nor rejection is given within a time period specified in this Lease as to any particular approval which may be requested by one party of the other (or, if no such time is specified, then within thirty (30) days after request for approval is given by a Notice), then the approval thus requested will be conclusively and irrevocably deemed to have been given. The requesting Party will be entitled to seek specific performance at law and will have such other remedies as are reserved to it under this Lease, but in no event will Landlord or Tenant be responsible for damages to anyone for such failure to give consent or approval.

SECTION 44 – DELAY OF PERFORMANCE

Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, acts of terrorism, and other causes beyond the control of the Party obligated to perform, will excuse the performance by such Party for a period equal to any

such prevention, delay or stoppage, except the obligations imposed with regard to rental and other monies to be paid by Tenant pursuant to this Lease.

SECTION 45 – RELATIONSHIP

This is a ground lease. This Lease will not be construed as creating a joint venture, partnership or any other cooperative or joint arrangement between Landlord and Tenant, and it will be construed strictly in accordance with its terms and conditions. Nothing contained herein is intended to confer a benefit upon any third parties.

SECTION 46 – LEASE AMENDMENT

This Lease may be amended only upon written agreement by the Parties. In the event a Party wishes to amend one or more provisions of this Lease, it will make a written request to the other Party setting forth the nature of the request. In the event the Parties agree upon the terms of the proposed Lease modifications, Landlord's approval of any proposed amendments will be subject to its City Council's review and approval. Notwithstanding the foregoing, administrative and non-material amendments to this Lease may be made by the City Manager on behalf of Landlord without the requirement of public hearing and City Council approval.

SECTION 47 – FURTHER INSTRUMENTS AND DOCUMENTS

Landlord and Tenant will, upon request from the other, promptly acknowledge and deliver to the other any and all further documents, instruments or assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Lease.

SECTION 48 – INTEGRATION CLAUSE; NO ORAL MODIFICATION

This Lease is the result of arms-length negotiations between parties of roughly equivalent bargaining power and represents the entire agreement of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Lease are hereby revoked and superseded by this Lease. This Lease will not be construed for or against either Party as a result of its participation, or the participation of its counsel, in the preparation and/or drafting of this Lease or of any exhibits or documents prepared to carry out the intent of this Lease. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Lease. This Lease may not be changed, modified or rescinded, except as provided for herein, absent a written agreement signed by Landlord and Tenant. Any attempt at oral modification of this Lease will be void and of no effect.

SECTION 49 – COUNTERPARTS

This Lease may be executed in any number of counterparts, each of which will be deemed to be an original and all of which together will comprise but a single instrument.

SECTION 50 – CONFLICT OF INTEREST

This Lease is subject to cancellation pursuant to the provisions of A.R.S. §38-511 relating to conflicts of interest.

SECTION 51 – NO BOYCOTT OF ISRAEL

Tenant certifies pursuant to A.R.S. §35-393.01 that it is not currently engaged in, and for the Term of this Lease will not engage in, a boycott of Israel.

The balance of this page is blank; signatures are on the following page.

IN WITNESS WHEREOF, the Parties have executed this Ground Lease to be effective as of the Effective Date.

<p>Landlord:</p> <p>City of Mesa, Arizona, an Arizona municipal corporation</p> <p>By: _____ Christopher J. Brady, City Manager</p> <p>ATTEST:</p> <p>By: _____ DeeAnn Mickelsen, City Clerk</p> <p>APPROVED AS TO FORM:</p> <p>By: _____ James W. Smith, City Attorney</p>	<p>Tenant:</p> <p>_____, a(n) _____</p> <p>By: _____</p> <p>Name: _____</p> <p>Its: _____</p>
---	---

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing Ground Lease was acknowledged before me this ____ day of _____, 201__, by _____, the _____ of _____, a(n) _____, on behalf of the Tenant.

Notary Public

My Commission Expires:

EXHIBIT A-1
TO GROUND AND AIR RIGHTS LESASE
LEGAL DESCRIPTION OF POMEROY PARCEL

EXHIBIT A-1 - LEGAL DESCRIPTION OF POMEROY PARCEL

Wood, Patel & Associates, Inc.
(602) 335-8500
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November 6, 2017
WP# 174663
Page 1 of 4
See Exhibit "A"

PARCEL DESCRIPTION **The Grid** **Parcel 2 Lease**

A portion of that certain parcel of land described in Docket 14814, page 0174, Maricopa County Records (M.C.R.), lying within Section 22, Township 1 North, Range 5 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the intersection of Pomeroy Street (north) and Pomeroy Street (east), a brass cap in handhole, from which the intersection of Pomeroy Street (west) and Pomeroy Street (south), a brass cap in handhole, bears South 89°48'22" East (basis of bearing), a distance of 240.98 feet;

THENCE South 00°11'38" West, a distance of 2.92 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street;

THENCE along said parallel line, North 89°48'22" West, a distance of 6.50 feet, to a line parallel with and 6.50 feet west of the north/south monument line of said Pomeroy Street;

THENCE leaving said east/west parallel line, along said north/south parallel line, South 00°11'21" West, a distance of 39.58 feet, to the south right-of-way line of said Pomeroy Street and the **POINT OF BEGINNING**;

THENCE along said south right-of-way line, South 89°48'22" East, a distance of 223.02 feet, to the east line of said certain parcel of land and an angle point in the right-of-way line of said Pomeroy Street;

THENCE leaving said south right-of-way line, along said east line and the west right-of-way of said Pomeroy Street, South 00°07'45" West, a distance of 225.00 feet;

THENCE leaving said east line and said west right-of-way line, North 89°48'22" West, a distance of 48.79 feet;

THENCE North 00°00'00" East, a distance of 20.76 feet;

THENCE South 89°47'56" East, a distance of 29.22 feet;

THENCE North 00°11'23" East, a distance of 163.63 feet;

THENCE North 89°44'03" West, a distance of 19.62 feet;

THENCE North 00°07'41" West, a distance of 19.26 feet;

THENCE North 89°47'12" West, a distance of 321.93 feet;

THENCE South 00°20'17" West, a distance of 19.32 feet;

THENCE North 89°42'26" West, a distance of 19.76 feet;

THENCE South 00°11'39" West, a distance of 154.05 feet;

THENCE North 90°00'00" West, a distance of 1.69 feet;

THENCE South 00°00'00" East, a distance of 19.29 feet;

THENCE North 90°00'00" East, a distance of 18.67 feet;

THENCE South 00°11'38" West, a distance of 11.20 feet;

THENCE North 89°48'22" West, a distance of 35.92 feet, to the west line of said certain parcel of land;

THENCE along said west line, North 00°07'45" East, a distance of 225.00 feet;

EXHIBIT A-1 - LEGAL DESCRIPTION OF POMEROY PARCEL

Parcel Description
The Grid
Parcel 2 Lease

November 6, 2017
WP# 174663
Page 2 of 4
See Exhibit "A"

THENCE leaving said west line, South 89°48'22" East, a distance of 176.98 feet, to the **POINT OF BEGINNING**.

Containing 17,885 square feet or 0.4106 acres, more or less

Subject to existing right-of-way and easements.

This parcel description was prepared without the benefit of survey field work and is based on the client provided unrecorded ALTA Survey of 34 S. Pomeroy Street, prepared by Alliance Land Surveying LLC, dated April 26, 2017, job number 170416, and other client provided information. Any monumentation noted in this parcel description is based on said ALTA Survey.

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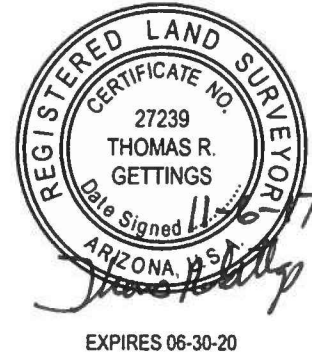


EXHIBIT A-1 - LEGAL DESCRIPTION OF POMEROY PARCEL

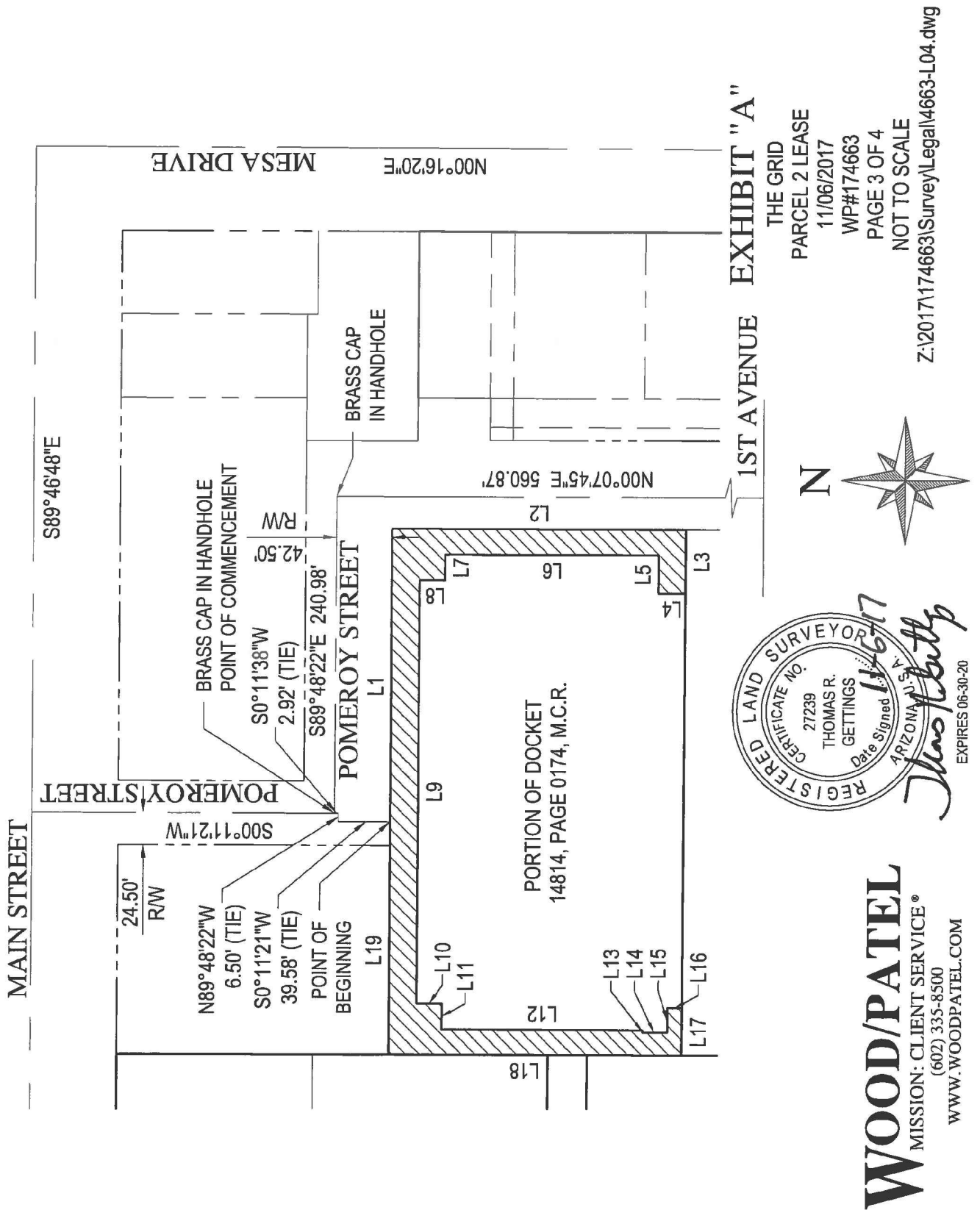


EXHIBIT A-1 - LEGAL DESCRIPTION OF POMEROY PARCEL

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S89°48'22"E	223.02'
L2	S00°07'45"W	225.00'
L3	N89°48'22"W	48.79'
L4	N00°00'00"E	20.76'
L5	S89°47'56"E	29.22'
L6	N00°11'23"E	163.63'
L7	N89°44'03"W	19.62'
L8	N00°07'41"W	19.26'
L9	N89°47'12"W	321.93'
L10	S00°20'17"W	19.32'

LINE TABLE		
LINE	BEARING	DISTANCE
L11	N89°42'26"W	19.76'
L12	S00°11'39"W	154.05'
L13	N90°00'00"W	1.69'
L14	S00°00'00"E	19.29'
L15	N90°00'00"E	18.67'
L16	S00°11'38"W	11.20'
L17	N89°48'22"W	35.92'
L18	N00°07'45"E	225.00'
L19	S89°48'22"E	176.98'



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EXHIBIT "A"
 THE GRID
 PARCEL 2 LEASE
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EXHIBIT A-2
TO GROUND AND AIR RIGHTS LESASE
LEGAL DESCRIPTION OF ROW

EXHIBIT A-2 - LEGAL DESCRIPTION OF ROW

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Revised October 31, 2017
October 27, 2017
WP# 174663
Page 1 of 2
See Exhibit "A"

PARCEL DESCRIPTION **The Grid** **Right-of-Way Abandonment**

A parcel of land lying within Section 22, Township 1 North, Range 5 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the intersection of Pomeroy Street (north) and Pomeroy Street (east), a brass cap in handhole, from which the intersection of Pomeroy Street (west) and Pomeroy Street (south), a brass cap in handhole, bears South 89°48'22" East (basis of bearing), a distance of 240.98 feet;

THENCE South 00°11'38" West, a distance of 2.92 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street;

THENCE along said parallel line, North 89°48'22" West, a distance of 6.50 feet, to a line parallel with and 6.50 feet west of the north/south monument line of said Pomeroy Street, and the **POINT OF BEGINNING**;

THENCE leaving said east/west parallel line, along said north/south parallel line, South 00°11'21" West, a distance of 39.58 feet, to the south right-of-way line of said Pomeroy Street;

THENCE leaving said north/south parallel line, along said south right-of-way line, North 89°48'22" West, a distance of 18.00 feet, to an angle point in the right-of-way line of said Pomeroy Street;

THENCE leaving said south right-of-way line, along the west right-of-way line of said Pomeroy Street, North 00°11'21" East, a distance of 208.09 feet, to the south right-of-way line of Main Street;

THENCE leaving said west right-of-way line, along the easterly prolongation of said south right-of-way line, South 89°46'48" East, a distance of 18.00 feet, to said north/south parallel line;

THENCE along said north/south parallel line, South 00°11'21" West, a distance of 168.51 feet, to the **POINT OF BEGINNING**.

Containing 3,746 square feet or 0.0860 acres, more or less

Subject to existing right-of-way and easements.

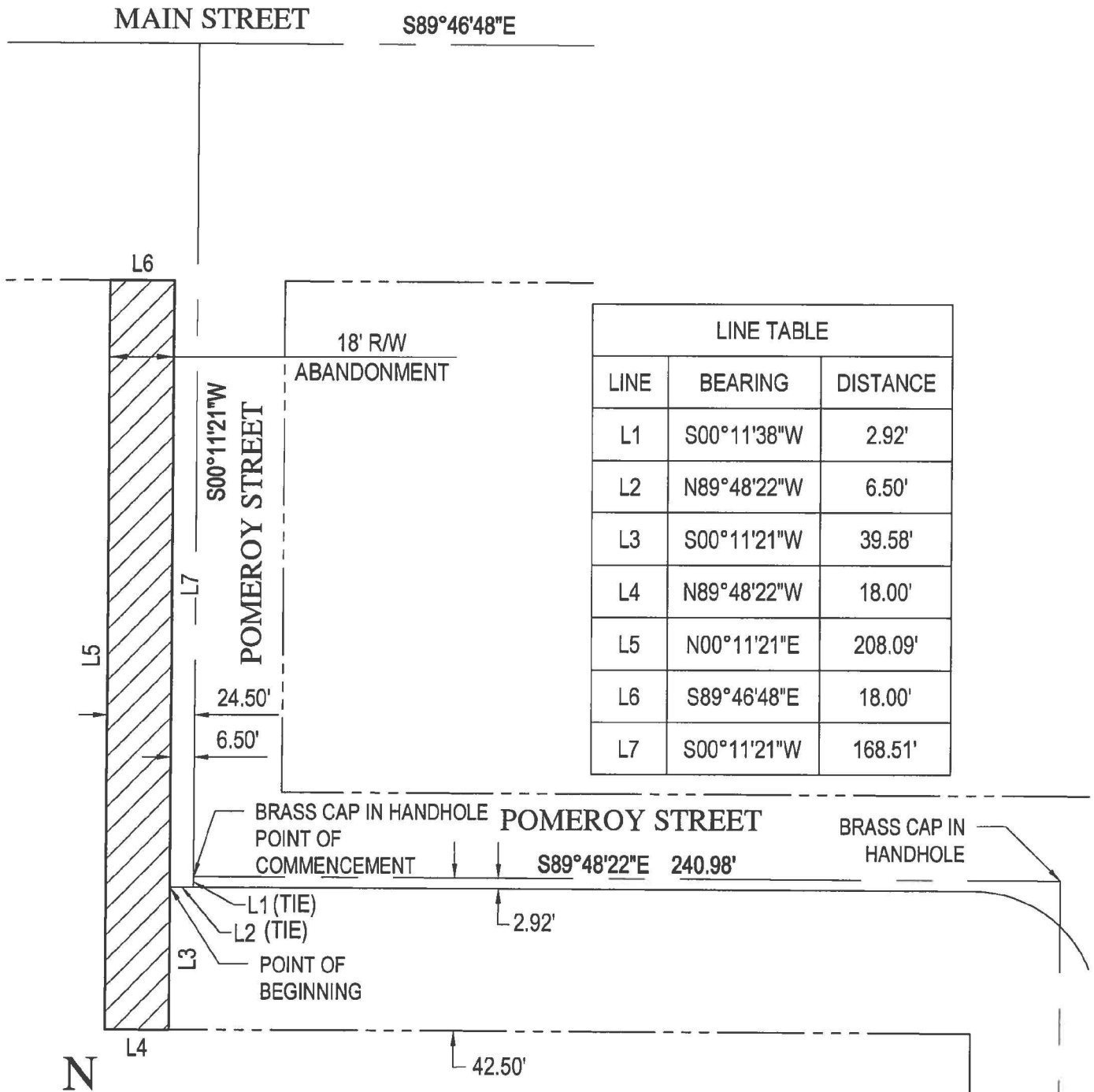
This parcel description was prepared without the benefit of survey field work and is based on the client provided unrecorded ALTA Survey of 34 S. Pomeroy Street, prepared by Alliance Land Surveying LLC, dated April 26, 2017, job number 170416, and other client provided information. Any monumentation noted in this parcel description is based on said ALTA Survey.

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EXPIRES 06-30-20

EXHIBIT A-2 - LEGAL DESCRIPTION OF ROW



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EXHIBIT "A"
 THE GRID
 RIGHT-OF-WAY ABANDONMENT
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EXHIBIT A-2 - LEGAL DESCRIPTION OF ROW

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October 27, 2017
WP# 174663
Page 1 of 3
See Exhibit "A"

PARCEL DESCRIPTION **The Grid** **Right-of-Way Abandonment**

A parcel of land lying within Section 22, Township 1 North, Range 5 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the intersection of Pomeroy Street (north) and Pomeroy Street (east), a brass cap in handhole, from which the intersection of Pomeroy Street (west) and Pomeroy Street (south), a brass cap in handhole, bears South 89°48'22" East (basis of bearing), a distance of 240.98 feet;

THENCE South 00°11'38" West, a distance of 2.92 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street, and the **POINT OF BEGINNING**;

THENCE along said parallel line, South 89°48'22" East, a distance of 217.02 feet, to the beginning of a curve;

THENCE leaving said parallel line, southeasterly along said curve to the right, having a radius of 34.50 feet, concave southwesterly, through a central angle of 89°56'06", a distance of 54.15 feet, to a line parallel with and 10.50 feet east of the north/south monument line of said Pomeroy Street, and the curves end;

THENCE along said parallel line, South 00°07'45" West, a distance of 200.15 feet, to the beginning of a curve;

THENCE leaving said parallel line, southerly along said curve to the right, having a radius of 34.50 feet, concave westerly, through a central angle of 21°21'06", a distance of 12.86 feet, to the curves end;

THENCE South 21°28'51" West, a distance of 18.67 feet;

THENCE North 89°48'22" West, a distance of 25.83 feet, to the west right-of-way line of said Pomeroy Street;

THENCE along said west right-of-way line, North 00°07'45" East, a distance of 225.00 feet, to an angle point in the right-of-way line of said Pomeroy Street;

THENCE leaving said west right-of-way line, along the south right-of-way line of said Pomeroy Street, North 89°48'22" West, a distance of 223.02 feet, to a line parallel with and 6.50 feet west of the north/south monument line of said Pomeroy Street;

THENCE leaving said south right-of-way line, along said parallel line, North 00°11'21" East, a distance of 39.58 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street;

EXHIBIT A-2 - LEGAL DESCRIPTION OF ROW

Parcel Description
The Grid
Right-of-Way Abandonment

October 27, 2017
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THENCE leaving said north/south parallel line, along said east/west parallel line, South 89°48'22" East, a distance of 6.50 feet, to the **POINT OF BEGINNING**.

Containing 17,721 square feet or 0.4068 acres, more or less

Subject to existing right-of-way and easements.

This parcel description was prepared without the benefit of survey field work and is based on the client provided unrecorded ALTA Survey of 34 S. Pomeroy Street, prepared by Alliance Land Surveying LLC, dated April 26, 2017, job number 170416, and other client provided information. Any monumentation noted in this parcel description is based on said ALTA Survey.

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EXHIBIT A-2 - LEGAL DESCRIPTION OF ROW

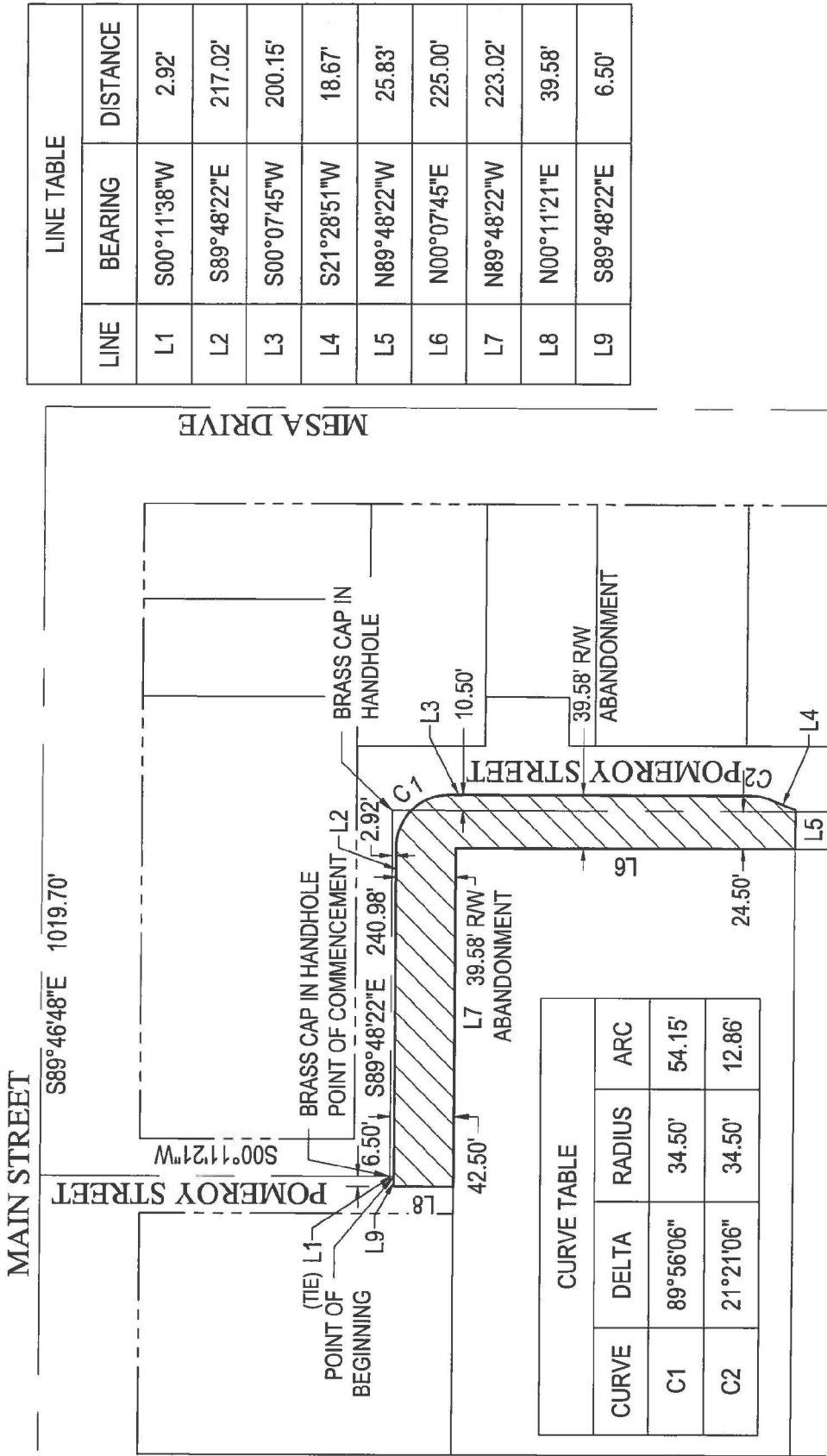
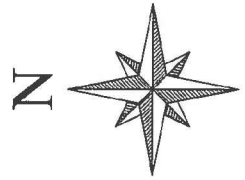


EXHIBIT "A"

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EXHIBIT A-3
TO GROUND AND AIR RIGHTS LESASE

LEGAL DESCRIPTION OF PARCEL OVER WHICH AIR RIGHTS ARE LOCATED

EXHIBIT A-3 - LEGAL DESCRIPTION OF PARCEL OVER WHICH
AIR RIGHTS ARE LOCATED

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PARCEL DESCRIPTION
The Grid
Parcel 2 Air Space Lease

A portion of that certain parcel of land described in Docket 14814, page 0174, Maricopa County Records (M.C.R.), lying within Section 22, Township 1 North, Range 5 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the intersection of Pomeroy Street (north) and Pomeroy Street (east), a brass cap in handhole, from which the intersection of Pomeroy Street (west) and Pomeroy Street (south), a brass cap in handhole, bears South 89°48'22" East (basis of bearing), a distance of 240.98 feet;

THENCE South 00°11'38" West, a distance of 2.92 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street;

THENCE along said parallel line, North 89°48'22" West, a distance of 6.50 feet, to a line parallel with and 6.50 feet west of the north/south monument line of said Pomeroy Street;

THENCE leaving said east/west parallel line, along said north/south parallel line, South 00°11'21" West, a distance of 60.85 feet, to the **POINT OF BEGINNING**;

THENCE South 89°47'12" East, a distance of 183.90 feet;

THENCE South 00°07'41" East, a distance of 19.26 feet;

THENCE South 89°44'03" East, a distance of 19.62 feet;

THENCE South 00°11'23" West, a distance of 163.63 feet;

THENCE North 89°47'56" West, a distance of 29.22 feet;

THENCE South 00°00'00" East, a distance of 20.76 feet;

THENCE North 89°48'22" West, a distance of 315.29 feet;

THENCE North 00°11'38" East, a distance of 11.20 feet;

THENCE South 90°00'00" West, a distance of 18.67 feet;

THENCE North 00°00'00" East, a distance of 19.29 feet;

THENCE North 90°00'00" East, a distance of 1.69 feet;

THENCE North 00°11'39" East, a distance of 154.05 feet;

THENCE South 89°42'26" East, a distance of 19.76 feet;

THENCE North 00°20'17" East, a distance of 19.32 feet;

EXHIBIT A-3 - LEGAL DESCRIPTION OF PARCEL OVER WHICH
AIR RIGHTS ARE LOCATED

Parcel Description
The Grid
Parcel 2 Air Space Lease

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See Exhibit "A"

THENCE South 89°47'12" East, a distance of 138.03 feet, to the **POINT OF BEGINNING**.

Containing 72,115 square feet or 1.6555 acres, more or less

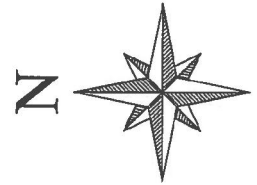
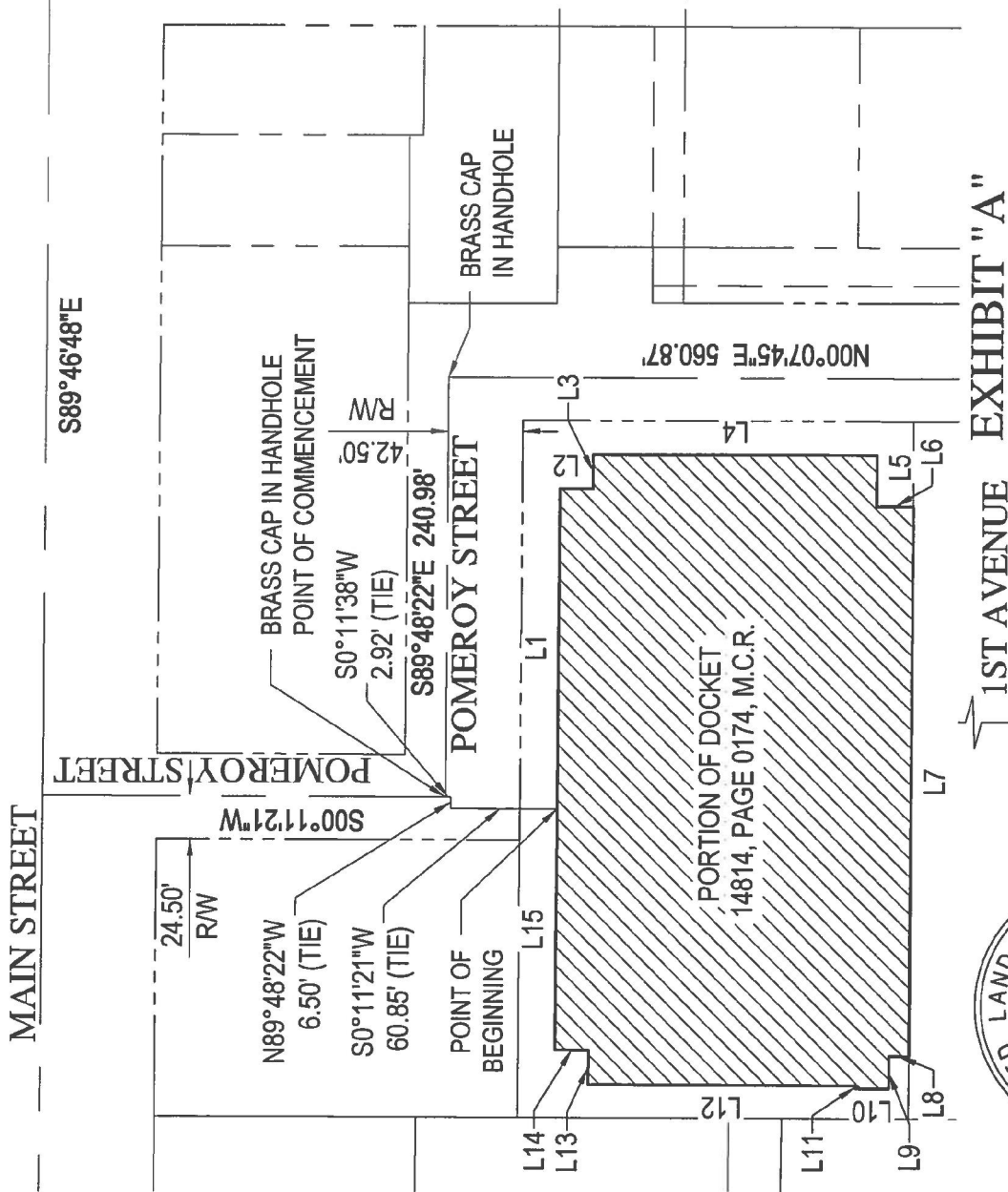
Subject to existing right-of-way and easements.

This parcel description was prepared without the benefit of survey field work and is based on the client provided unrecorded ALTA Survey of 34 S. Pomeroy Street, prepared by Alliance Land Surveying LLC, dated April 26, 2017, job number 170416, and other client provided information. Any monumentation noted in this parcel description is based on said ALTA Survey.

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EXHIBIT A-3 - LEGAL DESCRIPTION OF PARCEL OVER WHICH AIR RIGHTS ARE LOCATED



EXPIRES 06-30-20

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S89°47'12"E	183.90'
L2	S00°07'41"E	19.26'
L3	S89°44'03"E	19.62'
L4	S00°11'23"W	163.63'
L5	N89°47'56"W	29.22'
L6	S00°00'00"E	20.76'
L7	N89°48'22"W	315.29'
L8	N00°11'38"E	11.20'
L9	S90°00'00"W	18.67'
L10	N00°00'00"E	19.29'
L11	N90°00'00"E	1.69'
L12	N00°11'39"E	154.05'
L13	S89°42'26"E	19.76'
L14	N00°20'17"E	19.32'
L15	S89°47'12"E	138.03'

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EXHIBIT A-4
TO GROUND AND AIR RIGHTS LESASE
LEGAL DESCRIPTION OF LAND

EXHIBIT A-4 - LEGAL DESCRIPTION OF LAND

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November 6, 2017
WP# 174663
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See Exhibit "A"

PARCEL DESCRIPTION

The Grid Parcel 1

That certain parcel of land described in Document 2012-0629802, Maricopa County Records (M.C.R.), lying within Section 22, Township 1 North, Range 5 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the intersection of Pomeroy Street (north) and Pomeroy Street (east), a brass cap in handhole, from which the intersection of Pomeroy Street (west) and Pomeroy Street (south), a brass cap in handhole, bears South 89°48'22" East (basis of bearing), a distance of 240.98 feet;

THENCE South 00°11'38" West, a distance of 2.92 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street;

THENCE along said parallel line, North 89°48'22" West, a distance of 6.50 feet, to a line parallel with and 6.50 feet west of the north/south monument line of said Pomeroy Street, and the **POINT OF BEGINNING**;

THENCE leaving said east/west parallel line, along said north/south parallel line, South 00°11'21" West, a distance of 39.58 feet, to the south right-of-way line of said Pomeroy Street;

THENCE leaving said north/south parallel line, along said south right-of-way line, North 89°48'22" West, a distance of 18.00 feet, to an angle point in the right-of-way line of said Pomeroy Street, also being the southeast corner of said certain parcel of land, and the **POINT OF BEGINNING**;

THENCE leaving said south right-of-way line, along the south line of said certain parcel of land, North 89°48'22" West, a distance of 158.98 feet, to the southwest corner of said certain parcel of land;

THENCE leaving said south line, along the west line of said certain parcel of land, North 00°07'45" East, a distance of 208.16 feet, to the northwest corner of said certain parcel of land, also being the south right-of-way line of Main Street;

THENCE leaving said west line, along the north line of said certain parcel of land and said south right-of-way line, South 89°46'48" East, a distance of 159.20 feet, to the northeast corner of said certain parcel of land;

EXHIBIT A-4 - LEGAL DESCRIPTION OF LAND

Parcel Description
The Grid
Parcel 1

November 6, 2017
WP# 174663
Page 2 of 3
See Exhibit "A"

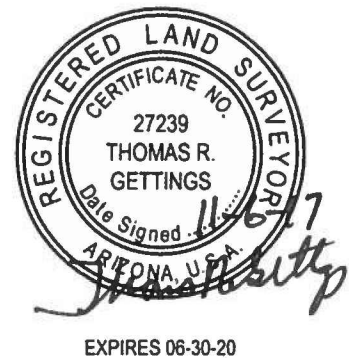
THENCE leaving said north line and said right-of-way line, along the east line of said certain parcel of land and the west right-of-way line of Pomeroy Street, South 00°11'21" West, a distance of 208.09 feet to the **POINT OF BEGINNING**.

Containing 33,110 square feet or 0.7601 acres, more or less

Subject to existing right-of-way and easements.

This parcel description was prepared without the benefit of survey field work and is based on the client provided unrecorded ALTA Survey of 34 S. Pomeroy Street, prepared by Alliance Land Surveying LLC, dated April 26, 2017, job number 170416, and other client provided information. Any monumentation noted in this parcel description is based on said ALTA Survey.

Y:\WP\Parcel Descriptions\2017\174663 The Grid Parcel 1 L03 11-06-17.docx



MAIN STREET
S89°46'48"E

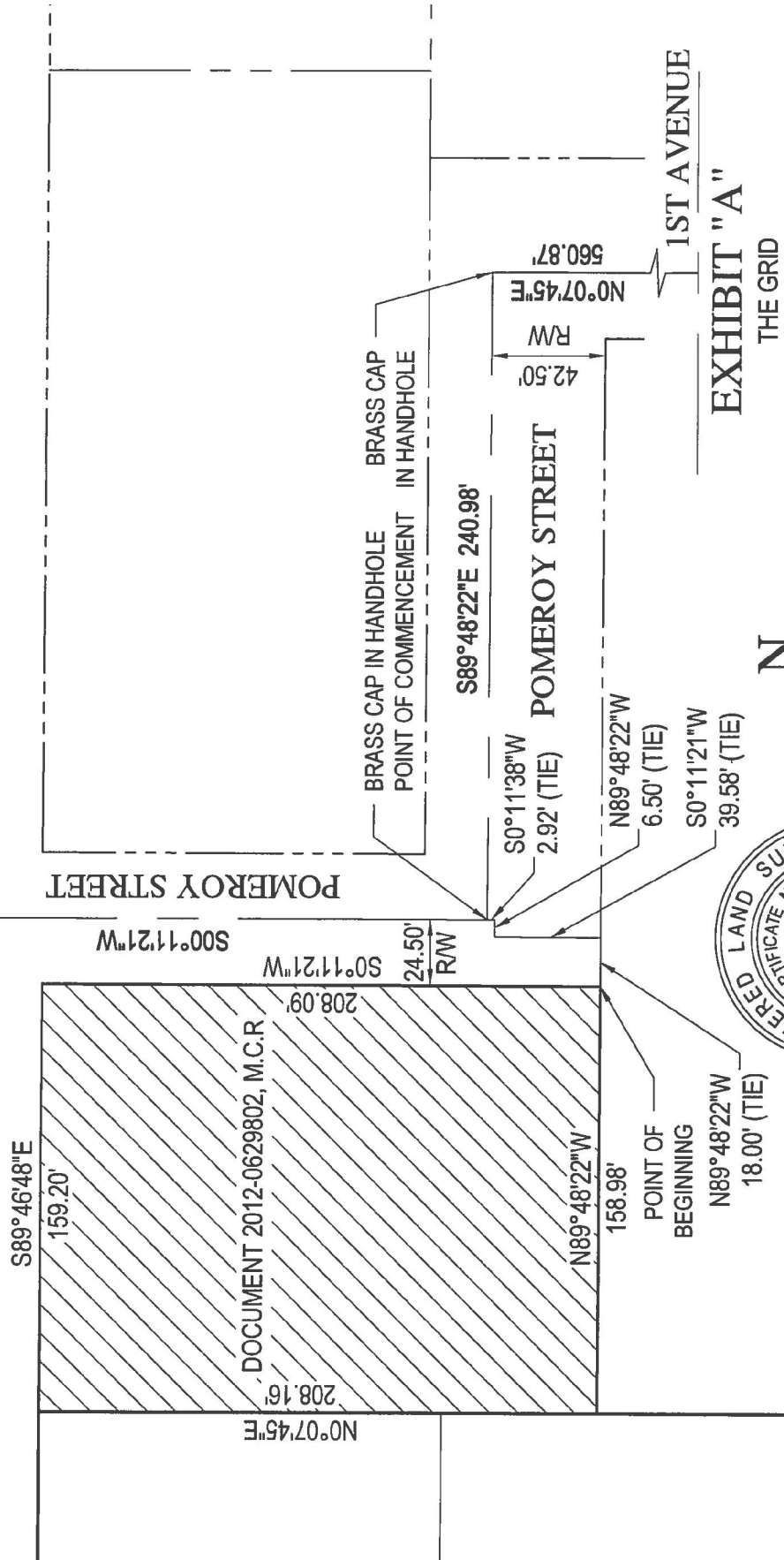


EXHIBIT "A"

THE GRID

PARCEL 1

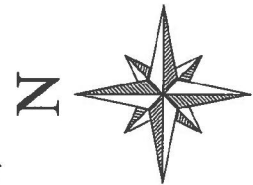
11/06/2017

WP#174663

PAGE 3 OF 3

NOT TO SCALE

Z:\2017\174663\Survey\Legal\4663-L03.dwg



EXPIRES 06-30-20

WOOD/PATEL
MISSION: CLIENT SERVICE®

MISSION: CLIENT SERVICE®

(602) 335-8500

WWW.WOODPATEL.COM

EXHIBIT A-5
TO GROUND AND AIR RIGHTS LESASE
GENERAL DEPICTION OF LEASED AREA

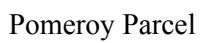
[illegible]

EXHIBIT A-6
TO GROUND AND AIR RIGHTS LESASE
DEPICTION OF PUBLIC ACCESS AREAS

[illegible]

EXHIBIT B
TO GROUND AND AIR RIGHTS LESASE
LICENSE AGREEMENT

LICENSE AGREEMENT

This License Agreement (the "Agreement") is entered into as of this ____ day of _____, 2018 (the "Effective Date" of this Agreement), by and between the City of Mesa, an Arizona municipal corporation ("Licensor") and _____ LLC, an Arizona limited liability company ("Licensee"). Each of Licensor and Licensee may be referred to in this Agreement as a "Party," or collectively as the "Parties."

RECITALS

A. Licensor is the owner of that certain real property located in Maricopa County, Arizona, a portion of which has been leased to Licensee (as "Tenant" named therein) by Licensor (as "Landlord" named therein) pursuant to the terms of a ground and air rights lease executed and dated concurrently with this Agreement (the "Lease"). The portion of Licensor's real property that has been leased to Licensee pursuant to the Lease is referred to in this Agreement as the "Premises."

B. Licensor additionally is the owner of a public parking garage ("Garage") on real property that is adjacent to a portion of the Premises. A portion of the Premises consists of the "air rights" above the Garage. Whereas Licensor will remain the owner and operator of the Garage, Licensee now assumes certain maintenance, repair, and other obligations as set forth in this Agreement.

C. Licensor (as "City" named therein) and Licensee (as "Developer" named therein) are also parties to a development agreement dated November __, 2018 (the "Development Agreement") in which Licensor and Licensee have undertaken certain obligations with respect to the development of the Premises by Licensee (as Developer), which includes certain improvements required to be made by Licensee (as Developer) to the Garage at Licensee's sole cost and expense.

D. Licensee requires access to the Garage during the term of the Lease in order to accomplish its construction obligations under the Development Agreement, and to provide parking in connection with its operation and subleasing of the Premises pursuant to the Lease.

E. Licensor has agreed to grant to Licensee, and Licensee desires to receive from Licensor, an irrevocable, nonexclusive (subject, however, to the terms of this Agreement), non-delegable license on, over and across the Licensed Area (as defined below) for the purpose of using the Licensed Area for (i) certain construction work required by the Development Agreement, (ii) parking only of non-commercial automobiles and motorcycles (no boats, jet skis, trailers, etc.), and (iii) maintenance and other reasonably related purposes (including but not limited to required repairs and replacements) in connection with Licensee's permitted use of the Premises pursuant to the Lease (collectively, the "Licensed Activities"), subject to the terms, conditions and limitations set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grant of License. Licensor hereby grants to Licensee an irrevocable, non-exclusive (subject, however to the terms of this Agreement), non-delegable license upon, over and across those portions of the Garage depicted on Exhibit A (the “Licensed Area”) to the extent reasonably necessary or appropriate for the Licensed Activities to be conducted or performed on or at the respective Licensed Area (collectively, the “License”).

2. Term of Agreement. The License granted by this Agreement is effective from and after the date of this Agreement, and the term of this Agreement is concurrent with the Lease. In the event that Licensee (as Tenant named in the Lease) exercises its option granted in the Lease to purchase the Premises, then the License granted by this Agreement will be deemed to run with the land in perpetuity, and the obligations of Licensee as set forth and described in this Agreement will thereupon be fully and automatically assumed by the fee owner upon the transfer of title.

3. Not a Lease; Encumbrances Prohibited. This Agreement constitutes a license with respect to the Licensed Activities in the Licensed Area, and not a lease or other interest in real property. Licensee will not permit or allow to be placed any lien, charge or encumbrance of any nature on the Garage or any portion of the Licensed Area and will keep the Licensed Area free and clear of all liens and encumbrances.

4. Relationship to Development Agreement and Lease. Pursuant to the Development Agreement, Licensee has certain construction obligations with respect to the Licensed Area, and those obligations are governed in all respects by the Development Agreement. Licensee’s obligations with respect to its use and maintenance of the Licensed Area are governed solely by this Agreement.

5. Licensed Activities. Licensee is permitted to conduct and perform only the Licensed Activities described in Exhibit B, and only with respect to the applicable Licensed Areas depicted on Exhibit A. Although Licensee is not required to cause its subtenants and sublicensees to use all of the Spaces (as defined in this Agreement), Licensee is obligated to make all payments required by Section 10 of this Agreement; and all other Licensed Activities described in this Agreement are mandatory, and not permissive.

6. Parking. Parking in the Garage is permitted only in designated “striped” stalls or spaces (each, a “Space”; or collectively, “Spaces”). Subject to the payment by Licensee of the License Fee and Licensee’s compliance with all other terms and conditions of this Agreement, parking by Licensee and its sublicensees is permitted pursuant to this Agreement in those Spaces described on Exhibit C to this Agreement (each, a “Licensed Space”; or, if more than one, the “Licensed Spaces”). Parking in the Licensed Spaces is permitted only for non-commercial automobiles and motorcycles; the parking of trailers, commercial vehicles, boats, jet-skis and similar motorized forms of transportation are expressly prohibited in the Garage. No vehicle

may be parked or maintained in the Garage pursuant to this Agreement as a form of advertising for any subtenant or sublicensee of Licensee.

(a) Licensors retains the right to all Spaces except the Licensed Spaces described on Exhibit C (“City Spaces”). Licensee may sublicense the Licensed Spaces only to Licensee’s permitted residential and commercial subtenants existing under the Lease. Nothing in this Agreement is intended to restrict the use of Licensed Spaces by commercial invitees of Licensee and its subtenants at the Premises.

(b) Licensee, at its sole cost and expense, may construct, and thereafter operate and maintain, an entry “gate” or similar control device (the “Gate”), to restrict entry to the Licensed Spaces to Licensee’s sublicensees. The Gate will be placed within the Garage at a location agreed by Licensors and Licensee that does not restrict or impede Licensors’s access to the City Spaces. Any Spaces within the Garage that are used (in whole or in part) for the placement and maintenance of the Gate, turn-around areas, and other purposes related to the design and placement of the Gate, will be included within the number of Licensed Spaces allocated to Licensee and subject to the Licensee Fee described in Section 8.

(c) Not more than five (5) months nor less than three (3) months before each anniversary date of this Agreement, Licensee may submit a request to Licensors for reallocation of the Licensed Spaces, which reallocation may reduce the number of Licensed Spaces subject to this Agreement, but may not increase the number of Licensed Spaces subject to this Agreement. The reallocation may be approved by the City Manager (or designee) on behalf of the Licensors. Following Licensors’s approval of the requested reallocation, which approval will not be unreasonably withheld, Licensee will be responsible, at its sole cost and expense, for relocating the Gate to a location approved by Licensors that reflects the reduced number of Licensed Spaces allocated to Licensee. The cost of such relocation must include all required repairs to the Garage caused by the removal of the existing Gate, including (but not limited to) restriping of the affected Spaces. The reallocation will be deemed effective on the applicable anniversary date of this Agreement. In the event that Licensee does not submit a timely request for reallocation of the Licensed Spaces, the number of Licensed Spaces allocated to Licensee will remain the same as the allocation for the previous year.

(d) Notwithstanding the foregoing, Licensee is not permitted to reduce its number of allocated Licensed Spaces below one hundred and fifty (150) Spaces.

(e) Licensee may charge its sublicensees a sublicense fee for each Licensed Space.

7. Construction and Maintenance within Licensed Area. Licensee accepts the Licensed Area in its current “as-is”, “where-is” condition, with all faults, whether latent or patent. Licensee will cause all required construction within the Licensed Area to be completed at Licensee’s sole cost and expense, and in accordance with the Development Agreement. Thereafter, Licensee will maintain the Licensed Area during the term of this Agreement at Licensee’s sole cost and expense, in good condition and repair (including all repairs and replacements) and in accordance with all requirements of the Approved Plans (as defined in the Development Agreement) and all applicable laws, including Hazardous Materials Laws (as

defined in the Lease). Further, Licensee will be solely responsible for: (i) all structural repairs, replacements, and structurally related maintenance costs for the Garage and Licensed Areas, which will include, but is not limited to, all pillars, walls, and ramps for exiting Garage on all levels; (ii) all repair and replacement costs for the stairwells and elevators. Licensors will only be obligated to repair and maintain the non-structural improvements in the basement of the Garage and to make routine repairs (i.e., normal wear and tear) in areas of the Garage that are not licensed to Licensee under this Agreement.

8. Security. Licensee acknowledges and understands that the Licensors provides no security at or for the Garage and agrees that the Licensors will have no obligation to provide security at the Garage. In the event that Licensors elects, in its sole discretion, to provide security for the basement or any other portion of the Garage, it will do so solely for the benefit of Licensors, and Licensors's employees and invitees, and Licensee and Licensee's employees, agents, contractors, subtenants, sublicensees and invitees are not (and will not be) either intended or unintended beneficiaries of such security measures and are not authorized to rely on such security. Licensee is solely responsible, at its sole cost and expense, for: (i) the security for Licensee's, and Licensee's subtenants' and sublicensees', employees, agents, clients, and invitees at the Garage; (ii) the security for the personal property (including all vehicles) of Licensee, and of Licensee's subtenants and sublicensees, and their employees, agents, clients, and invitees at the Garage; and (iii) the security of third parties and users of the Garage to the extent such security-related events or incidents arise or are related to Licensee's, or Licensee's subtenants' or sublicensees' (including their employees, agents, clients, and invitees) use of the Garage. Licensee will ensure that it, and its tenants and subtenants (including their employees, agents, clients, and invitees) use the Property in a safe and secure manner and in compliance with all applicable laws. Licensors agrees Licensee, at its sole cost and expense, may implement security measures at the Garage provided that Licensee gives reasonable prior notice to Licensors if such measures involve the installation of improvements at the Garage; and further provided that no such security measures implemented by Licensee will restrict or impair the right of Licensors and the public to use those portions of the Garage that are not subject to the exclusive use granted to Licensee by this Agreement. In addition to, and without limiting any other indemnity in this Agreement, Licensee will indemnify, defend, pay and hold Licensors and its City Council members, officers and employees harmless for, from and against any and all claims or damages (including, but not limited to, injury and death to persons and loss of or damage to property) arising from or related to Licensee's, or its subtenants' or sublicensees', employees', agents', clients', and invitees' use of the Garage or the security at the Garage (including, but not limited to, adequacy of security, lack of security, and types of security installed).

9. Reserve Fund. Licensee will pay into and fund an account for the payment of anticipated capital repair and replacement costs for Licensee's required maintenance of the Licensed Area (the "Reserve Fund"). The Reserve Fund will not be used by Licensee to pay routine and regular maintenance costs or costs of repairs or replacements under \$5,000.00 per event or item, as applicable.

(a) Promptly following completion of Licensee's required construction within the Licensed Area, but before the use of the Licensed Area by Licensee's sublicensees, Licensee will deposit the sum of \$25,000.00 (the "Initial Deposit") into the Account (as defined below),

which amount must be maintained in the Account until the fifth (5th) anniversary of the Effective Date.

(b) Thereafter, on the fifth (5th) anniversary of the Effective Date, and for each of the next four (4) years, Licensee will deposit \$5,000.00 into the Account (the “Annual Deposit”). Thereafter, on the tenth (10th) anniversary of the Effective Date, and each fifth anniversary thereafter, Licensor and Licensee will review the repair and replacement history of the Licensed Area for the previous five (5) years and reasonably determine whether the amount of the Annual Deposit should be increased; and if the Parties so determine, the Annual Deposit will be as determined by the Parties until the next fifth anniversary. Any change in the amount of the Annual Deposit may be approved by the City Manager (or designee) on behalf of the Licensor.

(c) At no time will the Account be funded in an amount less than the Initial Deposit.

(d) The Account will be maintained by Licensee in a federally chartered bank or a bank licensed by the State of Arizona, as reasonably approved by Licensor, and all withdrawals will require the signatures of authorized representative of both Licensor and Licensee. Licensee will cause statements of the Account to be delivered to Licensor not less frequently than annually.

(e) Licensor will reasonably approve all withdrawals from the Account for approved capital repairs and replacements upon delivery to Licensor of a statement from Licensee describing the capital repair and replacement and including bids or estimates from the entity proposed to make the capital repair or replacement. Upon completion of the capital repair or replacement in accordance with the request and Licensor’s approval, and the delivery of a statement or certification that the work has been completed, Licensor will co-sign a check from the Account (or otherwise approve a withdrawal or debit from the Account) to the vendor in the authorized amount. In no event will Licensor be required to deposit any monies into the Account, and any shortfall will be paid solely by Licensee. In the event that Licensor reasonably determines that any capital repair or replacement is governed by any applicable public bidding or similar requirements, Licensee will comply with all such requirements at Licensee’s sole cost and expense.

10. License Fee. In consideration of Licensee’s construction of the Licensed Area Improvements in and on the Licensed Areas as required by the Development Agreement, and Licensee’s maintenance of the Licensed Area at Licensee’s sole cost and expense during the term of this Agreement, Licensee will pay a monthly fee to Licensor for the License (the “License Fee”) as set forth in Exhibit D.

11. Open to the Public; Non-Exclusive Use by Licensee. Subject to reasonable periods of closure for maintenance and repair (such as re-striping or re-surfacing of the parking and drive areas), and Licensee’s exclusive right to use and sublicense the designated licensed Spaces, the Licensed Area will at all times be open to the public, and Licensee’s use of the Licensed Areas is non-exclusive. Licensee acknowledges that the basement floor of the Garage is restricted, and Licensee’s access to the basement floor of the Garage is limited solely to

construction required by the Development Agreement, and structural repairs required by this Agreement.

12. Utility Fees and Services. Licensee, at Licensee's sole cost and expense, and during the term of this Agreement, will provide all utility services required for the Licensed Areas (excluding the basement of the Garage) and will pay, before delinquency, all charges (including but not limited to any deposits) for utilities so provided. To the extent practicable, all utilities provided to the Licensed Areas will be metered separately from utilities provided to the basement of the Garage; but electric service for existing (that is, in place and in operation as of the Effective Date) components (e.g., lighting) in the Garage, will be paid by Licensor. Electrical service for new components (e.g., completed by Licensee pursuant to the terms of the Development Agreement, and particularly including (and not limited to) all elevators in the Garage, will be paid solely by Licensee. Licensor will not be liable in damages or otherwise for any failure or interruption of any utility services to the Licensed Area.

13. Insurance; Indemnity.

(a) Throughout the term of this Agreement, Licensee will procure and maintain, at its sole cost and expense, insurance against claims for injuries to person or damages to property which may arise from or in connection with the use by Licensee of the Licensed Area and Garage, and the obligations set forth in the Agreement including, but not limited to, the maintenance and repair obligations and indemnity obligations of this Agreement. The terms and coverages for the insurance will be as set forth in Exhibit E to this Agreement.

(b) In addition, Licensee will pay, defend, indemnify and hold harmless Licensor and its City Council members, officers and employees from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and court costs associated with such matters; all of the foregoing, collectively, "Claims") imposed upon or asserted against Licensor, its agents, representatives, officers, directors, elected or appointed officials, and employees, by reason of any of the following: (i) any act or omission by Licensee, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Licensee's obligations under this Agreement ; (ii) any use or nonuse of, or any condition created by Licensee on or at the Garage or any part thereof; (iii) any accident, injury to or death of persons (including workmen) or loss of or damage to property occurring on or about the Garage or any part thereof caused or created in whole or in part by Licensee or its employees, contractors, subcontractors, agents, representatives, sublicensees or subtenants under the Lease (and invitees of any of the foregoing); (iv) performance of any labor or services or the furnishing of any materials or other property with respect to the Garage or any part thereof relating to an obligation of Licensee under this Agreement; (v) any failure on the part of Licensee to comply with Hazardous Materials Laws; and (vi) all Claims relating to or arising from design, construction and structural engineering acts or omissions related in any way to, of or in connection with, the existing Garage, and all subsequent design, construction, engineering and other work and improvements by or on behalf of Licensee (collectively, "Indemnity"). Licensee's obligations of Indemnity will survive the expiration or earlier termination of this Agreement; but the obligations of Indemnity expressly exclude criminal acts by third parties that occur in the Garage other than theft of or damage to property in the Mail Room and in any portion of the Licensed Area

provided for bicycle parking and storage. For the purposes of the foregoing sentence, “criminal acts by third parties” do not include criminal acts committed by, upon or involving Licensors (as Tenant named in the Lease) subtenants at the Premises or Licensee’s sublicensees, or any invitees or such subtenants or sublicensees.

14. Storage and Nuisances Prohibited. The Licensed Area will not be used for the storage of vehicles, equipment or materials; provided, however, that nothing in this Agreement will be deemed to prohibit secure bicycle parking for Licensee’s subtenants and sublicensees. All vehicles parked in the Garage must be fully operational. Licensee will not use the Licensed Area, nor permit the Licensed Area to be used in a manner that creates or causes to be created nuisances or hazards to the public health or safety.

15. Permits. Licensee will, at its sole cost and expense, obtain all permits, licenses and authorizations which may be required by Licensors or any other governmental authorities with respect to the Licensed Activities. Licensee will not engage in or permit any conduct in the Licensed Area which violates any law, ordinance, permit or governmental regulation, or which violates the terms of this Agreement.

16. Default. If Licensee fails to pay any sum due under this Agreement promptly when due and such failure continues for ten (10) days after notice thereof in writing to Licensee, or if Licensee fails to perform or comply with any of the other agreements, conditions or undertakings of this Agreement and such default continues for thirty (30) days after notice thereof in writing to Licensee (each, a “Default”), Licensors will have the right, at its election, to seek any remedy available to Licensors under the Development Agreement or the Lease. Notwithstanding the foregoing, a Default of this Agreement by Licensee will be a breach or default both of the Lease and of the Development Agreement, and a breach or default of either the Lease by Tenant or the Development Agreement by Developer will be a breach of this Agreement; and notice of such breach or default under either the Lease or the Development Agreement, sent either to the Tenant named in the Lease or the Developer named in the Development Agreement, as applicable, and in accordance with the “Notice” provisions of the Lease or the Development Agreement, as applicable, will, without further act or notice required, constitute Notice to Licensee of a Default of this Agreement.

17. Attorneys’ Fees. In the event of any litigation or other legal proceedings between the Parties, the prevailing Party as determined by the court, will be entitled to the payment by the non-prevailing Party of its reasonable attorneys’ fees, court costs and litigation expenses, as determined by the court. In no event will Licensors or Licensee (or their respective successors or permitted assigns) be liable for any special, consequential, incidental, punitive or exemplary damages.

18. No Partnership; Assignment. It is not intended by this Agreement to, and nothing contained in this Agreement will, create any partnership, joint venture, landlord-tenant or similar arrangement between the Parties, other than that of Licensors and Licensee. No term or provision of this Agreement is intended to, or will, be for the benefit of any person, firm, organization or corporation not a party to, and no such other person, firm, organization or corporation will have any right or cause of action hereunder. Other than in connection with a permitted transfer under the Lease of Licensee’s entire leasehold interest in the Premises, and an express assumption by

an assignee of all of Licensee's obligations under this Agreement, Licensee may not assign its rights under this Agreement or grant to any other person the right to utilize the Licensed Area (other than Licensee's permitted residential sublicensees) without the prior written consent of Licensors, which consent Licensors may grant or withhold in its sole discretion.

19. Descriptive Headings. The captions used in this Agreement are for reference only and are not to be construed as a part of this Agreement.

20. Applicable Law. This Agreement will be governed by, and construed in accordance with, the substantive laws of the State of Arizona without giving any effect to the principles of conflicts of law.

21. Incorporation of Recitals and Exhibits. Each of the recitals set forth above and each of the exhibits attached hereto are hereby incorporated into this Agreement and made a part hereof. Subject in all events to Licensee's obligations under the Development Agreement and the Lease, this Agreement constitutes the entire Agreement between Licensors and Licensee pertaining to the use of the Licensed Area and the grant of the License and supersedes all prior agreements, understandings and representations with respect thereto. This Agreement may not be modified, amended, supplemented or otherwise changed except by a writing executed by both Licensors and Licensee. Licensee agrees, acknowledges and understands that certain amendments to this Agreement may require the approval of the City Council acting in its sole discretion.

22. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together will constitute one in the same instrument.

23. Severability. If any term, provision or covenant contained in this Agreement will, to any extent, be invalid or unenforceable, the remainder of this Agreement will not be affected thereby, and each term, provision and condition hereof will be valid and enforceable to the fullest extent permitted by law.

24. Notices. All notices, demands, requests, consents, approvals and other communications required or permitted in this Agreement (each, a "Notice"), will be in writing and will be deemed to have been given upon personal delivery to the respective Party, after delivery by personal service or a nationally recognized overnight courier service (e.g., UPS, Federal Express), or within three (3) days after the same has been mailed by registered or certified mail, postage prepaid and return receipt requested, at the address shown below:

To Licensee:

With a copy to:

3W Management, LLC
Attn: Tony Wall
7349 N. Via Paseo del Sur, Suite 515
Scottsdale, Arizona 85258

With a copy to: AZ Strategies LLC
Attn: Karrin Taylor Robson
3344 East Camelback Road, Suite 100
Phoenix, Arizona 85018

With a copy to: Gallagher & Kennedy, P.A.
Attn: Dana Stagg Belknap
2575 East Camelback Road
Phoenix, Arizona 85016

If to Licensor: City of Mesa
Attn: City Manager
20 East Main Street
Mesa, Arizona 85211

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

and

City of Mesa
Attn: Downtown Transformation Manager
20 East Main Street
Mesa, Arizona 85211

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

With a copy to: City of Mesa
Attn: City Attorney
20 East Main Street, Suite 850
Mesa, Arizona 85201

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

or at such other address as either Party may from time to time designate in writing to the other.

25. No Recordation. The Parties agree that this Agreement may not be recorded in the Official Records of Maricopa County, Arizona, and the recordation of this Agreement by either Party will be a Default of this Agreement by such Party.

26. Conflict of Interest Statute. This Agreement is subject to, and may be terminated by Licensors in accordance with, the provisions of A.R.S. §38-511.

27. No Boycott of Israel. Licensee certifies pursuant to A.R.S. §35-393.01 that it is not currently engaged in, and for the duration of this Agreement will not engage in, a boycott of Israel.

IN WITNESS WHEREOF, Licensors and Licensee have executed this Agreement as of the date first written above.

LICENSOR:

THE CITY OF MESA, an Arizona municipal corporation

By: _____

Name: _____

Title: _____

LICENSEE:

_____ LLC, an Arizona limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A
TO LICENSE AGREEMENT
DEPICTION OF LICENSED AREA

[illegible]

- 15 Nov 17

EXHIBIT B
TO LICENSE AGREEMENT

DESCRIPTION OF LICENSED ACTIVITIES

EXHIBIT B
Description of Licensed Activities

<u>Licensed Area</u> (portion of Garage)	<u>Licensed Activity Permitted</u>
Basement floor	Structural, mechanical and plumbing improvements required by the Development Agreement to support and service the addition of four stories of residential development and landscaping above the Garage; thereafter, all required repairs and replacements (including but not limited to structural repairs and replacements) as reasonably determined by Licensor. Access for routine maintenance and parking is prohibited.
First floor; ramp to second floor; second floor; ramp to third floor; third floor	Structural, mechanical and plumbing improvements required by the Development Agreement to support and service the addition of four stories of residential development and landscaping above the Garage; restriping of parking stalls; thereafter, all required maintenance, repairs and replacements (including but not limited to structural repairs and replacements) as reasonably determined by Licensor. Construction, operation and maintenance of an entry gate on an upper level to restrict access to higher floors to permitted sublicensees. Parking by Licensee's subtenants is permitted in accordance with Exhibit C.
Roof	Structural, mechanical and plumbing improvements required by the Development Agreement to support and service the addition of four stories of residential development and landscaping above the Garage; thereafter, all required maintenance, repairs and replacements (including but not limited to structural repairs and replacements) as elected by Licensee or reasonably determined by Licensor.
Mail Room	Ownership and maintenance of United States Postal Service approved mailboxes for Licensee's subtenants in the Premises;

	ownership and maintenance of private delivery service lockers or similar systems (e.g., Amazon® Hub®) which may be in an enclosed, secured room built within the ground level of the Garage; all improvements owned and maintained solely by Licensee.
Trash Compactor and Sanitation Yard	Ownership, maintenance and continuous operation (including collection) of a trash compactor, recycling dumpster, grease trap interceptor (or similar devices as may be reasonably approved by Licensor as technologies develop) in the area of the Garage depicted in Exhibit A-2, including all repair and replacement of the compactor (or similar device); all clean-up costs beyond normal trash collection. This Licensed Activity is subject to all City of Mesa Ordinances, rules, terms and conditions applicable to solid waste maintenance, collection and pick up, as the same may be amended from time-to-time. The use of these facilities may be shared with the City Courts of the City of Mesa, as Licensor may elect.
Row Home Entry Points	Licensee will have the right to modify exterior enclosing walls to allow direct access (for vehicles and pedestrians) from the existing Garage to the new garage, from the Garage to the mail room, from the mail room to the new building, and from the Garage to the row homes (individually or in common). Licensee will have the right to physical access to the Garage at all of these locations (and similar locations as reasonably determined by Licensor).
Secure Bicycle Parking and Storage	Throughout the Garage, Licensee may install secure bicycle parking and storage. This may take the form of lockers, elevated locking racks, enclosed areas or as reasonably determined by Licensor.
Stairwells	Licensee will have the right to: (i) remove and replace the existing stair wells at the southwest and southeast corners of the garage (the new stair wells may also include mechanical and sanitation

	<p>facilities); (ii) remove all staircases from the basement level and replace them with staircases in common, but secured from the upper levels at the southwest and southeast corners; (iii) remove the staircases at the northeast and northwest corners and not replace them; (iv) add a new staircase (owned by Licensee) with City/public access to levels 1-3 north of the existing staircase in the northwest corner (outside of but proximate to the Licensed Area); (v) add a staircase (owned by Licensee) (outside of but proximate to the Licensed Area) with City/public access to levels basement-3 at the mid-point north of the garage (this staircase must be secured at the basement level); and (vi) remove the staircase at the midpoint of the west end of the garage and replace it with vehicular or bicycle parking. All of the staircases may also be used by the Licensee to provide access to the residential and landscape areas above the garage (such access may be secured by the Licensee). All City/public access to staircases owned by Licensee will be solely for the benefit of the public properly using the parking garage facility. See Exhibit E-2 to the Development Agreement (“Stairwell Access and Elevator Improvements”) for approximate locations.</p>
Elevators	<p>Licensee will provide an elevator, outside of but proximate to the Licensed Area, with City/public access to levels basement-3 at the mid-point north of the garage. This access will be solely for the benefit of the public properly using the parking garage facility. This elevator will owned by the Licensee and must be secured at the basement level. The elevator may also be used by the Licensee to provide access to the residential and landscape areas above the Garage. Such access may be secured by the Licensee.</p>
Southern boundary (exterior of Garage)	<p>Licensee may use the area south of the garage for support columns for Sky Apartments (as defined in the Development</p>

	Agreement). Licensee may also use the same area (above the existing Garage) for shade devices and architectural embellishments as reasonably determined and approved by Licensor. These areas will not be included in the leasable area of the Premises.
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EXHIBIT C
TO LICENSE AGREEMENT
DESCRIPTION OF SPACES

EXHIBIT C

Description of Spaces

The number and location of the Licensed Spaces are as described in this Exhibit; however, after the completion of the improvements to the Pomeroy Parking Garage (the “Garage”) and the construction by Licensee of a new parking garage on the leased Premises (the “New Garage”), the Parties will create a detailed depiction of the parking spaces to show where the Licensed Spaces, City Spaces (and other improvements) are located.

The Garage has 596 spaces on levels 1 through 3 (the basement spaces are exclusively for Licensor’s use and are not being licensed). Licensee is licensed 339 spaces subject to the following reduction in spaces: Licensee will be making certain improvements to the Garage (such as adding support columns for improvements above the Garage), and these improvements will reduce the current number of spaces in the Garage. For every space lost (below 596) in the Garage (levels 1-3) due to construction, improvements, and re-stripping, the number of Licensed Spaces will be reduced on a one-for-one basis. By way of example, if after the construction, improvements, and re-stripping to the Garage there are 556 spaces on levels 1-3 (a loss of 40 spaces), then the Licensed Spaces would be 299 ($339 - 40 = 299$). After the construction, improvements, and re-stripping, the Parties shall agree upon the number of Licensed Spaces. As to parking in the Garage and the New Garage and the location of certain spaces, the Parties further agree:

Garage

1. Ten (10) of the Licensed Spaces will be located on the east end of the ground level of the Garage and will be for exclusive use by the Grid Rowhomes.
2. Ten (10) of the Licensed Spaces will be located on the north end of the ground level of the Garage and will be for exclusive use by the Grid Rowhomes.
3. Five (5) of the Licensed Spaces will be located in the northeast corner of the ground level of the Garage for use by tenants using the Grid Mail Room.
4. Sixty-one (61) of the Licensed Spaces will be located on the ground level of the Garage and will be at all times shared, non-exclusive, and available for all public and commercial uses.
5. Other than the Licensed Spaces describe in numbered paragraphs 1 through 4 above (which consists of 86 Licensed Spaces), all the remaining Licensed Spaces will be on Garage levels 2 and 3 and the ramps, and these Licensed Spaces may be gated.
6. Thirteen (13) spaces in the Garage will continue to be handicapped stalls for use by all handicap users of the Garage.

New Garage

- a. At least thirty-three (33) ground-level spaces in the New Garage will be at all times shared, non-exclusive, and available for all public and commercial uses. All other spaces in the New Garage will be only for the use of the Grid tenants.

EXHIBIT D
TO LICENSE AGREEMENT
SCHEDULE OF LICENSE FEES

Exhibit D

Schedule of License Fees

	Monthly Rate (300 spaces)	Yearly Rate (300 spaces) ^{1,2}	PI Cap Credit (Monthly) ^{3, 4}	PI Cap Credit (Yearly) ^{3,4}	Monthly Rate w/PI Cap Credit	Yearly Rate w/PI Cap Credit
During Construction	Developer shall provide replacement parking for current permitted parking spaces and Mesa Courts employees displaced during construction, at its sole costs.					
Years 3 -5 (\$20/space)	\$6,000	\$72,000	\$4,500	\$54,000	\$1,500	\$18,000
	Monthly Rate (250 spaces)	Yearly Rate (250 spaces) ^{1,2}	PI Cap Credit (Monthly) ^{3, 4}	PI Cap Credit (Yearly) ^{3, 4}	Monthly Rate w/PI Cap Credit	Yearly Rate w/PI Cap Credit
Years 6-10 (\$25/space)	\$6,250	\$75,000	\$4,687.50	\$56,250	\$1,562.50	\$18,750
Year 11 (\$30/space)	\$7,500	\$90,000	\$5,625	\$67,500	\$1,875	\$22,500
Year 12 (\$35/space)	\$8,750	\$105,000	\$6,562.50	\$78,750	\$2,187.50	\$26,250
Years 13-99	Based on then Council approved parking rate/space/month, or if such fee ceases to exist in the future, the Parties shall negotiate in good faith and agree upon a commercially reasonable rate (which shall in no event be less than the previously applicable rate)					

¹Developer shall have the right to reduce the number of parking spaces licensed on a yearly basis, but at no time will the developer license less than 150 parking spaces. After monthly/annual payments for the minimum 150 licensed parking spaces, the additional parking license fee will be assessed per/space licensed, up to the maximum 340 spaces.

²Calculations shown in this table represent assumed number of parking spaces licensed. Actual monthly and yearly License Rates will be based on actual number of parking spaces licensed. Additionally, if Licensee is entitled to Rent Credits (i.e., PI Cap Credits) under the terms of the Development Agreement, the PI Cap Credits will be used as described in this Exhibit and Lease Exhibit C to reduce the License Fee (and the Rent under the Lease) until the Credits are used (up to the Cap) between the License Fees and Rent or are extinguished under the terms of the Development Agreement, Lease, or License at which point the License Fee shall be as described in the "Monthly Rate" and "Yearly Rate" columns. Because the use of the Credits will be based on future variables (such as the number of licensed parking spaces and the use of the Credits under the Lease) this Exhibit does not show or establish when the Credits will be used up, which the Parties shall agree to when all such future variable are determined.

³For Years 3-15, the maximum PI Cap Credit shall not exceed 75% of the License Rate. After Year 15, the maximum PI Cap Credit shall not exceed 50% of the License Rate.

⁴ License Fee Credit available only to reimburse for those Minimum Public Improvements and Additional Public Improvements that have been completed and accepted by the City Engineer, up to the \$3,000,000 Cap. License Fee Credits are only available after Year 3 of the License Agreement.

EXHIBIT E
TO LICENSE AGREEMENT
INSURANCE REQUIREMENTS

EXHIBIT E
Insurance Requirements

Licensee will procure and maintain insurance during the applicable “Coverage Period,” as shown on the below chart, against claims for injury to persons or damage to property which may arise from or in connection with the Garage and/or in the performance of work or construction of the Garage by Licensee, its agents, representatives, employees, contractors, or subcontractors.

The insurance requirements herein are minimum requirements for the Agreement, of which this Exhibit is a part (the “License”), and in no way limits the indemnity covenants contained in the License. Licensor in no way warrants that the minimum limits contained herein are sufficient to protect Licensee from liabilities that might arise from or in connection with the Garage, and Licensee is free to purchase additional insurance as Licensee may determine.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Licensee will provide coverage during the Coverage Period and with limits of liability not less than those stated below.

<u>Type</u>	<u>Amount</u>	<u>Coverage Period</u>
General Liability (which will include operations, products, completed operations, and contractual liability coverage)	With limits not less than \$25,000,000 combined single limit per occurrence and not less than \$25,000,000 general aggregate.	Coverage will be in effect upon or prior to and remain in effect for the Term of the License.
Property (all risks of loss including risks covered by fire and extended coverage, terrorism, vandalism and malicious mischief)	In an amount not less than full replacement cost of structure and all fixtures.	Coverage will be in effect upon or prior to the earlier of when the Builder’s Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage will thereafter remain in effect for the remainder of the Term of the License.
Commercial Automobile Liability	With limits not less than \$1,000,000 each occurrence, Combined Single Limit for bodily injury and property damage covering owned, non-owned and hired auto	Coverage will be in effect upon or prior to and remain in effect for the Term of the License.

	coverage as applicable.	
Business Interruption Coverage (can be endorsed to the Property policy)	Minimum 12 months' rent and ongoing operating expenses	Coverage will be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage will thereafter remain in effect for the remainder of the Term of the License.
Workers' Compensation Employers' Liability	Statutory Limits \$500,000 each accident, each employee	Coverage will be in effect upon or prior to and remain in effect for the Term of the License.
Liquor Liability	\$5,000,000	Coverage will be in effect upon or prior to and remain in effect for the Term of the License, provided Licensee sells and/or serves alcohol
Builder's Risk	In an amount not less than the estimated total cost of construction.	Coverage will be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Owner's and Contractor's Protective Liability	\$25,000,000	Coverage will be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Professional Liability	\$2,000,000	Coverage will be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a

		temporary or final certificate of occupancy is obtained.
Blanket Crime Policy	\$5,000,000	Coverage will be in effect upon or prior to and remain in effect for the Term of the License.
Boiler and Machinery Coverage	\$25,000,000	Coverage will be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage will thereafter remain in effect for the remainder of the Term of the License.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies will include, or be endorsed to include, provisions with the following effect:

1. Licensors, and its agents, officials, volunteers, officers, elected officials, and employees, will be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies.

2. On insurance policies where the Licensor is to be named as an additional insured, the Licensor will be named as additional insured to the full limits and to the same extent of coverage as the insurance purchased by Licensee, even if those limits of coverage are in excess of those required by the License.

3. The Licensee's insurance coverage will be primary and non-contributory with respect to all other Licensor insurance sources.

4. All policies will include a waiver of subrogation rights in favor of the Licensor, its agents, officials, volunteers, officers, elected officials, and employees. Licensee will obtain a workers' compensation policy that is endorsed with a waiver of subrogation in favor of Licensor for all work performed by Licensee, its employees, agents, contractors and subcontractors. Licensee agrees to obtain any endorsement that may be necessary to comply with this waiver of subrogation requirement.

5. All general liability policies will include coverage for explosion, collapse, underground work, and contractual liability coverage, which will include (but is not limited to) coverage for Licensee's indemnification obligations under the License.

6. Licensors will be named as Loss Payee on all property insurance policies. Proceeds of any property damage insurance will be applied as required by Section 14 of this License.

C. EXCESS OR UMBRELLA POLICY: In addition to a primary policy, an excess or umbrella policy may be used to meet the minimum requirements if the excess or umbrella coverage is written on a “following form” basis.

D. NOTICE OF CANCELLATION: Each insurance policy will include provisions to the effect that it will not be suspended, voided, cancelled, or reduced in coverage except after thirty (30) days’ prior written notice has been given to Licensors. Such notice will be sent directly to Risk Management, City Attorney’s Office, City of Mesa, 20 E. Main Street, P.O. Box 1466, MS-1077, Mesa, Arizona 85211.1466.

E. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an “A.M. Best” rating of not less than A- VII. Licensors in no way warrants that the above-required minimum insurer rating is sufficient to protect the Licensee from potential insurer insolvency.

F. ENDORSEMENTS AND VERIFICATION OF COVERAGE: Licensee will provide Licensors with Certificates of Insurance signed by the Issuer with applicable endorsements for all policies as required herein. All Certificates of Insurance and any required endorsements are to be received and approved by the Licensors before the applicable Coverage Period. Each applicable insurance policy required by the License must be in effect at or prior to and remain in effect for the Coverage Period. All Certificates of Insurance and endorsements will be sent directly to the City Attorney, City Attorney’s Office, City of Mesa, 20 E. Main Street, P.O. Box 1466, MS-1077, Mesa, Arizona 85211-1466. Licensors reserves the right to require complete copies of all insurance policies required by the License at any time, but not more than once each twelve consecutive months during the Term of the License.

G. LICENSEE’S DEDUCTIBLES AND SELF-INSURED RETENTIONS: Any deductibles or self-insured retention in excess of \$250,000 will be declared to and be subject to approval by Licensors. Licensee will be solely responsible for the payment of any deductible or self-insured amounts and waives any rights it may have to seek recovery of such amounts from Licensors and its agents, officials, volunteers, officers, elected officials, and employees.

H. LICENSEE’S CONTRACTORS AND DESIGN PROFESSIONALS: Licensee will require and verify that the general contractor and all subcontractors maintain reasonable and adequate insurance with respect to any work on or at the Garage, all such policies will include: (i) a waiver of subrogation rights in favor of the Licensors, its agents, officials, volunteers, officers, elected officials, and employees, (ii) a waiver of liability in favor of the Licensors, its agents, officials, volunteers, officers, elected officials, and employees releasing and holding harmless the same from any and all

liability for any and all bodily injury, including death, and loss of or damage to property, and (iii) Licensor, and its agents, officials, volunteers, officers, elected officials, and employees, will be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies. Licensee will require all design professionals (e.g., architects, engineers) to obtain Professional Liability Insurance with limits of liability not less than those stated in the above chart.

I. LICENSOR'S RIGHT TO ADJUST. With written notice to Licensee of not less than 60 days, Licensor may reasonably adjust the amount and type of insurance Licensee is required to obtain and maintain under this License as reasonably required by Licensor from time-to-time.

J. FAILURE TO PROCURE. If Licensee fails to procure or maintain any insurance required hereunder, Licensor may, but is not required to, procure and maintain any or all of the insurance required of Licensee under this License. In such event, all costs of such insurance procured and maintained by Licensor will be the responsibility of Licensee and will be fully reimbursed to Licensor within ten (10) business days after Licensor's request payment thereof.

EXHIBIT C
TO GROUND AND AIR RIGHTS LESASE
SCHEDULE OF RENT

Exhibit C SCHEDULE OF RENT

Year 1 ³	Monthly Lease Rate	Yearly Lease Rate	PI Cap Credit (Monthly) ¹	PI Cap Credit (Yearly) ¹	Monthly Lease w/PI Cap Credit ²	Yearly Lease w/PI Cap Credit ²
Construction Rate	\$1,000	\$12,000	N/A	N/A	\$1,000	\$12,000
Year 2³						
Lease up period	\$2,500	\$30,000	N/A	N/A	\$2,500	\$30,000
Years 3-15						
6% Lease	\$18,850	\$226,200	\$14,137.50	\$169,650	\$4,712.50	\$56,550
Years 16-17						
7% Lease	\$22,000	\$264,000	\$11,000	\$132,000	\$11,000	\$132,000
Years 18-20						
7% Lease	\$22,000	\$249,000	\$11,000	\$132,000	\$11,000	\$132,000
Years 21-99	Based on 7% monthly/annually of the then appraised value of the property every 7 years					

¹ Rent Credit available only to reimburse for those Minimum Public Improvements and Additional Public Improvements that have been completed and accepted by the City Engineer, up to the \$3,000,000 Cap. Rent Credits are only available after Year 3 of the Lease. Additionally, if Tenant is entitled to Rent Credits (i.e., PI Cap Credits) under the terms of the Development Agreement, the PI Cap Credits will be used as described in this Exhibit and License Exhibit D to reduce the Rent (and the License Fees under the License) until the Credits are used (up to the Cap) between the Rent and License Fees or are extinguished under the terms of the Development Agreement, Lease, or License at which point the Rent shall be as described in the "Monthly Lease Rate" and "Yearly Lease Rate" columns. Because the use of the Credits will be based on future variables (such as the number of licensed parking spaces and the use of the Credits under the Lease) this Exhibit does not show or establish when the Credits will be used up, which the Parties shall agree to when all such future variable are determined.

² For Years 3-15, the maximum Rent Credit that can be used to offset the Rent shall not exceed 75% of the Rent. After Year 15, the maximum Rent Credit to offset the Rent shall not exceed 50% of the Rent.

³ If Developer does not meet the Compliance Dates in Section 4.12, including but not limited to timely submittal of plans, paying for permits, and Commencing Construction timely, the Rent for the remainder of the Construction Rate and Lease Up periods shall be \$22,000/month.

⁴ Starting in the 21st year of the Lease and every 7 years thereafter, the Rent shall be based on 7% of the fair market value of the Premises (as unimproved property and air rights) as follows: one hundred and twenty days before the 21st year of the Lease (and every 7 years thereafter), the Parties (if they Parties are unable to agree upon the fair market value of the Premises unimproved) shall each create a list of three appraisers and provide such list to the other Party. The appraisers on the lists shall be members of the American Institute of Real Estate Appraisers ("M.A.I.") with at least 10 years of experience in appraising commercial real property. The Parties shall act in good faith to select one appraiser from one of the lists as the primary appraiser (the "Primary Appraiser") and to select from the other list another appraiser to be the review appraiser (the "Review Appraiser") (the Primary Appraiser and Review Appraiser shall be from different lists). If the Parties cannot so agree within thirty (30) days of providing the lists, either Party may, upon at least 5 days prior written notice to the other Party, apply to the American Institute of Real Estate Appraisers or to the presiding judge of the Maricopa County Arizona Superior Court, for selecting such appraisers. Within 45 days after selecting the Primary Appraiser, the Primary Appraiser shall provide the Parties with an appraisal of the Premises that determines the fair market value of the Premises (as unimproved). Within 15 days after receiving such appraisal, either Party may provide notice to the other Party that they disagree with the Primary Appraiser's fair market value of the Premises and engage the Review Appraiser to appraise the Premises. If such notice is not provided, the fair market value of the Premises shall be as stated in the Primary Appraiser's appraisal, unless the Parties agree in writing to another amount for the fair market value of the Premises. If notice that a Party disagrees with the Primary Appraiser's determination is provided, the Parties agree that the Premises shall be appraised by the Review Appraiser; and, then, within 30 days of engaging the Review Appraiser, the Review Appraiser shall provide the Parties with an appraisal of the Premises that determines the fair market value of the Premises (as unimproved); the Parties shall negotiate in good faith based on the two appraisals to agree upon a fair market value of the Premises that falls within the range of the two appraisals. If the Parties cannot so agree within thirty (30) days of receiving the Review Appraiser's appraisal, either Party may, upon at least 5 days prior written notice to the other Party, apply to presiding judge of the Maricopa County Arizona Superior Court, (or file suit in Maricopa County Arizona Superior Court) for a determination of the fair market value of the Premises. Each Party agrees to pay one-half (½) of the fees for the appraisals. The date of valuation for the appraisals shall be the date the appraisal is completed.

EXHIBIT D
TO GROUND AND AIR RIGHTS LESASE
PROHIBITED USES

Exhibit D
PROHIBITED USES

The uses listed below are expressly prohibited from the Premises:

1. Group Residential, as defined by Chapter 64 of the Zoning Ordinance
2. Non-chartered Financial Institution, as defined by Chapter 64 of the Zoning Ordinance
3. Pawn Shops, as defined by Chapter 64 of the Zoning Ordinance
4. Social Service Facilities, as defined by Chapter 64 of the Zoning Ordinance
5. Tattoo and Body Piercing Parlors, as defined by Chapter 64 of the Zoning Ordinance
6. Group Residential, as defined by Chapter 86 of the Zoning Ordinance
7. Off-Track Betting Establishment, as defined by Chapter 86 of the a Zoning Ordinance
8. All sales of marijuana, including Medical Marijuana Dispensary, as defined by Chapter 86 of the Zoning Ordinance
9. Package liquor stores, except as part of a restaurant or bar concept
10. Kennels, as defined by Chapter 64 of the Zoning Ordinance

EXHIBIT E
TO GROUND AND AIR RIGHTS LESASE
INSURANCE REQUIREMENTS

Exhibit E
INSURANCE REQUIREMENTS

Tenant shall procure and maintain insurance during the applicable “Coverage Period,” as shown on the below chart, against claims for injury to persons or damage to property which may arise from or in connection with the Premises and/or in the performance of work or construction of the Premises by Tenant, its agents, representatives, employees, contractors, or subcontractors.

The insurance requirements herein are minimum requirements for the Lease, of which this Exhibit is a part (the “Lease”), and in no way limits the indemnity covenants contained in the Lease. Landlord in no way warrants that the minimum limits contained herein are sufficient to protect Tenant from liabilities that might arise from or in connection with the Premises, and Tenant is free to purchase additional insurance as Tenant may determine.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Tenant shall provide coverage during the Coverage Period and with limits of liability not less than those stated below.

<u>Type</u>	<u>Amount</u>	<u>Coverage Period</u>
General Liability (which shall include operations, products, completed operations, and contractual liability coverage)	With limits not less than \$25,000,000 combined single limit per occurrence and not less than \$25,000,000 general aggregate.	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Property (all risks of loss including risks covered by fire and extended coverage, terrorism, vandalism and malicious mischief)	In an amount not less than full replacement cost of structure and all fixtures.	Coverage shall be in effect upon or prior to the earlier of when the Builder’s Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.
Commercial Automobile Liability	With limits not less than \$1,000,000 each occurrence, Combined Single Limit for bodily injury and property damage covering owned, non-owned and hired auto coverage as applicable.	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Business Interruption Coverage (can be endorsed to the Property policy)	Minimum 12 months’ rent and ongoing operating expenses	Coverage shall be in effect upon or prior to the earlier of when the Builder’s Risk policy is no longer in effect

		or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.
Workers' Compensation Employers' Liability	Statutory Limits \$500,000 each accident, each employee	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Liquor Liability	\$5,000,000	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease, provided Tenant sells and/or serves alcohol
Builder's Risk	In an amount not less than the estimated total cost of construction.	Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Owner's and Contractor's Protective Liability	\$25,000,000	Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Professional Liability	\$2,000,000	Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Blanket Crime Policy	\$5,000,000	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Boiler and Machinery	\$25,000,000	Coverage shall be in effect

Coverage		upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.
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B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, provisions with the following effect:

1. Landlord, and its agents, officials, volunteers, officers, elected officials, and employees, shall be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies.

2. On insurance policies where the Landlord is to be named as an additional insured, the Landlord shall be named as additional insured to the full limits and to the same extent of coverage as the insurance purchased by Tenant, even if those limits of coverage are in excess of those required by the Lease.

3. The Tenant's insurance coverage shall be primary and non-contributory with respect to all other Landlord insurance sources.

4. All policies shall include a waiver of subrogation rights in favor of the Landlord, its agents, officials, volunteers, officers, elected officials, and employees. Tenant shall obtain a workers' compensation policy that is endorsed with a waiver of subrogation in favor of Landlord for all work performed by Tenant, its employees, agents, contractors and subcontractors. Tenant agrees to obtain any endorsement that may be necessary to comply with this waiver of subrogation requirement.

5. All general liability policies shall include coverage for explosion, collapse, underground work, and contractual liability coverage, which shall include (but is not limited to) coverage for Tenant's indemnification obligations under the Lease.

6. Landlord shall be named as Loss Payee on all property insurance policies. Proceeds of any property damage insurance shall be applied as required by Section 14 of this Lease.

C. **EXCESS OR UMBRELLA POLICY:** In addition to a primary policy, an excess or umbrella policy may be used to meet the minimum requirements if the excess or umbrella coverage is written on a "following form" basis.

D. NOTICE OF CANCELLATION: Each insurance policy shall include provisions to the effect that it shall not be suspended, voided, cancelled, or reduced in coverage except after thirty (30) days' prior written notice has been given to Landlord. Such notice shall be sent directly to Risk Management, City Attorney's Office, City of Mesa, 20 E. Main Street, P.O. Box 1466, MS-1077, Mesa, Arizona 85211.1466.

E. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. Landlord in no way warrants that the above-required minimum insurer rating is sufficient to protect the Tenant from potential insurer insolvency.

F. ENDORSEMENTS AND VERIFICATION OF COVERAGE: Tenant shall provide Landlord with Certificates of Insurance signed by the Issuer with applicable endorsements for all policies as required herein. All Certificates of Insurance and any required endorsements are to be received and approved by the Landlord before the applicable Coverage Period. Each applicable insurance policy required by the Lease must be in effect at or prior to and remain in effect for the Coverage Period. All Certificates of Insurance and endorsements shall be sent directly to the City Attorney, City Attorney's Office, City of Mesa, 20 E. Main Street, P.O. Box 1466, MS-1077, Mesa, Arizona 85211-1466. Landlord reserves the right to require complete copies of all insurance policies required by the Lease at any time, but not more than once each twelve consecutive months during the Term of the Lease.

G. TENANT'S DEDUCTIBLES AND SELF-INSURED RETENTIONS: Any deductibles or self-insured retention in excess of \$250,000 shall be declared to and be subject to approval by Landlord. Tenant shall be solely responsible for the payment of any deductible or self-insured amounts and waives any rights it may have to seek recovery of such amounts from Landlord and its agents, officials, volunteers, officers, elected officials, and employees.

H. TENANT'S CONTRACTORS AND DESIGN PROFESSIONALS: Tenant shall require and verify that the general contractor and all subcontractors maintain reasonable and adequate insurance with respect to any work on or at the Premises, all such policies shall include: (i) a waiver of subrogation rights in favor of the Landlord, its agents, officials, volunteers, officers, elected officials, and employees, (ii) a waiver of liability in favor of the Landlord, its agents, officials, volunteers, officers, elected officials, and employees releasing and holding harmless the same from any and all liability for any and all bodily injury, including death, and loss of or damage to property, and (iii) Landlord, and its agents, officials, volunteers, officers, elected officials, and employees, shall be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies. Tenant shall require all design professionals (e.g., architects, engineers) to obtain Professional Liability Insurance with limits of liability not less than those stated in the above chart.

I. LANDLORD'S RIGHT TO ADJUST. With written notice to Tenant of not less than 60 days, Landlord may reasonably adjust the amount and type of insurance Tenant is required to obtain and maintain under this Lease as reasonably required by Landlord from time-to-time.

J. FAILURE TO PROCURE. If Tenant fails to procure or maintain any insurance required hereunder, Landlord may, but is not required to, procure and maintain any or all of the insurance required of Tenant under this Lease. In such event, all costs of such insurance procured and maintained by Landlord shall be the responsibility of Tenant and shall be fully reimbursed to Landlord within ten (10) business days after Landlord's request payment thereof.

EXHIBIT F
TO GROUND AND AIR RIGHTS LESASE
FORM OF SPECIAL WARRANTY DEED

Exhibit F
FORM OF SPECIAL WARRANTY DEED

When Recorded, Mail to:

SPECIAL WARRANTY DEED

For the consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration received, the City of Mesa, Arizona ("**Grantor**"), does hereby convey to _____ ("**Grantee**"), all of Grantor's right, title and interest in and to the following described real property (the "**Property**") situated in Maricopa County, Arizona, together with all improvements thereon and all of Grantor's interest in any rights and privileges appurtenant thereto:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS
REFERENCE MADE A PART HEREOF;

and further together with all rights and obligations of Developer granted in Section 5.6 ("Encroachment into Right-of-Way") of that certain "Development Agreement" dated November ___, 2017, between the City of Mesa, Arizona, and 3W Management, LLC, an Arizona limited liability company, recorded in the Official Records of Maricopa County, Arizona, on or about _____, as Recording No. 2017-_____ (the "**Development Agreement**");

and further together with all rights and obligations of Licensee granted in that certain "License" dated _____, and which is described in Section 5.2(b) of the Development Agreement;

SUBJECT matters of record and to any and all conditions, easements, encroachments, rights-of-way, or restrictions which a physical inspection, or accurate ALTA survey, of the Property would reveal; and all applicable municipal, county, state or federal zoning and use regulations.

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

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed as of this ____ day of _____, 2____.

GRANTOR:

City of Mesa, Arizona, an Arizona municipal corporation

By:_____

Name: _____

Its:_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this the ____ day of _____, 20__, before me, the undersigned Notary Public, personally appeared _____, who acknowledged ____self to be the _____ of the City of Mesa, Arizona, an Arizona municipal corporation; and that, being authorized so to do, __he executed the foregoing instrument.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

ACCEPTANCE BY GRANTEE

IN WITNESS WHEREOF, Grantee has accepted this Special Warranty Deed as of this ____ day of _____, 2____.

GRANTEE:

[Name]

By:_____

Name: _____

Its:_____

STATE OF _____)
) ss.
County of _____)

On this the ____ day of _____, 20__, before me, the undersigned Notary Public, personally appeared _____, who acknowledged ____self to be the _____ of _____; and that, being authorized so to do, __he executed the foregoing instrument.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

EXHIBIT G
TO GROUND AND AIR RIGHTS LESASE
MEMORANDUM OF LEASE

Exhibit G
MEMORANDUM OF LEASE

WHEN RECORDED RETURN TO:

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MEMORANDUM OF LEASE

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THIS MEMORANDUM OF LEASE shall evidence that there is in existence a Lease as hereinafter described. It is executed by the Landlord and Tenant for recording purposes only as to the Lease hereinafter described, and it is not intended and shall not modify, amend, supersede or otherwise effect the terms and provisions of the Lease.

1. Name of Document: Ground and Air Lease (the "Lease")
2. Name of Landlord: City of Mesa, Arizona ("Landlord")
3. Name of Tenant: _____
("Tenant")
4. Address of Landlord: City of Mesa
Attn: City Clerk
20 East Main Street
Mesa, Arizona 85211
5. Address of Tenant: _____

6. Date of Lease: _____, 2018
("Commencement Date")
7. Initial Lease Term: Commencing on the Commencement Date and expiring
fifty (50) years thereafter.

8. Option to Extend: Tenant has the option to extend the Initial Lease Term for one (1) additional period of forty-nine (49) years.
9. Demised Premises: The real property more particularly described in **Exhibit "A"** attached to this Memorandum of Lease.

A copy of the Lease is maintained at the offices of Landlord and Tenant at their respective addresses set forth above.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease to be effective as of _____, 2018.

Landlord:

City of Mesa, Arizona, an Arizona municipal corporation

By: _____
Name: _____
Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this the ____ day of _____, 2018, before me, the undersigned Notary Public, personally appeared _____, who acknowledged ____self to be the _____ of the City of Mesa, Arizona, an Arizona municipal corporation; and that, being authorized so to do, __he executed the foregoing instrument.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

Tenant:

a(n) _____

By: _____

Name: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this the ____ day of _____, 2018, before me, the undersigned Notary Public, personally appeared _____, who acknowledged ____self to be the _____ of _____, a(n) _____; and that, being authorized so to do, __he executed the foregoing instrument.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:
