

## SECOND AMENDMENT TO LICENSE AGREEMENT

This Second Amendment to License Agreement (this “Amendment”) is made and entered into as of \_\_\_\_\_, 2019, by and between City of Mesa, a municipal corporation (“Licensor”), and Palladium Grid, LLC, an Arizona limited company (“Licensee”). Licensor and Licensee are sometimes referred to in this Amendment collectively as the “Parties,” or individually as a “Party.”

### RECITALS

A. Licensor and Licensee entered into that certain License Agreement dated July 25, 2018, and that certain First Amendment to License Agreement dated July 25, 2018 (collectively, the “License Agreement”).

B. Licensor ( as “City” named therein) and Licensee (as “Developer” named therein) 3W Management, LLC, an Arizona limited liability company (“Developer”) are parties to that certain Development Agreement dated December 7, 2017 and recorded in the Maricopa County Recorder’s Office as Recording No. 20170915520, that certain First Amendment to Development Agreement dated February 27, 2018, and recorded in the Maricopa County Recorder’s Office as Recording No. 20180149429, that certain Second Amendment to the Development Agreement dated July 24, 2018, and recorded in the Maricopa County Recorder’s Office as Recording No. 20180565588, and that certain Third Amendment to Development Agreement dated July 25, 2018, and recoded in Maricopa County Recorder’s Office as Recording No. 20180565588 (collectively, the “Development Agreement”). The Development Agreement is for a mixed-use commercial and residential development that includes commercial, retail/restaurant or office space; apartments; row homes; and other private and public improvements; all of which are described and defined as the “Project” in the Development Agreement.

C. Concurrently upon entering into this Amendment, City and Developer intend to enter into a Fourth Amendment to Development Agreement that, *inter alia*, eliminates the requirement for construction of additional structured parking of not fewer than 140 parking spaces by eliminating the “new parking garage” as it is identified on exhibits to the Development Agreement (the “New Parking Garage Requirement”) and replaces this requirement with a new requirement of Developer to build a courtyard with pool and other amenities (the “Courtyard Requirements”).

D. The Parties desire to make certain amendments to the License Agreement consistent with the Fourth Amendment to Development Agreement’s elimination of the New Parking Garage Requirement and addition of the new Courtyard Requirements, including certain new provisions to the License Agreement to ensure that the Licensee/Developer, and its subtenants, sublicensees and invitees do not park in the City Spaces and to make certain conforming revisions to Exhibit C, entitled “Description of Spaces,” all as further set forth in this Amendment.

## AGREEMENTS

IN CONSIDERATION of the foregoing recitals and representations, all of which are fully incorporated into this Amendment and made a part of this Amendment for all purposes, and the mutual covenants and agreements and conditions in this Amendment, the Parties agree as follows:

1. Definitions and Incorporation. All capitalized words and phrases used in this Amendment will have the same meanings as set forth in the License Agreement (and in the exhibits to the License Agreement, as applicable), unless a different definition is set forth in this Amendment. The terms, conditions, and definitions contained in the above Recitals are hereby incorporated herein as terms, conditions, and definitions of this Amendment.

2. Additional Parking Provisions. In order to ensure Licensee/Developer, and its subtenants, sublicensees and invitees do not park in the City Spaces and to ensure that there is sufficient public parking in the Garage, the Parties agree to add new Sub-Sections 6(f), (g), (h), (i), and (j) as follows:

- (f) The City Spaces are not intended to, and shall not be, used by Licensee/Developer, and/or its subtenants, sublicensees, employees, and/or invitees (collectively “Project Users”). Licensors may enforce and restrict the use of the City Spaces in any manner permitted by the Mesa City Code or state law, including, without limitation, time limitations on spaces, permitting spaces, and enforcement by fines and towing. Licensee/Developer shall provide reasonable notifications to its subtenants, sublicensees, and employees not to park in the City Spaces.
- (g) Licensors may require Licensee, at its sole cost and expense, to install the Gate, as described and set forth in the Subsection 6(b) above, in order to facilitate compliance of Project Users in not using the City Spaces.
- (h) Licensee shall reimburse Licensors for all Licensors’ costs and fees related to enforcement to prevent Project Users from parking in the City Spaces and shall make such reimbursement within thirty days of invoice to Licensee. Licensors may contract with a third party for such enforcement; Licensee shall reimburse such third party directly within thirty days of invoice or to Licensors as directed by Licensors. Licensee acknowledges that Licensors currently contracts with the Downtown Mesa Association (“DMA”) for such enforcement; and Licensee agrees to enforcement of any and all parking restrictions by DMA (on behalf of Licensors) and to reimburse DMA for such costs within thirty days of invoice.
- (i) If enforcement of the restrictions contained in Subsection 6(f) and (h) above do not reasonably prevent (as determined by Licensors in its City Manager’s or his delegee’s reasonable discretion) the use of the City Spaces by the Project Users (all such uses are misuses of the City Spaces), within ninety (90) days of written notice from Licensors to Licensee of such misuse of the City Spaces to Licensee, Licensee shall, at its sole cost and expense, lease or license parking spaces for

Project Users (e.g., Project User employees or subtenants) at another location and in a sufficient number so as to eliminate the improper use of the City Spaces by Project Users; and Licensee shall requires such Project Users to park in the leased/licensed parking spaces at the other location.

- (j) If Licensor, through its City Manager's or his delegee's sole discretion, determines that there is a need to increase the number of Shared Use Spaces (as that term is described and defined in Exhibit C, hereto) to allow for additional public parking in the Garage (e.g., for users of the Mesa Municipal Court), Licensor may send written notice to Licensee to increase the number of Shared Use Spaces by up to an additional 75 Licensed Spaces so that the Shared Use Spaces are increased from 92 to up to 167. Within thirty days of such written notice, Licensee shall increase the number of Shared Use Spaces by the number identified in the written notice (not to exceed a total of 167 Shared Use Spaces). Licensor shall identify in its written notice the number of increased Shared Use Spaces and may incrementally increase the number of Shared Use Spaces in separate, subsequent notices up to the cap of 75 additional Licensed Spaces (167 total). If a gate (as described in Subsection 6(b) above) has been installed, Licensee, at its sole cost and expense, shall relocate the gate in order to allow public use of the additional Shared Use Spaces.
- (k) Licensee's compliance with the terms, conditions, and requirements of this Section 6 and all its subsections (including, but not limited to, Licensee having to lease/license parking spaces at another location under Section 6(i) and increasing the number of Shared Use Space under Section 6(j), if and when applicable) shall not result in a reduction, modification, or any other change to the License Fee.

2. Replacement of Exhibit. The Parties agree to replace Exhibit C (Description of Spaces) to the License Agreement with Exhibit 1 attached to this Amendment, which is entitled "Exhibit C, Description of Spaces."

3. Merger. This Amendment is the entire agreement of the Parties with respect to the matters set forth in this Amendment. Except as expressly set forth in this Amendment, the License Agreement is unmodified and remains in full force and effect.

4. Statutory Notice Requirement. The Parties acknowledge that this Amendment is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

[The signatures of the Parties are on the following two pages.]

IN WITNESS WHEREOF, the Parties have executed this Amendment to be effective as of the date written above.

**LICENSOR**

CITY OF MESA, ARIZONA,  
an Arizona municipal corporation

By: \_\_\_\_\_  
Christopher J. Brady, City Manager

ATTEST:

By: \_\_\_\_\_  
DeeAnn Mickelsen, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
James N. Smith, City Attorney

**LICENSEE**

\_\_\_\_\_,  
a(n) \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a(n) \_\_\_\_\_, on behalf of Licensee.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

## Exhibit 1 to Second Amendment to License

### **“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.

Upon Completion of Construction, the Garage will have 604 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 604) 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 532 spaces on levels 1-3 (a loss of 72 spaces), then the Licensed Spaces would be 267 ( $339 - 72 = 267$ ). 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. One (1) 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. Ninety-two (92) of the Licensed Spaces will be located on the ground level of the Garage and will be at all times shared, non-exclusive, free, and available for all public and commercial uses (the “Shared Use Spaces”). Pursuant to Section 6(j) of the License, Licensor may increase the number of Shared Use Spaces by up to an additional 75 Licensed Spaces and in such event 167 of the Licensed Spaces would be Shared Use Spaces.
5. Other than the Licensed Spaces described in numbered paragraphs 1 through 4 above (which consists of 113 Licensed Spaces, not including the additional Shared Use Spaces as may be required under Section 6(j)), all the remaining Licensed Spaces will be on Garage levels 2 and 3 and the ramps, and these Licensed Spaces may be gated (provided the Shared Use Spaces and any additional Shared Use Spaces required under Section 6(j) shall not be gated).
6. Thirteen (13) spaces in the Garage will continue to be handicapped stalls for use by all handicap users of the Garage.

