

# EXHIBIT M to Purchase and Option Agreement

## GROUND AND PARKING GARAGE LEASE<sup>1</sup>

**THIS GROUND AND PARKING GARAGE LEASE** (this "**Lease**") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("**Effective Date**"), by and between City of Mesa, Arizona, an Arizona municipal corporation ("**Landlord**") and \_\_\_\_\_, a(n) \_\_\_\_\_ ("**Tenant**"). Landlord and Tenant each may be referred to as a "**Party**," and collectively as the "**Parties**."

### RECITALS

A. Landlord owns that certain undeveloped real property legally described on **Exhibit A-1** and defined in **Section 1** below as the "**Land**."

B. The Landlord and Union Mesa Holdings, LLC, a Delaware limited liability company ("Holdings") are parties to a separate development agreement dated \_\_\_\_\_, between Landlord (as "City" named therein) and Holdings (as "Developer" named therein) (the "**Development Agreement**"), which has been recorded in the Official Records of Maricopa County, Arizona ("**Official Records**"), as Instrument no. 2019-\_\_\_\_\_, and sets forth the obligations and responsibilities of City and Developer related to the development of the "Union at Riverview," including but not limited to Developer's obligation to construct the Improvements (as defined in **Section 8** below), as defined in the Development Agreement (the "**Project**"). The rights, duties and obligations of Developer under the Development Agreement with respect to the Land have been assigned to and assumed by Tenant pursuant to the terms and conditions of that Partial Assignment and Assumption of Development Agreement dated as of \_\_\_\_\_ and recorded in the Official Records as Instrument No. \_\_\_\_\_.

C. Pursuant to its obligations under the Development Agreement, Tenant will construct a parking garage on the Land and on an immediately adjacent parcel of undeveloped real property owned by Landlord (the "**Adjacent Land**") in support of the Project, with the construction occurring in two approximately equal phases which will produce a single conjoined structure. The Adjacent Land is legally described on **Exhibit A-2** attached to this Lease. Notwithstanding the foregoing, it is contemplated that the second phase of construction of the parking garage on the Adjacent Land may be undertaken by an entity that is different from Tenant (the "**Second Tenant**"). The parking garage described in this recital and throughout this Lease is referred to in the Development Agreement as the "**West Garage**." As set forth in this Lease, upon the issuance of a certificate of occupancy for any portion of the West Garage, those improvements shall accrete to the Landlord.

D. The Land and the Adjacent Land are unique property that Landlord was unwilling to sell as part of the Project because, *inter alia*, the Land and Adjacent Land are located adjacent to a City water treatment facility, and located at the trail head of the Rio Salado Pathway (the "**Pathway**") (a shared-use pathway along the Salt River Bank for walking, running and bicycling that connects Riverview Park, Sloan Park and Mesa's Riverview shopping center to Tempe Town Lake), and further the Land and Adjacent Land

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<sup>1</sup> This Lease is a template that the Parties intend to use to finalize their agreement prior to the Closing on Option Parcel C. Because the Closing on Option C will not occur for several years following the execution of the Development Agreement and the intensity of development (e.g., number of stories for the office building) on Option Parcel C could be increased, the Parties have elected to agree to this template in its current form with the expectation that certain portions may be subject to further negotiations. Those provisions that may be subject to further negotiation include those parts of this template set apart by brackets.

provide parking for Riverview Park (the "**Park**") and parking in support of the nearby City-owned stadium (the "**Stadium**") as required under the FUA (as defined in Section 9(a) below). Further, Landlord would not have agreed to lease the Land or the Adjacent Land, nor would Landlord have entered into the Development Agreement, but for the public benefit generated from the construction of the West Garage and Landlord's reservation of a portion of the parking rights therein. Accordingly, as further set forth in this Lease, Tenant's leasehold interest in the West Garage will be subject to certain retained rights of Landlord to use and permit parking in the West Garage for the Pathway, Park, certain Stadium uses, and other uses as further described herein (collectively, the "**City Uses**").

E. In order to provide Tenant parking for the Project and to provide Landlord parking for City Uses, Landlord and Tenant desire to enter into this Lease.

For and in consideration of the mutual agreements, covenants and promises set forth in this Lease and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. **Leased Property:** Landlord leases to Tenant, and Tenant accepts and leases from Landlord, upon the terms and conditions set forth in this Lease (including but not limited to Landlord's reserved rights set forth and described in Section 9 of this Lease), that certain undeveloped real property more particularly described on Exhibit A-1 attached hereto, subject to all retained easements, rights, and encumbrances of record or as described herein (the "**Land**"), together with the Improvements to be constructed on the Land by Tenant. The Land and Improvements may be referred to collectively in this Lease as the "**Premises**."

2. **Duration of Lease:** The term of this Lease ("**Term**") shall be a period of ninety-nine (99) years, commencing on \_\_\_\_\_ (the "**Commencement Date**") and expiring on \_\_\_\_\_ (the "**Termination Date**"). At the termination of this Lease, all items of rent, taxes, and other matters shall be adjusted and prorated as of the Termination Date, and Tenant shall pay to Landlord, or Landlord shall pay to Tenant, as the case may be, such sums as shall be required to accomplish the proration.

3. **Base Rent:** Commencing on the Commencement Date and on the first day of each calendar month thereafter during the Term, Tenant shall pay to Landlord base rent as set forth on the Schedule of Rent attached hereto as Schedule 1 ("**Base Rent**"). If the Commencement Date is other than the first day of a month, then Base Rent for the first month of the Term shall be prorated on the basis of a thirty (30) day month.

4. **Payment of Rent:** Tenant shall pay the monthly installments of Base Rent and all other sums due under this Lease to Landlord, without notice or demand, and except as expressly set forth in this Lease and subject to the use of credits set forth in the Development Agreement, without deduction, abatement or setoff, on the first day of each month during the Lease Term. All sums due under this Lease shall be payable in current legal tender of the United States of America.

5. **Late Charges:** If any amount due to Landlord is not received in full by Landlord on or before ten (10) days after the date any such payment is due, then Tenant shall pay to Landlord a late payment charge of [an amount which shall be negotiated in good faith prior to the finalization of this Lease] commencing on the due date and continuing until (and including) the date on which such payment is made in full. The Parties acknowledge that the damages Landlord will suffer in the event of late payments would be extremely difficult to calculate and the Parties agree that the foregoing late payment charge is a reasonable estimate of Landlord's probable damages, and as such, constitutes a reasonable

charge for the expenses Landlord will suffer if Tenant fails to pay any such sum when due, and is not a penalty. This provision shall not be construed to allow Tenant to make payments after the due date, or to waive any of Landlord's rights in connection therewith.

6. **Additional Rent:** In addition to Base Rent, all other amounts to be paid by Tenant to Landlord pursuant to this Lease shall be deemed to be Additional Rent, whether or not designated as such and shall be due and payable upon demand or together with the next succeeding installment of Base Rent, whichever shall first occur. Landlord shall have the same remedies for the failure to pay Additional Rent as for the nonpayment of Base Rent.

7. **Taxes:**

(a) **Occupancy, Sales and Rent Taxes:** In addition to and together with its payments of Base Rent and Additional Rent, Tenant shall pay to Landlord any governmental taxes now or hereafter imposed on Base Rent, Additional Rent and other charges collected or paid pursuant to the terms of this Lease, including, without limitation, state or local rental, occupancy, sales, transaction privilege and excise taxes.

(b) **Personal Property Taxes:** During the Lease Term Tenant shall pay to the appropriate taxing authority, not later than ten (10) days prior to delinquency, all personal property taxes assessed against any personal property of Tenant located on or used in connection with the Premises.

(c) **Real Property Taxes:** Landlord and Tenant intend that this Lease is a lease of "Government Property Improvements" pursuant to the terms of A.R.S. § 42-6208(14) and, as such, the Premises are not subject to the payment of ad valorem real property taxes or assessments. However, if, for any reason during the Term of this Lease, the Premises or Improvements are no longer deemed to be Government Property Improvements and become subject to the payment of ad valorem real property taxes and assessments, then Tenant shall pay all real property taxes and assessments (including, but not limited to water, irrigation project, sewer, street, paving and other improvement lien assessments), if any, against the Premises. Upon receipt of tax statements from Landlord, Tenant shall pay all such real property taxes and assessments accruing during any portion of the Term covered by such tax statement, to the appropriate taxing authority at least thirty (30) days prior to delinquency and shall provide to Landlord written evidence of such timely payment. Accrued but unpaid real property taxes and assessments, if any, will be prorated between the Parties as of the Termination Date.

(d) **Government Property Lease Excise Tax:** Although the Improvements, following (i) their construction, (ii) the issuance of a certificate of occupancy for such Improvements, and (iii) their conveyance to Landlord, will be "Government Property Improvements" as defined in A.R.S. § 42-6201(2), those Improvements as of the Effective Date are exempt from the Government Property Lease Excise Tax ("**GPLET**"), A.R.S. §§ 42-6201 et seq., pursuant to A.R.S. § 42-6208(14). In the event that the Improvements or the Land are ever subject to GPLET or any other similar excise tax or taxes, whether by repeal of or amendment to GPLET, or for any other reason, Tenant will pay and be solely responsible for all such taxes assessed against the Improvements during the Lease Term. Accordingly, and as required under A.R.S. § 42-6206(A), Tenant is hereby notified of its potential tax liability under GPLET and that failure of Tenant to pay the tax after notice and an opportunity to cure is an Event of Default that could result in divesting Tenant of any interest in or right of occupancy of the government property improvement.

8. **Construction Obligations of Tenant.** As and when required pursuant to the terms and conditions of the Development Agreement (including, but not limited to, compliance with Title 34 for the

design and construction of improvements), Tenant will construct those improvements described in **Schedule 2A** attached to this Lease, and fully incorporated into this Lease for all purposes (collectively, the “**Improvements**”), and specifically including (i) a \_\_\_-story, \_\_\_ space parking garage to be constructed on the Land and, if and to the extent Developer elects to lease the Adjacent Land pursuant to the terms of the Development Agreement, (ii) a \_\_\_\_\_ story, \_\_\_\_\_ space parking garage on the Adjacent Land, hereinafter described as the Second Phase Garage Improvements (collectively, the “**West Garage**”), subject to the following terms and conditions:

(a) **Accretion of Improvements:** Upon Completion of Construction of the applicable portion of the Improvements, and the issuance of a certificate of completion or occupancy by the City of Mesa (“**Certificate**”) for such portion of the Improvements, the Improvements will accrete to Landlord without any further act or instrument required, free of all liens, claims and encumbrances at the time of the issuance of the Certificate.

(b) **Title to Improvements:** Although the Improvements are being constructed by Tenant at its sole cost and expense, it is the intent of the Parties that title to all Improvements vests solely and exclusively in Landlord by accretion upon the issuance of a Certificate for the Improvements (and Second Phase Garage Improvements, as applicable), without further act required. Notwithstanding the foregoing, if Landlord requests, (i) Tenant will provide Landlord with a condition of title report (or similar) confirming the lien-free condition of the Premises (subject to any resold mortgages recorded in favor of any Leasehold Mortgagee pursuant to the provisions of Section 15 below) at the time Tenant requests a Certificate, and (ii) Tenant will execute and deliver to Landlord a bill of sale and special warranty deed for the Improvements (and Second Phase Garage Improvements, as applicable), in a form reasonably agreed to by Landlord, conveying title (free and clear of all liens, claims and encumbrances for financing) to the Improvements (or Second Phase Garage Improvements, as applicable) to Landlord.

(c) **Construction of Additional West Garage Improvements:** Landlord and Tenant acknowledge that the Development Agreement provides for the construction by Developer or its assignee (subsequent to the construction by Tenant of the Improvements on the Land) of additional improvements on the Adjacent Land and appurtenant to the West Garage as described in **Schedule 2B** attached to this Lease, and fully incorporated into this Lease for all purposes (the “**Second Phase Garage Improvements**”), upon satisfaction of certain requirements of the Development Agreement. The design and construction of the Second Phase Garage Improvements must comply with Title 34 of Arizona Revised Statutes. Following the Completion of the Second Phase Garage Improvements, the Second Phase Garage Improvements will be included in, and be part of, the West Garage for all purposes and will be deemed to be included into and constitute a portion of the Improvements and the Premises for all purposes.

(d) **Amending this Lease:** In the event that Developer timely observes and satisfies all terms and conditions for the right by Developer to lease the Adjacent Land and construct the Second Phase Garage Improvements on the Adjacent Land as set forth in the Development Agreement, then Landlord, Tenant, and Developer, or its assignee with respect to the Adjacent Land, as the Second Tenant, will enter into an amendment to this Lease (“**Amendment**”) as follows:

(1) to include the Adjacent Land as part of the Land and the Premises, so that the terms “Land” and “Premises” will mean and refer to the Land and the Adjacent Land;

(2) to add the Developer, and/or its assignee, as the Second Tenant under the terms of this Lease, whereupon the term “Tenant” will mean and refer to both the Tenant named in the first grammatical paragraph of this Lease, and the Second Tenant; and by which the Second Tenant will

expressly assume all of the obligations of “tenant” under this Lease, and Second Tenant agrees that it will be jointly and severally liable for all of the obligations of Tenant under this Lease;

(3) to adjust the Base Rent pursuant to the terms set forth in Schedule 1 to account for the additional Base Rent payable by Tenant with respect to the Adjacent Land. In addition, notwithstanding anything contained in the foregoing or elsewhere in this Lease to the contrary, the Base Rent payable by Tenant under this Lease shall be subject to the any credits available to Tenant in the event Tenant incurs Excess Garage Costs as such term is described in the Development Agreement. If Tenant is entitled to such rent credits, then Landlord and Tenant shall enter into a further amendment of this Lease which shall incorporate the applicable rent credit as part of the terms of this Lease;

(4) To reallocate City Exclusive Parking, the Game Day Parking Spaces and the Event Parking Spaces between that portion of the West Garage that was first constructed, and that portion of the West Garage that consists of the Second Phase Garage Improvements pursuant to the terms of the Development Agreement and subject to the Annual Parking Plan described in the Development Agreement.

Except as expressly described in this Section 8(d), this Lease will continue in full force and effect, with no other amendments or modifications (expressly including no extension of the Termination Date of this Lease, which will remain unchanged).

(e) **Defined Terms:** Defined terms that are used in this Lease that are not otherwise defined in this Lease, have the meanings attributed to them in the Development Agreement **[and additional defined terms may be added during the final negotiation of this Lease.]**

9. **Use of Premises:** Notwithstanding any other uses that may be permitted in the applicable zoning classification for the Land, Tenant and the Tenant Parties will occupy and use the Premises throughout the Lease Term (i) only as a parking garage, and in accordance with the terms and conditions of Schedule 3 attached to this Lease, and incorporated into this Lease for all purposes, (ii) in a safe and secure manner and in compliance with all applicable laws, and (iii) further subject to the following:

(a) **Landlord’s Reserved Parking Rights in the West Garage:** The Premises is located in the Park and adjacent to the Pathway and Stadium. The Premises and Landlord are subject to that certain Facilities Use Agreement, dated as of November 30, 2011, by and between the City and Chicago Cubs Baseball Club, LLC, a Delaware limited liability company, recorded on December 6, 2011, as Recording No. 2011-1004062, Official Records of Maricopa County, Arizona, as subsequently amended pursuant to First Amendment recorded on January 3, 2014, as Recording No. 2014-0005366, Official Records of Maricopa County, Arizona, by that Second Amendment recorded on February 13, 2017, as Recording No. 2017-0104677, Official Records of Maricopa County, Arizona, and by that Third Amendment recorded on January 29, 2018, as Instrument No. 2018-0071002, Official Records of Maricopa County, Arizona, (collectively, “the **FUA**”), which requires that a certain number of parking spaces be provided in the vicinity of the Stadium to support parking for patrons attending baseball games played at the Stadium (“**Spring Training Games**”), events sponsored by Landlord at the Stadium (“**City Stadium Events**”) and other, non-City sponsored events at the Stadium (“**Stadium Events**”). In addition, Landlord must provide public parking for the Park, Pathway, and as otherwise described below. Accordingly, at all times during the Term, Landlord reserves rights to use the West Garage as follows, and at no cost, charge or expense to Landlord:

(1) Landlord has the exclusive right to use not fewer than 430 parking spaces on the entire first floor of the West Garage (consisting of not fewer than 215 spaces in the first phase of

construction of the West Garage, with the balance included in the Second Phase Garage Improvements if and when constructed) and all surface parking outside the physical structure of the West Garage and located within the City Surface Parking Lot as depicted in Exhibit “\_\_\_\_\_” attached hereto, at all times and for any parking use Landlord determines to use such parking in its sole discretion (“**City Exclusive Parking**”). The City Exclusive Parking located within the West Garage shall be, to the fullest extent practicable, provided in a single, contiguous “block” reasonably determined by Landlord and Tenant. Landlord may impose restrictions and conditions on the use of City Exclusive Parking as Landlord may elect from time-to-time in its sole discretion, including but not limited to (i) requiring permits, (ii) limiting or restricting parking by time (*e.g.*, two-hour parking), place, function or other feature; (iii) placing signs in the West Garage or painting (or otherwise marking) legends on the floor of the West Garage, (iv) licensing all or any portions of the West Garage on such terms and conditions as Landlord may elect from time-to-time in its sole discretion, and (v) charging for parking at such rates and upon such other terms and conditions as Landlord may elect from time-to-time in its sole discretion. Tenant will not permit any commercial tenants (or their employees, guests or invitees) of buildings within the Project to park in or otherwise utilize any of City Exclusive Parking. Landlord hereby grants to Tenant the right to lease, and Tenant shall have the right to lease, fifty (50) spaces within the City Exclusive Parking within the West Garage (consisting of not more than twenty-five [25] spaces in the first phase of construction of the West Garage, with the balance included in the Second Phase Garage Improvements if and when constructed) (such spaces being referred to in this Lease as “**Fully Reserved Tenant Parking**”) at the same lease rates, and on such terms, then being offered by Landlord to other lessees and permittees of the City Exclusive Parking.<sup>2</sup> The Fully Reserved Tenant Parking is reserved for Tenant’s permitted users at all times. Payment for the Tenant Reserved Parking shall be paid monthly to Landlord with Tenant’s payment of Base Rent. Landlord may, but is not obligated to, enforce Landlord’s rights with respect to City Exclusive Parking in any manner permitted by the Mesa City Code or state law including, without limitation, enforcement by fines, towing, immobilizing, booting or restriction of access. In addition, Landlord may offer Tenant up to fifty (50) *non-reserved* spaces within the City Exclusive Parking requested by Tenant (consisting of not more than twenty-five [25] spaces in the first phase of construction of the West Garage, with the balance included in the Second Phase Garage Improvements if and when constructed) for use by Tenant’s permitted users on days other than Game Days and Event Days (“**Semi-Reserved Tenant Parking**”) at the same lease rates, and on such terms, then being offered by Landlord to other lessees and permittees of the City Exclusive Parking, subject to payment to Landlord by Tenant for all such spaces so requested, and further subject to Landlord’s right to use, re-assign or re-allocate any of such fifty (50) non-reserved spaces not requested and paid for by Tenant.

(2) Subject to the Annual Parking Plan, for up to twenty (20) Spring Training Games a year (“**Game Days**”), Landlord has the exclusive right to use an additional 570 spaces on the second or above floors of the West Garage (“**Game Day Parking Spaces**”), in order to provide a total number of 1,000 spaces (including those on the ground floor) for Landlord’s exclusive use. Landlord shall have the exclusive right to use the Game Day Parking Spaces two (2) hours prior to and two (2) hours following the Spring Training Games. On Game Days, Landlord may impose such restrictions on the Game Day Parking Spaces, including but not limited to charging for parking, at such rates and upon such conditions as Landlord may elect from time-to-time in its sole discretion.

(3) For up to five (5) City Stadium Events, Stadium Events and City Sponsored Public Events, combined, a year (“**Event Days**”), Landlord has the exclusive right to use an additional 570 spaces on the second or above floors of the West Garage (“**Event Parking Spaces**”), in

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<sup>2</sup> [Landlord’s obligation and Tenant’s ability to lease the Fully Reserved Tenant Parking and Semi-Reserved Tenant Parking is subject to further negotiation regarding the process for releasing unused spaces to allow Landlord to use those spaces for public or other uses.]

order to provide a total number of 1,000 spaces (including those on the ground floor) for Landlord's exclusive use. Landlord shall have the exclusive right to use the Event Day Parking Spaces two (2) hours prior to and two (2) hours following such events. On Event Days, Landlord may impose such restrictions on the Event Day Parking Spaces, including but not limited to charging for parking, at such rates and upon such conditions as Landlord may elect from time-to-time in its sole discretion.

(4) On weekends, and on all weekdays from and after 7:00 pm until 6:00 am the following morning, Landlord has the non-exclusive right to use the second floor of the West Garage, and all higher floors.

(5) Notwithstanding the foregoing, in the event that (i) the FUA is terminated, or (ii) the FUA is amended to change the designation of events being held or hosted at the Stadium, elsewhere in the Spring Training Facilities (as defined in the FUA), or at the Park, or (iii) Landlord (as owner of the Stadium and the Park) enters into a facilities use agreement for the Stadium and the Spring Training Facilities with a different tenant, user or baseball team, or (iv) Landlord changes the use of the real property on which the Spring Training Facilities are located, Landlord's exclusive and non-exclusive parking rights reserved in this Lease for the use of parking spaces in the West Garage will not increase, decrease, or otherwise be modified or altered.

(6) Notwithstanding anything contained in this Section 9(a) or elsewhere in this Lease to the contrary, Landlord hereby acknowledges and agrees that, except for any Tenant Reserved Parking leased by Tenant for use of the Project, Landlord shall not offer for lease to any tenants or occupants of the Project any City Exclusive Parking, and shall at all times maintain such spaces as either public parking spaces or for third parties who are not owners, lessees or occupants of any portion of the Project.

(b) **Operation and Management of West Garage:** At all times during the Term, the West Garage will be operated and managed by Landlord or by a third-party manager selected by Landlord in its reasonable discretion ("**Parking Manager**"). Tenant will pay and be solely responsible for all fees, charges and other sums required to be paid to the Parking Manager by Landlord; provided, however, that such fees charged by the Parking Manager shall not be greater than similar fees charged by third-party parking managers in the greater Phoenix metropolitan area and providing the services of the Parking Manager with respect to the West Garage as hereinafter described. In the event that Landlord manages the West Garage itself, Landlord will be authorized to charge and collect from Tenant a fee that is reasonably equivalent to a fee that would be paid to a third-party manager for equivalent management services. The Parking Manager will be responsible for operating, administering and maintaining (including repairing and replacing) the West Garage.

10. **Condition of Premises:** Tenant hereby accepts the Land in an "**as is**" and "**where is**" condition without warranty of any kind, express or implied, except as specifically otherwise provided in this Lease, and if the Land is not in all respects entirely suitable for the use or uses to which the Land or any part thereof will be put, then it is the sole responsibility and obligation of Tenant to take such action, at Tenant's sole cost and expense, as may be necessary to place the Land in a condition entirely suitable for such use or uses.

11. **Cost of Maintenance and Repairs:** Tenant, at its sole cost and expense, and throughout the Term agrees to be responsible for all costs and expenses related to maintenance, repairs, replacements, alterations, improvements, or any related expenses or costs thereto of any kind (capital and non-capital) in order to keep the Premises in good order and repair (making all necessary replacements, renewals, and alterations, thereto) as to all portions of the Premises. **[Additional provisions related to the**

**maintenance and repair obligations shall be the subject of additional negotiations prior the finalization of this Lease. Such additional provisions may include, but shall not be limited to: the establishment of a reserve fund, quality standards for operation and maintenance and repair, audit procedures, procedures for Tenant to self-repair in the event Landlord is unable to perform, and Landlord's obligation to repair should damage occur due to Dedicated Stadium Parking use].**

12. **Easements Retained:** The Land contains vital utility infrastructure that serves regional needs, and Tenant accepts its leasehold interest subject to all easements necessary to access, maintain, repair, replace, or install such facilities. In addition, Landlord and its authorized representatives shall have, at all reasonable times, during Tenant's normal business hours, upon not less than forty-eight (48) hours advance notice (except in the event of an emergency, in which event only such notice as may be reasonable under the circumstances shall be required), the right to enter the Premises to inspect the same, to make any necessary repairs to the Land, or to perform any work (i) which may be necessary to comply with any laws, ordinances, rules or regulations of any public authority, or (ii) that Landlord may deem necessary to prevent waste or deterioration in connection with the Land if Tenant does not make or cause such repairs to be made or performed or cause such work to be performed promptly after receipt of written notice from Landlord.

13. **Indemnity and Insurance:**

(a) **Indemnification and Waiver by Tenant:**

(i) **Indemnity:** To the fullest extent permitted by law, Tenant shall, at Tenant's sole cost and expense, Indemnify (as defined below) Landlord Parties (as defined below) against all Claims (as defined below) arising in whole or in part from (i) any personal injury, bodily injury or property damage (as defined below) whatsoever occurring in or at the Premises; (ii) any Bodily Injury to an employee or agent of a Tenant Party (as defined below) arising out of and in the course of employment of the employee and occurring anywhere in the Premises; (iii) the use or occupancy, or manner of use or occupancy, or conduct or management of the Premises or of Tenant's activities therein, including, without limitation, any property of third parties situated on the Premises; (iv) any act, error, omission or negligence of any of the Tenant Parties in, on or about the Premises; (v) any alterations, activities, work or things done, omitted, permitted or allowed by Tenant Parties in, at or about the Premises, including the violation of or failure to comply with, or the alleged violation of or alleged failure to comply with any applicable laws, statutes, ordinances, standards, rules, regulations, orders, or judgments in existence on the date of the Lease or enacted, promulgated or issued after the date of this Lease; (vi) any breach or default by Tenant in the full and prompt payment of any amount due under this Lease, any breach, violation or nonperformance of any term, condition, covenant or other obligation of Tenant under this Lease, or any misrepresentation made by Tenant or any guarantor of Tenant's obligations in connection with this Lease; (vii) all damages sustained by Landlord as a result of any holdover by Tenant or any Tenant Party in the Premises including, but not limited to, any claims by another tenant resulting from a delay by Landlord in delivering possession of the Premises to such tenant; or (viii) any liens or encumbrances arising out of any work performed or materials furnished by or for Tenant at or on the Premises. Notwithstanding the foregoing, Tenant shall not be required to Indemnify any of the Landlord Parties with respect to any Claim resulting from the breach by Landlord of this Lease or damages arising out of the sole negligence or an intentional act by any of the Landlord Parties, or from any claim resulting from the active negligence, omissions or intentional acts of Landlord arising from Landlord's use of the West Garage in connection with Spring Training Games, City Stadium Events or other Stadium Events.

(ii) **Definitions:** For purposes of this Section 12: (i) the term "**Tenant Parties**" means Tenant and Tenant's officers, directors, shareholders, partners, affiliates, board members,



staff, employees, members, agents, principals, independent contractors, invitees, tenants, subtenants, licensees, sublicensees, attorneys, and representatives of the referenced person and the predecessors, heirs, successors and assigns of any such person (collectively, "**Representatives**"), and all persons and entities claiming through any of these persons or entities; (ii) the term "**Landlord Parties**" means Landlord and its Representatives, members of the City Council of the City of Mesa, the Parking Manager and all persons and entities claiming through any of these persons or entities; (iii) the term "**Indemnify**" means indemnify, defend and hold free and harmless for, from and against; and (iv) the term "**Claims**" means all liabilities, claims, damages (including consequential damages), losses, penalties, litigation, demands, causes of action (whether in tort or contract, in law or at equity or otherwise), suits, proceedings, judgments, disbursements, charges, assessments, and expenses (including attorneys' and experts' fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding), whether arising in whole or in part from Tenant Parties' actions.

(b) **Tenant's Insurance:** Tenant will at all times, throughout the Term of this Lease, insure the Premises pursuant to the requirements set forth in Exhibit B.

14. **Liens:** Except as provided in Section 15, below, Tenant shall keep the Premises free and clear of all mechanics', materialmen's and other professional service liens. Any encumbrance not expressly allowed under this Lease shall be null and void. If, because of any act or omission (or alleged act or omission) of Tenant, any mechanics', materialmen's or other lien, charge or order for the payment of money shall be filed or recorded against the Premises or any building or improvement thereon, or against Landlord (whether or not such lien, charge or order is valid or enforceable as such), Tenant shall, at its own expense, cause the same to be canceled or discharged of record within thirty (30) days after Tenant shall have received written notice of the filing thereof, or Tenant may, within said thirty (30) day period, furnish to Landlord, a bond satisfying statutory requirements and satisfactory to Landlord against the lien, charge or order, in which case Tenant shall have the right to contest, in good faith, the validity or amount thereof.

15. **Mortgages; Mortgaging of Leasehold Estate:** Tenant has the right to mortgage its interest in this Lease to not more than [a number to be negotiated] banks, insurance companies or other bona fide institutional lenders (each, a "**Leasehold Mortgagee**") for the purposes of obtaining construction financing or permanent financing without first obtaining the written consent of Landlord, provided that any leasehold mortgage will be subject and subordinate to the rights of Landlord under this Lease and the Development Agreement to the extent applicable to the Premises. Any other mortgage by Tenant of its interest in this Lease requires the prior written consent of Landlord, which may be granted, withheld, conditioned or delayed in Landlord's sole and absolute discretion.

(a) Tenant may not mortgage or encumber the Land. Any mortgage or encumbering of the Land by Tenant is void and not voidable, and is an Event of Default. Landlord is not required to subordinate its interest in the Land to any financing requested by Tenant.

(b) Tenant may not mortgage or encumber the Improvements (or Second Phase Garage Improvements, as applicable). Any mortgage or encumbering of the Improvements (or Second Phase Garage Improvements, as applicable) by Tenant is void and not voidable, and is an Event of Default.

(c) As used in this Section 15 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, together with a copy of the leasehold mortgage.

(d) Landlord agrees, simultaneously with the giving of any notice of default to Tenant, to provide to each Leasehold Mortgagee for whom Landlord has been given notice of such Leasehold Mortgagee's lien (including names, addresses and other contact information) duplicate copies of any such notice of default; provided, however, that Landlord is not required to provide duplicate copies of such notices of Tenant's default to more than two (2) Leasehold Mortgagees with respect to any single Event of Default. 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.

(e) In case of a Termination Default (as hereinafter described), Landlord may not terminate this Lease by reason of the occurrence of such Termination Default if Leasehold Mortgagee, within ninety (90) days after the giving of notice of such Termination Default as provided in this Section 15, has commenced foreclosure or similar proceedings under the leasehold 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, if any, 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 and other sums due hereunder and performs or causes to be performed all other agreements, terms, covenants and conditions of Tenant arising out of or contained herein in this Lease.

(f) 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 a foreclosing leasehold mortgagee may have the right to assign its interest under this Lease to a third party with Landlord's consent (not to be unreasonably withheld), provided the assignee cures all defaults of Tenant and assumes and agrees to perform and be bound by all of the terms of this Lease.

(e) Any mortgage of Tenant's interest in this Lease not expressly in compliance with this Section 15 is void and not voidable, and is an Event of Default.

**16. Damage to or Destruction of Improvements:** If the Improvements are wholly or partially damaged or destroyed by fire or any other causes, Tenant must, at its sole cost and expense, and whether insurance proceeds are sufficient for the purpose, promptly repair, restore or rebuild the Improvements to their pre-casualty condition, and continue this Lease in effect. There shall be no abatement of Base Rent or other charges under this Lease or delay in the payment of Base Rent or other charges under this Lease on account of all or any portion of the Premises being unused because of damage or destruction. Subject to the limitations under any leasehold mortgage and the requirements of any Leasehold Mortgagee, all insurance proceeds payable on account of damage to or destruction of the Improvements by fire or other casualty shall be payable directly to Tenant to be applied against the cost of restoring or replacing the Improvements and any excess proceeds shall belong to Tenant. Tenant's insurance shall be primary, and the preceding provisions shall apply regardless of whether or not Landlord elects to insure the Premises.

**17. Condemnation:** In the event of any taking of less than the whole or substantially all of the Premises (by a governmental entity other than Landlord or an agency thereof), the Term shall not be reduced or affected in any way. In such a case, the Rent payable for that part of the balance of the Term occurring prior to the termination or expiration of the Lease, shall be based on the ratio of the remaining

square footage of leased Improvements to the square footage of the Improvements prior to the condemnation.

18. **Utilities:** Tenant shall pay for all electricity, natural gas, water, telephone, trash removal and other utilities which may be furnished to or used by it at the Premises from and after the execution of this Lease. Tenant covenants to pay the charges for such utility services on or before the dates when such payments shall be due and to keep the Premises free and clear of any lien or encumbrance of any kind whatsoever constituting a charge against the Premises arising from the nonpayment or a delinquency in payment for said utility services. Tenant hereby agrees to use the services of the City of Mesa (where available) for all water, wastewater, gas, and trash removal on the Premises.

19. **Assignment and Subletting:**

(a) **Limitation:** Subject to Tenant's rights in Section 15 and Schedule 3 of this Lease, Tenant may not transfer or assign this Lease (or any portion of this Lease) or any of Tenant's rights under this Lease, or sublease the Premises or any part of the Premises, except in connection with the sale, transfer or other conveyance of that portion of the Project owned by Tenant and with respect to which its rights under this Lease are appurtenant. Any such purported transfer, assignment or sublease under any other circumstance shall be void (and not voidable) and shall not relieve Tenant of its liability for the full performance of all of the terms, agreements, covenants and conditions of this Lease unless Landlord has given its written consent to such transfer, assignment or sublease, which consent may be granted, withheld, conditioned or delayed in Landlord's sole and absolute discretion. Any transfer, assignment or sublease by Tenant in violation of this Section 19 will be void and not voidable, and is an Event of Default. For the avoidance of doubt, Landlord and Tenant acknowledge and agree that Tenant's rights under this Lease shall be freely assignable without Landlord's prior written consent in connection with and as part of a sale, transfer or conveyance of that portion of the Project with respect to which Tenant's rights under this Lease are appurtenant.

(b) **Documentation of Transfers:** Each transfer, assignment or sublease to which there has been consent by Landlord shall be by an instrument in writing, and shall be executed by (i) the transferor, assignor or sublessor, who shall affirm its continuing liability under the Lease; and (ii) the transferee, assignee or sublessee, who shall agree in writing for the benefit of Landlord to assume, to be bound by and to perform the terms, covenants and conditions of this Lease. One executed copy of such written instrument shall be delivered to Landlord.

20. **Surrender:** At the expiration or termination of this Lease, Tenant shall peaceably and quietly surrender the Premise to Landlord in a broom-clean and sanitary condition and in good order, condition and repair, ordinary and reasonable wear and tear excepted, free and clear of all liens and encumbrances. Any fixtures, equipment or personal property left on the Premises by Tenant at the termination of this Lease shall belong to Landlord.

21. **Default - Grounds:** The occurrence of any of the following events will constitute a default on the part of Tenant (each, an "**Event of Default**"):

(a) failure to meet any of the Compliance Dates required by the Development Agreement with respect to the Commencement of Construction or Completion of Construction (each as defined in the Development Agreement) of the applicable portion of the West Garage (or such later date as may be permitted by the terms of the Development Agreement);

(b) failure to pay any installment of Base Rent, any Additional Rent or any other sum due and payable hereunder when such payment is due, which failure is not cured within ten (10) days after written notice thereof by Landlord to Tenant;

(c) failure in the performance of any of Tenant's agreements or obligations hereunder, such default (except failure in the payment of any installment of Base Rent, any Additional Rent or any other monetary obligation hereunder) continuing for thirty (30) days after written notice thereof from Landlord to Tenant, provided that if such default is other than the payment of money and cannot be cured within such thirty (30) day period, then an Event of Default shall not have occurred if Tenant, within such thirty (30) day period, commences curing of such failure and diligently and in good faith prosecutes the same to completion; or

(d) permanent abandonment by Tenant of the Premises together with that portion of the Project owned by Tenant and with respect to which Tenant's rights under this Lease are appurtenant, while any amount of Base Rent remains due and unpaid.

22. **Default - Remedies:** [SEE FOOTNOTE]<sup>3</sup>

(a) **Landlord's Right to Terminate for Certain Events of Default:** Landlord shall have the right to elect to terminate this Lease upon thirty (30) days prior written notice to Tenant in the event of a default by Tenant under Section 21(a) or Section 21(d) above (each, a "**Termination Default**"); provided, however, that in the event that such event of default is cured by Tenant within said thirty (30) day period, then Landlord's termination notice shall be deemed to be null and void and have no further force or effect. Notwithstanding the foregoing, Landlord shall have the right to terminate this Lease upon an additional ninety (90) days' prior written notice to Tenant in the event of a default by Tenant under Section 21(b) or Section 21(c) above; provided, however, that in the event that such event of default is cured by Tenant within said ninety (90) day period, then Landlord's termination notice shall be deemed to be null and void and have no further force or effect.

(b) **Remedies for all other Events of Default:** The City's remedies for any uncured Event of Default under this Lease which is not a Termination Default may include any of the following:

(1) The pursuit of a special action or other similar relief (whether characterized as specific performance, injunction or otherwise), requiring Tenant to undertake and to fully and timely address or to enjoin any activity undertaken by Tenant which is not in accordance with the terms of this Lease;

(2) Landlord may pursue and recover from Tenant its actual damages as a result of the Event of Default by Tenant;

(3) Landlord may restrict access to the West Garage for Tenant and its subtenants and invitees;

(4) Landlord may terminate Tenant's right to use the Tenant Reserved Spaces;

(5) Landlord may use any credits available to Tenant for payments of Base Rent granted by the Development Agreement to discharge any payment obligation described in Section 21(b);

(6) Landlord may seek indemnity from (including but not limited an action for damages) arising under Tenant's obligations of indemnity set forth in this Lease; and

(7) Landlord may at any time enforce its rights given under any bond or similar financial assurance given or provided for by Tenant pursuant to this Lease.

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<sup>3</sup> [Sections 22(a) and 22(b)(3) shall be subject to further limitations, modifications, and requirements including that in the event of termination or restricting access, the tenants of the Project (other than Tenant under this Lease) will be entitled, without interruption due to such termination or access restriction, to continue to use the Premises and contract directly with Landlord to allow continued park rights within the Premises.]

(c) **Interest on Past Due Amounts:** In addition to late charge described in Section 5 above, if any installment of Base Rent, Additional Rent or any other payment is not paid promptly when due, it will bear interest at the rate of eighteen percent (18%) per annum from the date on which it becomes due until paid; provided, however, this provision is not intended to relieve Tenant from any default in the making of any payment at the time and in the manner herein specified. The foregoing interest, expenses and damages will be recoverable from Tenant by the exercise of Landlord's remedies hereinabove set forth.

(d) **Remedies Cumulative:** The remedies of Landlord specified herein will be cumulative and non-exclusive as to each default to the extent allowed by law. Additionally, Landlord shall be entitled to all rights and remedies granted to a Landlord in equity, at law, or by statute.

23. **Right to Cure:** In the event Landlord shall neglect or fail to perform or observe any of the covenants, provisions or conditions contained in this Lease on its part to be performed or observed, and such failure continues for thirty (30) days after written notice of default, then Tenant shall be entitled to seek specific performance at law and will have such other remedies as are reserved to it under this Lease, or which are otherwise available to a Tenant in equity, at law, or by statute.

24. **Holding Over:** It is agreed that the date of termination of this Lease and the right of Landlord to recover immediate possession of the Premises thereupon is an important and material matter affecting the Parties hereto and the rights of third parties, all of which have been specifically considered by Landlord and Tenant. In the event of any continued occupancy or holding over of the Premises without the express written consent of Landlord beyond the end of the term hereof, whether in whole or in part, this Lease will be deemed a monthly tenancy and Tenant will pay the greater of (a) 125% of the Base Rent then in effect pursuant to Section 3 (prorated to a monthly rental amount) in advance at the beginning of each held-over month, plus any other charges or payments contemplated in this Lease, or (b) any other costs, expenses, damages, liabilities, and attorney's fees incurred by Landlord on account of Tenant's holding over.

25. **Status Statement:** Each Party shall, at any time and from time to time, within twenty (20) days after written request by the other Party, without charge, execute, acknowledge and deliver a written statement certifying that this Lease is unmodified and in full force and effect if such is the fact (or, if there has been any modification thereof, stating the modification) and the dates to which Base Rent and other charges have been paid in advance, if any.

26. **Notices - Manner of Giving:** All notices required to be given hereunder are to be in writing. Such notice shall be (i) personally served; (ii) delivered or sent by United States certified mail, return receipt requested, postage prepaid; or (iii) delivered or sent by a recognized national courier service for next-business day delivery, addressed to the Parties as follows:

If to Landlord:

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

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

and

City of Mesa  
Attn: Office of Economic Development  
20 East Main Street  
Mesa, Arizona 85211

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

With a required copy to:

City of Mesa  
Attn: City Attorney  
20 East Main Street, Suite 850  
Mesa, Arizona 85201

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

If to Tenant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a required copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other place as the respective addressee may have designated in a written notice to the other Party. Notice will be deemed effective upon receipt.

27. **Landlord's Right to Perform Tenant's Covenants:** If Tenant shall at any time fail to pay any sum in accordance with the provisions hereof, or shall fail to make any other payment or perform any other act on its part to be made or performed, then Landlord, after thirty (30) days' written notice to Tenant following any other grace period or extensions allowed in this Lease (or without notice in case of emergency) and without waiving, or releasing Tenant from any obligation of Tenant contained in this Lease, may, but shall be under no obligation to: (a) pay any sum payable by Tenant pursuant to the provisions hereof; or (b) make any other payment or perform any other act on Tenant's part to be made or performed as in this Lease provided; and may enter upon the Premises for any such purpose, and take all such action thereon, as may be necessary therefor. All sums so paid by Landlord and all costs and expenses, including reasonable attorneys' fees, incurred by Landlord in connection with the performance of any such act shall be paid by Tenant to Landlord on demand, together with interest thereon at the rate of ten percent (10%) per annum from the respective dates of Landlord's making of each such payment or incurring of each such cost and expense, including reasonable attorney's fees, until repaid by Tenant in full.

28. **Waiver:** No waiver of any default by either Party hereunder will be implied from any omission by either Party to take action on account of such default if such default persists or is repeated,

and no express waiver will affect any default other than the default specified in the waiver, and then such waiver will be operative only for the time and to the extent therein stated. A waiver by either Party of any provision hereof will not be construed as a waiver of any subsequent breach of the same provision, nor will the consent or approval by either Party to or of any act by the other be deemed to waive or render unnecessary their consent or approval to or of any subsequent similar acts.

29. **Time:** Time is of the essence of each and every provision of this Lease.

30. **No Encumbrances or Conveyance by Landlord:** During the Term, Landlord shall place no liens or encumbrances on the Land, except for those necessary for access to or the replacement, repair, construction, or placement of utility facilities; nor shall Landlord convey, transfer, assign or hypothecate all or any portion of its interest in the Land or this Lease.

31. **Invalidity:** If any provision or any part of this Lease shall be determined to be invalid, unenforceable or illegal, then such provision shall be deemed severed from this Lease, and shall not affect the remaining provisions of this Lease.

32. **Construction; Venue; Exclusive Jurisdiction:** This Lease shall not be construed against either Landlord or Tenant. This Lease, its construction, validity and effect, shall be governed and construed by and in accordance with the substantive laws of the State of Arizona, without regard to principles of conflicts of law. In the event of a dispute regarding this Lease, the Parties consent to the sole and exclusive jurisdiction of the Superior Court of Maricopa County, Arizona, as the situs of the Land; and the Parties expressly waive any right to seek to change venue for any reason, including (but not limited to) diversity jurisdiction or the legal domicile of the Parties.

33. **Priority of Interpretation in the Event of Ambiguity:** In the event of a conflict or ambiguity between any provision of this Lease and a provision of the Development Agreement, the conflict or ambiguity will be resolved by treating the documents in this order: first, the interpretation or requirement of this Lease; and then the interpretation or requirement of the Development Agreement.

34. **Attorneys' Fees:** In the event that it becomes necessary for any Party to employ an attorney to enforce any of the terms or provisions of this Lease, the defaulting Party shall pay to the prevailing Party all reasonable attorneys' fees and court costs (if any) in connection therewith, the amount to be fixed by the court without a jury.

35. **Binding Effect:** This Lease shall inure to the benefit of and shall be binding upon the Parties, their heirs, personal representatives, successors and permitted assignees.

36. **Net Lease:** It is the purpose and intent of Landlord and Tenant that the Base Rent and Additional Rent payable under this Lease shall be absolutely net to Landlord so that this Lease shall net to Landlord, the Base Rent and Additional Rent specified in this Lease and that except as expressly set forth in this Lease, all costs, operating expenses, taxes, premiums, fees, interest, charges, expenses, reimbursements and obligations of every kind and nature whatsoever relating to Tenant's use and occupation of the Premises which may arise or become due during or out of the term of this Lease shall, except as expressly set forth in this Lease, be paid or discharged by Tenant.

37. **No Commissions:** Each of Landlord and Tenant represents and warrants to the other that no finder's fee or real estate sales or brokerage commissions are or will be due in connection with this Lease due to promises or agreements made by the warranting Party to pay such fee or commission. Each of Landlord and Tenant agrees to indemnify, defend and hold harmless the other for, from and against



any claims by third parties claiming by, through or under any relationship with Landlord or Tenant (as applicable) for a finder's fee, real estate sales or brokerage commissions in connection with this Lease.

38. **No Partnership:** Nothing contained in this Lease shall be deemed or construed as creating an agency, partnership or joint venture relationship between Landlord and Tenant or between Landlord and any other party, or cause Landlord to be responsible in any way for the debts or obligations of Tenant or any other party.

39. **Entire Agreement:** This Lease constitutes the entire agreement between Landlord and Tenant with respect to the leasing of the Premises and supersedes any and all other prior written or oral agreements or understandings with respect to the leasing of the Premises (although Landlord and Tenant acknowledge that the Development Agreement sets forth certain conditions and obligations with respect to the construction and use of the West Garage. This Lease may not be modified or amended in any respect except by an instrument signed in writing by both Landlord and Tenant.

40. **Hazardous Materials:**

(a) **Hazardous Materials Laws:** "**Hazardous Materials Laws**" means any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "**common-law**") relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about any of the improved real properties comprising the Land, or soil and ground water conditions, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**"), as amended, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act ("**RCRA**"), 42 U.S.C. §6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq., Title 49 of Arizona Revised Statutes, any amendments to the foregoing, and any similar federal, state or local laws, ordinances, rules, decrees, orders or regulations.

(b) **Hazardous Materials:** "**Hazardous Materials**" means any flammables, explosives, radioactive materials, hazardous wastes, hazardous and toxic substances or related materials, petrochemicals, asbestos or any material containing asbestos (including, without limitation, vinyl asbestos tile), or any other substance or material, defined or regulated as a "hazardous substance" by any federal, state or local environmental law, ordinance, rule or regulation including, without limitation, any Hazardous Materials Law.

(c) **Use:** Except as expressly provided otherwise in this Lease, Tenant shall not allow any Hazardous Material to be used, generated, released, stored or disposed of on, under or about, or transported from the Premises, unless: (i) such use is specifically disclosed to and approved by Landlord in writing prior to such use; and (ii) such use is conducted wholly in compliance with the provisions of this Section 40 as reasonably understood by Landlord. Landlord may approve such use subject to reasonable conditions to protect the Premises and Landlord's interests. Landlord may withhold approval if Landlord determines that such proposed use involves a material risk of a release or discharge of Hazardous Materials or a violation of any Hazardous Materials Laws or that Tenant has not provided reasonable assurances of its ability to remedy such a violation and fulfill its obligations under this Section 40(c). Notwithstanding anything contained in this Lease to the contrary, Tenant shall be permitted to store and use on the Premises such Hazardous Materials in quantities as are reasonable, necessary and incidental to its business operations on the Premises as described in this Lease, so long as Tenant does so in strict compliance with applicable Hazardous Materials Laws.

(d) **Compliance with Laws:** Tenant shall strictly comply with, and shall maintain its operations on the Premises in compliance with, all Hazardous Materials Laws. Tenant shall obtain and maintain in full force and effect all permits, licenses and other governmental approvals required for Tenant's operations at the Premises under any Hazardous Materials Laws and shall comply with all terms and conditions thereof. At Landlord's request, Tenant shall deliver copies of, or allow Landlord to inspect, all such permits, licenses and approvals. Tenant shall perform any monitoring, investigation, clean-up, removal and other remedial work (collectively, "**Remedial Work**") required as a result of any release or discharge by Tenant of Hazardous Materials affecting the Premises or any violation of Hazardous Materials Laws by Tenant or any Tenant Parties. Landlord shall have the right to intervene in any governmental action or proceeding involving any Remedial Work, and to approve performance of the work, in order to protect Landlord's interests.

(e) **Notice; Reporting:** Tenant shall notify Landlord, in writing, within two (2) business days after any of the following: (a) a release or discharge of any Hazardous Material, whether or not the release or discharge is in quantities that would otherwise be reportable to a public agency; (b) Tenant's receipt of any order of a governmental agency requiring any Remedial Work pursuant to any

Hazardous Materials Laws; (c) Tenant's receipt of any warning, notice of inspection, notice of violation or alleged violation, or Tenant's receipt of notice or knowledge of any proceeding, investigation of enforcement action, pursuant to any Hazardous Materials Laws; or (d) Tenant's receipt of notice or knowledge of any claims made or threatened by any third party against Tenant or the Premises relating to any loss or injury resulting from Hazardous Materials.

(f) **Event of Default:** The release or discharge from and after the Commencement Date by Tenant or any Tenant Parties of any Hazardous Material or the violation by Tenant or any Tenant Parties of any Hazardous Materials Law shall constitute an Event of Default by Tenant under this Lease. In addition to and not in lieu of the remedies available under this Lease as a result of such Event of Default, Landlord shall have the right, without terminating this Lease, to require Tenant to suspend its operations and activities at the Premises until Landlord is satisfied that appropriate Remedial Work has been or is being adequately performed and Landlord's election of this remedy shall not constitute a waiver of Landlord's right thereafter to pursue the other remedies set forth in this Lease.

(g) **Inspections:** Tenant shall do no invasive testing of any portion of the Land without the prior written consent of the Landlord, which consent will not be unreasonably withheld by Landlord. Such prohibition includes, but is not limited to, the taking of physical samples and boring of test holes; but in the event Landlord reasonably agrees to such testing, any disturbance of the Land will be remediated, and the Land restored to its pre-testing condition by Tenant at its sole cost and expense.

41. **No Warranties:** Tenant acknowledges and covenants to Landlord that it has made a complete investigation of the real property included within the Land, 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 this Lease. 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.

42. **Severability:** If any provision of this Lease shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect. It is the intention of Landlord and Tenant that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

43. **Conflict of Interest:** This Lease is subject to, and may be terminated by Landlord in accordance with, the provisions of A.R.S. §38-511.

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

*Signatures of the Parties are on the following page.*

IN WITNESS WHEREOF, the Parties have executed this Lease to be effective as of the day and year first above written.

Landlord:

Tenant:

City of Mesa, Arizona, an Arizona  
municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**SCHEDULE 1 TO GROUND LEASE**  
**BASE RENT**

The annual Base Rent amount shall be determined by multiplying 6.25% by the appraised value of the Land (the “**Land Value**”), and the Land Value will be subject to re-appraisals as further described below. The initial Land Value shall be determined by an appraisal prepared within six months of the execution of this Lease (the “**Initial Appraisal**”).

- a) Re-Appraisals. On the tenth (10th) anniversary of the execution of the Lease, and every tenth (10th) anniversary thereafter, Landlord shall obtain a new appraisal for the Land (each, a “**New Landlord Appraisal**”), which the Parties shall use to replace the most previously appraised value for multiplying by 6.25% to determine the annual Base Rent. Notwithstanding the determination of any New Landlord Appraisal, (1) solely for the purposes of recalculating Base Rent, the value of the Land will not be increased more than ten percent (10%) over the most previously appraised value of the Land in the Initial Appraisal or the most recent New Landlord Appraisal, as applicable; and (2) the Base Rent will never be less than the Base Rent charged for the previous year.
- b) Appraisals. In preparing the initial appraisal and the New Landlord Appraisals, the appraiser shall be instructed to determine the fair market value of the Land without regard to the value of improvements on the Land that were paid for by Tenant, but to include the value of improvements on the Land that were paid for by Landlord.

**SCHEDULE 2A TO GROUND LEASE**  
**DESCRIPTION OF REQUIRED IMPROVEMENTS**

**SCHEDULE 2B TO GROUND LEASE**  
**DESCRIPTION OF SECOND PHASE GARAGE IMPROVEMENTS**

**SCHEDULE 3 TO GROUND LEASE**  
**WEST GARAGE OPERATIONS, MAINTENANCE AND OTHER REQUIREMENTS**

1. **Parking.** Parking in the West Garage is permitted only in designated “striped” stalls or spaces (each, a “**Space**”; or collectively, “**Spaces**”). Parking in the Spaces is permitted only for non-commercial automobiles (including pickup trucks and family vans) and motorcycles; the parking of trailers, commercial vehicles (which shall not be deemed to mean fleet vehicles owned by tenants or occupants within the Project and available for use by such tenants or occupants, and their employees) recreational vehicles, boats, jet-skis and similar motorized forms of transportation are expressly prohibited in the West Garage. Parking for extended cab pickup trucks may be restricted. No vehicle may be parked or maintained in the West Garage pursuant to this Agreement as a form of advertising (including, but not limited to, for any subtenant or subtenant of Tenant or for any third party).

(a) Subject to Landlord’s reserved rights, and without additional cost or expense to Tenant, Tenant retains the right to all Spaces. Tenant may sublicense the Spaces to Tenant’s subtenants and other persons with occupancy rights at the Project. Tenant may charge its subtenants a sublicense fee for each licensed Space, as Tenant may determine in its sole discretion.

(b) Subject to Landlord’s reserved rights, Tenant, at its sole cost and expense, may construct, and thereafter operate and maintain, an entry “gate” or similar control device (each, a “**Gate**”), to restrict entry to the Spaces to Tenant’s subtenants and their invitees. The Gate will be placed within the West Garage at a location agreed by Landlord and Tenant and will be operated in a manner that does not restrict or impede Landlord’s reserved rights.

2. **Security.** Tenant acknowledges and understands that the Landlord provides no security at or for the West Garage and agrees that the Landlord will have no obligation to provide security at the West Garage; provided, however, that Landlord shall provide security for the West Garage during Spring Training Games and other Stadium Events. At all times other than during Spring Training Games and other Stadium Events, Tenant is solely responsible, at its sole cost and expense, for: (i) the security for Tenant and all Tenant Parties; (ii) the security for the personal property (including all vehicles) of Tenant and Tenant Parties at the West Garage; and (iii) the security of third parties and users of the West Garage to the extent such security-related events or incidents arise or are related to Tenant’s, or Tenant Parties’ use of the West Garage. Tenant will indemnify, defend, pay and hold Landlord and all Landlord Parties 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 security at the West Garage (including but not limited to adequacy of security, lack of security, or types of security installed or available.)

3. **Storage and Nuisances Prohibited.** The West Garage will not be used for the storage of vehicles, equipment or materials, except for any such vehicles, equipment or materials used in connection with the ongoing maintenance and repair of the West Garage. All vehicles parked in the West Garage must be fully operational. Tenant will not use the West Garage, nor permit the West Garage to be used in a manner that creates or causes to be created nuisances or hazards to the public health or safety.

4. **Permits.** Tenant will, at its sole cost and expense, obtain all permits, licenses and authorizations which may be required by Landlord or any other governmental authorities with respect to Tenant’s use of the Premises. Tenant will not engage in or permit any conduct in the West Garage which violates any law, ordinance, permit or governmental regulation, or which violates the terms of this Lease.



## **Exhibit A-1**

### **Legal Description of West Garage Parcel**

Entire Subject Property consists of Lot 6, Lot 9 and Tract I of the “Cubs Spring Training Facility & Riverview Park” Final Plat, as recorded with the Maricopa County Recorder on January 1<sup>st</sup>, 2016. The “West Garage Parcel,” as referenced in the Development Agreement can be described as the following:

**Lot 6** of Final Plat Cubs Spring Training Facility & Riverview Park, recorded in Book 1257 of maps, Page 29, according to the plat of record on file in the Office of the County Recorder, Maricopa County, Arizona.

## **Exhibit A-2**

### **Legal Description of Full Property**

Subject Property consists of Lot 6, Lot 9 and Tract I of the “Cubs Spring Training Facility & Riverview Park” Final Plat, as recorded with the Maricopa County Recorder on January 1<sup>st</sup>, 2016.

**Lot 6** of Final Plat Cubs Spring Training Facility & Riverview Park, recorded in Book 1257 of maps, Page 29, according to the plat of record on file in the Office of the County Recorder, Maricopa County, Arizona.

**Lot 9** of Final Plat Cubs Spring Training Facility & Riverview Park, recorded in Book 1257 of maps, Page 29, according to the plat of record on file in the Office of the County Recorder, Maricopa County, Arizona.

**Tract I** of Final Plat Cubs Spring Training Facility & Riverview Park, recorded in Book 1257 of maps, Page 29, according to the plat of record on file in the Office of the County Recorder, Maricopa County, Arizona.

**[Note: Subject to review by Parties prior to finalization of Lease]**

**EXHIBIT B TO GROUND LEASE**

**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 Land and/or in the performance of work or construction of the Improvements 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 \$5,000,000 combined single limit per occurrence and not less than \$5,000,000 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.
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.

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 Article 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 \$250,000.00 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.