

## **PARKING LICENSE AGREEMENT**

This Parking License Agreement (this “**Agreement**”) is entered into to be effective as of \_\_\_\_\_, 2026 (the “**Effective Date**”), by and between the City of Mesa, an Arizona municipal corporation (“**City**”) and OCAP Main St, LLC, an Arizona limited liability company (“**Licensee**”). Each of City and Licensee may be referred to in this Agreement as a “**Party**,” or collectively as the “**Parties**.”

A. Licensee is the owner of the real property located at the northeast corner of E. Main Street and N. Centennial Way in Mesa, Arizona, totaling approximately 32,496 square feet (the “**Property**”).

B. City is the owner of the three-story parking structure located at 20 N. Hibbert (the “**Garage**”) on real property that is adjacent to the east side of the Property owned by Licensee.

C. Pursuant to that certain Development Agreement between the Parties effective \_\_\_\_\_, 2026, (the “**Development Agreement**”), generally regarding the development of a hotel on the Property (the “**Hotel**”), Licensee is required to license from City one hundred (100) parking spaces in the Garage for, among other reasons, the Hotel to satisfy Mesa City Code development requirements.

D. Additionally, as set forth in the Development Agreement, Developer desires and intends to convey the Property and Minimum Improvements to City following Completion of Construction of the Project (each as defined in the Development Agreement), lease the Property and Minimum Improvements from City pursuant to A.R.S. §§ 42-6201, *et seq.*, via a lease agreement in the form attached to the Development Agreement to, among other things, abate the government property lease excise tax (the “**Lease**”), and operate the Project in compliance with the Development Agreement and Lease. Licensee is required to execute and deliver this Agreement as a condition precedent to City having any obligation to enter into the Lease.

E. City has agreed to grant to Licensee, and Licensee desires to receive from City, an irrevocable (subject, however, to the terms of this Agreement), nonexclusive, non-delegable license on, over, and across the Licensed Area (defined in Section 1(a)) by Licensee and its permitted sublicensees for the parking of non-commercial automobiles and motorcycles (as more fully defined as “Licensed Activities” in Section 1(c)).

## **AGREEMENT**

Now, therefore, in consideration of the foregoing recitals and representations and the mutual promises contained in this Agreement, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Grant of License. City hereby grants to Licensee (and its permitted sublicensees) an irrevocable (subject, however, to the terms of this Agreement), non-exclusive, non-delegable license for parking in the Garage subject to all the following (the “**License**”):

a. The License is only upon, over, and across the one hundred (100) Spaces (as defined below) within that portion of the Garage described and depicted on Exhibit A (the “**Licensed Area**”).

b. The Licensed Area may only be used by Licensee and Licensee’s permitted sublicensees; such permitted sublicensees consist only of Hotel guests who are granted access to the Garage by Licensee in connection with their stay at the Hotel, dining at the onsite restaurant at the Hotel, or events at the Hotel, and Hotel employees and officers who are granted access to the Garage by Licensee in connection with their shifts at the Hotel (each, a “**Licensee Party**” and collectively, “**Licensee Parties**”).

c. The Licensed Area may solely be used by Licensee and Licensee Parties for the purpose of allowing, in connection with Licensee’s and Licensee Parties’ permitted use of the Property, the parking of non-commercial automobiles, motorcycles, and light-duty trucks and vans (collectively, the “**Licensed Activities**”) subject to the terms, conditions, and limitations set forth in this Agreement and further subject to all rules and regulations of the City of Mesa respecting use of the Garage (the “**Rules and Regulations**”). Licensed Activities expressly do not include, and expressly exclude, the parking of any (1) commercial vehicle; (2) heavy-duty trucks or vans; (3) trailers; (4) boats or jet skis or other item intended for nautical use; and (5) recreational vehicles such as vehicles fitted for living accommodation and travel use, including motorhomes, campervans, coaches, travel trailers, fifth-wheel trailers, popup campers, and truck campers. All permitted vehicles parked in the Garage must be fully operational, and no repair or maintenance of any vehicle in the Garage is permitted at any time. No vehicle may be parked or maintained in the Garage as a form of advertising or promotion of a commercial enterprise. In addition, the parking of non-commercial extended cab or extended bed trucks and vans that are owned and used exclusively for personal use by Licensee or a Licensee Party may be restricted as to location within the Garage by City. For the avoidance of doubt, Licensee is permitted to conduct, permit, and allow only the Licensed Activities, only by Licensee and Licensee Parties, and only with respect to the Licensed Area.

d. The License includes a non-exclusive license for the use of Common Areas in the Garage that are directly related to the use of the Licensed Spaces by Licensee or Licensee Parties for Licensed Activities that are in accordance with the normal commercial uses of the Garage. The “**Common Areas**” include the drive aisles, entrances, exits, elevators, and stairwells of the Garage; all of the terms of this Agreement, including Licensee’s obligations related to the Licensed Spaces, including the obligation to Indemnify (as that term is defined below), apply to and include the Common Areas.

2. Term of Agreement; Obligation to Pay License Fee. The term of this Agreement (“**Term**”) is that period of time commencing on the Effective Date and terminating on the date that is fifty (50) years later (“**Termination Date**”); provided however, this Agreement may be earlier terminated by City in the event of a Default by Licensee in accordance with Section 11, or in the event of a conflict of interest in accordance with Section 21. Licensee acknowledges and agrees that this Agreement and the License Fee hereunder are a material part of the consideration for City entering into the Development Agreement, an element of the conditions precedent to City entering into the Lease, and the abatement of the government property lease excise tax in

accordance with the Lease. Therefore, Licensee agrees that if this Agreement is terminated by Licensee prior to the Termination Date or is terminated by City due to a Default by Licensee prior to the Termination Date, Licensee must pay to City the cumulative total of the License Fee that would have been paid to City for the period of time commencing on the date of the Notice of termination and ending on the Termination Date. Such cumulative total of the License Fee (a) will be determined by City based on the monthly parking rate per Licensed Space at the time of the Notice of termination of this Agreement for one hundred (100) Spaces in the Garage extrapolated over the remainder of the Term; and (b) must be paid to City within thirty (30) days of the Notice of termination of this Agreement.

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

4. Licensed Spaces.

a. Parking in the Garage is permitted only in designated “striped” stalls or spaces within the Garage for a single motor vehicle (each, a “**Space**” or collectively, “**Spaces**”). Subject to (i) the payment in advance by Licensee of the License Fee; and (ii) Licensee’s compliance with all other terms and conditions of this Agreement, parking by Licensee and Licensee Parties is permitted pursuant to this Agreement in those Spaces within the Licensed Area (each, a “**Licensed Space**”; or, if more than one, the “**Licensed Spaces**”).

b. City may relocate the Licensed Area and the Licensed Spaces from time-to-time upon reasonable notice to Licensee and as City may reasonably require, but not more than once per calendar year.

c. Licensee may sublicense the Licensed Spaces only to Licensee Parties; for the avoidance of doubt, the only permitted sublicense of Licensed Spaces is to Licensee Parties. Licensee may charge Licensee Parties a sublicense fee for each Licensed Space; for which City has neither involvement nor responsibility. Licensee acknowledges that City is not in privity of contract with any of Licensee Parties.

d. Licensee is responsible, at its sole cost and expense, for all repair (including replacement, as applicable) to the Garage resulting from damage by Licensee and Licensee Parties. Upon Notice from City of an event of damage or destruction to the Garage by Licensee or a Licensee Party, Licensee will promptly commence repair or replacement as required by City and such repair or replacement will be subject to approval and supervision of City. City may reasonably require the use of City’s approved contractor to complete any repair or replacement in the Garage required by this section.

e. City retains the right to use, occupy, assign, restrict, and otherwise deal with all Spaces within the Garage except the Licensed Spaces while Licensee complies with this

Agreement. Licensee acknowledges that the lower level of the Garage is restricted and Licensee and Licensee Parties have no right to use any Spaces in the lower level of the Garage.

f. Subject to City's prior written approval with respect to (i) content; (ii) placement; (iii) quality; (iv) method of adherence; and (v) any other condition reasonably imposed by City, Licensee, at its sole cost and expense, may place signs within the Licensed Area, *inter alia*, to assign Licensed Spaces to specific Licensee Parties, indicate location of and demark the Licensed Area, and post reasonable rules and regulations for Licensee Parties.

5. License Fee. Licensee must pay a monthly fee to City for the License on or prior to the first (1st) day of each month of the Term (the "**License Fee**") as set forth in this section. Commencing on the Effective Date and continuing for eight (8) years, the License Fee will be ten dollars (\$10.00) per Licensed Space per month. Commencing on the first (1st) day of the ninth (9th) year following the Effective Date, the License Fee will be (a) the amount of the then-current Mesa City Council approved monthly parking rate per Space; (b) a License Fee other than the Mesa City Council approved monthly parking rate per Space provided this Agreement is amended to set such License Fee and the amendment is approved by the City Council at its sole and absolute discretion; or (c) only if a Mesa City Council approved monthly parking rate per Space does not exist, a commercially reasonable monthly rate for each Licensed Space (which will in no event be less than the previously applicable monthly rate for the Licensed Spaces) that is mutually agreed upon by the Parties. Licensee must make all payments required by and in accordance with this section regardless of Licensee and Licensee Parties using less than all the Spaces within the Licensed Area; stated another way, Licensee must pay to City the monthly License Fee for one hundred (100) spaces for the fifty (50) year Term of this Agreement. Provided further, if Licensee restripes Spaces in the Licensed Area or makes other changes to the Licensed Area in a manner that results in less than one hundred (100) Spaces in the Licensed Area (such as to add Spaces to the Licensed Area in order to comply with the Americans with Disabilities Act) (see Section 9), the License Fee that Licensee must pay to City will still be calculated based on and as if Licensee is licensing one hundred (100) Spaces in the Garage.

6. Access and Security.

a. Access. Licensee acknowledges and understands that the Garage is not open to the public and is equipped with an access control system which allows only City authorized personnel to enter the Garage by scanning a keycard or badge to open the gates and doors to the Garage. Licensee will be responsible, at its sole cost and expense, for installing and maintaining an access control system at the Garage to allow for and control access to the Garage by Licensee and Licensee Parties. Licensee may issue keycards, badges, or other instrumentalities to Licensee Parties for access to the Garage via Licensee's access control system. City will not be responsible for the access of Licensee or Licensee Parties to the Garage. Licensee is prohibited from installing an access control system that in any way interferes with or limits access to the Garage by City or City authorized personnel. Licensee must coordinate its design and installation of its access control system with City and such improvements are subject to Section 9.

b. Security. Licensee acknowledges and understands that City provides no security at or for the Garage and agrees that City will have no obligation to provide security at the

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

7. Insurance; Indemnity.

7.1. Throughout the term of this Agreement, Licensee will procure and maintain, at its sole cost and expense, insurance against claims for injuries to person or damages to property which may arise from or in connection with the use by Licensee, Licensee Parties, or Licensee's tenants, subtenants, employees, agents, contractors, and invitees of the Licensed Area and Garage, and the obligations set forth in the Agreement, including the repair and replacement obligations and indemnity obligations of this Agreement. The terms and coverages for the insurance are as set forth in Exhibit B to this Agreement.

7.2. In addition, Licensee will pay, defend, indemnify, and hold harmless City and its City Council members, officers, and employees (collectively, "**City Indemnified Party(-ies)**") from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and court costs associated with such matters; all of the foregoing, collectively, "**Claims**") imposed upon or asserted against City, its agents, representatives, officers, directors, elected or appointed officials, and employees, caused by, arising from, or related to, in whole or in part, the acts or omissions of Licensee, Licensee Parties, and Licensee's tenants, subtenants, employees, agents, contractors, and invitees for reason of any of the following: (i) any act or omission by Licensee, Licensee Parties, or Licensee's tenants, subtenants, employees, agents, contractors, invitees, or representatives undertaken in fulfillment of Licensee's obligations under this Agreement; (ii) any use or nonuse

of, or any condition created by Licensee, a Licensee Party, or Licensee's tenant, subtenant, employee, agent, contractor, invitee, or representative on or at the Garage or any part thereof; and (iii) any accident, injury to or death of persons (including workmen), or loss of or damage to property occurring on or about the Garage or any part thereof caused or created by, or arising from, in whole or in part, any act or omission of Licensee, a Licensee Party, or Licensee's tenant, subtenant, employee, agent, contractor, invitee, or representative; except those Claims solely and exclusively arising from or caused by the gross negligence or intentional misconduct of a City Indemnified Party (collectively, "**Indemnity**"). Licensee's obligations of Indemnity will survive the expiration or earlier termination of this Agreement.

8. Storage and Nuisances Prohibited. The Licensed Area may not be used for the storage of vehicles, equipment, or materials. Licensee will not use the Licensed Area, nor permit the Licensed Area to be used, in a manner that creates (or causes to be created) nuisances or hazards to the public health or safety.

9. Licensee's Requested Improvements. To the extent that Licensee requests changes to the Garage (by way of illustration, Licensee's access control system required by Section 6, separate entry for Licensee Parties, or structures to demark or limit access to the Licensed Area), any such changes are subject to City's prior approval, which may be granted, withheld, or conditioned in City's sole, absolute, and unfettered discretion, and which will be at Licensee's sole cost and expense. In addition, to the extent that Licensee's use of the Garage by the Licensee Parties for the Licensed Activities may require physical changes to the Garage by reason of the Americans with Disabilities Act or other similar laws regulating access and accommodation (by way of illustration, restriping of Spaces in the Licensed Area), all such changes will be at Licensee's sole cost and expense and are subject to Licensor's prior approval, which may be granted, withheld, or conditioned in Licensor's sole, absolute, and unfettered discretion. If Licensee restripes Spaces in the Licensed Area or makes other changes to the Licensed Area in a manner that results in less than one hundred (100) Spaces in the Licensed Area (such as to add Spaces to the Licensed Area in order to comply with the Americans with Disabilities Act), this Agreement does not grant to Licensee, and Licensee will not be entitled to, a license to any additional Spaces in the Garage outside of the Licensed Area; this Agreement only grants to Licensee a license for the Licensed Area (which currently has one hundred (100) Spaces).

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

11. Default.

a. Any breach by Licensee of any term or provision of this Agreement, after Notice and opportunity to cure as more specifically set forth in this Agreement, is a "**Default**" by Licensee of this Agreement.

b. If Licensee fails to pay any sum due under this Agreement promptly when due and such failure continues for ten (10) days after Notice to Licensee, and such Default continues for thirty (30) days after Notice to Licensee, City will have the right, at its election, to terminate this Agreement and to seek any remedy available to City at law or in equity.

c. If Licensee fails to perform or comply with any of the other agreements, conditions, or undertakings of this Agreement that do not solely involve payment as described in Section 11(b), and such Default continues for ninety (90) days after Notice to Licensee, City will have the right, at its election, to terminate this Agreement and to seek any remedy available to City at law or in equity.

d. As long as the Development Agreement is in effect, a Default by Licensee of this Agreement by Licensee will be a breach or default of the Development Agreement, and a breach or default of the Development Agreement by Developer will be a Default of this Agreement; and notice of such breach or default under the Development Agreement, sent to the Developer named in, and in accordance with the “Notice” provisions of, the Development Agreement, will, without further act or notice required, constitute Notice to Licensee of a Default of this Agreement.

e. As long as the Lease is in effect, a Default of this Agreement by Licensee will be a breach or default of the Lease, and a breach or default of the Lease by Tenant will be a Default of this Agreement; and notice of such breach or default under the Lease, sent to the Tenant named in, and in accordance with the “Notice” provisions of, the Lease, will, without further act or notice required, constitute Notice to Licensee of a Default of this Agreement.

f. In addition to any other remedies available to City, during any period of Default by Licensee, the License Fee will be increased by three hundred percent (300%) per Space.

g. In addition to any other remedies of City with respect to a Default by Licensee, Licensee acknowledges, on behalf of Licensee and all Licensee Parties, that (1) they are subject to all applicable ordinances and codes of the City of Mesa, and all Rules and Regulations applicable to a parking structure owned and operated by the City of Mesa; and (2) they may be liable for any fines or penalties imposed by the City of Mesa for a violation by Licensee or a Licensee Party of any applicable ordinance or code of the City of Mesa, or any Rule and Regulation applicable to a parking structure owned and operated by the City of Mesa.

h. If Licensee receives Notice of a violation by Licensee or a Licensee Party of this Agreement or the Rules and Regulations, Licensee must promptly cure or remedy such violation at Licensee’s sole cost and expense within not fewer than seventy-two (72) hours, which cure or remedy may include towing (and subsequent storage) of any vehicle in violation of this Agreement or the Rules and Regulations. The failure of Licensee to timely and promptly comply with this Section 11(h) is a Default by Licensee.

12. Attorneys’ Fees. In the event of any litigation or other legal proceedings between the Parties, the prevailing Party as determined by the court, will be entitled to the payment by the non-prevailing Party of its reasonable attorneys’ fees, court costs, and litigation expenses, as

determined by the court. In no event will City or Licensee (or their respective successors or permitted assigns) be liable for any special, consequential, incidental, punitive, or exemplary damages.

13. No Partnership; Assignment. It is not intended by this Agreement to, and nothing contained in this Agreement will, create any partnership, joint venture, landlord-tenant, or similar arrangement between the Parties, other than that of City and Licensee. No term or provision of this Agreement is intended to, or will, be for the benefit of any person, firm, organization, or corporation not a party to, and no such other person, firm, organization, or corporation will have any right or cause of action hereunder. Other than in connection with a permitted transfer under the Development Agreement and the Lease of Licensee's entire leasehold interest in the Property, and an express assumption by an assignee of all of Licensee's obligations under this Agreement, Licensee may not assign its rights under this Agreement or grant to any other person the right to utilize the Licensed Area (other than Licensee Parties) without the prior written consent of City, which consent City may grant or withhold in its sole discretion.

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

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

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

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

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

19. Notices. All notices, demands, requests, consents, approvals, and other communications required or permitted in this Agreement (each, a "**Notice**"), must be in writing and will be deemed to have been given upon personal delivery to the respective Party, after

delivery by personal service or a nationally recognized overnight courier service (e.g., UPS, Federal Express) for next business day delivery, at the Party's address shown below:

To Licensee: Breakwell Group LLC  
Attn: Blake Bunker  
3626 East Sagebrush Street  
Gilbert, Arizona 85296

With a copy to: Huber Barney PLLC  
Attn: Aaron Huber  
4915 East Baseline Road, Suite 105  
Gilbert, Arizona 85234

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

and

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

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

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

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

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

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

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

**“CITY”**

CITY OF MESA, ARIZONA,  
an Arizona municipal corporation

\_\_\_\_\_  
By: Scott Butler  
Its: City Manager

Date: \_\_\_\_\_

**“LICENSEE”**

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

## **EXHIBIT A TO PARKING LICENSE AGREEMENT**

### **Description and Depiction of Licensed Area**

[Insert Description and Depiction]

The Garage has \_\_\_\_ spaces on levels 1 through \_\_\_\_ . Licensee is licensed one hundred (100) spaces which will be located on levels \_\_\_\_\_

## **EXHIBIT B TO PARKING LICENSE AGREEMENT**

### **Insurance Requirements**

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

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

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

| <u>Type</u>                                                                                                                      | <u>Amount</u>                                                                                                                                                                       | <u>Coverage Period</u>                                                                                                                                                                                                  |
|----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| General Liability (which will include operations, products, completed operations, and contractual liability coverage)            | With limits not less than \$3,000,000 combined single limit per occurrence and not less than \$5,000,000 general aggregate.                                                         | Coverage will be in effect upon or prior to and remain in effect for the Term of the License.                                                                                                                           |
| Property (all risks of loss including risks covered by fire and extended coverage, terrorism, vandalism, and malicious mischief) | In an amount not less than full replacement cost of structure and all fixtures.                                                                                                     | Coverage will be in effect upon or prior to the earlier of when the Builder’s Risk policy is no longer in effect or substantial completion of construction and thereafter remain in effect for the Term of the License. |
| Commercial Automobile Liability                                                                                                  | With limits not less than \$1,000,000 each occurrence, Combined Single Limit for bodily injury and property damage covering owned, non-owned and hired auto coverage as applicable. | Coverage will be in effect upon or prior to and remain in effect for the Term of the License.                                                                                                                           |
| Business Interruption Coverage (can be endorsed to the Property policy)                                                          | Minimum 12 months’ rent and ongoing operating expenses                                                                                                                              | Coverage will be in effect upon or prior to the earlier of when the Builder’s Risk policy is no longer in effect or substantial completion of construction and thereafter                                               |

|                                                  |                                                                      |                                                                                                                                              |
|--------------------------------------------------|----------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
|                                                  |                                                                      | remain in effect for the Term of the License.                                                                                                |
| Workers' Compensation<br>Employers' Liability    | Statutory Limits<br>\$500,000 each accident, each employee           | Coverage will be in effect upon or prior to and remain in effect for the Term of the License.                                                |
| Liquor Liability                                 | \$5,000,000                                                          | Coverage will be in effect upon or prior to and remain in effect for the Term of the License, provided Licensee sells and/or serves alcohol. |
| Builder's Risk                                   | In an amount not less than the estimated total cost of construction. | Coverage will be in effect upon or prior to any construction activities and maintained until the substantial completion of construction.     |
| Owner's and Contractor's<br>Protective Liability | \$5,000,000                                                          | Coverage will be in effect upon or prior to any construction activities and maintained until the substantial completion of construction.     |
| Professional Liability                           | \$2,000,000                                                          | Coverage will be in effect upon or prior to any construction activities and maintained until the substantial completion of construction.     |
| Blanket Crime Policy                             | \$5,000,000                                                          | Coverage will be in effect upon or prior to and remain in effect for the Term of the License.                                                |

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

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

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

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

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

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

6. City will be named as Loss Payee on all property insurance policies. Proceeds of any property damage insurance will be applied as required by Section 17 of the 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 will include provisions to the effect that it will not be suspended, voided, cancelled, or reduced in coverage except after thirty (30) days' prior written notice has been given to City. Such notice will be sent directly to Risk Management, City Attorney's Office, City of Mesa, 20 E. Main Street, P.O. Box 1466, MS-1077, Mesa, Arizona 85211.1466.

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

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

G. LICENSEE'S DEDUCTIBLES AND SELF-INSURED RETENTIONS: Any deductibles or self-insured retention in excess of \$250,000 will be declared to and be subject to approval by City. Licensee will be solely responsible for the payment of any deductible or self-insured amounts

and waives any rights it may have to seek recovery of such amounts from City and its agents, officials, volunteers, officers, elected officials, and employees.

H. LICENSEE'S CONTRACTORS AND DESIGN PROFESSIONALS: Licensee will require and verify that the general contractor and all subcontractors maintain reasonable and adequate insurance with respect to any work on or at the Garage, all such policies will include: (i) a waiver of subrogation rights in favor of the City, its agents, officials, volunteers, officers, elected officials, and employees, (ii) a waiver of liability in favor of the City, 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) City, and its agents, officials, volunteers, officers, elected officials, and employees, will be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies. Licensee will require all design professionals (e.g., architects, engineers) to obtain Professional Liability Insurance with limits of liability not less than those stated in the above chart.

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

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