

When recorded, return to:

City of Mesa
Office of the City Clerk
20 East Main Street
P. O. Box 1466
Mesa, Arizona 85211-1466

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GOVERNMENT PROPERTY IMPROVEMENTS LEASE

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1. **Date.** The date of this Government Property Improvements Lease (the "Lease") is _____, 202__ (the "Effective Date").

2. **Parties.** The parties to this lease are as follows:
 - A. City of Mesa, Arizona, an Arizona municipal corporation ("Landlord")

20 East Main Street, Suite 200
P. O. Box 1466
Mesa, Arizona 85211-1466
Attn: _____

Landlord may also be referred to in this Lease as the "City."

 - B. Stone Applications LLC, a Delaware limited liability company ("Tenant")

Stone Applications LLC
2801 Centerville Road, 1st Floor
PMB 811
Wilmington DE, 19808
Attention: Legal Department

 - C. **Parties.** Landlord and Tenant may be referred to in this Lease individually as a "Party" or collectively as the "Parties."

3. **Recitals.** As background to this Lease, the Parties agree, acknowledge and recite as follows, each of which shall be deemed a material term and provision of this Lease:
 - A. Landlord, as "City," and Tenant, as "Company" executed and delivered a "Development Agreement" dated _____, 2019, and which was recorded on _____ as Recording no. 2019-_____ in the Official Records of Maricopa County, Arizona ("Development Agreement"), relating to certain real property described in the Development Agreement, consisting of approximately 187 acres (the "Project Property").

B. The Development Agreement contemplates that all or portions of the Project Property, following the construction of Private Improvements, may be conveyed to City in order to be leased back to Company.

C. In order to facilitate the possibility that not all the Project Property is or will become part of this Lease (and thereby allow for the exclusion of portions of the Project Property), this Lease is made with respect to a portion of the Project Property (the "Land") within the City of Mesa, County of Maricopa, State of Arizona, all as more particularly described in Exhibit A and as depicted on Exhibit B attached to and incorporated into this Lease.

D. In consideration of Tenant's completion of the undertakings in the Development Agreement, and in further recognition of the direct, tangible benefits to be received by the Landlord as a result of Tenant's performance under the Development Agreement, and the conveyance of the Land and the Improvements to Landlord by Tenant, Landlord has agreed to lease the Land and Improvements to Tenant, and Tenant has agreed to lease the Land and Improvements from Landlord, on the terms and conditions set forth in this Lease.

E. Tenant, identified as "Company" in the Development Agreement, and in compliance with the terms and conditions of the Development Agreement, has conveyed the Land and Improvements to Landlord, so that title to the Land and the Improvements has vested in Landlord.

F. It is intended by Landlord and Tenant that this Lease be subject to the provisions of A.R.S. § 42-6201 et seq.

G. It is intended by Landlord and Tenant that Landlord is a "Government Lessor" as defined in A.R.S. § 42-6201.

H. It is intended by Landlord and Tenant that the Improvements on the Land, whether presently existing or to be constructed in accordance with the Development Agreement, are intended to be Government Property Improvements for all purposes as defined in A.R.S. § 42-6201. The Parties acknowledge that the Land is NOT located in a redevelopment area NOR within the single central business district of the City of Mesa.

4. **Lease of the Premises.**

A. Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon and in consideration of the terms and conditions contained in this Lease, (i) the surface and subsurface rights on and above the Land, and (ii) all Improvements presently situated on the Land, or which may be constructed on the Land hereafter by Tenant (collectively, "Premises"); subject, however, to:

- (1) All covenants, restrictions, easements, agreements, and reservations of record.
- (2) Present and future building restrictions and regulations, zoning laws at the time the permit is applied for, ordinances, resolutions and regulations of the municipality in which the land lies and all present and future ordinances, laws, regulations and orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction.
- (3) The condition and state of repair of the Premises as the same may be on the Commencement Date.
- (4) Any public easements granted to the City.

(5) The Development Agreement.

B. Condition of Premises. Subject to Section 4(A), the Premises are being leased to Tenant in their as-is, where-is condition, with no representation or warranty of any nature from the Landlord, and specifically as to (but in no event limited to) any hazardous conditions or Hazardous Materials in, on, at or under the Premises. Tenant acknowledges that it has designed and constructed the Improvements, and has owned the Land and Improvements prior to their conveyance to Landlord; and by executing this Lease and entering onto the Premises, accepts the Premises in their as-is, where-is condition and unconditionally releases Landlord from any liability with respect to the condition of the Premises.

C. Addition of Land and Improvements. Additional portions of the Project Property appurtenant to the Land, together with improvements located and constructed on such real property (collectively, the “Annexed Property”), may be conveyed to Landlord by Tenant from time-to-time and added to and made subject to this Lease by an addendum in writing executed by Landlord and Tenant (each, an “Addendum”), in which Tenant confirms, agrees and acknowledges that the Annexed Property is in all respects subject to this Lease and made a part of the Premises from and after the date of conveyance, and all other terms and conditions of the Lease remain in full force and effect, except as may otherwise be amended in the Addendum.

The form of conveyance will be by special warranty deed in substantially the form attached hereto as Exhibit F. Additionally, the Annexed Property must be conveyed to Landlord free and clear of all monetary liens, except current taxes and assessments; provided, either Landlord must approve any other claims or encumbrances against the Annexed Property, such approval not to be unreasonably withheld, or Tenant must obtain title insurance insuring over, or indemnify Landlord from any Claims arising from, any other claims or encumbrances against the Annexed Property.

D. Term. The term of this Lease (“Term”) shall commence on the date of execution of this Lease (“Commencement Date”), and shall expire at 12:00 midnight on the last day of the Rental Period, unless this Lease is sooner terminated as hereinafter provided. Upon the expiration or earlier termination of this Lease for any reason, including, without limitation, a default by Tenant, Landlord will convey title to the Premises to Tenant pursuant to Section 34. The Term will not be extended by reason of any Annexed Property being conveyed by Tenant to Landlord and being made part of the Premises and subject to this Lease. At any time Tenant may terminate this Lease by written notice to Landlord, subject to Tenant’s obligations of indemnity that survive the termination of this Lease, in which event the Land and Improvements will be conveyed to Tenant by Landlord pursuant to Section 34.

5. Definitions.

For the purposes of this Lease, the following words shall have the definition and meaning set forth in this Lease:

(a) “Additional Payments” means as defined in Section 7(A).

(b) “Affiliate” means, with respect to Tenant (including all entities that have an ownership interest in Tenant), any person or legal entity that is controlled by Tenant, that controls Tenant or that is under common control with Tenant, whether direct or indirect, and whether through ownership of voting securities, by control or otherwise. For purposes of this definition, “control” shall be conclusively presumed in the case of direct or indirect ownership of fifty percent (50%) or more of outstanding interests in terms of value or voting power of Tenant.

(c) “Annexed Property” means as defined in Section 4(C).

(d) “Applicable Laws” means as defined in Section 1(d) of the Development Agreement.

- (e) “Building” means as defined in Section 4.1(a) of the Development Agreement.
- (f) “Claims” means as defined in Section 16(A).
- (g) “Commencement Date” means as defined in Section 4(C).
- (h) “Default Rate” means a rate of interest equal to five percent (5%) per annum in excess of the so-called “prime interest rate” then in effect as published in the Wall Street Journal (or comparable publication reasonably selected by Landlord, if the Wall Street Journal is not then being published, or does not regularly publish “prime rate” information) compounded monthly from the date of the act, event, omission or default giving rise to Landlord’s right to receive such interest payment.
- (i) “Development Agreement” means as defined in Section 3(A).
- (j) “Development Parcel” means as defined in Section 20(B).
- (k) “Environmental Laws” means as defined in Section 33(A)(1).
- (l) “Event of Default” means as defined in Section 21(A).
- (m) “Force Majeure” means as defined in Section 9.7 of the Development Agreement.
- (n) “General Plan” means *This is My Mesa: Mesa 2040 General Plan*, as adopted by the City of Mesa, Arizona.
- (o) “GPLET” means as defined in Section 7(G).
- (p) “Imposition” or “Impositions” means as defined in Section 7(A).
- (q) “Improvements” means all Buildings and above-ground and underground structures constructed or installed on the Land, including, without limitation, electrical, mechanical, and telecommunications equipment; conduits; stormwater detention/retention; pipes; parking areas; private roadways; sidewalks; and landscaping. Improvements specifically exclude any public infrastructure that is dedicated to, and accepted by, the City or any public utility provider, for maintenance and public use.
- (r) “Indemnify” means as defined in Section 16(A).
- (s) “Institutional Lender” means any savings bank; bank or trust company; savings and loan association; insurance company; mortgage banker; mortgage broker; finance company; college or university; governmental pension or retirement funds or systems; any pension retirement funds or systems of which any of the foregoing shall be trustee, holder, servicer, or special servicer of any commercial mortgage-backed securities; private equity company; or a Real Estate Investment Trust as defined in Section 856 of the Internal Revenue Code of 1986 as amended; provided, however, that any Institutional Lender must be organized under the laws of the United States or any state.
- (t) “Land” means as defined in Recital A, and as legally described in Exhibit A, as it may be amended from time to time pursuant to Section 4(C).
- (u) “Landlord” means the City of Mesa, Arizona, a municipal corporation.
- (v) “Landlord Indemnified Parties” means as defined in Section 16(A).

- (w) “Lease” means this Government Property Improvements Lease.
- (x) “Net Rent” means as defined in Section 6(A).
- (y) “New Lease” means as defined in Section 20(B).
- (z) “Permitted Mortgage” means any mortgage or deed of trust that constitutes a lien upon this Lease, the leasehold estate hereby created, or all (or any portion of) Tenant's interest in the Premises, and which complies with the requirements of Section 20.
- (aa) “Permitted Mortgagee” means the beneficiary, secured party or mortgagee under any Permitted Mortgage, and its successors and assigns and purchasers at any foreclosure sale.
- (bb) “Premises” means as defined in Section 4(A) and described in Exhibit A and Exhibit B, as it may be amended from time to time pursuant to Section 4(C).
- (cc) “Private Improvements” means as defined in the Development Agreement.
- (dd) “Purchase Price” means as defined in Section 34(B).
- (ee) “Regulated Substances” means as defined in Section 33(A)(2).
- (ff) “Release” means as defined in Section 33(A)(3).
- (gg) “Rental Period” means the period beginning on the Commencement Date and ending twenty-five (25) years after the date the certificate of occupancy is issued for the first Building constructed on the Land.
- (hh) “Successor Owner” means any subsequent holder of all or any portion of Tenant’s leasehold interest in Premises with right of fee ownership upon termination of this Lease.
- (ii) “Tenant” means the Tenant named herein and its permitted successors and assigns.
- (jj) “Tenant’s Premises Users” means as defined in Section 16(A).
- (kk) “Term” means as defined in Section 4(D).
- (ll) “Termination Event” means as defined in Section 21(F).
- (mm) “Third Party” means any person other than Landlord or Tenant.
- (nn) “Transfer” means as defined in Section 11.4(a) of the Development Agreement.
- (oo) “Work” means as defined in Section 17(A).
- (pp) “Zoning” means the Red Hawk Employment Opportunity District (RHEOD) as described in the Development Plan of the RHEOD as adopted by the Mesa City Council as Ordinance No. 5502.

6. **Rent.**

A. **Net Rent.**

(1) **Net Annual Rental.** Tenant will pay to Landlord, in collected funds and at the addresses specified or furnished pursuant to Section 24, during the term of this Lease net annual rental ("Net Rent") in the amount of \$10,000.00. The amount of Net Rent reflects the administrative and related costs to Landlord for maintaining and administering this Lease, rather than fair market rental value, as Tenant owned the Land and Improvements prior to the conveyance of the Land and Improvements to Landlord at no cost to Landlord. Tenant, at its option and without prejudice to its right to terminate this Lease as provided herein, may prepay the Net Rent for the entire Lease term, but upon any early termination of this Lease, Landlord shall not be obligated to refund any portion of the prepaid Net Rent.

(2) **Annual Installments.** Unless Tenant chooses to prepay the Net Rent for the entire term of this Lease, all payments of Net Rent will be made in annual installments, in advance, commencing on the Commencement Date, and on each anniversary of the Commencement Date, during the Term.

(3) **Other Payments and Obligations.** Net Rent will be in addition to all of the other payments to be made by Tenant and other obligations to be performed by Tenant, as hereinafter provided.

B. **Rent Absolutely Net.** It is the purpose and intent of the Landlord and Tenant that Net Rent payable hereunder will be absolutely net to Landlord so that this Lease will yield to Landlord the Net Rent herein specified, free of any charges, assessments, Impositions, or deductions of any kind charged, assessed, or imposed on or against the Premises and without abatement, deduction or set-off by the Tenant, and Landlord will not be expected or required to pay any such charge, assessment or Imposition or be under any obligation or liability hereunder except as herein expressly set forth, and that all costs, expenses, and obligations of any kind relating to the maintenance and operation of the Premises, including all construction, alterations, repairs, reconstruction, and replacements as hereinafter provided, which may arise or become due during the term hereof will be paid by Tenant; and Tenant will indemnify, defend, pay, and hold harmless Landlord for, from and against any and all such costs, expenses, and obligations in accordance with Section 16.

C. **Non-Subordination.** Landlord's interest in this Lease, as the same may be modified, amended or renewed, will not be subject or subordinate to (a) any mortgage now or hereafter placed upon Tenant's interest in this Lease or the Premises, or (b) any other liens or encumbrances hereafter affecting Tenant's interest in this Lease or the Premises.

D. **No Release of Obligations.** Except for either a mutual release and waiver of rights and liabilities arising under this Lease or to the extent expressly provided in this Lease, no happening, event, occurrence, or situation during the Rental Period, whether foreseen or unforeseen, and however extraordinary (including, without limitation, Tenant's failure, refusal, or inability for any reason to construct additional Buildings or Improvements) shall permit the Tenant to quit or surrender the Premises or this Lease nor shall it relieve the Tenant of its liability to pay the Net Rent and Additional Payments and other charges under this Lease, nor shall it relieve the Tenant of any of its other obligations under this Lease (including, but not limited to, Tenant's obligation to indemnify Landlord).

7. **Additional Payments.** Tenant shall pay ("Additional Payments") during the Term hereof, without notice and without abatement, deduction or setoff, before any fine, penalty, interest, or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, the following:

A. **Impositions.** Tenant shall pay all sums, impositions, costs, expenses and other payments and all taxes (including [i] personal property taxes; [ii] taxes on rents, leases or occupancy, if any; [iii] ad valorem

and similar taxes and assessments, if any; and [iv] any and all government property improvement lease excise tax or other similar tax), assessments, special assessments, enhanced municipal services district assessments, water and sewer fees, rates and charges, charges for public utilities, excises, levies, licenses, and permit fees, and other governmental or quasi-governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which, at any time during the Term hereof may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or with respect to, or become a lien on, the Premises or any part thereof, or any appurtenances thereto, any use or occupation of the Premises, or such franchises as may be appurtenant to the use of the Premises (all of which are sometimes herein referred to collectively as "Impositions" and individually as an "Imposition") provided, however, that:

(1) if, by law, any Imposition may at the option of the Tenant be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and in such event, shall pay such installments as they become due during the Term hereof before any fine, penalty, further interest or cost may be added thereto; and

(2) any Imposition (including Impositions which have been converted into installment payments by Tenant, as referred to in subparagraph (1) above) relating to a fiscal period of the taxing authority, a part of which period is included within the Term hereof and a part of which is included in the period of time after the expiration of the Term hereof shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or become a lien upon the Premises, or shall become payable, during the Term hereof) be adjusted between Landlord and Tenant as of the expiration of the Term hereof, and Tenant shall pay that portion of such Imposition attributable to the tenancy period and Landlord shall pay the remainder thereof.

B. Landlord's Payments. Tenant shall pay, or reimburse Landlord for any actual out-of-pocket expenses incurred by Landlord on behalf of Tenant pursuant to this Lease, whether or not designated in this Lease as an Additional Payment.

C. Rental Taxes. Tenant shall pay to Landlord, with and in addition to Net Rent and any Additional Payments, all rental or similar taxes imposed by any governmental unit on Net Rent and Additional Payments received by Landlord. Tenant shall pay all other Impositions directly to the taxing authority or authorities.

D. Contest. Tenant, if it shall so desire, and at its sole cost and expense, may contest the validity or amount of any Imposition, in which event, Tenant may defer the payment thereof during the pendency of such contest or Tenant shall first pay the Imposition under protest if legally required as a condition to such protest and contest. Tenant shall not, in the event of and during the bona fide prosecution of such protest or proceedings, be considered in default with respect to the payment of such Imposition

E. Assessment Reduction. Tenant if it shall so desire, and at its sole cost and expense, may endeavor at any time to obtain a lowering of an Imposition or assessment upon the Premises for the purpose of reducing the amount thereof. However, with respect to any City Imposition or assessment, Landlord will not be required to cooperate with Tenant and may in fact oppose such endeavor. Tenant shall be authorized to collect any refund payable as a result of any proceeding Tenant may institute for that purpose and any such refund shall be the property of Tenant to the extent to which it may be based on a payment made by Tenant.

F. Hold Harmless. Landlord shall not be required to join in any action or proceeding referred to in Section 7(D) (unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event any such action or proceeding may be taken by Tenant in the name of the Landlord only with Landlord's prior written consent). Tenant hereby agrees to indemnify, defend, pay and hold Landlord

harmless for, from and against any and all costs, expenses, claims, loss or damage by reason of, in connection with, on account of, or resulting from, any such action or proceeding referred to in Section 7(D), except to the extent of any lost revenues due to Tenant's successful contest of such Imposition, in accordance with Section 16.

G. Government Property Lease Excise Tax. As required under Arizona Revised Statutes Section 42-6206, Tenant is hereby notified of its potential tax liability under the Government Property Lease Excise Tax provisions of Arizona Revised Statutes, Section 42-6201, *et seq* ("GPLET"). Failure of Tenant to pay the tax after notice and an opportunity to cure is an Event of Default that could result in the termination of Tenant's interest in this Lease and of its right to occupy the Premises. Upon the expiration or earlier termination of this Lease for any reason, including, without limitation, a default by Tenant, Landlord will convey title to the Premises to Tenant pursuant to Section 34. Notwithstanding the foregoing, or any other term of this Lease (including, but not limited to, the Recitals to this Lease), Landlord does not represent, warrant or guarantee that the benefits provided by GPLET, including but not limited to any abatement of GPLET during any portion of the Term, will be available or in effect at any time during the Term. The benefits provided by GPLET are not a condition to the effectiveness of this Lease or Tenant's obligations under this Lease; and the nonexistence or failure of GPLET to be maintained, or any changes in or amendments to, GPLET, will not be a default by Landlord. In the event that GPLET is no longer available, or the provisions of GPLET are modified to the extent that Tenant believes that this Lease no longer provides the benefits intended by Tenant, in Tenant's sole discretion, then Tenant may terminate this Lease, subject to Tenant's obligations of indemnity that survive the termination of this Lease, in which event the Land and Improvements will be conveyed to Tenant by Landlord pursuant to Section 34.

8. Insurance.

A. Tenant's Obligation to Insure. Tenant shall procure and maintain for the duration of this Lease, at Tenant's own cost and expense, insurance against casualty to or loss of the Premises and against claims for injuries to persons or damages to property which may arise from or in connection with this Lease by the Tenant, its agents, subtenants, employees, contractors, licensees or invitees in accordance with the insurance requirements set forth in Exhibit C attached hereto. If any Building (or any portion thereof) is damaged or destroyed, Tenant shall have no obligation to repair, restore or rebuild the Building; provided, however, that in such event Landlord may exercise its right to terminate this Lease as to the damaged or destroyed Building as set forth in Section 17(C).

B. Failure to Maintain Insurance. If Tenant fails or refuses to provide a copy of the renewal insurance certificates, or otherwise fails or refuses to procure or maintain insurance as required by this Lease, Landlord shall have the right (but not the obligation), at Landlord's election, following any applicable Notice required by Section 24, to procure and maintain such insurance. The premiums paid by Landlord shall be due and payable from Tenant to Landlord on the first day of the month following the date on which the premiums were paid, together with interest at the Default Rate on the amounts paid by Landlord. Landlord shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer(s) and insured(s). The lapse or cancellation of any policy of insurance required herein, in whole or in part for the benefit of Landlord, shall be an event of default. No cure of such default can be accomplished unless a new or renewed policy is issued which specifically provides the required coverage to the Landlord for any liability arising during the lapsed or previously uncovered period.

C. Relationship to Obligations to Indemnify Landlord. Tenant's obligation to maintain insurance is in addition to, and not in lieu of, Tenant's obligation of indemnity set forth in Section 11(C), Section 16, Section 33, and elsewhere in this Lease.

9. **Intentionally Omitted.**

10. **Landlord's Performance for Tenant.** If Tenant fails to pay any Imposition or make any other payment required to be made under this Lease or shall default in the performance of any other covenant, agreement, term, provision, limitation, or condition herein contained, following any applicable Notice required by Section 24, Landlord may, without being under any obligation to do so and without thereby waiving such default, make such payment or remedy such other default for the account and at the expense of Tenant, immediately and without notice. Bills for any expense required by Landlord in connection therewith, and bills for all such expenses and disbursements of every kind and nature whatsoever, including reasonable attorney's or administrative fees, involved in collection or endeavoring to collect the Net Rent or Additional Payments or any part thereof, or enforcing or endeavoring to enforce any right against Tenant, under or in connection with this Lease, or pursuant to law, including (without being limited to) any such cost, expense, and disbursements involved in instituting and prosecuting summary proceedings, as well as bills for any property, material, labor, or services provided furnished, or rendered, or caused to be furnished or rendered, by Landlord to Tenant, with respect to the Premises and other equipment and construction work done for the account of the Tenant together with interest at the Default Rate, or immediately, at Landlord's option, and shall be due and payable in accordance with the terms of said bills and if not paid when due the amount thereof shall immediately become due and payable as Additional Payments.

11. **Uses and Maintenance.**

A. **Absence of Warranties.** Tenant, as the prior owner of the Land and the party that constructed (or caused the construction of) the Improvements, now leases the Premises after a full and complete examination thereof, as well as the title thereto and knowledge of its present uses and all restrictions on use. Tenant accepts the Premises in the condition or state in which they exist as of the Commencement Date without any representation or warranty, express or implied in fact or by law, by Landlord and without recourse to Landlord, as to the title, the nature, condition, or usability of the Premises or the use or uses to which the Premises or any part thereof may be put. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Premises or to provide any off-site improvements, such as utilities or paving, or other forms of access to the Premises, other than what may already exist on the Commencement Date, or that Landlord has agreed to provide in the Development Agreement, throughout the Term hereof. Tenant hereby assumes the full and sole responsibility for the condition, construction, operation, repair, demolition, replacement, maintenance, and management of the Premises, including but not limited to the performance of all burdens running with the Land.

B. **Permitted Uses.** Tenant agrees that it shall use the Premises only for those purposes and uses described in the Development Agreement, including the General Plan and Zoning. In no event shall the Premises or any part thereof be used for any purpose (i) prohibited by any Applicable Laws, (ii) prohibited by this Lease, or (iii) that would bring shame, disrepute or opprobrium upon Landlord, its Council members and officials. Regardless of the uses which would otherwise be allowed pursuant to the zoning classification or other ordinances which may be applicable to the Premises at any time during the Rental Period, the uses set forth in Exhibit D are expressly prohibited. Any permitted use which involves the handling, production and/or storage of Hazardous Materials on the Premises shall be subject to all Applicable Laws.

C. **Maintenance, Repairs, and Indemnity.** Tenant, at its sole cost and expense, shall maintain and keep the Premises in commercially acceptable order. It is the intent of Landlord and Tenant that this Lease be an "absolute net lease" to Landlord, with Landlord having no obligation during the Term for the maintenance, repair or replacement of the Buildings and Improvements. Tenant shall indemnify, defend, pay and hold Landlord harmless for, from and against any and all Claims, upon or arising out of any accident, injury, or damage to any person or property occurring in or upon the Premises, in accordance with Section 16. The

provisions of this Section 11(C), however, will not apply to Claims attributable to the sole exclusive negligence or willful action of the Landlord Indemnified Parties.

D. Alterations. During the Term, Tenant, without the consent or approval of Landlord, may erect structures, make any improvements, or do any other construction work on the Premises or alter, modify, or make additions, improvements, or repairs to or replacements of any structure, now existing or built at any time during the Term hereof, or install any fixtures in the Premises; provided, however, that nothing in this Section 11(D) in any way modifies, alters or waives Tenant's obligation to comply with all Applicable Laws and to obtain all required permits, inspections and approvals.

E. Easements, Dedications and Other Matters. At the request of Tenant and to the extent required by Landlord as holder of the fee interest in the Premises, Landlord shall dedicate or initiate a request for dedication to public use of any portion of the Land and improvements owned by Landlord; convey or transfer any improvements located within any roads, alleys or easements to the appropriate governmental authority; cooperate in connection with the subdivision of all or any portion of the Premises; execute (or participate in a request for initiation by the appropriate commission or department of) petitions seeking annexation or change in zoning for all or a portion of the Premises; consent to the making and recording, or either, of any map, plat, site plan, condominium documents, construction, operation, and reciprocal easement agreement, declaration of covenants, conditions and restrictions, or other instrument of or relating to the Land or Premises or any part thereof; join in granting any easements on the Land or Premises; and execute and deliver (in recordable form where appropriate) all other instruments and perform all other acts reasonably necessary or appropriate to the development, subdivision, entitlement, construction, demolition, redevelopment or reconstruction of the Premises; provided, however, that all such requests of Tenant will be in compliance with all Applicable Laws, and all such acts requested of Landlord will be free from any cost or expense to Landlord.

12. Compliance with Applicable Laws.

A. Tenant Obligations. Tenant shall timely assume and perform any and all obligations of Landlord under any covenants, easements, and agreements affecting the title to the Premises and shall diligently comply with, at its own expense during the Term hereof, all Applicable Laws concerning the Premises or any part thereof, or the use thereof, whether or not such Applicable Laws require the making of structural alterations or the use or application of portions of the Premises for compliance therewith or interfere with the use and enjoyment of the Premises, the intention of the parties being with respect thereto that Tenant, during the Term hereby granted, shall discharge and perform all the obligations of Landlord, as well as all obligations of Tenant, arising as aforesaid, and indemnify, defend, pay and hold Landlord harmless for, from and against all such matters, so that at all times the Net Rent of the Premises shall absolutely be net to the Landlord without deduction or expenses on account of any such law, act, rule, requirement, order, direction, ordinance and/or regulation whatever it may be; provided, however, that Tenant may, in good faith (and wherever necessary, in the name of, but without expense to and with the prior written permission of, Landlord), contest the validity of any such law, act, rule, requirement, order, direction, ordinance and/or regulation, or Tenant shall first pay any required payment under protest if legally required as a condition to such protest and contest, and, pending the determination of such contest, may postpone compliance therewith, except that Tenant shall not so postpone compliance therewith, as to subject Landlord to any fine or penalty or to prosecution for a crime, or to cause the Premises or any part thereof to be condemned, untenable or uninsured.

B. Certificate of Occupancy. Tenant, at its sole cost and expense, shall obtain any certificate of occupancy with respect to the Premises which may at any time be required by any governmental agency having jurisdiction thereof.

13. **Ownership and Operation Of Premises.**

A. **Ownership of Improvements.**

(1) **During Term.** During the Term, title to the Premises is vested in Landlord free and clear of all monetary liens, claims, and encumbrances, except current taxes and assessments, if any.

(2) **Ownership at Termination.** Subject to **Section 34(D)** of this Lease, upon the expiration or sooner termination of this Lease, title to the Premises will automatically, and without further act required, be vested in Tenant.

B. **Tenant's Management and Operating Covenant.** During the Term, Tenant shall manage and operate (or cause to be managed and operated) the Premises in accordance with all Applicable Laws.

14. **Impairment of Landlord's Title.**

A. **No Liens.** Tenant shall not create, or suffer to be created or to remain, and shall promptly discharge any mechanics', laborer's, or materialman's lien which might be or become a lien, encumbrance, or charge upon the Premises or any part thereof or the income therefrom (a "**Mechanics' Lien**") and Tenant will not suffer any other matter or thing arising out of Tenant's use and occupancy of the Premises whereby the estate, rights, and interests of Landlord in the Premises or any part thereof might be impaired.

B. **Discharge.** If any Mechanics' Lien shall at any time be filed against the Premises or any part thereof, Tenant, within thirty (30) days after notice of the filing thereof, shall cause such Mechanics' Lien to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. Tenant shall notify Landlord in writing of its action to either satisfy or contest the Mechanics' Lien.

C. **No Implied Consent.** Nothing contained in this Lease shall be deemed or construed in any way as constituting Landlord's expressed or implied authorization, consent or request to any contractor, subcontractor, laborer or materialman, architect, or consultant, for the construction or demolition of any improvement, the performance of any labor or services or the furnishing of any materials for any improvements, alterations to, or repair of, the Premises or any part thereof.

D. **No Agency Intended.** The parties acknowledge that Tenant is entitled to occupy and operate the Premises. Accordingly, the parties agree that Tenant is not the agent of Landlord for the construction, alteration or repair of any improvement Tenant may construct upon the Premises, the same being done at the sole expense of Tenant, or for any other act or purpose.

E. **Contest.** Tenant, if it shall so desire, and at its sole cost and expense, may contest the validity or amount of any Mechanics' Lien, in which event, Tenant may defer the payment thereof during the pendency of such contest.

15. **[Reserved]**

16. **Indemnification of Landlord.**

A. **Indemnification.** Tenant shall indemnify, defend, pay and hold Landlord and its Council members, officers, employees, and agents (including Landlord, collectively, "**Landlord Indemnified Parties**") harmless for, from, and against (collectively, "**Indemnify**") any and all claims, liabilities, suits, obligations, fines, damages, penalties, claims, costs, losses, demands, lawsuits, actions, charges and expenses, of any nature including but not limited to property damage, personal injury and wrongful death, alleged by Third Parties

(collectively, “Claims”), which may be imposed upon, incurred by or asserted against Landlord (and/or the other Landlord Indemnified Parties) in Landlord’s capacity as the owner of the Premises or as Landlord under this Lease, that arise (or are alleged to arise) in whole or in part out of: (1) any act or omission of Tenant or any of its contractors, agents, employees, subtenants, or invitees (collectively, “Tenant’s Premises Users”) in or on the Premises; (2) the use or occupancy of the Premises by Tenant or Tenant’s Premises Users; or (3) the failure by Tenant or Tenant’s Premises Users to comply with or fulfill its obligations required by this Lease or Applicable Laws. Subject to Section 16(D) below, such obligation to Indemnify shall extend to and encompass all costs incurred by Landlord Indemnified Parties in defending against the Claims, including but not limited to attorney, witness and expert fees, and all other litigation-related expenses. Notwithstanding the foregoing, Tenant’s obligation to Indemnify pursuant to this Section 16 does not extend to Claims attributable to the sole exclusive negligence or willful action of the Landlord Indemnified Parties.

B. Tenant will keep, hold and maintain all goods, materials, furniture, fixtures, equipment, machinery and other property of any nature on the Premises at the sole risk of Tenant; and Tenant releases and discharges Landlord for, from and against any and all loss or damage to such property by or from any cause.

C. The obligations of Tenant under this Section shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Premises.

D. Promptly after Landlord receives written notice or obtains actual knowledge of any pending or threatened litigation against Landlord that may be subject to Tenant’s indemnity obligations under this Section, Landlord will deliver written notice thereof to Tenant and Landlord will tender sole control of the indemnified portion of the legal proceeding to Tenant (provided that Tenant accepts such tender), but Landlord shall have the right to approve counsel, which approval shall not be unreasonably withheld or delayed. Landlord’s failure to deliver written notice to Tenant within a reasonable time after Tenant receives notice of any such claim shall relieve Tenant of any liability to the Landlord under this indemnity only if and to the extent that such failure is prejudicial to Tenant’s ability to defend such action. Upon Tenant’s acceptance of a tender from Landlord without a reservation of right, Landlord may not settle, compromise, stipulate to a judgment, or otherwise take any action that would adversely affect Tenant’s right to defend the claim.

E. The provisions of this Section 16 shall survive the expiration or earlier termination of this Lease for a period of two (2) years.

17. **Damage or Destruction.**

A. **Tenant Repair and Restoration.** If, at any time during the Term, any Building (or any part thereof) shall be damaged or destroyed by fire or other occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant may elect in writing within ninety (90) days after such damage or destruction, either: (i) to continue this Lease in full force and effect, and Tenant, at Tenant’s sole cost and expense, may, but shall not be obligated to, rebuild or repair the Building so damaged or destroyed (subject in all events to Landlord’s right to terminate this Lease as set forth in Section 17(C)); or (ii) to terminate this Lease with respect to the Building damaged or destroyed as Tenant may elect. Landlord and Tenant agree that the provisions of A.R.S. § 33-343 shall not apply to this Lease. In the event that Tenant elects to repair or rebuild the Improvements, any such repair or rebuilding shall be performed at the sole cost and expense of Tenant. If there are insurance proceeds resulting from such damage or destruction, as between Landlord and Tenant, Tenant shall be solely entitled to such proceeds, whether or not Tenant rebuilds or repairs the Improvements or fixtures. Any such repair, alteration, restoration, replacement, or rebuilding, including temporary repairs to protect the public and to protect the Building from further damage are sometimes referred

to in this Section as the "Work." Anything herein to the contrary notwithstanding, Tenant shall immediately secure the Building and undertake temporary repairs and work necessary to protect the public.

B. Payment of Insurance Proceeds. As between Landlord and Tenant, all insurance proceeds on account of such damage or destruction under the policies of insurance provided for in Section 8 or otherwise shall be paid to Tenant. If Tenant elects to restore or repair the Improvements and the insurance proceeds are not sufficient to pay the entire cost of the Work, Tenant shall supply the amount of any such deficiency. Under no circumstances shall Landlord be obligated to make any payment, reimbursement, or contribution towards the cost of the Work.

C. Failure to Commence Repairs. If the Work shall not have been commenced within one hundred and eighty (180) days after the date of the damage or destruction, or if such Work after commencement shall not proceed expeditiously, Landlord, following any applicable Notice and cure period required by Section 24, may terminate this Lease with respect to the damaged or destroyed Building in accordance with Section 21(F) of this Lease, but not as to any other Buildings that may be included within the Premises.

D. Lease Obligations Continue. In no event shall Tenant be entitled to any abatement, allowance, reduction, or suspension of Net Rent, Additional Payments, and other charges because part or all of the Premises shall be untenable owing to the partial or total destruction thereof. No such damage or destruction shall affect in any way the obligation of Tenant to pay the Net Rent, Additional Payments, and other charges herein reserved or required to be paid, nor release Tenant of or from obligations imposed upon Tenant hereunder.

18. Condemnation.

A. Total, Substantial, or Unusable Remainder. If at any time during the term of this Lease, title to the whole or substantially all of the Land shall be taken in condemnation proceedings or by any right of eminent domain or by agreement in lieu of such proceedings, this Lease shall terminate and expire on the date possession is transferred to the condemning authority and the Net Rent and Additional Payments reserved shall be apportioned and paid to the date of such taking. All compensation paid by the condemning authority in the case of any condemnation (total or partial) shall be the sole property of Tenant free and clear of any right, title, claim or interest of Landlord.

B. Partial Taking -- Lease Continues. In the event of any taking of less than the whole or substantially all of the Land, neither the Net Rent nor the Rental Period of this Lease will be reduced or affected in any way, and this Lease will continue in full force and effect with respect to the balance of the Premises.

C. Rights of Participation. Tenant shall have the sole right, at its own expense, to appear in and defend any condemnation proceeding and participate in any and all hearings, trials, and appeals therein. Landlord, at the request of Tenant, shall execute a Disclaimer of Interest in the condemnation action evidencing the fact that Landlord has no interest in the proceeds of the condemnation.

D. Notice of Proceeding. In the event Landlord or Tenant shall receive notice of any proposed or pending condemnation proceedings affecting the Premises, the party receiving such notice shall promptly notify the other party of the receipt and contents thereof.

E. Relocation Benefits. Tenant shall also retain any federal, state or local relocation benefits or assistance provided in connection with any condemnation or prospective condemnation action.

19. **[Reserved]**

20. **Encumbrances and Assignments.**

A. At any time that Tenant is not in default of any term or condition of this Lease, Tenant is hereby given the absolute right without the Landlord's consent to create a lien on or security interest in Tenant's leasehold interest under this Lease (and in any subleases and the rents, income and profits therefrom) by mortgage, deed of trust, collateral assignment or otherwise. Any such security interest shall be referred to herein as a "Permitted Mortgage," and the holder of a Permitted Mortgage shall be referred to herein as a "Permitted Mortgagee."

(1) With respect to such Permitted Mortgage, Landlord will agree to a non-disturbance and recognition agreement in substantially the form attached hereto as Exhibit E, or other commercially standard form of non-disturbance and recognition agreement, with an Institutional Lender, as well as other reasonable, non-material or administrative modifications to this Lease requested by an Institutional Lender. In no event will Landlord subordinate its interest in the Premises to any leasehold financing.

(2) A Permitted Mortgage shall cover no interest in the real property other than Tenant's leasehold interest in the Premises (and in any subleases and the rents, income and profits therefrom) and any personal property, fixtures, or other assets of Tenant.

(3) Tenant or the holder of a Permitted Mortgage shall promptly deliver to Landlord in the manner herein provided for the giving of notice to Landlord, a true copy of the Permitted Mortgage(s), of any assignment thereof, and of the satisfaction thereof; and

(4) For the purpose of this Section 20, the making of a Permitted Mortgage shall not be deemed to constitute an assignment or transfer of this Lease, nor shall any holder of a Permitted Mortgage, as such, be deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such holder of a Permitted Mortgage, as such, to assume the performance of any of the terms, covenants, or conditions on the part of Tenant to be performed hereunder. No liability for the performance of Tenant's covenants and agreements hereunder shall attach to or be imposed upon any Permitted Mortgagee due solely to the making of the Permitted Mortgage; but the purchaser at any sale of this Lease in any proceedings for the foreclosure of any Permitted Mortgage, or the assignee or transferee of this Lease under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Mortgage, shall be deemed to be an assignee or transferee within the meaning of this Section and shall be deemed to have assumed the performance of all the terms, covenants, and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment and the liability shall attach only during the term of ownership of the leasehold estate by said Permitted Mortgagee.

(5) No act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender, amend, or modify this Lease or Tenant's right to possession shall be binding upon or effective as against the Permitted Mortgagee without its prior written consent.

(6) Any Permitted Mortgage entered into that does not comply with this Section 20(A) is void, and not voidable, and the Permitted Mortgagee will have no rights with respect to the Premises or this Lease.

B. No Transfer by the Tenant will be permitted under this Lease except as specifically permitted under the Development Agreement. Landlord agrees that, in the event of a Permitted Transfer (as defined in Section 11.7(a)(i) of the Development Agreement) of a portion of the Premises (a "Development Parcel"),

Landlord will enter into a new lease of the Development Parcel with the Tenant or Successor Tenant (a “New Lease”), in which the Successor Tenant assumes all of the obligations of Tenant under the Lease with respect to the Development Parcel, and which New Lease shall commence as of the date of the Permitted Transfer and shall run for the remainder of the original term of this Lease, at the prorated Net Rent and upon the terms, covenants and conditions herein contained, provided:

(1) Tenant or Successor Tenant shall give Landlord at least 60 days’ written notice of the Permitted Transfer.

(2) Upon the Permitted Transfer of the Development Parcel and the execution of a New Lease covering the Development Parcel, this Lease shall automatically be amended to exclude the Development Parcel but shall remain in full force and effect with respect to the remainder of the Premises. In such event, Landlord and Tenant shall, at the request of the other, execute an amendment to this Lease to evidence such exclusion. Each such New Lease shall be separate from this Lease and no default under or termination of a New Lease shall affect this Lease or other New Leases.

(3) Tenant or the Successor Tenant shall pay to Landlord at the time of execution and delivery of the New Lease any and all sums that would, at that time, be due and unpaid pursuant to this Lease but for its partial termination as to the portion of the Premises consisting of the Development Parcel, and in addition thereto all reasonable expenses, including reasonable attorneys’ fees, that Landlord shall have incurred by reason of such partial termination;

(4) Tenant and each Successor Tenant shall have the right to grant a lien on or security interest in its leasehold interest in the Development Parcel and secure such financing with a Permitted Mortgage, and the Permitted Mortgagee providing such financing shall receive the same rights and obligations of a Permitted Mortgagee under this Lease; and

(5) Tenant and each Successor Tenant shall, as to the Development Parcel, perform and observe all covenants in this Lease to be performed and observed by Tenant, and shall further remedy any other conditions pertaining to the Development Parcel that Tenant under the Lease was obligated to perform under its terms, to the extent the same are reasonably susceptible of being cured by the Tenant or Successor Tenant.

21. **Default by Tenant.**

A. **Events of Default.** The happening of any one of the following events (each, an “Event of Default”) shall be considered a material breach and default by Tenant under this Lease:

(1) **Monetary Default.** Tenant’s default in the due and punctual payment of any Net Rent or Additional Payments (a “Monetary Default”) and such Monetary Default is not cured within forty-five (45) days after written notice thereof to Tenant; or

(2) **Non-Monetary Default.** Tenant’s default in the performance of or compliance with any of the covenants, agreements, terms, limitations, or conditions of this Lease other than a Monetary Default, and such default shall continue for one hundred eighty (180) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of such failure is such that the same cannot reasonably be cured within such one hundred eighty (180) day period, no Event of Default shall be deemed to have occurred if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion; or

(3) Bankruptcy -- Voluntary. If Tenant shall file a voluntary petition in bankruptcy or take the benefit of any relevant legislation that may be in force for bankrupt or insolvent debtors or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state, or other statute, law or regulation, or if Tenant shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties, or shall make any general assignment for the benefit of creditors; or

(4) Bankruptcy -- Involuntary. If a petition is filed against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation, and shall remain undismissed or unstayed for one hundred eighty (180) days, or if any trustee, receiver or liquidator of Tenant, or of all or a substantial part of its properties, shall be appointed without the consent or acquiescence of Tenant and such appointment shall remain unvacated and unstayed for one hundred eighty (180) days; or

(5) Insurance -- Lapse or Termination. The lapse or cancellation of any policy of insurance required herein, in whole or in part for the benefit of Landlord, shall be an event of default. No cure of such default can be accomplished unless a new or renewed policy is issued which specifically provides the required coverage to the Landlord for any liability arising during the lapsed or previously uncovered period; or

(6) Go Dark. Tenant ceases to conduct business operations (including any decommissioning activities) from the Premises for a period in excess of two (2) years; provided, however, that this provision does not include a cessation of business operations resulting from a casualty or other act of Force Majeure.

B. No Implied Waivers. No failure by Landlord to insist upon strict performance of any covenant, agreement, term or condition hereof or to exercise any right or remedy consequent upon a breach hereof, and no acceptance of full or partial Net Rent or Additional Payments during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition hereof to be performed or complied with by Landlord or Tenant, and no breach thereof, shall be waived, altered or modified, except by a written instrument executed by the party to be charged therewith. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term, limitation and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach hereof.

C. Remedies Cumulative. In the event of any breach by Tenant of any of the covenants, agreements, terms or conditions hereof, subject to the rights, privileges and protections granted to Permitted Mortgagees pursuant to Section 20(A) and subject to Section 21(F), Landlord shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity, by statute or by this Lease for such breach. In the event of Tenant's failure to pay Net Rent or Additional Payments on the date when due, Tenant shall pay Landlord interest on any such overdue payments and associated late charges at the Default Rate, but in no event an amount greater than permitted by Applicable Law, but this shall in no way limit any claim for damages for Landlord for any breach or default by Tenant. Notwithstanding the foregoing or any provision of this Lease to the contrary, Landlord hereby waives any right to seek consequential, punitive, exemplary or special damages for a breach of this Lease; provided, however, that this waiver does not apply to Landlord's right or ability to recover such damages with respect to Tenant's obligations of indemnity required in this Lease.

D. Late Charge. In the event that any payment required to be made by Tenant to Landlord under the terms of this Lease is not received within sixty (60) days after the due date thereof, a late charge shall

become immediately due and payable as an Additional Payment in an amount equal to two and one-half percent (2-1/2%) of the late payment.

E. **Specific Performance.** If a default is not cured within any applicable time period after service of Notice of the default, Landlord may, at its option, thereafter (but not before), and without waiving any of Landlord's other remedies for an Event of Default by Tenant) commence an action for specific performance of the terms of this Lease pertaining to such default.

F. **Termination of Lease.** Notwithstanding anything to the contrary in Section 21(C), Landlord's right to terminate this Lease is limited to (a) an Event of Default for failure of Tenant to procure and maintain insurance as required under Section 8 of this Lease that is not cured within any applicable time period after service of Notice of the default; (b) a Transfer in violation of Section 20(B), provided however that the termination will be effective only with respect to the portion of the Premises that is the subject of such Transfer; (c) a breach by Tenant of Section 17(C) of this Lease, provided however that the termination will be effective only with respect to the Building (and associated portions of the Property) that was damaged or destroyed; (d) a failure of Tenant to Indemnify Landlord pursuant to Section 11(C), Section 16(A) or Section 33 of this Lease which failure is not cured within sixty (60) days of service of Notice of the Default; and (e) in accordance with Section 30(P) (each of the foregoing, a "Termination Event.") Upon a Termination Event, Landlord, may, at its option and with no further act or Notice required, terminate this Lease and quitclaim the Land and Improvements (or applicable portion of the Land and Improvements) to Tenant; provided however that the termination of this Lease and the conveyance of the Land and Improvements to Tenant will not terminate or otherwise restrict Tenant's obligations of indemnification of Landlord required in this Lease, including (but not limited to) Section 11(C), Section 16 and Section 33.

G. **Tenant Liability Continues.** No such expiration or termination of this Lease shall relieve Tenant of its liabilities and obligations under this Lease that by their terms are intended to survive any such expiration or termination of this Lease.

22. **Default by Landlord.** In the event of any breach by Landlord of any of the covenants, agreements, terms, or conditions hereof, Tenant's sole and exclusive remedies are (i) pursue an injunction to enjoin the breach; (ii) pursue specific performance of Landlord's obligations under this Lease; or (iii) terminate this Lease. Notwithstanding the foregoing or any provision of this Lease to the contrary, Tenant hereby waives any right to seek or recover from Landlord damages of any kind, including (but not limited to) actual, consequential, punitive, exemplary or special damages for a breach of this Lease. If Landlord shall file a voluntary petition in bankruptcy or take the benefit of any relevant legislation that may be in force for bankrupt or insolvent municipalities or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state, or other statute, law or regulation, the provisions of Section 35 would apply and thereafter this Lease will automatically terminate without the need for further action on the part of either party.

23. **Limited Severability.** Landlord and Tenant each believes that the execution, delivery and performance of this Lease comply with all Applicable Laws. However, in the unlikely event that any provision of this Lease is declared void or unenforceable (or is construed as requiring Landlord to do any act in violation of any Applicable Laws), such provision will be deemed severed from this Lease and this Lease will otherwise remain in full force and effect; provided that this Lease will retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Lease, as reformed.

24. **Notices.** Any notice, request, demand, statement, or consent herein required or permitted to be given by either Party to the other in this Lease (each, a “Notice”), must be in writing signed by or on behalf of the party giving the notice and addressed to the other at the address as set forth below:

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: Stone Applications LLC
2801 Centerville Road, 1st Floor
PMB 811
Wilmington DE, 19808
Attention: Legal Department

With a required copy to: Fennemore Craig, P.C.
Attention: Jay S. Kramer
2394 East Camelback Road, Suite 600
Phoenix, Arizona 85016-3429

Each party may by notice in writing change its address for the purpose of this Lease, which address shall thereafter be used in place of the former address. Each notice, demand, request, or communication which shall be mailed to any of the aforesaid shall be deemed sufficiently given, served, or sent for all purposes hereunder (i) two (2) business days after deposit with the United States Postal Service as registered or certified mail, postage prepaid and return receipt requested, (ii) upon personal delivery, or (iii) one (1) business day after deposit with any recognized commercial air courier or express service for next business day delivery.

25. **[Reserved]**

26. **Condition of Premises.** Tenant represents that the Premises, the title to the Premises, parking, drive and walk areas adjoining the Premises, the environmental condition of the Premises and any subsurface conditions thereof, and the present uses and non-uses thereof, have been examined by Tenant and Tenant accepts the same in the condition or state in which they or any of them may be on the date of the execution of this Lease, without representation or warranty, express or implied in fact or by law, by Landlord and without recourse to Landlord, as to the nature, condition, or usability thereof or the use or uses to which the Premises or any part thereof may be put.

27. **Quiet Enjoyment.** Subject to all of the conditions, terms, and provisions contained in this Lease, Landlord covenants that Tenant, upon paying the Net Rent, and Additional Payments and observing and keeping all terms, covenants, agreements, limitations, and conditions hereof on its part to be kept, shall quietly have and enjoy the Premises during the term hereof, without hindrance or molestation by Landlord.

28. **Estoppel Certificates.** Landlord or Tenant may request, a certificate evidencing whether or not:

A. This Lease is in full force and effect along with the amount and current status of the Net Rent and Additional Payments due hereunder;

B. This Lease has been modified or amended in any respect or describing such modifications or amendments, if any;

C. There are any existing defaults under this Lease, to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any; and

D. Such other matters as Landlord or Tenant may reasonably request in connection with this Lease.

Such certificate shall be returned to the requesting party not later than twenty (20) days following receipt of the request, and in no event shall the certificate require that Landlord subordinate its interest in the Premises to any party.

29. **Consents.**

A. **Parties and Notice.** Whenever the consent or approval of a Party to this Lease is required or reasonably requested under this Lease, if the Party whose consent or approval is requested fails to notify the other Party in writing within fifteen (15) days (except where a different period is otherwise specified herein for the giving of such consent or approval) after the giving of a written request therefor in the manner specified herein for the giving of notice, it shall be concluded that such consent or approval has been given.

B. **No Unreasonable Withholding.** Wherever in this Lease the consent or approval of either party is required, such consent or approval shall not be unreasonably withheld, delayed, or conditioned, except and unless where otherwise specifically provided. The remedy of the party requesting such consent or approval, in the event such party should claim or establish that the other party has unreasonably withheld, delayed, or conditioned such consent or approval, shall be limited to an injunction or declaratory judgment and reimbursement of the requesting party's enforcement costs, including, without limitation, attorneys' fees, court costs, expert witness fees, and other litigation related expenses.

30. **Limitation of Landlord's Liability.** Landlord shall not be responsible or liable for any damage or injury to any property, fixtures, merchandise, or decorations or to any person or persons at any time on the

Premises from steam, gas, electricity, water, rain, or any other source whether the same may leak into, issue or flow from any part of the Improvements or from pipes or plumbing work of the same, or from any other place or quarter; nor shall Landlord be in any way responsible or liable in case of any accident or injury including death to any of Tenant's employees, agents, subtenants, or to any person or persons in or about the Premises; and Tenant agrees that it will not hold Landlord in any way responsible or liable therefor and will Indemnify Landlord for Claims pursuant to Section 16. Landlord shall not be liable for interference with light or corporeal or incorporeal hereditaments caused by anybody or the operation of or for any governmental authority in the construction of any public or quasi-public work and Landlord shall not be liable for any latent or any other defects in the Premises. Nothing set forth herein waives or otherwise modifies the City's obligations as a municipality with respect to providing municipal services and municipal utilities to the Premises in accordance with the requirements of Applicable Laws, including the Terms and Conditions.

31. **Miscellaneous.**

A. **Landlord's Right of Cancellation.** All parties hereto acknowledge that this Lease is subject to cancellation by the City of Mesa for a conflict of interest pursuant to the provisions of A.R.S. § 38-511.

B. **Choice of Law; Exclusive Jurisdiction.** This Lease shall be construed and enforced in accordance with the substantive laws of the State of Arizona, without regard to principles of conflicts of laws. In the event of a dispute regarding this Lease, the Parties consent to the sole and exclusive jurisdiction of the Federal District Court for the State of Arizona as the situs of the Land; and the Parties expressly waive any right to seek to change such venue for any reason, including (but not limited to) diversity jurisdiction or the legal domicile of the Parties. Tenant acknowledges that its waiver set forth above is material consideration to Landlord for Landlord to have entered into this Lease, and without which Landlord would not have accepted title to the Premises and entered into this Lease.

C. **Memorandum.** Landlord and Tenant agree that at the request of either, each will execute a short form memorandum of this Lease in a form satisfactory for recording in the Office of the County Recorder, Maricopa County, Arizona.

D. **Entire Agreement.** This Lease with its schedules and annexes contains the entire agreement between Landlord and Tenant and any executory agreement hereafter made between Landlord and Tenant shall be ineffective to change, modify, waive, release, discharge, terminate, or effect an abandonment of this Lease, in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, waiver, release, discharge, termination, or the effect of the abandonment is sought. The City Manager is authorized to execute and deliver on behalf of the Landlord, without the further consent and approval of the City Council, any waivers under this Lease.

E. **Corrections and Minor Amendments.** The City Manager is authorized to execute and deliver on behalf of the Landlord, without the further consent and approval of the City Council, amendments to this Lease that correct typographical or similar errors, revise or update legal descriptions or other exhibits, do not materially revise any business or policy provisions of this Lease, or that otherwise are ministerial in nature.

F. **Amendments.** No amendment to this Lease will be effective unless it is in writing and has been approved by the Parties (including, but not limited to, approval by the City Manager or City Council of the City of Mesa in its sole discretion).

G. **Captions.** The captions of Sections in this Lease and its Table of Contents are inserted only as a convenience and for reference and they in no way define, limit, or describe the scope of this Lease or the

intent of any provision thereof. References to Section numbers are to those in this Lease unless otherwise noted.

H. Execution and Delivery. This Lease shall bind Tenant upon its execution thereof. Landlord shall be bound only after it executes and delivers the Lease to Tenant following approval by the City Council of the City of Mesa, in such Council's sole discretion.

I. Counterparts. This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

J. Singular and Plural, Gender. If two or more persons, firms, corporations, or other entities constitute either the Landlord or the Tenant, the word "Landlord" or the word "Tenant" shall be construed as if it reads "Landlords" or "Tenants"; and the pronouns "it," "he," "she," "him" and "her" appearing herein shall be construed to be the singular or plural, masculine, feminine, or neuter gender as the context in which it is used shall require.

K. Multiple Parties. If at any time Landlord, Tenant, or any Permitted Mortgagee (Landlord, Tenant or any such mortgagee being in this Section referred to as a "party") is other than one individual, partnership, firm, corporation, or other entity, the act of, or notice, demand, request, or other communication from or to, or payment of refund from or to, or signature of, or any one of the individuals, partnerships, firms, corporations, or other entities then constituting such party with respect to such party's estate or interest in the Premises or this Lease shall bind all of them as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed, unless all of them have executed and acknowledged in recordable form and given a notice (which has not been revoked by notice given by all of them) designating not more than three individuals, partnerships, firms, corporations, or other entities as the agent or agents for all of them. If such a notice of designation has been given, then, until it is revoked by notice given by all of them, the act of, or notice, demand, request or other communication from or to, or payment or refund from or to, or signature of, the agent or agents so designated with respect to such party's estate or interest in the Premises or this Lease shall bind all of the individuals, partnerships, firms, corporations, or other entities then constituting such party as if all of them acted, or gave or received such notice, demand, request, or other communication, or gave or received such payment or refund, or signed any such document.

L. Exhibits and Incorporation. The following exhibits, which are attached hereto or are in the possession of the Landlord and Tenant, are incorporated herein by reference as though fully set forth:

Exhibit A	Legal Description of Land
Exhibit B	Depiction of Land
Exhibit C	Required Insurance
Exhibit D	Prohibited Uses
Exhibit E	Recognition and Non-Disturbance Agreement
Exhibit F	Special Warranty Deed

M. Attorneys' Fees. Each of Landlord and Tenant waive A.R.S. § 12-341.01 and agree that, in the event of litigation or other dispute arising out of this Lease, the prevailing Party will not be entitled to an award of its attorneys' fees

N. Immigration Reform and Control Act of 1986 (IRCA). Tenant understands and acknowledges the applicability of the IRCA to it and agrees to comply with the IRCA for all activities undertaken under this

Lease and agrees to permit Landlord to inspect its personnel records to verify such compliance in accordance with A. R. S. § 23-214.A.

O. No Boycott of Israel. To the extent enforceable under Applicable Law, Tenant certifies pursuant to A.R.S. § 35-393.01 that it is not currently engaged in, and for the Term of this Lease will not engage in, a boycott of Israel.

P. Preserve State Shared Revenue. Notwithstanding any other provision of, or limitation in, this Lease to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Lease violates any provision of state law or the Constitution of Arizona and Landlord and Tenant are not able (after good faith attempts) to modify the Lease so as to resolve the violation with the Attorney General within thirty days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1), this Lease shall automatically terminate at midnight on the thirtieth day after receiving such notice from the Attorney General, and upon such termination the Parties shall have no further obligations under this Lease except as provided in the last sentence of this Section. Additionally, if the Attorney General determines that this Lease may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and requires the posting of a bond under A.R.S. § 41-194.01(B)(2), Landlord shall be entitled to terminate this Lease, except if Tenant post such bond. If Tenant fails to timely post such bond, this Lease shall automatically terminate at midnight on the last day that such bond can be posted under Applicable Law, and upon such termination the Parties shall have no further obligations under this Lease except as provided in the last sentence of this Section. If the Arizona Supreme Court determines that this Lease violates any provision of state law or the Constitution of Arizona, this Lease shall automatically terminate and upon such termination the Parties shall have no further obligations under this Lease except as provided in the last sentence of this Section. In the event of a termination of the Lease pursuant to this Section 30(P), Landlord will immediately convey the Premises to Tenant as if Tenant had delivered a Notice to Landlord pursuant to Section 34(B) and all applicable time periods in Section 34(B) had expired.

32. **Force Majeure; Extension of Time of Performance.** Section 9.7 of the Development Agreement is incorporated herein by this reference. A lack of funds or inability to obtain funds shall not be included in this definition of Force Majeure. Times of performance under this Lease may also be extended in writing by the Parties.

33. **Compliance with Environmental Laws.**

A. Definitions.

(1) "Environmental Laws" means those laws promulgated for the protection of human health or the environment, including (but not limited to) the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Arizona Environmental Quality Act, A.R.S. §§ 49-101 et seq.; the Occupational Safety and Health Act of 1970, as amended, 84 Stat. 1590, 29 U.S.C. §§ 651-678; Maricopa County Air Pollution Control Regulations; Archaeological Discoveries, A.R.S. §§ 41-841 et seq.; regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, county, state or federal government) now in effect or hereinafter enacted that deal with Regulated Substances and the regulation or protection of human health and the environment, including but not limited to the ambient air, ground water, surface water, and land use, including substrata soils.

(2) "Regulated Substances" means:

(a) Any substance identified or listed as a hazardous substance, pollutant, hazardous material, or petroleum in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., and in the regulations promulgated thereto; and Underground Storage Tanks, U.S.C. §§ 6991 to 6991i.

(b) Any substance identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or as a special or solid waste in the Arizona Environmental Quality Act, A.R.S. §§ 49-201 et seq.; including, but not limited to, the Water Quality Assurance Revolving Fund Act, A.R.S. §§ 49-281 et seq.; the Solid Waste Management Act, A.R.S. §§ 49-701 et seq.; the Underground Storage Tank Regulation Act, A.R.S. §§ 49-1001 et seq.; and Management of Special Waste, A.R.S. §§ 49-851 to 49-868.

(c) All substances, materials and wastes that are, or that become, regulated under, or that are classified as hazardous or toxic under any Environmental Law during the term of this Lease.

(3) "Release" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping.

B. Compliance. Tenant shall, at Tenant's sole expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Tenant's operation on the Premises. Tenant shall not cause or permit any Regulated Substance to be used, generated, manufactured, produced, stored, brought upon, or released on or under the Premises, or transported to or from the Premises, by Tenant, its agents, employees, contractors, invitees or any Third Party in a manner that would constitute or result in a violation of Environmental Laws or that would give rise to liability under Environmental Laws.

C. Indemnification.

(1) Tenant shall indemnify, defend, pay and hold harmless, on demand, Landlord, its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys, for, from and against any and all Claims alleging or arising in connection with contamination of, or adverse effects on, human health, property or the environment pursuant to any Environmental Law, the common law, or other statute, ordinance, rule, regulation, judgment or order of any governmental agency or judicial entity, which are incurred or assessed as a result, whether in part or in whole, of Tenant's use of the Premises during the Term of this Lease, in accordance with Section 16(A). Regardless of the date of termination of this Lease, Tenant's obligations and liabilities under this Section 33 shall continue so long as the Landlord bears any liability or responsibility under the Environmental Laws for any use of the Premises during the Term of this Lease. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial actions, removal or restoration work required or conducted by any federal, state or local governmental agency or political subdivision (other than City) because of Regulated Substances located on the Premises or present in the soil or groundwater on, or under the Premises. The Parties agree that Landlord shall also have the rights set forth in this Section in addition to all other rights and remedies provided by law or otherwise provided for in this Lease.

(2) Without limiting the foregoing, if the presence of any Regulated Substance on, or under the Premises results in any contamination of the Premises or any adjacent real property as a result, whether in part or in whole, of Tenant's use of the Premises during the Term of this Lease, Tenant shall promptly take all actions at its sole cost and expense as are necessary to comply with applicable Environmental

Law. Any remedial activities by Tenant shall not be construed as to impair Tenant's rights, if any, to seek contribution or indemnity from another person.

(3) Tenant shall, at Tenant's own cost and expense, make all tests, reports, studies and provide all information to any appropriate governmental agency as may be required pursuant to the Environmental Laws pertaining to Tenant's use of the Premises. This obligation includes but is not limited to any requirements for a site characterization, site assessment and/or a cleanup plan that may be necessary due to any actual or potential spills or discharges of Regulated Substances on, or under the Premises, during the term of this Lease. Upon written request of Landlord, at no cost or expense to Landlord, Tenant shall promptly respond to any governmental investigation or any Claim related to environmental contamination.

(4) Tenant shall promptly notify Landlord of any of the following: (a) any correspondence or communication from any governmental agency regarding any violations of Environmental Laws, (b) any change in Tenant's use of the Premises that will change or has the potential to change Tenant's or Landlord's obligations or liabilities under Environmental Laws, and (c) any written notice from any governmental agency of a claim for which Landlord may incur liability under an Environmental Law.

(5) Tenant shall, at its own expense, obtain and comply with any permits or approvals that are required or may be required as a result of any use of the Premises by the Tenant, its agents, employees, contractors, invitees and assigns.

(6) Tenant shall obtain and maintain any permits, licenses, or approvals, and comply with any applicable financial responsibility requirements, under federal and/or state law regarding the ownership or operation of any underground storage tank(s) or any device used for the treatment or storage of a Regulated Substance and upon the written request of Landlord present evidence thereof to Landlord.

(7) The indemnity obligations in this Section 33 shall survive the expiration or earlier termination of this Lease.

34. **Purchase and Re-acquisition of Premises.** Tenant agrees to re-acquire, and Landlord agrees to reconvey, its fee interest in the Premises at the end of the Term (or earlier termination of this Lease). Landlord and Tenant hereby establish Tenant's obligation to purchase the Premises according to the terms and conditions as follows:

A. **Requirement of Exercise.** Notwithstanding anything in this Lease to the contrary, Tenant is obligated to purchase the Premises, and Landlord is obligated to sell, transfer, and convey, at the expiration of the Term (or earlier termination of this Lease). In the event that Tenant fails to complete the purchase of the Premises within six (6) months following the expiration of the Term (or earlier termination of this Lease), Landlord will convey its interest in the Premises to Tenant by Special Warranty Deed in the form of Exhibit F, but will retain all rights of indemnification granted in this Lease, including (but not limited to) Section 16 and Section 34.

B. **Exercise of Obligation.** Tenant's obligation to purchase the Premises is effective, and Tenant has the right to execute the purchase of the Premises, at any time after the execution of this Lease; provided that Tenant's right to purchase is conditioned upon Tenant curing any monetary default then existing under this Lease; and further provided that Landlord may waive this requirement in Landlord's sole discretion. Tenant may purchase the Premises at any time during the Rental Period by delivering Notice of its intent to purchase the Premises to Landlord (the "Reacquisition Notice"); and the purchase of the Premises by Tenant shall be completed as soon as possible after the expiration or earlier termination of this Lease, but must be completed

no later than the earlier of (i) six (6) months following the delivery of the Reacquisition Notice to Landlord, or (ii) six (6) months after the expiration of the Term (or earlier termination of this Lease).

C. Purchase Price. The Purchase Price for the Premises (“Purchase Price”) is \$10.00. The Purchase Price reflects the fact that Tenant initially owned the Land and constructed all of the Improvements at Tenant’s sole cost and expense, and is not intended to be the fair market value of the Premises.

D. Conveyance of Title and Delivery of Possession. Landlord and Tenant agree to perform all acts necessary to complete the conveyance of the Premises to Tenant within ninety (90) days after delivery to Landlord of Tenant’s Reacquisition Notice, or on the last day of the Rental Period, whichever first occurs. Landlord’s entire interest in the Premises shall be conveyed by Special Warranty Deed in the form of Exhibit F. The condition of title of the Premises will be as reflected in a commitment to issue title insurance (or similar report) obtained by Tenant at its sole cost and expense at the time of Tenant’s delivery of the Reacquisition Notice or the last day of the Rental Period (or date of earlier termination of this Lease), as applicable, and Landlord has no responsibility to eliminate, cure or “endorse over” any exceptions to title or other matters shown in such commitment except for matters directly attributable to the acts of Landlord. Landlord’s then City Manager (or such City Manager’s designee) is authorized to execute and deliver the Deed on behalf of Landlord. All expenses in connection with conveyance of the Premises to Tenant including, but not limited to, title insurance (if requested by Tenant), recordation and notary fees and all other closing costs (including escrow fees if use of an escrow is requested by Tenant), shall be paid by Tenant. Tenant is not required to provide a Reacquisition Notice to Landlord at the expiration of the Term if there has been no earlier termination of this Lease. Although Tenant will have been in actual possession of the Premises throughout the Term, (i) legal possession of the Premises will be deemed to have been delivered to Tenant concurrently with the conveyance of title pursuant to the Deed, and (ii) Landlord will retain all rights of indemnification granted in this Lease, including (but not limited to) Section 16 and Section 33. The terms of this Section 34 will survive the termination of this Lease and the recordation of any deed from Landlord to Tenant.

Signatures of Landlord and Tenant are on the following two (2) pages.

35. **Signatures.** The Parties have executed this Lease to be effective as of the Effective Date.

LANDLORD:

CITY OF MESA, ARIZONA,
a municipal corporation

By: _____

Its: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

TENANT:

STONE APPLICATIONS LLC,
a Delaware limited liability company

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 202__,
by _____, the _____ of Stone Applications LLC, a Delaware
limited liability company, on behalf of the company.

Notary Public

My commission expires:

Exhibit A to Government Property Improvements Lease

Legal Description of the Land

Exhibit B to Government Property Improvements Lease

Depiction of the Property

Exhibit C to Government Property Improvements 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 Premises and/or in the performance of work or construction of the Premises by Tenant, its agents, representatives, employees, contractors, or subcontractors.

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

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

<u>Type</u>	<u>Amount</u>	<u>Coverage Period</u>
General Liability (which shall include operations, products, completed operations, and contractual liability coverage)	With limits not less than \$25,000,000 combined single limit per occurrence and not less than \$25,000,000 general aggregate.	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Property (all risks of loss including risks covered by fire and extended coverage, terrorism, vandalism and malicious mischief)	In an amount not less than full replacement cost of structure and all fixtures.	Coverage shall be in effect upon or prior to 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 and remain in effect for 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.
Equipment Breakdown Coverage	\$10,000,000 (or such other amount as agreed to in writing between the Parties that is sufficient to cover all such risks)	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.

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.

G. **TENANT'S DEDUCTIBLES AND SELF-INSURED RETENTIONS:** Any deductibles or self-insured retention in excess of \$250,000 shall be declared to and be subject to approval by Landlord in its sole discretion; provided, however, that during such time as the net worth of the Tenant or its parent company, as determined in accordance with generally accepted accounting principles consistently applied, is at least One Hundred Million Dollars (\$100,000,000), the Tenant or its parent company, as applicable, may self-insure (without Landlord's prior approval) the coverages required herein (including coverages for any architect and contractor) provided that all such self-insurance, and self-insured amounts, shall provide the same or better coverage and benefits to Landlord as would commercially available insurance (that Landlord is endorsed as an additional insured) for all claims or damages covered by the insurance required in this Exhibit C, and Landlord shall be endorsed (or deemed endorsed) as an additional insured under the self-insurance program. Tenant (or its parent company, as applicable) shall provide notice of its intent to self-insure and provide an endorsement to the self-insurance and excess coverages, as applicable to comply with the insurance coverage requirements in this Exhibit C. Any self-insurance shall be primary and non-contributory with respect to all other Landlord insurance sources. Further, Tenant (or its parent company, as applicable) shall be solely responsible for the payment of any deductible or self-insured amounts and waives any rights it may have to seek recovery (waives subrogation) 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 reasonable and adequate Professional Liability Insurance with respect to any work done with respect to the Premises.

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

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

Exhibit D to Government Property Improvements Lease

Prohibited Uses

The Land will be developed and operated with land uses consistent with Chapter 64 of the Mesa Zoning Ordinance. In addition, the below uses are specifically prohibited within the Premises.

- Group Residential, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Non-chartered Financial Institution, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Pawn Shops, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Social Service Facilities, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Tattoo and Body Piercing Parlors, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Group Residential, as defined by Chapter 86 of the Mesa Zoning Ordinance
- Off-Track Betting Establishment, as defined by Chapter 86 of the Mesa Zoning Ordinance
- Medical Marijuana Dispensary, as defined by Chapter 86 of the Mesa Zoning Ordinance
- Package liquor stores
- Kennels

Exhibit E to Government Property Improvements Lease

Recognition and Non-Disturbance Agreement

When recorded, return to:

=====

NON-DISTURBANCE AND RECOGNITION AGREEMENT

=====

THIS NON-DISTURBANCE AND RECOGNITION AGREEMENT (this “**NDRA**”) is made as of the ___ day of _____, 20___, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by and among: (a) _____ (“**Tenant**”); (b) _____ (“**Lender**”); and (c) City of Mesa, Arizona, an Arizona municipal corporation (“**City**”).

1. Recitals.

1.1 Tenant is the present Tenant under a Government Property Improvements Lease entered into with City, as Landlord, dated _____, 20___, and recorded in the Official Records of Maricopa County, Arizona, at _____ (the “**Agreement**”), which Agreement sets forth certain rights and responsibilities of Tenant with respect to the lease of that certain real property referred to in the Agreement (and herein) as the “**Property**,” and more particularly described in Exhibit “A” attached hereto.

1.2 Tenant’s obligations arising under the Agreement include but are not limited to payment of rent, maintenance and repair of the Property, and indemnification of Landlord (collectively, the “**Obligations**”).

1.3 Lender has agreed to lend money to Tenant, and Tenant will execute certain loan documents (the “**Loan Documents**”) including but not limited to a leasehold deed of trust for the use and benefit of Lender (the “**Deed of Trust**”) and an assignment of Tenant’s rights under the Agreement (the “**Assignment**”) to secure the loan from Lender to Tenant (the “**Loan**”). The Deed of Trust, the Assignment and certain other Loan Documents will be recorded in the Official Records of Maricopa County, Arizona, and will encumber the Property.

1.4 Lender has certain rights under the Loan Documents in the event of a Default by Tenant of its obligations either under the Loan Documents or the Agreement, including but not limited to the right of Lender to be substituted for Tenant under the Agreement and to assume Tenant’s position with respect to the Agreement; and the Agreement states in Section 20 thereof that a Lender may be allowed to assume Tenant’s rights and obligations with respect to the Agreement (collectively, “**Tenant’s Position**”).

1.5 Accordingly the parties have executed this NDRA to be effective as of the date set forth above.

2. No Subordination. Subject only to the specific provisions of (i) Section 3 of this NDRA regarding the right of Lender to assume Tenant’s Position with respect to the Agreement and (ii) Section 4 of this NDRA regarding non-disturbance and recognition, all rights of Tenant and Lender under the Deed of Trust

are and will continue to be junior, inferior, subject and subordinate to the Agreement, as it may hereafter be modified, amended, restated or replaced.

3. Notice of Tenant Default.

3.1 If Lender is a “Permitted Mortgagee” pursuant to Section 20 of the Agreement, City will give Lender written notice of any claimed Event of Default by Tenant (the “**Notice**”) under the Agreement and 30 days following the expiration of Tenant’s cure period under the Agreement to cure such claimed Event of Default (as the Agreement exists as of the date of this NDRA), prior to terminating the Agreement or invoking such other remedies as may be available to City under the Agreement.

3.2 Lender will have the option, following Lender’s receipt of the Notice, and within the time period set forth herein for curing an Event of Default of Tenant, in its sole election either: (a) to cure the Default of Tenant, in which event Tenant will retain its position with respect to the Agreement; or (b) in addition to any other remedies available to Lender under law, equity or contract (including but not limited to the Deed of Trust and the Assignment) to assume Tenant’s Position with respect to the Agreement (to “**Assume**” or an “**Assumption**”). Lender will give written notice to City of its intention to Assume on or before the expiration of any applicable cure period available to Lender.

3.3 If Lender agrees to Assume Tenant’s Position with respect to the Agreement, Lender and City will execute an amendment to the Agreement (an “**Amendment**”) and will cause the Amendment to be recorded in the Official Records of Maricopa County, Arizona. The Amendment will state that Lender has fully assumed Tenant’s Position with respect to the Agreement, and that Lender is thereafter substituted for Tenant with respect to all Obligations, payment and performance rights and responsibilities arising under or in connection with the Agreement. The execution or approval by Tenant of the Amendment will not be necessary or required, and upon execution and recordation of the Amendment, City will (i) look to Lender and/or Tenant for performance of the Obligations under the Agreement and (ii) make to Lender all payments, and render all performance required to be made by the City, required to be made to Tenant under the Agreement.

3.4 In connection with (i) any foreclosure by Lender (whether by notice or judicially) of the Deed of Trust, or any other acquisition by Lender of the Property in lieu of such foreclosure (collectively, a “**Foreclosure**”) and (ii) the transfer of the Property to a third-party purchaser or purchasers (by way of illustration and not in limitation, a purchaser or purchasers at a trustee’s sale conducted pursuant to A.R.S. §33-810) concurrently with such Foreclosure or thereafter (a “**Purchaser**”), the Tenant’s Position under the Agreement will accompany and be deemed covenants running with the Property, and the Purchaser will be deemed to have assumed Tenant’s Position with respect to the Agreement. Upon the acquisition of the Property by a Purchaser, City will (i) look to Purchaser and/or Tenant for performance of the Obligations under the Agreement and (ii) make to Purchaser all payments, and render all performance required to be made by the City, required to be made to Tenant under the Agreement.

3.5 Until an Assumption as defined herein, nothing in this NDRA will constitute an assumption by Lender of any Obligation. Tenant will continue to be liable for all of the Obligations thereunder and will perform all such Obligations, will comply with all terms and conditions of the Agreement applicable to Tenant, and will take such steps as may be necessary or appropriate to secure performance by City under the Agreement.

3.6 Whether before or after an Assumption as defined herein, nothing in this NDRA will constitute a release of Tenant of any Obligation.

4. Nondisturbance and Recognition.

4.1 In the event that City institutes any proceedings to enforce the Agreement, City agrees that, so long as Lender is not in default (beyond any applicable cure period provided to Lender under this NDRA) under the Agreement:

4.1.1 City will not interfere with or disturb Lender's rights under the Agreement and this NDRA; and

4.1.2 Lender will not be made a party to any proceeding commenced pursuant to the Agreement, unless Lender is determined to be a necessary party for purposes of maintaining the action or securing other necessary relief not involving the termination of Lender's interest under the Deed of Trust or the Assignment, provided that nothing herein will prevent City from giving any required notice to Lender.

4.2 Upon and following an Assumption, Lender will recognize the City's rights under the Agreement for the balance of the Term thereof. The recognition described in this Section 4.2 will automatically become effective upon an Assumption by Lender.

5. Estoppel

5.1 City and Tenant hereby confirm to Lender that as of the date of this NDRA and to the best of their respective actual knowledge:

- (a) Neither City nor Tenant has acted or failed to act in a manner giving rise to an Event of Default under the Agreement;
- (b) The Agreement has not been assigned, modified or amended in any way except as set forth in Recital 1.1;
- (c) The Agreement is in full force and effect; and
- (d) [If applicable] "Completion of Construction," as defined in the Agreement, occurred on _____.

6. Miscellaneous.

6.1 This NDRA will be binding upon and inure to the benefit of City, Tenant and Lender and their respective successors and assigns, including, without limitation, any successful bidder at any judicial foreclosure or trustee's sale.

6.2 Except as otherwise required by law, any notice required or permitted under this NDRA will be in writing and will be given by (i) personal delivery, (ii) deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the parties at their respective addresses set forth below, or at such other address as such party may designate in writing pursuant to the terms of this Section, or (iii) any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid:

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

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

With required copy to: City of Mesa
Attn: City Attorney
20 East Main Street
Mesa, Arizona 85211

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

If to Tenant: _____

With required copy to: _____

If to Lender: _____

With required copy to: _____

Any notice sent by United States Postal Service certified or registered mail will be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service will be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service will be deemed effective upon its receipt or refusal to accept receipt by the addressee. Any party may designate a different person or entity or change the place to which any notice will be given as herein provided, by giving notice to the other parties as provided in this Section 6.2.

6.3 This NDRA is delivered in and relates to property located in Maricopa County, Arizona, and the rights and obligations of the parties hereunder will be governed by and construed in accordance with the substantive laws and judicial decisions of the State of Arizona (regardless of Arizona conflict of laws principles or the residence, location, domicile or place of business of the parties and their constituent principals) and applicable federal laws, rules and regulations, subject to Section 11.1 of the Agreement.

6.4 This NDRA integrates all of the terms and conditions of the parties' agreement regarding the subordination of the Deed of Trust and Lender's interest thereunder to the Agreement, and supersedes all prior oral or written agreements with respect to such subordination (only to the extent, however, as would affect the priority between the Agreement and the Deed of Trust). This NDRA may not be modified or amended except by a written agreement signed by the parties or their respective successors in interest.

6.5 This NDRA may be executed and acknowledged in one or more counterparts, each of which may be executed by one or more of the signatory parties. Signature and notary pages may be detached from the counterparts and attached to a single copy of this NDRA physically to form one legally effective document.

6.6 This NDRA is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. §38-511.

6.7 Each party to this NDRA represents and warrants to the others that all necessary company, corporate and/or governmental approvals, consents and authorizations have been obtained prior to the execution of this NDRA by such party, and that the person executing this NDRA on behalf of such party is duly authorized to do so to bind such party.

6.8 Capitalized terms not defined herein will have the definitions set forth in the Agreement.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the parties hereto have each caused this NDRA to be executed on or as of the day and year first above written.

“CITY”

CITY OF MESA, an Arizona municipal corporation

By: _____

Its: _____

“TENANT”

By: _____

Name: _____

Its: _____

“LENDER”

_____, a(n)

By: _____

Name: _____

Its: _____

Acknowledgment by City

=====
STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing was acknowledged before me this day of _____, 20__, by _____, the City _____ of the City of Mesa, Arizona, on behalf of the City.

Notary Public

My Commission Expires: _____

Acknowledgment by Tenant

=====
STATE OF ARIZONA)
) ss.
County of _____)

The foregoing was acknowledged before me this day of _____, 20__, by _____, the _____ of _____, on behalf of the _____.

Notary Public

My Commission Expires: _____

Acknowledgment by Lender

=====
STATE OF ARIZONA)
) ss.
County of _____)

The foregoing was acknowledged before me this day of _____, 200_, by _____, the _____ of _____, a _____, on behalf of the _____.

Notary Public

My Commission Expires: _____

=====

Exhibit F to Government Property Improvements Lease

Special Warranty Deed

When Recorded, Mail to:

SPECIAL WARRANTY DEED

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

*SEE EXHIBIT "A" ATTACHED TO THIS SPECIAL WARRANTY DEED
AND BY THIS REFERENCE MADE A PART HEREOF*

SUBJECT ONLY TO all matters of record (except those created by Grantor from and after [insert date of conveyance from Owner to City]); any and all conditions, prescriptive easements, encroachments, rights-of-way, or restrictions which a physical inspection, or accurate ALTA survey, of the Property would reveal; and all applicable municipal, county, state or federal zoning and use regulations.

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

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed as of this ____ day of _____, 20__.

GRANTOR:

City of Mesa, Arizona, an Arizona municipal corporation

By: _____

Its: City Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this the ____ day of _____, 20____, before me, the undersigned Notary Public, personally appeared _____, who acknowledged himself to be the City Manager of the City of Mesa, Arizona, the Grantor named herein, and that, being authorized so to do, he or she executed the foregoing instrument for the purposes herein contained on behalf of the said Grantor.

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

Notary Public

My Commission Expires:
