WHEN RECORDED, RETURN TO:

City of Mesa
Attn: Real Estate Services
20 East Main Street
Mesa, Arizona 85201

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DEVELOPMENT AGREEMENT
"AC HOTEL BY MARRIOTT"

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CITY OF MESA, ARIZONA,
an Arizona municipal corporation

AND

OCAP MAIN ST, LLC,
an Arizona limited liability company

==

____________ ____, 2026

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DEVELOPMENT AGREEMENT
DA26-02396

This Development Agreement (DA26-02396) is made as of the ____ day of ___________, 2026, between the City of Mesa, an Arizona municipal corporation ("**City**"), and OCAP Main St, LLC, an Arizona limited liability company ("**Developer**"). City and Developer are referred to herein collectively as the "**Parties**," or individually as a "**Party**."

RECITAL

A. Developer is the owner of that certain real property totaling approximately 32,496 square feet, as legally described and depicted in Exhibit A (the "**Property**").

B. The Property is in the Town Center redevelopment area within City's single Central Business District, which was initially adopted by the Mesa City Council in 1999. The City Council found a substantial number of blight factors still existed within the Central Business District and on April 6, 2020, the City Council by resolution re-designated and renewed the Central Business District and Town Center redevelopment area. In the reevaluation of the Central Business District, the blight assessment study conducted and presented to the City Council found the Central Business District maintains a predominance of blight and is a "blighted area" as described in A.R.S. § 36-1471, *et seq*.

C. Developer intends to develop on the Property an approximately eighty-five thousand (85,000) square foot AC Hotel by Marriott, which will be an upscale hotel as classified by Smith Travel Research with a minimum of one hundred fifty (150) hotel rooms catering to regional guests traveling for business, leisure, and extended stay, and will include various amenities, including a minimum of one thousand five hundred (1,500) square feet of meeting room space and an outdoor pool (the "**Hotel**"), and a restaurant and lounge, designed, constructed, and operated to the AC Kitchen and AC Lounge brand standards, serving breakfast, lunch, and light fare and appetizers for dinner consisting of a minimum of two thousand (2,000) square feet of indoor and outdoor space that will provide Hotel guests and the general public with a dining option in downtown Mesa (the "**Kitchen & Lounge**"). Collectively, hereinafter, the Hotel and Kitchen & Lounge may be referred to as the "**Project**" and the Project will be designed, constructed, and operated in accordance with the AC Hotel by Marriott brand standards, including an AC Kitchen and AC Lounge.

D. City reasonably believes the development of the Project as described in this Agreement, with the inclusion of the Hotel and Kitchen & Lounge, will generate substantial transaction privilege and transient lodging tax revenues for City, will meet a downtown Mesa need for high-caliber accommodations and dining options, and will activate a high-profile Property in the center of downtown Mesa that is currently partially vacant.

E. The Project will also generate substantial parking revenues for City during the term of this Agreement through a parking license agreement entered into by City and Developer, wherein Developer will license from City one hundred (100) parking spaces in the City-owned three-story parking structure located at 20 N. Hibbert (the "**Hibbert Garage**"), adjacent to the east side of the Property, for use by guests, employees, and officers of the Project. For the license of the parking spaces in the Hibbert Garage, during the term of this Agreement, it is estimated that Developer will pay to City three million dollars ($3,000,000.00), and over the fifty (50) year term of the Parking License, it is estimated that Developer will pay to City five million two hundred thousand dollars ($5,200,000.00). Developer could have provided the required parking for the Project on the Property or through a parking agreement with a third party, in which case City would not receive the substantial parking revenues described above, but Developer agreed to license parking spaces from City and through such parking license and this Agreement, Developer is obligated to pay parking fees to City for a fifty (50) year term in accordance with the parking license agreement.

F. In addition to the substantial taxes and parking revenues the Project will generate for City, Developer agrees to grant to City, at no cost to City, a perpetual public utilities easement on a portion of the Property for installation, repair, and maintenance of, and access to the electric public improvements that will be constructed and installed related to the Project and thereafter dedicated to and controlled by City.

G. Provided further, as set forth in this Agreement, Developer agrees to (i) provide to City and organizations partnering with City access to use of the meeting room space in the Hotel at no cost (subject to the limitations set forth in this Agreement) and to reasonably prioritize reservation requests from City for such meeting room space; and (ii) make available rooms at the Hotel for major entertainment and sporting events in Mesa in order to provide accommodations in Mesa for people attending such major events, thereby increasing tourism in Mesa.

H. In order to ensure the Project is able to be constructed with the higher-caliber Hotel and Kitchen & Lounge that will provide increased transaction privilege and transient lodging tax and serve a specific area need, Developer requested, and City is willing to provide, a tax incentive consisting of reimbursement for public infrastructure dedicated to and accepted and controlled by City, including the electric public improvements described in this Agreement.

I. Developer desires and intends to design and build the Minimum Improvements, convey the Property and Minimum Improvements to City following Completion of Construction of the Minimum Improvements, lease the Property and Minimum Improvements (all as defined below) from City pursuant to A.R.S. §§ 42-6201, *et seq*., and thereafter operate the Project in furtherance of the Central Main Plan and in accordance with this Agreement and the lease in the form attached as Exhibit B (the "**Lease**").

J. The City Council finds and determines the redevelopment of the Property as set forth in this Agreement (i) will generate substantial monetary and non-monetary benefits for City and substantially enhance the economic welfare of City; (ii) will increase tax revenues to City; (iii) will increase utility revenues to City; (iv) will increase parking revenues to City primarily by City collecting the parking fees from Developer for licensing parking spaces in the Hibbert Garage for fifty (50) years; (v) will create and retain new jobs; (vi) will support tourism and meet a need of downtown Mesa by providing the Hotel and Kitchen & Lounge and the room block for major events; (vii) provides for the planned and orderly development of the Property consistent with the General Plan, the Central Main Plan, and the Zoning Ordinance; and (viii) furthers the City

Council's objective to reduce the slum and blight in the Central Business District.

K. This Agreement is a "Development Agreement" within the meaning of A.R.S. § 9-500.05 and is authorized by and entered into in accordance with the terms of A.R.S. § 9-500.05 and A.R.S. § 9-500.11 (V.2). The terms of this Agreement constitute covenants running with the Property as more fully described in this Agreement.

AGREEMENT

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

1. **PARTIES AND PURPOSE**.

1.1. Parties. The Parties to this Agreement are:

a. City. City is the City of Mesa, Arizona, a municipal corporation, and a political subdivision of the State of Arizona, duly organized and validly existing under the laws of the State of Arizona, exercising its governmental functions and powers.

b. Developer. Developer is OCAP Main St, LLC, a limited liability company, duly organized and validly existing under the laws of the State of Arizona.

1.2. Purpose. Among the purposes of this Agreement are to (a) provide for the development of the Property in accordance with the Approved Plans and this Agreement; (b) provide for the Minimum Improvements and Public Improvements to be designed and constructed by Developer or at Developer's direction; (c) provide for the reimbursement for Public Improvements; and (c) acknowledge the obligations of Developer and City.

2. **TERM**. The term of this Agreement ("**Term**") is that period of time commencing on the Effective Date and terminating thirty-five (35) years later; provided, however, (a) all obligations of Indemnity in this Agreement and in the Lease will survive in accordance with the terms of this Agreement and the Lease, as applicable; and (b) the prohibited uses in Section 4.6 and Exhibit D will survive the earlier termination and will continue and remain enforceable in accordance with the terms of this Agreement for a period of fifty (50) years from the Effective Date.

3. **SCOPE AND REGULATION OF DEVELOPMENT**.

3.1. Compliance with Applicable Laws. Developer agrees all design and development of the Property (including the Project, Minimum Improvements, and Public Improvements) must comply with the terms of this Agreement and Applicable Laws. All Applicable Laws in effect at the time of development of any portion of the Property will apply to such development. Developer must pay all fees and costs for the development and construction of the Property and Project (including for the Minimum Improvements and Developer Public

Improvement Work (defined below)), including building permit, inspection, development, and other similar fees (each a "**Fee**"), and the Fees will be those in effect at the time of any application or submission.

3.2. Approved Plans. Provided further, development of the Project must be in accordance with one (1) or more plans ("**Approved Plan(s)**," as the same may be amended from time to time) prepared and submitted by Developer to City for approval, and which must (a) comply with the terms of this Agreement and Applicable Laws, including the General Plan, Central Main Plan, and Zoning Ordinance; and (b) set forth the basic land uses and all other matters relevant to the development of the Project in compliance with this Agreement. Developer has submitted to City a preliminary plan for the Project and Developer must submit to City, as part of City's Zoning Clearance process, a final Approved Plan which is subject to the approval process set forth in Section 3.3.

3.3. Approval Process; Customized Review Schedule. Developer recognizes the development and construction of the Property and Project (including the Minimum Improvements and Public Improvements) are subject to City's normal and customary planning, engineering, and building plan submittal, review, approval, and inspection processes and related fees; provided, however, the review and approval of all construction plans, applications, and other submissions by or on behalf of Developer will be in accordance with a customized review schedule mutually agreed upon by Developer and City ("**Customized Review Schedule**"). The Parties will work in good faith to create the Customized Review Schedule. The Parties agree the Customized Review Schedule may need to be amended from time to time to accommodate reasonable changes necessitated by design and construction matters and will work in good faith to make such amendments. City's Downtown Transformation Manager or designee, in conjunction with City's Development Services Department, is authorized to administratively approve amendments to the Customized Review Schedule that are agreed to in writing by the Parties. Additionally, the Customized Review Schedule will not result in or require the payment of an additional Fee by Developer for the agreed upon scheduled processing and approval of Developer's submittals. Standard permit fees will be charged for the Project consistent with City's adopted fee schedule.

3.4. Administrative Adjustments. The Approved Plans for the Project may be amended by Developer from time to time and any such amendments will be subject to City's standard review procedures and processes in accordance with Section 3.3. Additionally, the City Manager has the authority, without further act or approval of the City Council, to make administrative adjustments to the amounts and areas described in Section 4.3 to accommodate reasonable changes necessitated by design and construction matters discovered or determined subsequent to the execution of this Agreement.

4. **PROJECT DEVELOPMENT; MINIMUM IMPROVEMENTS**. Developer must perform the obligations contained in this Section 4 in compliance with this Agreement and Applicable Laws and at Developer's sole cost and expense.

4.1. Demolition of Existing Improvements. Developer will demolish and remove all existing improvements and other materials on the Property that are required to be demolished and removed in connection with the Approved Plans and the construction of the

Project.

4.2. Environmental Remediation; Environmental Compliance. Developer will undertake and complete all required removal and remediation of all Hazardous Materials from the Property. Developer's removal and remediation of Hazardous Materials from the Property and construction (and subsequent use and occupancy) of the Property will at all times comply with all Hazardous Materials Laws.

4.3. Minimum Improvements. Developer will construct on the Property, as shown on Developer's Approved Plans, the following minimum improvements (collectively, the "**Minimum Improvements**"), which must be in conformance with the AC Hotel by Marriott brand standards, including an AC Kitchen and AC Lounge:

a. The Hotel, which must include: (i) a minimum of one hundred fifty (150) hotel rooms; (ii) an outdoor swimming pool; and (iii) a minimum of one thousand five hundred (1,500) square feet of meeting room space.

b. The Kitchen & Lounge, which must: (i) be in conformance with the AC Kitchen and AC Lounge brand standards; (ii) be open to Hotel guests and the general public; (iii) serve breakfast, lunch, tapas and other light fare for dinner, and cocktails; and (iv) consist of a minimum of two thousand (2,000) square feet of indoor and outdoor space, including an outdoor dining space.

Provided further, Developer is solely responsible for all structural and capital repairs and replacement (including operation and maintenance of such structural and capital improvements) of the Minimum Improvements.

4.4. Program Compliance. Developer will comply in all material respects with the programs and policies set forth and described in Exhibit C. The Parties agree and acknowledge the City Manager has the authority, without further act or approval of the City Council, to make minor adjustments to Exhibit C that are agreed to in writing by the Parties and are consistent with the intent of the Parties and this Agreement.

4.5. City Services. During the Term, Developer will use all City of Mesa utility services available to the Property, including City's water, sewer, electric, solid waste, and natural gas. Additionally, Developer will use City of Mesa comingled recycling services at such time when that service is offered for the Project. Developer will be responsible, at its sole cost and expense, for all utility costs for the Project, including installing, extending, or upgrading the infrastructure to connect the Project to City's utility systems (subject, however, to Section 8 and Section 9, which set forth the requirements for the Public Improvements and reimbursement of Reimbursable Public Improvement Costs (as defined below)), as necessary, for the provision of utility services which may require Developer to enter a separate utility agreement with City (including an Electric Distribution Facilities Design and Construction Agreement). Developer may participate in any applicable City renewable energy, solar incentive, or rebate program to the extent then in effect and subject to availability. All utility services to the Property will be subject to City's Terms and Conditions for the Sale of Utilities, City Code, and Applicable Laws. City services will also be provided subject to payment of the then-applicable rates, fees, and charges.

4.6. Prohibited Uses. Notwithstanding anything in Applicable Laws (including the Zoning Ordinance), the uses described in Exhibit D are prohibited on the Property. The prohibited uses in this section and Exhibit D will survive the earlier termination of this Agreement and will continue and remain enforceable in accordance with the terms of this Agreement for a period of fifty (50) years from the Effective Date.

4.7. Encroachment into Right-of-Way. Developer, as part of the Project, is allowed to construct and maintain only those certain encroachments in City's right-of-way as described and depicted in, and subject to compliance with, the Encroachment Permit attached to this Agreement as Exhibit E. The Encroachment Permit will be duly executed simultaneously with the execution of this Agreement and recorded in the Official Records of Maricopa County, Arizona immediately following recordation of the Easement (see Section 8.5), and prior to any lien, claim, encumbrance, or any other recording against the Property.

5. **PARKING LICENSE**. As an element of the Lease Conditions Precedent (see Section 10.1), a material part of the consideration for City entering into this Agreement with Developer, and a material condition of this Agreement, Developer must enter into the parking license agreement with City in substantially the same form attached as Exhibit F (the "**Parking License**"). Licensee acknowledges and agrees that the Parking License and license fee thereunder are a material part of the consideration for City entering into this Agreement, and an element of the Lease Conditions Precedent and of the abatement of the government property lease excise tax in accordance with the Lease. Therefore, as set forth in the Parking License, Licensee agrees that if the Parking License is terminated prior to completion of its fifty (50) year term, Licensee must pay to City the cumulative total of the parking license fees that would have been paid to City for the remainder of the Parking License term had the Parking License not been earlier terminated. Provided further, Developer's default under the Parking License will be both a Default of Developer under this Agreement subject to Section 14 and a default of Developer under the Lease subject to Section 20 of the Lease.

6. **MEETING SPACE**. As stated in Section 4, the Hotel is required to include a minimum of one thousand five hundred (1,500) square feet of meeting room space, which is intended to consist of two (2) board rooms of approximately two hundred seventy-five (275) square feet each and one (1) large meeting room of approximately one thousand five hundred (1,500) square feet (the "**Meeting Space**"). As partial consideration for City entering into this Agreement, Developer and/or the Hotel operator (as applicable) will (a) allow City and organizations partnering or associated with City and designated as such by City ("**City Partner(s)**") access to the Meeting Space during regular business hours through the standard process for reserving the Meeting Space as established by the Hotel operator, including standard fees charged; (b) for at least two (2) meetings per year or eight (8) hours per year, whichever is less, allow a combination of City and/or City Partners to use the Meeting Space without charging a rental fee, including a rental fee for use of the subject Meeting Space or a fee for the existing equipment or existing furniture provided in the subject Meeting Space, to City or City Partners; and (c) prioritize City's reservation requests over other requests for the Meeting Space provided that the City-requested reservation does not conflict with a previously scheduled use of the Meeting Space. City agrees that all requests for

City or City Partner use of the Meeting Space under subsection (b) above (meaning those meetings for which City or City Partners will not be charged a rental fee) will be made through City's Office of Urban Transformation. The Hotel operator may establish reasonable rules for use and scheduling of the Meeting Space.

For purposes of clarity, the above subsection (b) does not prevent the Hotel operator from charging for direct costs incurred by the Hotel for City or City Partner use of the Meeting Space such as for fees associated with the rental of additional equipment, catering costs, custodial charges, and for damage caused by a user of the Meeting Space from (i) third-party users of the Meeting Space, including City Partners; and (ii) City, upon City's approval of an invoice submitted to City within thirty (30) days after City's use of the Meeting Space. Additionally, for purposes of clarity, if multiple of the rooms that make up the Meeting Space are simultaneously used by City or City Partners without a rental fee charged, the use of each Meeting Space will be counted separately for purposes of subsection (b) above.

7. **HOTEL ROOM BLOCK FOR MAJOR EVENTS**. As partial consideration for City entering into this Agreement, for any Major Event in which City is a host, co-host, sponsor, co-sponsor, or partner, Developer and/or the Hotel operator (as applicable) must make available to the host or host committee of the Major Event an official guest room "block" at the Hotel of at least fifteen (15) guest rooms, or ten percent (10%) of the Hotel's total available guest rooms, whichever is greater, per night for the duration of the Major Event and subject to availability of such rooms. Rooms designated for a Major Event room block must be (a) removed from general inventory and will not be resold, repriced, or otherwise displaced in favor of other bookings until after the reservation deadline for the Major Event room block, which deadline may be established by the Hotel operator; and (b) offered at a rate no greater than comparable rooms at the Hotel not within the Major Event room block. The administration of the room blocks required by this section may be in accordance with the Hotel's standard procedures for room blocks. City will make reasonable efforts to inform the Hotel operator of Major Events sufficiently in advance of such Major Events such that the required room block may be created in accordance with the Hotel's standard procedures for room blocks. Additionally, City agrees that all requests for room blocks for Major Events will be made through City's Office of Urban Transformation.

8. **PUBLIC IMPROVEMENTS**. The public improvements that are directly related to the Project and that will be dedicated to and accepted and controlled by City upon completion consist of the following: (a) the electric improvements generally described and depicted on Exhibit G (the "**Electric Improvements**"); and (b) the right-of-way improvements, including improved sidewalks, landscaping, and lighting, generally described and depicted on Exhibit H (the "**ROW Improvements**"). The Electric Improvements and the ROW Improvements are collectively referred to as the "**Public Improvements**" and the portions of the Public Improvements that Developer is responsible for, as described on Exhibit I, are collectively referred to as the "**Developer Public Improvement Work**." The Developer Public Improvement Work will be eligible for reimbursement in accordance with this Agreement (see also Section 9).

8.1. Electric Improvements. As set forth in this section, Developer is responsible for certain portions of the planning, designing, constructing, and installation of the Electric Improvements, and City is responsible for the remaining portions of the Electric Improvements necessary to provide electric utility service to the Project.

a. Developer and City Responsibility. In addition to any other public infrastructure or development requirements for the Project, Developer must complete the work for the Electric Improvements that is described on Exhibit I, which includes the excavating of trenches, conduit installation, backfilling of trenches, and surface restoration related to the Electric Improvements (including Electric Improvements not located on the Property). The remaining portions of the Electric Improvements that will be completed by City will be paid for by City using redevelopment program funds, and Developer will not receive any reimbursement for the portions of the Electric Improvements completed by City. Developer recognizes and agrees that it is required to enter into a separate Electric Distribution Facilities Design and Construction Agreement as a condition to City commencing any work related to the Electric Improvements and a condition to City providing electric utility service to the Project.

b. Developer Reporting Requirements. For City to pay for its portion of the Electric Improvements with redevelopment program funds, Developer will be required to report certain metrics to City as set forth in this section. Upon request of City's Office of Urban Transformation, on or prior to each of the first (1st), second (2nd), and third (3rd) anniversaries of the date the Hotel and Kitchen & Lounge are first in operation and open to the public, Developer must report to City's Office of Urban Transformation for the immediately preceding year:

i. The number of full-time employees employed at the Hotel and Kitchen & Lounge.

ii. The number of part-time employees employed at the Hotel and Kitchen & Lounge.

iii. The number of nightly room rentals for the Hotel.

8.2. ROW Improvements. As set forth in this section, Developer is responsible for the entirety of the ROW Improvements. Specifically, in addition to any other public infrastructure or development requirements for the Project, Developer must complete the work for the ROW Improvements that is described on Exhibit I, which includes all planning, designing, constructing, and installation related to the ROW Improvements.

8.3. General Obligations for the Developer Public Improvement Work. The Developer Public Improvement Work must be planned, designed, bid, constructed, and dedicated in compliance with Applicable Laws, including A.R.S. Title 34 and City's procurement and public bidding procedures. Developer recognizes that the Developer Public Improvement Work is subject to and must comply with City's normal and customary planning, engineering, energy resources, electric utility, and building plan submittal, review, and approval processes, and day-to-day inspection services and requirements that will be subject to the Customized Review Schedule.

8.4. Administrative Adjustments. The Parties agree and acknowledge that the plans for the Public Improvements are conceptual as of the Effective Date and therefore the City Manager has the authority, without further act or approval of the City Council, to make minor adjustments to the Public Improvements and Developer Public Improvement Work, and to Exhibits G, H, and I, provided such adjustments are agreed to in writing by the Parties and are consistent with the intent of the Parties and this Agreement.

8.5. Easement Required. A portion of the Electric Improvements will be located on the Property. As such, as an element of the Rebate Conditions Precedent (see Section 9.1.1) to any obligation of City to make any tax reimbursement payment to Developer, and as an element of the Lease Conditions Precedent (see Section 10.1) to any obligation of City to enter into the Lease, Developer must grant to City a perpetual public utility easement in, on, over, under, and across portions of the Property reasonably determined by City to provide for the installation, use, repair, maintenance of, and access to, future utilities improvements, including the Electric Improvements, on City's standard form, and through City's standard process, for public utility easements (the "**Easement**"). The Easement must be recorded in the Official Records of Maricopa County, Arizona immediately following recordation of this Agreement and immediately prior to the recordation of the Encroachment Permit (see Section 4.9), and prior to any lien, claim, encumbrance, or any other recording against the Property.

8.6. Public Improvements Costs. "**Public Improvement Costs**" means all reasonable costs, expenses, fees, and charges actually incurred by Developer and paid to third-party contractors, construction managers, architects, engineers, surveyors, consultants, and other third parties for studies, reports, tests, inspections, reviews, materials, labor, design, engineering, surveying, site excavation, and preparation, grading, drainage, removal, relocation, and replacement of utility facilities and improvements, governmental permits and fees (excluding impact fees), payment, performance, and other bonds, and other similar costs and expenses reasonably necessary for the design, permitting, construction, installation, or provision of the Developer Public Improvement Work. Developer must pay all Public Improvement Costs as the same become due. Public Improvement Costs will not include: (a) recording costs; (b) environmental remediation costs; (c) archeological studies; or (d) legal fees related to planning, permitting, easements, right-of-way dedications, or any other legal fees associated with the design and construction of the Public Improvements. In order for any Public Improvement Costs to be eligible for reimbursement through the Construction Tax Rebate set forth in Section 9, all the Public Improvement Costs must be in compliance with the requirements of this Agreement ("**Reimbursable Public Improvement Costs**").

8.7. Dedication, Acceptance, and Maintenance of Public Improvements. When the Public Improvements are Completed in accordance with the requirements of this Agreement and Applicable Laws, Developer must dedicate to City, and City will accept and control, the Public Improvements; however, City's acceptance of the Public Improvements will be conditioned upon such reasonable and customary conditions as City may impose, which may include a two (2) year warranty of workmanship, materials, and equipment. Upon acceptance of the Public Improvements by City: (a) the Public Improvements will become public facilities and property of City; and (b) all subsequent maintenance, replacement, or repairs of the Public Improvements will be the responsibility of City to complete except for landscaping which will remain the responsibility of Developer to maintain, replace, and repair in accordance with the City Code, but City does not waive any rights at law or in equity it may have related to maintenance, replacement, or repair.

8.8. Indemnity; Risk of Loss. All maintenance, replacement, or repairs of the Developer Public Improvement Work that come due prior to acceptance of the Public Improvements by City in accordance with this section are solely the responsibility of Developer. With respect only to Claims arising prior to acceptance of the Public Improvements by City, Developer will bear all risk of, and will indemnify, defend, pay, and hold harmless City Indemnified Parties for, from, and against the Claims imposed upon or asserted against a City Indemnified Party, by reason of, or arising from or relating to, in whole or in part, the design, construction, installation, location, condition, loss, damage to, or failure of the Developer Public Improvement Work; except those Claims solely and exclusively arising from or caused by the gross negligence or intentional misconduct of a City Indemnified Party. At the time title to the Public Improvements is accepted by and transferred to City by dedication deed, plat recordation, or otherwise, Developer will, to the extent allowed by law, assign to City any unexpired warranties relating to the design, construction, or composition of such Public Improvements. Acceptance of any Public Improvements by City may be conditioned on City's receipt of a two (2) year warranty of workmanship, materials, and equipment; provided, however, any such warranty may be provided by Developer's contractors or subcontractors directly to City and are not required from Developer, and will extend from the date of completion of any Public Improvement, any component thereof, or the work of any specific trade or contractor, as applicable.

8.9. Public Improvement Costs Compliance. Within ninety (90) days of the acceptance of the Public Improvements by City, Developer must submit to City documentation showing the Public Improvement Costs that Developer believes in good faith are Reimbursable Public Improvement Costs that meet the requirements of this Agreement. Documentation to support the Public Improvement Costs include evidence of paid itemized receipts or invoices, lien releases, proof of payment, and contracts with contractors and subcontractors. City staff will review the submitted Public Improvement Costs for compliance with this Agreement, including compliance with A.R.S. Title 34. Developer agrees that it will work with City staff in the provision of information and documentation necessary for the determination of the Reimbursable Public Improvement Costs. Any Public Improvement Costs claimed by Developer that are deemed by City to not be Reimbursable Public Improvement Costs will be deemed disallowed and ineligible for reimbursement from the Construction Tax Rebate set forth in Section 9 or from any tax or other financial incentive that may be provided under this Agreement. Any decision related to the disallowance of Public Improvement Costs as Reimbursable Public Improvement Costs may be appealed by Developer as set forth in Section 15.2 if there is an impasse as to the allowability of costs.

8.10. Maintenance Obligations for Non-Standard Public Improvements. Developer will maintain, repair, and replace (as reasonably necessary) all the public infrastructure and improvements (including any component of the public infrastructure and improvements) within City right-of-way or easements that are reasonably deemed from time to time by the City Engineer to be non-standard ("**Non-standard Public Improvements**"). In the event Developer fails to maintain, repair, or replace such Non-standard Public Improvements (or any component of such Non-standard Public Improvements), City may, but is not obligated to, after thirty (30) days written notice to Developer, maintain, repair, and replace such Non-standard Public Improvements (or component of such Non-standard Public Improvements) at Developer's expense, in which event Developer, promptly upon receipt of an invoice from City for City's costs and expenses (with copies of all invoices related thereto), will pay and reimburse City for all such costs of maintenance (including repair or replacement) of such Non-standard Public Improvements incurred by City. Developer's obligations of maintenance, repair, replacement, and reimbursement set forth in this section run with the land and will survive the expiration or earlier termination of this Agreement.

9. **CONSTRUCTION TAX REBATE**. In consideration of Developer completing the Developer Public Improvement Work and otherwise satisfying the conditions of this Agreement, City will rebate and pay to Developer certain portions of the Eligible Construction Tax collected by City related to the Project. The rebate will be a reimbursement for the Reimbursable Public Improvement Costs up to a set dollar maximum (the Maximum Reimbursement Cap defined in Section 9.2.1 below). Eligibility to receive any portion of the tax rebate is contingent upon Developer meeting the Rebate Conditions Precedent in Section 9.1.1 and Developer not having an uncured Default (see Section 14). The exact portions of the Eligible Construction Tax that are reimbursable to Developer are set forth in this Section 9. Payment of the rebate is subject to the limitations on payment and eligibility to receive payment set forth herein.

9.1. Completion of Conditions Precedent for Receipt of Construction Tax Rebate.

9.1.1. Rebate Conditions Precedent. The Construction Tax Rebate (defined below) is a refund to Developer for the Reimbursable Public Improvement Costs as permitted under Applicable Laws, including A.R.S. § 9-500.11 and A.R.S. § 42-6010, for the Developer Public Improvement Work completed by Developer in accordance with the requirements of this Agreement, including A.R.S. Title 34. As a condition to any right of Developer to receive any portion of the Construction Tax Rebate, all of the following must take place on or before the dates listed, subject to Enforced Delay (collectively, the "**Rebate Conditions Precedent**"): (a) obtain all the necessary permits to begin construction of the Developer Public Improvement Work by the day that is the eighteen (18) month anniversary of the Effective Date ("**Permit Deadline**"); (b) Completion of Construction and acceptance by City of all the Public Improvements within twenty-four (24) months of the Permit Deadline (subject to Enforced Delay); (c) the Easement must be granted to City and recorded in the Official Records of Maricopa County, Arizona prior to the acceptance of the Public Improvements by City; and (d) the Hotel and Kitchen & Lounge being in operation open to the public, within six (6) months of the Completion of Construction of the Project.

9.1.2. Failure to Meet Rebate Conditions Precedent. Failure of Developer to meet any element of the Rebate Conditions Precedent by the required date(s) will result in Developer not receiving any portion of the Construction Tax Rebate, or any other financial or tax related incentives that may be granted under this Agreement related to the development of the Property.

9.1.3. Confirmation of Completion of Rebate Conditions Precedent. Developer will send Notice to City of when the final Rebate Condition Precedent is met (i.e., when the Project is in operation and open to the public), and following receipt of such Notice, City will provide Developer return Notice confirming completion of such Rebate Condition Precedent, or if City does not agree that all the Rebate Conditions Precedent are complete, information regarding any remaining issues with the Rebate Conditions Precedent that Developer must resolve in order for City to issue confirmation of completion. Completion of each Rebate Condition Precedent will be dated as follows: (a) for obtaining all the necessary permits to begin construction of the Developer Public Improvement Work, the date City issues the final necessary permit; (b) for Completion of Construction and acceptance by City of all the Public Improvements, the date on which both a final certificate of occupancy is issued by City for the Minimum Improvements and on which a letter of acceptance has been issued by City for the Public Improvements; (c) for the Easement granted and recorded prior to the acceptance of the Public Improvements by City, the date on which the Easement is recorded in the Official Records of Maricopa County; and (d) for the Hotel and Kitchen & Lounge being in operation and open to the public, the date Developer confirms in writing to City that the Hotel and Kitchen & Lounge are in operation and open to the public.

9.2. Construction Tax Rebate.

9.2.1. City will pay to Developer the Construction Tax Rebate in an amount not to exceed the lesser of the following (the "**Maximum Reimbursement Cap**"): (a) the Reimbursable Public Improvement Costs that meet the requirements of this Agreement; or (b) the Eligible Construction Tax. For the avoidance of doubt, the total amount of any obligation City has in this Agreement to pay the Construction Tax Rebate is limited to the Maximum Reimbursement Cap.

9.2.2. The "**Construction Tax Rebate**" consists of one hundred percent (100%) of the Eligible Construction Tax for the Project collected and actually received by City as limited by Section 9.2. "**Eligible Construction Tax**" means the portion of City's transaction privilege taxes received by City from taxable activities for the development of the Project during the Economic Incentive Period (as defined below) pursuant to the Tax Code, Article IV, Section 5-10-415 (Construction Contracting; Construction Contractors), as the same may change from time to time, that is made part of City's general fund, and that has not otherwise been dedicated or assigned to specific purposes (i.e. non-dedicated). As of the Effective Date, of City's total two percent (2.00%) transaction privilege tax rate for taxable activities, one point two percent (1.20%) of the tax rate is considered non-dedicated and would qualify for Eligible Construction Tax; the remaining zero point eight percent (0.80%) is dedicated or assigned to a specific purpose (zero point three percent (0.30%) for the street maintenance fund, zero point two five percent (0.25%) for the quality-of-life fund, and zero point two five percent (0.25%) for public safety) and is therefore not Eligible Construction Tax for the purposes of this Agreement. For the avoidance of doubt, the Eligible Construction Tax represents a one point two percent (1.20%) tax rate on taxable activities of which one hundred percent (100%) may be used for the Construction Tax Rebate. The "**Economic Incentive Period**" is that period of time beginning on the Effective Date and ending on the date of Completion of Construction of the Project.

9.3. Modifications to Tax Code or Applicable Laws. This Agreement in no way binds the City Council or any taxing authority to prevent future modifications to Applicable Laws related to taxation, including the Tax Code. Changes in the Tax Code (including changes to the Eligible Construction Tax structure, the dedication or assignment of any portion of tax to a specific purpose, the tax rate, or taxable activities) may result in changes to the amount of the Construction

Tax Rebate received by Developer. If prior to or during the Economic Incentive Period, the Arizona Legislature eliminates or reduces City's ability to collect the Eligible Construction Tax, then City will pay the Construction Tax Rebate from the collected Eligible Construction Tax that City receives prior to the elimination of the tax or, in the case of a reduction, the collected reduced amount. If the Eligible Construction Tax is reduced or eliminated, City's obligation to pay the Construction Tax Rebate will remain limited to the collected amounts of Eligible Construction Tax, and City will not be obligated to pay the Construction Tax Rebate from any other sources of City revenue.

9.4. Accounting.

9.4.1. Bookkeeping. The portions of the Eligible Construction Tax that will be used for payment of the Construction Tax Rebate will be accounted for by City separately from the tax revenues credited to City's general fund in a special bookkeeping record of City; City is not required to deposit the funds in a separate account at a bank or other financial institution. Although City has no obligation to deposit Eligible Construction Tax in an interest-bearing account, any interest that may accrue on the account in which the Eligible Construction Tax is held will be the property of City and will not increase the Maximum Reimbursement Cap or accrue for the benefit of Developer.

9.4.2. Rebate Conditions Precedent. Notwithstanding the accumulation of or credit of funds for the Construction Tax Rebate, Developer will have no rights in the Construction Tax Rebate, and no payment of any portion of the tax rebates will be made to Developer, unless and until Developer meets all elements of the Rebate Conditions Precedent and, thereafter, Developer's rights to payments of the Construction Tax Rebate are subject to the conditions set forth in this Agreement. If the Rebate Conditions Precedent are not met in accordance with the requirements of this Agreement, all funds and interest accrued thereon (if any) for Eligible Construction Tax activities will be retained by City free and clear of any claims by Developer.

9.5. Construction Tax Rebate Payments. Within sixty (60) days of Developer receiving confirmation that all the requirements of the Rebate Conditions Precedent are met (see Section 9.1.1) and so long as Developer does not have an uncured Default (see Section 14), Developer will submit a request for the Construction Tax Rebate to City's Tax Audit & Collections Administrator or their designee ("**Request for Reimbursement**"). The Request for Reimbursement will cover the Economic Incentive Period. To determine the Eligible Construction Tax received by City from taxable activities, and to calculate the reimbursement payment for the Construction Tax Rebate, Developer will provide to City's Tax Audit & Collections Administrator or their designee the necessary authorizations, summaries, and any other documentation reasonably requested by City to track the Eligible Construction Tax generated from and received by City for taxable activities (the "**Tax Calculation Documents**"). City will review the Request for Reimbursement and accompanying Tax Calculation Documents, then City will generate a Reimbursement Report (see Section 9.8) and make a reimbursement payment to Developer within thirty (30) days of City's confirmation of the amount owed to Developer. The Construction Tax Rebate payment will cover the Economic Incentive Period. City's obligation to make the Construction Tax Rebate payment will terminate upon the earlier of: (a) City paying the Maximum

Reimbursement Cap to Developer; or (b) the termination of this Agreement.

9.6. Bank Account Information. Prior to the issuance of any Construction Tax Rebate payment, Developer will provide City's Tax Audit & Collections Administrator or their designee with bank account information for the issuance of payments. It is the responsibility of Developer to ensure that the bank account information provided, including any routing or electronic fund transfer information, is up to date and correct throughout the term of this Agreement.

9.7. Determination of Amount of Tax Revenues Received by City. City, in its sole and absolute discretion and in accordance with its normal processes and procedures related to tax calculations, will determine the amount of the Eligible Construction Tax for each month (or partial month if applicable) in which Developer is eligible for the Construction Tax Rebate.

9.8. Computation and Report of Tax Revenues; Confidentiality. In conjunction with the payment of any portion of the Construction Tax Rebate, City will deliver to Developer a report of the related Eligible Construction Tax revenues collected by City ("**Reimbursement Report**"). All Reimbursement Reports will be subject to Applicable Laws that may prohibit or limit the dissemination or use of tax information, including confidentiality requirements of the Arizona Department of Revenue. If necessary to meet confidentiality requirements, City's obligation to issue confidential information in a Reimbursement Report is conditioned upon the completion of a consent to release tax information by the applicable taxpayer, including the Hotel and Kitchen & Lounge.

9.9. Requests for Refund or Amended Return. Should Developer, contractors, subcontractors, the Hotel, Kitchen & Lounge, or any other Project-related taxpayer amend its tax returns or request a refund for taxes paid that impacts the Construction Tax Rebate to where such taxpayer is entitled to a refund, Developer will return to City within thirty (30) days of demand the portion of the Construction Tax Rebate that was paid in error (i.e. refunded) as a result of the incorrect tax return filings.

10. **LEASE**. City will accept conveyance of the Property to City by form of special warranty deed attached as Exhibit J (the "**Deed**") and City will lease the Property to Developer by means of the Lease in the form attached as Exhibit B as set forth in and subject to this Section 10.

10.1. Lease Conditions Precedent.

10.1.1. Lease Conditions Precedent. City will accept conveyance of the Property to City by form of the Deed and City will lease the Property to Developer by form of the Lease provided all the following conditions are met (collectively, the "**Lease Conditions Precedent**"): (a) Developer has Completed Construction of all Improvements constituting the Project in compliance with this Agreement, including compliance with all the timeframes in Section 9.1.1; (b) Developer is not in Default under this Agreement; (c) the Property and Improvements are free and clear of all financial liens and encumbrances; (d) Developer has delivered to City or the escrow agent the fully executed Parking License; (e) Developer has dedicated to City, and City has accepted the dedication of, the Easement and Public Improvements in compliance with Section 8; (f) Developer has paid all ad valorem taxes and similar assessments with respect to the Property and the Minimum Improvements; (g) Developer has paid to City through the escrow related to the conveyance of the Property to City by form of the Deed (i) net rent for the first (1st) year of the Lease term as required by the Lease, (ii) economic analysis cost reimbursement required by Section 10.2, and (iii) in-lieu payments for the school districts required by Section 10.4 of this Agreement and Section 7(C) of the Lease; (h) Developer is not in default under the Parking License and has paid to City all license fees due and owing to date under the Parking License; and (i) Developer obtains an ALTA owner's title insurance policy ("**Title Policy**") for the benefit of City in the amount of one million dollars ($1,000,000.00) (the premium for which will have been paid by Developer) in a form satisfactory to City in its sole discretion and reflecting the condition of title as approved (the condition of title is subject to approval by City in its sole discretion, subject to the limitations on City's right to object set forth below, including having no financial encumbrances and being lien-free).

10.1.2. Failure to Meet Lease Conditions Precedent. Notwithstanding City's right to approve the condition of title, City will not have any right to object to the condition of title if the Title Policy has no Schedule B, Part II exceptions other than those included in Developer's title insurance policy issued to Developer at its acquisition of the Property in accordance with the purchase agreement for the Property. Notwithstanding the foregoing, City will not enter the Lease and will not have any obligation to accept the conveyance of the Property from Developer by form of the Deed, if Developer fails to meet any element of the Lease Conditions Precedent.

10.2. Economic Analysis Costs. To ensure compliance with A.R.S. §§ 42-6201, *et seq*., City obtained a professional analysis of the economic impact of the proposed development of the Project. Developer must reimburse City five thousand six hundred seventy-five dollars ($5,675.00), which was the cost to obtain that analysis and will be paid through the escrow related to the transfer of the Property from Developer to City as an element of the Lease Conditions Precedent.

10.3. Annual Assessment to Mesa Town Center Improvement District. Developer acknowledges the Property is located within the Mesa Town Center Improvement District, specifically within Special Improvement District 228 ("**SID 228**"). Real property located within SID 228 is assessed an annual fee for City or its designee to provide a greater degree of management and public services and such annual fee may be amended from time to time ("**Annual Assessment**"). City currently contracts with the Downtown Mesa Association to provide this service to SID 228. Developer acknowledges and agrees to annually pay the Annual Assessment to City or City's designee within thirty (30) days of Developer's receipt of an invoice from City or City's designee; provided further, during the term of the Lease, Developer agrees to make an annual, lump-sum in-lieu payment in the amount that would have been assessed by SID 228 and paid by Developer if Developer were the fee owner of the Property and the Minimum Improvements as further set forth in Section 7(H) of the Lease.

10.4. Payments In-Lieu to School Districts. As set forth in Section 7(C) of the Lease, and as permitted by this Agreement and Applicable Laws, the Parties intend to abate the government property lease excise tax under A.R.S. §§ 42-6201, *et seq*. As more fully set forth in

Section 7(C) of the Lease, to address the reduction in revenue to the local school districts, Developer is responsible for the below listed amounts of in-lieu payments for the local school districts, which will be paid through the escrow related to the transfer of the Property from Developer to City as an element of the Lease Conditions Precedent.

Maricopa Community College District	$2,532.00
Mesa Public School District	$14,238.00
East Valley Institute of Technology District	$117.00
Total	*$16,887.00*

11. **INDEMNITY; RISK OF LOSS; INSURANCE**.

11.1. Indemnity of City by Developer. Developer will indemnify, defend, pay, and hold harmless City, its agents, representatives, officers, directors, elected or appointed officials, and employees (collectively "**City Indemnified Party(-ies)**") for, from, and against any and all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (all of the foregoing collectively "**Claims**") imposed upon or asserted against a City Indemnified Party, by reason of, or arising from or relating to, in whole or in part, any of the following: (a) any act or omission of Developer, or its employees, contractors, subcontractors, agents, or representatives (collectively "**Developer Indemnitor(s)**"), undertaken in fulfillment of Developer's obligations under this Agreement, including the design, construction, and structural engineering related to or in connection with the Minimum Improvements, Developer Public Improvement Work, or other work by or on behalf of Developer; (b) any use or nonuse of the Property or any part thereof by a Developer Indemnitor; (c) any negligent, willful act, or condition created by a Developer Indemnitor on the Property or any part thereof; (d) any accident, injury to, or death of a person (including workmen), or loss of or damage to property occurring on or about the Property or any part thereof that arose from or related to, in whole or in part, an act or omission of a Developer Indemnitor; (e) performance of any labor or services or the furnishing of any materials or other property with respect to the Property or any part thereof by a Developer Indemnitor; and (f) any loss of or reduction in state shared monies arising in connection with a Claim brought or maintained under A.R.S. § 41-194.01 or A.R.S. § 42-6201, *et seq.* as a result of this Agreement; except those Claims solely and exclusively arising from or caused by the gross negligence or intentional misconduct of a City Indemnified Party (collectively "**Indemnity**"). Developer's Indemnity obligations in this section extend to and encompass all costs incurred by Developer in defending such Claims, including reasonable attorney, witness, and expert witness fees, and any other litigation related expenses. Developer's obligations of Indemnity will survive the expiration or earlier termination of this Agreement.

If any of the occurrences described in this section arise for which Developer has an obligation of Indemnity, Developer will, at its own expense, resist and defend such action, suit, or proceeding or cause the same to be resisted and defended by counsel designated by City and reasonably approved by Developer. If any such action, suit, or proceeding should result in a final judgment against City, Developer will promptly satisfy and discharge such judgment or will cause such judgment to be promptly satisfied and discharged.

11.2. Risk of Loss. Developer assumes the risk of any and all loss, damage, or

Claims to any portion of the Minimum Improvements, and to any portion of the Developer Public Improvement Work unless and until title to the Public Improvements is transferred to City, at which time City assumes the risk of any and all loss, damage, or Claims to any portion of the Public Improvements transferred to City, except as otherwise set forth in Section 8.10. At the time title to the Public Improvements is transferred to City by dedication deed, plat recordation, or otherwise, Developer will, to the extent allowed by law, assign to City any unexpired warranties relating to the design, construction, and/or composition of such Public Improvements and Developer will not have any liability therefor, unless specifically stated otherwise herein. As set forth in Section 8, acceptance of the Public Improvements may include reasonable conditions as determined by City, which may include City's receipt of the two (2) year warranty of workmanship, materials, and equipment set forth in Section 8.7 in form and content reasonably acceptable to City, provided however that such warranty or warranties may be provided by Developer's contractor or contractors directly to City and are not required from Developer, and that any such warranties will extend from the date of completion of any Public Improvement, any component thereof, or the work of any specific trade or contractor, as applicable.

11.3. Insurance. During the period of any construction involving the Developer Public Improvement Work, and with respect to any construction activities relating to the Developer Public Improvement Work, Developer will obtain and provide City with proof of payment of premiums and certificates of insurance showing Developer is carrying, or causing its contractor(s) to carry, builder's risk insurance, comprehensive general liability, and worker's compensation insurance policies in amounts and coverages set forth in Exhibit K. Such policies of insurance will be placed with financially sound and reputable insurers, and Developer will use reasonable and good faith efforts to require the insurer to give at least thirty (30) days advance written notice of cancellation to City, and Developer will name City as an additional insured on such policies.

12. **CITY REPRESENTATIONS**. City represents and warrants to Developer that:

12.1. City's execution, delivery, and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the City Code.

12.2. All consents and approvals necessary to the execution, delivery, and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery, and performance.

12.3. City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence, and enforce this Agreement.

12.4. As of the date of this Agreement, City has no actual knowledge of any litigation, proceeding, initiative, referendum, investigation, or threat of any of the same contesting the powers of City or its officials with respect to this Agreement that has not been disclosed in writing to Developer. The term "actual knowledge" means the actual knowledge of Jeff McVay, Downtown Transformation Manager, as of the Effective Date. Notwithstanding anything herein to the contrary, Mr. McVay is not a Party to this Agreement and will not have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or Developer's representations and/or warranties herein being or becoming untrue, inaccurate, or incomplete in any respect.

12.5. The execution, delivery, and performance of this Agreement by City is not prohibited by, and does not conflict with, any other agreements, instruments, or judgments or decrees to which City is a party or is otherwise subject, and this Agreement (and each undertaking of City contained herein) constitutes a valid, binding, and enforceable obligation of City, enforceable according to its terms.

12.6. City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

13. **DEVELOPER REPRESENTATIONS**. Developer represents and warrants to City that:

13.1. Developer has the full right, power, and authorization to enter and perform this Agreement and of the obligations and undertakings of Developer under this Agreement, and the execution, delivery, and performance of this Agreement by Developer has been duly authorized and agreed to in compliance with the organizational documents of Developer.

13.2. All consents and approvals necessary to the execution, delivery, and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery, and performance.

13.3. Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence, and enforce this Agreement.

13.4. As of the date of this Agreement, Developer has no actual knowledge of any litigation, proceeding, or investigation pending or threatened against or affecting Developer which could have a material adverse effect on Developer's performance under this Agreement that has not been disclosed in writing to City. The term "actual knowledge" means the actual knowledge of Blake Bunker as of the Effective Date. Notwithstanding anything herein to the contrary, Mr. Bunker is not a Party to this Agreement and will not have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or City's representations or warranties herein being or becoming untrue, inaccurate, or incomplete in any respect.

13.5. This Agreement (and each undertaking of Developer contained herein) constitutes a valid, binding, and enforceable obligation of Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency, and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

13.6. The execution, delivery, and performance of this Agreement by Developer is not prohibited by, and does not conflict with, any other agreements, instruments, judgments, or decrees to which Developer is a party or to which Developer is otherwise subject.

13.7. Developer has not paid or given, and will not pay or give, any Third Party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers, financial advisors, brokers, and attorneys.

13.8. Developer has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

14. **EVENTS OF DEFAULT; REMEDIES**.

14.1. Events of Default by Developer. "**Default**" by Developer under this Agreement will mean one or more of the following (subject to Section 14.3):

a. Any representation or warranty made in this Agreement by Developer was materially inaccurate when made or is proven to be materially inaccurate during the Term and has an adverse impact on City's or Developer's ability to perform under this Agreement.

b. Developer fails to comply with the dates established in this Agreement for the Commencement of Construction or the Completion of Construction (see Section 9.1.1), for any reason other than Enforced Delay or any action or inaction of City.

c. Developer fails to observe or perform any covenant, obligation, or agreement required of it under the Parking License or breaches any provision of the Parking License.

d. Foreclosure (or deed in lieu of foreclosure) upon any mechanic's, materialmen's or other lien on the Property prior to Completion of Construction or upon any Improvements on such Property, but such lien will not constitute a Default if Developer deposits in escrow sufficient funds to discharge the lien or otherwise bonds over such liens in a customary fashion.

e. Developer transfers or attempts to transfer or assign this Agreement in violation of Section 16.2.

f. Developer fails to observe or perform any covenant, obligation, or agreement required of it under this Agreement or breaches any provision of this Agreement.

14.2. Events of Default by City. "**Default**" by City under this Agreement will mean one or more of the following (subject to Section 14.3):

a. Any representation or warranty made in this Agreement by City was materially inaccurate when made or is proven to be materially inaccurate during the Term and has an adverse impact on City's or Developer's ability to perform under this Agreement.

b. City fails to observe or perform any covenant, obligation, or agreement required of it under this Agreement or breaches any provision of this Agreement.

14.3. Grace Periods; Notice and Cure. In the event of a Default, the non-defaulting Party may provide written notice to perform to the defaulting Party. The defaulting Party will have thirty (30) days from receipt of the written notice to cure the Default. In the event the Default is such that more than thirty (30) days would reasonably be required to cure the Default or otherwise comply with any term or provision in this Agreement, then the defaulting Party must notify the non-defaulting Party of such and the timeframe needed to cure the Default, and, so long as the defaulting Party commences performance or compliance within the required thirty (30) day period and diligently and continuously proceeds to complete such performance or fulfill such obligation, then the time to cure the Default will be extended; however, no time to cure a Default may exceed ninety (90) days total. A written notice of Default must specify the nature of the Default and the manner in which the Default may be satisfactorily cured, if possible.

14.4. Remedies for Default. Whenever a Default occurs and is not cured (or cure undertaken) by the defaulting Party in accordance with Section 14.3, the other Party may take any of one or more of the following actions, subject to any additional notice and cure periods provided in this section:

14.4.1. Remedies of City. City's exclusive remedies for an uncured Default by Developer will consist of, and will be limited to the following:

a. City may suspend any of its obligations under this Agreement and/or may terminate this Agreement by written notice thereof to Developer.

b. City may immediately seek enforcement of this Agreement by means of specific performance, injunction, or other equitable relief, without any requirement to post bond or other security. Developer agrees not to oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this Agreement.

c. City may seek any remedies available at law or in equity except City specifically waives the right to seek special, incidental, indirect, consequential, or punitive damages from Developer.

d. Notwithstanding the foregoing, the limitations on City's remedies will not extend to actions against Developer with respect to Developer's obligations of Indemnity (including actions for damages).

14.4.2. Remedies of Developer. Developer's exclusive remedies for a Default by City will consist of and will be limited to seeking enforcement of this Agreement by means of a special action or other similar relief (whether characterized as mandamus, injunction, specific performance, or otherwise), requiring City to undertake and to fully and timely perform its obligations under this Agreement, and Developer hereby waives any and all right to recover actual, punitive, consequential, special, and any other type of damages whatsoever.

14.5. Delays; Waivers. Except as otherwise expressly provided in this Agreement (including Enforced Delay under Section 14.6), any delay by any Party in asserting any right or remedy under this Agreement will not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Default by the other Party will not be considered as a waiver of rights with respect to any other Default by the performing Party or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the Default involved.

14.6. Enforced Delay in Performance for Causes Beyond Control of Party. Whether stated or not, all periods of time in this Agreement are subject to this section. Neither City nor Developer, as the case may be, will be considered in Default of its obligations under this Agreement in the event of enforced delay directly due to causes beyond its control and without its fault, negligence, or failure to comply with Applicable Laws, including the following (an "**Enforced Delay**"): acts of God, such as, but not limited to, a significant weather or geological event or other act of God, civil, or military disturbance, epidemic or pandemic, labor or material shortage (excluding those caused by lack of funds), initiative or referendum, confiscation or seizure by any government or public authority, or acts of terrorism. In no event will an Enforced Delay include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants or purchasers of portions of the Project or Property, nor from the unavailability for any reason of a particular contractor, subcontractor, vendor, investor, or lender desired by Developer in connection with the Project, it being agreed that Developer will bear all risks of delay which are not an Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay will be extended for the period of the Enforced Delay; provided that the Party seeking the benefit of the provisions of this section must, within thirty (30) days after such Party knows (or reasonably should have known) of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; provided, however, that either Party's failure to notify the other of an event constituting an Enforced Delay will not alter, detract from, or negate its character as an Enforced Delay if such event of Enforced Delay were not known or reasonably discoverable by such Party; and provided further, that no period of Enforced Delay may exceed ninety (90) calendar days.

14.7. Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights will not preclude the exercise by it, at the same or different times, of any other right or remedy for any other Default by the other Party.

15. COOPERATION AND ALTERNATIVE DISPUTE RESOLUTION.

15.1. Representatives. To further the cooperation of the Parties in implementing this Agreement, City and Developer each will designate and appoint a representative to act as a liaison between City and its various departments and Developer which may be changed from time-to-time (each a "**Representative**"). The initial Representative for City will be Jeff McVay, Downtown Transformation Manager, and the initial Representative for Developer will be its Project Manager, as identified by Developer from time to time. City Representative and Developer Representative will be reasonably available to discuss and review the performance of the Parties to this Agreement and the development of the Project and Property.

15.2. Impasse. It is the intent of the Parties for Developer to proceed rapidly with the implementation of this Agreement and the development of the Project. Accordingly, the Parties agree that if at any time Developer believes an impasse has been reached with City staff on any issue affecting the Property that is not a Default, Developer will have the right to immediately appeal to City Representative for an expedited decision. If Developer and City Representative cannot resolve the impasse within ninety (90) days, Developer has the right to meet with the City Manager or his designee.

15.3. Mediation. If there is a dispute hereunder which is not a Default by a Party and which the Parties cannot reasonably resolve between themselves, the Parties agree that there will be a ninety (90) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by non-binding mediation before commencement of litigation. The mediator will be agreed upon by the Parties and all administrative fees will be divided evenly between City and Developer.

16. **MISCELLANEOUS PROVISIONS**.

16.1. Governing Law; Choice of Forum. This Agreement will be deemed to be made under, will be construed in accordance with, and will be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement must be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this section.

16.2. Restrictions on Assignment and Transfer.

16.2.1. Restriction on Transfers. Prior to Completion of Construction, no assignment or similar transfer of Developer's interest in the Property or this Agreement, or in the current management, ownership, or control of Developer (each a "**Transfer**" and collectively "**Transfers**") may occur without the prior written consent of City, which consent may be given or withheld in City's sole and unfettered discretion; provided, however, that the foregoing restriction will not apply up to a maximum of two (2) Transfers to an Affiliate of Developer upon City's reasonable determination that the management and control of the Affiliate transferee is materially the same as the management and control of Developer as of the Effective Date. The restrictions on Transfers set forth in Section 16.2 will terminate automatically, and without further notice or action, upon Completion of Construction and conveyance of the Property and Improvements to City; provided, however, that no Transfer will release or discharge Developer from any of its obligations arising in or under this Agreement or the Lease, including the obligations of Indemnity set forth in Section 8.8 and Section 11; and further provided that, upon a Transfer, the transferee (without further act or writing required) is deemed fully, automatically, and unconditionally to have assumed all obligations of Developer arising in or under this Agreement, including all obligations of Indemnity set forth in Section 8.8, Section 11, or elsewhere in this Agreement. No voluntary or involuntary successor in interest to Developer will acquire any rights or powers under this Agreement, except as expressly set forth herein, and any Transfer in violation of this Agreement will be void, and not voidable.

16.2.2. Transfers by City. City's rights and obligations under this Agreement will be non-assignable and non-transferable, without the prior express written consent of Developer, which consent may be given or withheld in Developer's sole and unfettered discretion.

16.3. Limited Severability. City and Developer each believes that the execution, delivery, and performance of this Agreement are in compliance with Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, City Code, or City Charter), such provision will be deemed severed from this Agreement and this Agreement will otherwise remain in full force and effect; provided that this Agreement 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 Agreement, as reformed.

16.4. Construction. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic, or otherwise. Consequently, the terms and provisions of this Agreement will be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement will be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

16.5. Notices.

a. Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement will be in writing and will be given by (i) personal delivery or (ii) 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, Suite 750

Mesa, Arizona 85201
Telephone: 480-644-2066
Email: COMmanager@mesaaz.gov

and

City of Mesa
Attn: Downtown Transformation Manager
26 North MacDonald, Suite 200
Mesa, Arizona 85201
Telephone: 480-644-5379
Email: jeff.mcvay@mesaaz.gov

With a required copy to:

City of Mesa
Attn: City Attorney
20 East Main Street, Suite 850
Mesa, Arizona 85201
Telephone: 480-644-3497
Email: sarah.steadman@mesaaz.gov

If to Developer:

Breakwell Group LLC
Attn: Blake Bunker
3626 East Sagebrush Street
Gilbert, Arizona 85296
Telephone: 480-665-9085
Email: blake@breakwellgroup.com

With required copy to:

Huber Barney PLLC
Attn: Aaron Huber
4915 East Baseline Road, Suite 105
Gilbert, Arizona 85234
Telephone: 480-305-7007
Email: ahuber@huberbarney.com

b. Effective Date of Notices. 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. Telephone numbers and email addresses are provided for informational purposes only and will not be deemed notice.

16.6. Time of Essence. Time is of the essence of this Agreement and each provision hereof.

16.7. Section Headings. The section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

16.8. Attorneys' Fees. Except as set forth in Section 16.9, in the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, the prevailing Party in any such dispute will be entitled to reimbursement of its reasonable attorneys' fees and court costs, including its reasonable costs of expert witnesses, transportation, lodging and meal costs of out-of-town parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

16.9. Third-Party Action Attorneys' Fees; Termination.

a. Third-Party Action Naming Developer (but not City). Developer, at its sole cost and expense, will defend the validity, legality, and enforceability of this Agreement in the event of any claim, action, proceeding, or litigation brought by a Third Party arising from the terms of this Agreement that names Developer (but not City) as a party and that challenges (i) the authority of Developer to enter this Agreement or perform any of its obligations under this Agreement; or (ii) the validity, legality, or enforceability of any term or condition of this Agreement (all the forgoing collectively an "**Action**"). City will cooperate with Developer in connection with Developer defending an Action.

b. Third-Party Action Naming City. City, by counsel of its own choosing, will defend the validity, legality, and enforceability of this Agreement in the event of any claim, action, proceeding, or litigation brought by a Third Party arising from the terms of this Agreement that names City as a party and that challenges (i) the authority of City to enter this Agreement or perform any of its obligations under this Agreement; (ii) the validity, legality, or enforceability of any term or condition of this Agreement; or (iii) the compliance of this Agreement with any state or federal law, including a claim or determination arising under A.R.S. § 41-194.01 or Arizona Constitution Article 9, Section 7 (all the foregoing collectively a "**City Action**"); provided, however, Developer must reimburse City within thirty (30) days of written demand from City for all reasonable attorneys' fees and costs incurred defending a City Action, and City has no obligation to maintain a defense of a City Action if Developer fails to reimburse City as required by this section. If a settlement of a City Action is needed to comply with Applicable Laws, City may settle the City Action on such terms and conditions determined by City in City's sole and absolute discretion. To the extent a settlement of a City Action is not needed to comply with Applicable Laws, City may settle the City Action only after obtaining Developer's commercially reasonable approval of the settlement, which approval may not be unreasonably withheld or delayed. Further, Developer will cooperate with City in connection with City defending a City Action.

c. Termination. Notwithstanding Section 16.9(a) and Section 16.9(b) above, Developer or City may terminate this Agreement in the event of an Action or City Action. Prior to exercising the termination right of this section, within thirty (30) days of the Parties becoming aware of the Action or City Action, the Parties must meet in good faith to attempt to modify this Agreement so as to fulfill each Parties' rights and obligations under this Agreement while resolving the challenge. If the Parties cannot agree to modify this Agreement within thirty (30) days of the Parties becoming aware of the Action or City Action, either Party may terminate this Agreement by providing written notice to the other Party and such termination will be effective immediately. Upon termination, the Parties will have no further obligations under this Agreement, except for those obligations that specifically survive the termination of this Agreement.

d. The severability and reformation provisions of Section 16.3 will apply to Section 16.9 in the event of any successful challenge to this Agreement.

16.10. Waiver. Without limiting the provisions of Section 14.5, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power, or privilege under this Agreement will operate as a waiver of such right, remedy, power, or privilege, nor will any single or partial exercise of any right, remedy, power, or privilege preclude any other or further exercise of the same or of any other right, remedy, power, or privilege, nor will any waiver of any right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver will be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

16.11. Third-Party Beneficiaries. No person or entity will be a third-party beneficiary to this Agreement, except for permitted transferees, assignees, or lenders under Section 16.23 to the extent that they assume or succeed to the rights and/or obligations of Developer under this Agreement, and except that the City Indemnified Parties referred to in the indemnity provisions of Section 8.8 and Section 11 (or elsewhere in this Agreement) will be third-party beneficiaries of such indemnity provisions.

16.12. Exhibits. The Parties agree that all references to this Agreement include all exhibits designated in and attached to this Agreement, such exhibits being incorporated into and made an integral part of this Agreement for all purposes, which include the following exhibits:

Exhibit A	Legal Description and Depiction of Property
Exhibit B	Form of Lease
Exhibit C	Program Compliance
Exhibit D	Prohibited Uses
Exhibit E	Encroachment Permit
Exhibit F	Form of Parking License
Exhibit G	Description and Depiction of Electric Improvements
Exhibit H	Description and Depiction of ROW Improvements
Exhibit I	Description of Developer Public Improvement Work
Exhibit J	Form of the Deed
Exhibit K	Insurance Requirements
Exhibit L	Form of Non-Disturbance and Recognition Agreement

16.13. Integration. Except as expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation, or representation regarding the subject matters covered by this Agreement.

16.14. Preservation of State Shared Revenue. Notwithstanding any other provision of, or limitation in, this Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Arizona Attorney General determines that this Agreement violates any provision of state law or the Constitution of Arizona (including A.R.S. § 42-6201, *et seq*.), City and Developer must use all and best faith efforts to modify the Agreement so as to fulfill each Party's rights and obligations in the Agreement while resolving the violation with the Attorney General. If within thirty (30) days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1), City and Developer cannot agree to modify this Agreement so as to resolve the violation with the Attorney General, this Agreement will automatically terminate at midnight on the thirtieth (30th) day after receiving such notice from the Attorney General, and upon such termination the Parties will have no further obligations under this Agreement. Additionally, if the Attorney General determines that this Agreement may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and the Arizona Supreme Court requires the posting of a bond under A.R.S. § 41-194.01(B)(2), City may terminate this Agreement, except if Developer posts such bond, if required; and provided further, that if the Arizona Supreme Court, determines that this Agreement violates any provision of state law or the Constitution of Arizona, City or Developer may terminate this Agreement and the Parties will have no further rights, interests, or obligations in this Agreement or claim against the other Party for a breach or Default under this Agreement. The computation of time set forth in Section 16.16 will be superseded by the computation of time utilized by the Arizona Attorney General's Office for alleged violations of A.R.S. § 41-194.01.

16.15. Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments, and instruments as any other Party may reasonably require to consummate, evidence, confirm, or carry out the matters contemplated by this Agreement or confirm the status of (a) this Agreement as in full force and effect; and (b) the performance of the obligations hereunder at any time during its Term.

16.16. Computation of Time. In computing any period of time under this Agreement, the date of the act or event from which the designated period of time begins to run will not be included. The last date of the completed period will be included unless it is a Saturday, Sunday, or legal holiday, in which event the period will run until the end of the next day which is not a Saturday, Sunday, or legal holiday. The time for performance of any obligation or taking any action under this Agreement will be deemed to expire at 5:00 p.m. (Phoenix, Arizona time) on the last day of the applicable time period provided in this Agreement. A "**business day**" means a City business day which is any day Monday through Thursday except for a legal holiday.

16.17. Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval will be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise. Any consent or approval required by this Agreement may be provided by the City Manager (or designee), unless otherwise specified or required by Applicable Laws. In addition, the City Manager is expressly authorized to execute and deliver all amendments to this Agreement, the Lease, and other transaction documents required by, contemplated under, or authorized in this Agreement.

16.18. Covenants Running With Land; Inurement. The covenants, conditions, terms, and provisions of this Agreement relating to use of the Property will run with the Property and will be binding upon, and will inure to, the benefit of the Parties and their respective permitted successors and assigns with respect to such Property. Wherever the term "Party" or the name of any particular Party is used in this Agreement such term will include any such Party's permitted successors and assigns.

16.19. Recordation. Within ten (10) days after this Agreement has been executed by the Parties, City will cause this Agreement to be recorded in the Official Records of Maricopa County, Arizona.

16.20. Amendment. No change or addition is to be made to this Agreement except by written amendment executed by City and Developer. Within ten (10) days after any amendment to this Agreement, City will cause such amendment to be recorded in the Official Records of Maricopa County, Arizona. Upon amendment of this Agreement as established herein, references to "Agreement" or "Development Agreement" will mean the Agreement as amended. If, after the effective date of any amendment(s), the parties find it necessary to refer to this Agreement in its original, unamended form, they will refer to it as the "Original Development Agreement." When the Parties mean to refer to any specific amendment to the Agreement which amendment is unmodified by any subsequent amendments, the Parties will refer to it by the number of the amendment as well as its effective date.

16.21. Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, or capriciously and will not unreasonably withhold, delay, or condition any requested approval, acknowledgment, or consent.

16.22. Survival. All indemnification provisions contained in this Agreement, including in Section 8.8 and Section 11, will survive the execution and delivery of this Agreement, the closing of any transaction contemplated herein, and the rescission, cancellation, expiration, or termination of this Agreement upon the terms and for the period set forth in each respective section, and if none is specified, then for a period of two (2) years. Additionally, the Encroachment Permit set forth in Section 4.7; Developer's obligations of maintenance, repair, replacement, and reimbursement set forth in Section 5; the prohibited uses set forth in Section 4.6 and Exhibit D; and the Proposition 207 Waiver set forth in Section 16.27 will survive the expiration or earlier termination of this Agreement.

16.23. Rights of Lenders.

a. City is aware that Developer may obtain financing or refinancing for acquisition, development, and/or construction of the Property and the Minimum Improvements (and appurtenant Public Improvements) to be constructed on the Property, in whole or in part, from time to time, by one or more Third Parties (individually a "**Lender**" and collectively the

"**Lenders**").

b. Developer has the right at any time, and as often as it desires, to finance the construction of the Minimum Improvements and to secure such financing with a lien or liens against the Property and Minimum Improvements (and will not lien the Public Improvements). Notwithstanding the foregoing, the provisions of Section 10 control in the event that Developer conveys the Property (and the Minimum Improvements constructed on the Property) to City for the purposes of leasing back the Property and Minimum Improvements.

c. Notwithstanding any other provision of this Agreement, Developer may collaterally assign all or part of its rights and duties under this Agreement as security to any financial institution from which Developer has borrowed funds for use in constructing the Minimum Improvements, obtaining furniture, fixtures, and equipment or otherwise developing the Property without such financial institution assuming the obligations of Developer under this Agreement, but without releasing Developer from its obligations under this Agreement.

d. In the event of a Default by Developer, City will provide notice of such Default, at the same time notice is provided to Developer, to not more than one (1) such Lender as previously designated by Developer to receive such notice (the "**Designated Lender**") whose names and addresses were provided by written notice to City in accordance with Section 16.5. City will give Developer copies of any such notice provided to such Designated Lender and, unless Developer notifies City that the Designated Lender's name or address is incorrect (and provides City with the correct information) within three (3) business days after Developer receives its copies of such notice from City, City will be deemed to have given such notice to the Designated Lender even if its name or address is incorrect. Developer may provide notices to other Lenders. If a Lender is permitted, under the terms of its non-disturbance agreement with City to cure the Default and/or to assume Developer's position with respect to this Agreement, City agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Developer under this Agreement. City will, at any time upon reasonable request by Developer, provide to any Lender an estoppel certificate or other document evidencing that (i) this Agreement is in full force and effect; and (ii) no Default by Developer exists hereunder (or, if appropriate, specifying the nature and duration of any existing Default). Upon request by a Lender, City will enter a separate non-disturbance agreement with not more than one (1) Lender, substantially in the form attached to this Agreement as Exhibit L, or in such other form requested by such Lender that is acceptable to City in its sole discretion.

16.24. Nonliability of City Officials, Etc., and of Employees, Members, and Partners, Etc. of Developer. No City Council member, official, representative, agent, attorney, or employee of City will be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any Default or breach by City or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Developer under this Agreement will be limited solely to the assets of Developer and will not extend to or be enforceable against: (i) the individual assets of any of the individuals or entities who are shareholders, members, managers, constituent partners, officers, or directors of the general partners or members of Developer; (ii) the shareholders, members or managers, or constituent partners of Developer; or (iii) officers of Developer.

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

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

16.27. Proposition 207 Waiver. Developer hereby waives and releases City ("**Waiver**") from any and all claims under A.R.S. § 12-1134, *et seq*., including any right to compensation for reduction to the fair market value of all or any part of the Property, as a result of City's approval of this Agreement, special warranty deed conveying the Property to Developer, City's approval of Developer's plans and specifications for the Project or any conditions imposed on the Project or the Property by this Agreement or the Approved Plans, the issuance of any permits, and all related zoning, land use, building, and development matters arising from or relating to this Agreement; except the foregoing Waiver does not apply to any City initiated rezoning after Completion of Construction of the Improvements. The terms of this Waiver run with all land that is the subject of this Agreement and are binding upon all subsequent landowners, assignees, lessees, and other successors, and will survive the expiration or earlier termination of this Agreement.

16.28. Definitions; Index of Defined Terms. In this Agreement, the below words and phrases are to be construed as defined in this section unless a different meaning clearly appears from the context. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. For an index of all defined terms in this Agreement, including those set forth in this section, see the "Index of Defined Terms" following the signature pages.

a. "**Affiliate**," as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person. For the purposes of this definition, (i) "**control**" (including with correlative meaning, the terms "controlling," "controlled by" and "under common control"), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise, and (ii) "**person**" means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts, or other organizations, whether or not legal entities.

b. "**Agreement**" means this Development Agreement, as amended and restated or supplemented in writing from time to time, and includes the recitals and attached exhibits, which are incorporated by reference and form a part of this Development Agreement.

c. "**Applicable Laws**" means federal, state, county and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, and other requirements and official policies of City that apply to this Agreement and the terms and conditions herein; the undertakings of the Parties; and development of the Property; each as may be amended from time to time; including the City Code, which includes the Mesa Zoning Ordinance (Title 11 of the City Code), Mesa Building Code (Title 4 of the City Code), Mesa Land Division Regulations (Title 9, Chapter 6 of the City Code), and Mesa Tax Code (Title 5, Chapter 10 of the City Code); City's Terms and Conditions for the Sale of Utilities; A.R.S. Title 42 (Taxation); and all related approvals or requirements by City Council, City boards (by way of example, but not limitation, Design Review Board or Planning and Zoning Board), or other governing authorities.

d. "**A.R.S.**" means the Arizona Revised Statutes as now or hereafter amended.

e. "**Central Main Plan**" means the *mesa central main plan* as adopted by the City of Mesa, Arizona.

f. "**City Code**" means the Mesa City Code as adopted by City and as amended from time to time.

g. "**City Council**" means the City Council of City.

h. "**City Manager**" means the person designated by City as its City Manager or their designee.

i. "**Commencement of Construction**" means both (i) the obtaining of permits by Developer that are required to begin the construction of vertical improvements on the Property; and (ii) the actual commencement of physical construction operations on the Property in a manner necessary to achieve Completion of Construction.

j. "**Completion of Construction"** means the date on which a final certificate of occupancy is issued by City for the Minimum Improvements and means the date on which a letter of acceptance has been issued by City for the Public Improvements.

k. "**Developer**" means the Party designated as Developer introductory paragraph on the first page of this Agreement, together with its Affiliates and their respective successors and assigns that conform with the requirements of this Agreement.

l. "**Effective Date**" means the date on which all the following have occurred: this Agreement has been adopted and approved by the City Council, executed by duly authorized representatives of City and Developer, and recorded in the Official Records of Maricopa County, Arizona.

m. "**General Plan**" means the *Moving Forward Together: Tomorrow's Mesa 2050 General Plan*, as adopted by the City of Mesa, Arizona.

n. "**Hazardous Materials**" means any substance: (i) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, pollutant or contaminant under any Hazardous Materials

Law; or (ii) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including gasoline, diesel fuel, petroleum hydrocarbons, any other petroleum products or by-products, polychlorinated biphenyls, asbestos, lead, radon and urea formaldehyde form insulation; or (iii) medical and biohazard wastes regulated by federal, state or local laws or authorities which includes any solid waste which is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals.

o. "**Hazardous Materials Law**" means any governmental statute, code, ordinance, regulation, rule, or order, and any amendment thereto, including (by way of illustration and not of limitation) the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601, *et seq*., as amended; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq*., as amended; the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq*., as amended; the Safe Drinking Water Act, 42 U.S.C. §§ 300f, *et seq*., as amended; the Clean Air Act, 42 U.S.C. § 7401, *et seq*., as amended; the Arizona Hazardous Waste Management Act, A.RS. § 49-921, *et seq*., as amended; the Arizona Environmental Quality Act, A.R.S. § 49-101, *et seq*., as amended; and any other laws, rules, regulations, acts, and decisions that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.

p. "**Including**" and "**Includes**" mean "including but not limited to" and "including without limitation."

q. "**Major Event**" means a sporting, entertainment, cultural, or civic event in or in close proximity to Mesa, Arizona that is anticipated to generate extraordinary visitation demand, including events such as professional and college sports tournaments and championship games, national or international championship events, professional sports all-star events, music festivals and concerts, and certain events at the Mesa Convention Center and Mesa Arts Center.

r. "**Third Party**" means any person (as defined in Section 16.28(a)) other than a Party, or an Affiliate of any Party.

s. "**Zoning Clearance**" means the review process in Article 6 Form-Based Code of the Zoning Ordinance that is used to determine if a project complies with the Form-Based Code and other requirements in the Zoning Ordinance.

t. "**Zoning Ordinance**" means Title 11 of the City Code, as the same may be amended from time to time during the Term.

The balance of this page is blank; signatures are on the following two (2) pages.

In witness whereof, the Parties have executed this Agreement on the dates set forth below.

"**CITY**"

CITY OF MESA, ARIZONA,
an Arizona municipal corporation

____
By: Scott Butler
Its: City Manager

Date: ________________________

STATE OF ARIZONA)
)ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me, a notary public, this ___ day of ______________, 2026, by Scott Butler as City Manager of the City of Mesa, an Arizona municipal corporation, who acknowledged that he signed the foregoing instrument on behalf of City.

____
Notary Public

My Commission Expires:

____

“**DEVELOPER**”

____

By: ________________________________

Its: ________________________________

Date: ________________________________

STATE OF)
)ss.
COUNTY OF________________)

The foregoing instrument was acknowledged before me, a notary public, this ___ day of _______________, 2026, by , as__________________________ of ___________________________, a ____________________________, who acknowledged that he/she signed the foregoing instrument on behalf of Developer.

____
Notary Public

My Commission Expires:

____

Index of Defined Terms

"**Developer**" is defined in Section 16.28(k).

"**Developer Indemnitor(s)**" is defined in Section 11.1.

"**Developer Public Improvement Work**" is defined in Section 8.

"**Easement**" is defined in Section 8.5.

"**Economic Incentive Period**" is defined in Section 9.2.2.

"**Effective Date**" is defined in Section 16.28(l).

"**Electric Improvements**" is defined in Section 8.

"**Eligible Construction Tax**" is defined in Section 9.2.2.

"**Enforced Delay**" is defined in Section 14.6.

"**Fee**" is defined in Section 3.1.

"**General Plan**" is defined in Section 16.28(m).

"**Hazardous Materials**" is defined in Section 16.28(n).

"**Hazardous Materials Law**" is defined in Section 16.28(o).

"**Hibbert Garage**" is defined in Recital E.

"**Hotel**" is defined in Recital C.

"**Including**" and "**Includes**" is defined in Section 16.28(p).

"**Indemnity**" is defined in Section 11.1.

"**Kitchen & Lounge**" is defined in Recital C.

"**Lease**" is defined in Recital I.

"**Lease Conditions Precedent**" is defined in Section 10.1.1.

"**Lender(s)**" is defined in Section 16.23(a).

"**Major Event**" is defined in Section 16.28(q).

"**Maximum Reimbursement Cap**" is defined in Section 9.2.1.

"**Minimum Improvements**" is defined in Section 4.3.

"**Meeting Space**" is defined in Section 6.

"**Non-standard Public Improvements**" is defined in Section 8.10.

"**Parking License**" is defined in Section 5.

"**Party(-ies)**" is defined in the introductory paragraph on the first page of this Agreement.

"**Permit Deadline**" is defined in Section 9.1.1.

"**Project**" is defined in Recital C.

"**Property**" is defined in Recital A.

"**Public Improvement Costs**" is defined in Section 8.6.

"**Public Improvements**" is defined in Section 8.

"**Rebate Conditions Precedent**" is defined in Section 9.1.1.

"**Reimbursable Public Improvement Costs**" is defined in Section 8.6.

"**Reimbursement Report**" is defined in Section 9.8.

"**Representative**" is defined in Section 15.1.

"**Request for Reimbursement**" is defined in Section 9.5.

"**ROW Improvements**" is defined in Section 8.

"**SID 228**" is defined in Section 10.3.

"**Tax Calculation Documents**" is defined in Section 9.5.

"**Term**" is defined in Section 2.

"**Third Party**" is defined in Section 16.28(r).

"**Title Policy**" is defined in Section 10.1.1.

"**Transfer(s)**" is defined in Section 16.2.1.

"**Waiver**" is defined in Section 16.27.

"**Zoning Clearance**" is defined in Section 16.28(s).

"**Zoning Ordinance**" is defined in Section 16.28(t).

Exhibit A to Development Agreement
Legal Description and Depiction of Property

Wood, Patel & Associates, Inc.
602.335.8500
www.woodpatel.com

LEGAL DESCRIPTION
AC Hotel Mesa AZ Lot 1

A portion of Lots 3 and 4, Block 8, Mesa Arizona, recorded in Book 23, page 18, Maricopa County Records (MCR), lying within the northeast quarter of Section 22, Township 1 North, Range 5 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

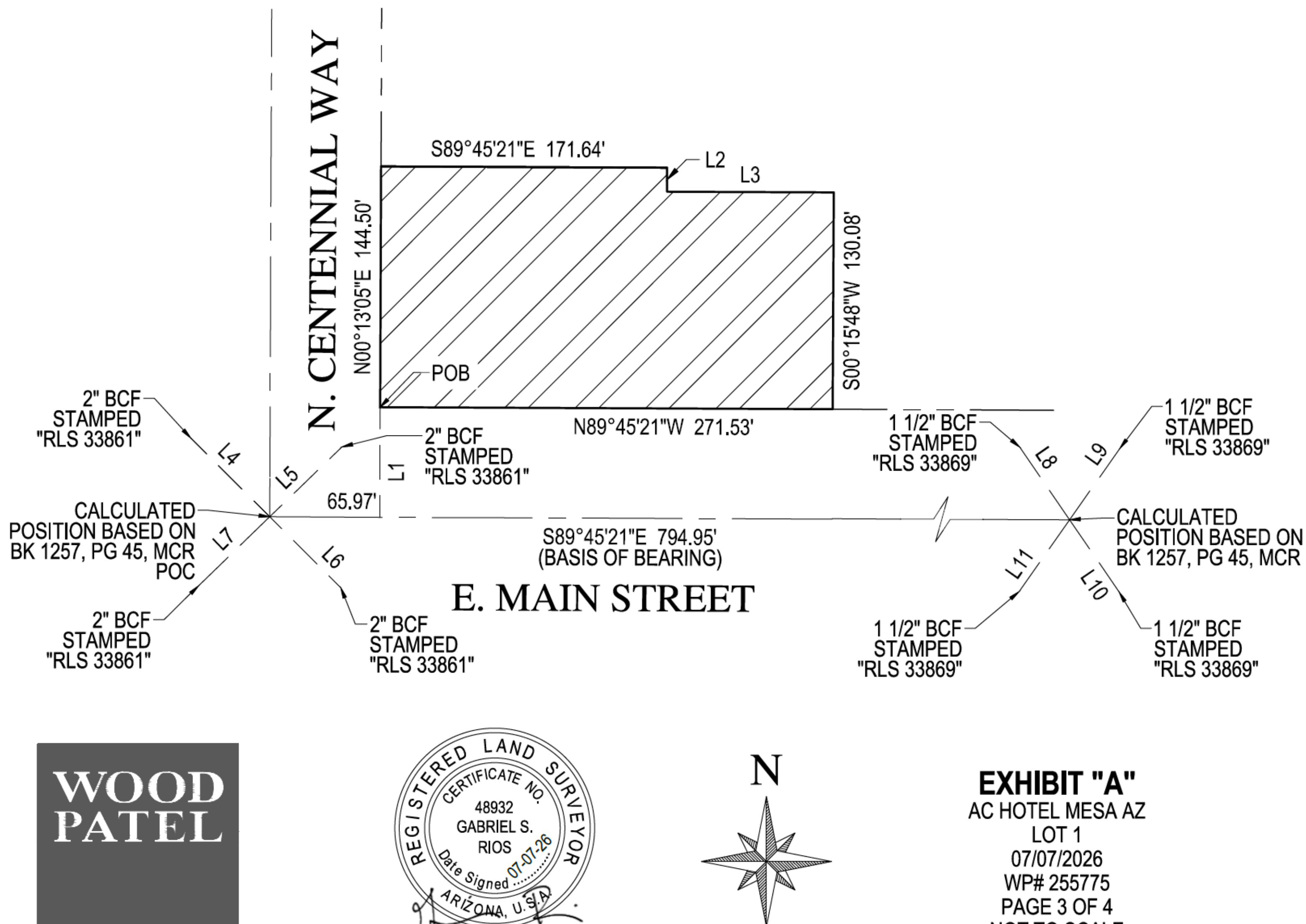
COMMENCING at the intersection of Main Street and Centennial Way, a calculated position based on the Record of Survey for Central Mesa Light-Rail Extension, recorded in Book 1257, page 45, MCR, from which the intersection of Main Street and Hibbert, a calculated position based on said Record of Survey, bears South 89°45'21" East (basis of bearing), a distance of 794.95 feet;
THENCE along the centerline of said Main Street, South 89°45'21" East, a distance of 65.97 feet;
THENCE leaving said centerline, North 00°14'39" East, a distance of 66.00 feet, to the east right-of-way line of said Centennial Way and the **POINT OF BEGINNING**;
THENCE along said east right-of-way line, North 00°13'05" East, a distance of 144.50 feet;
THENCE leaving said east right-of-way line, South 89°45'21" East, a distance of 171.64 feet, to the west line of the east 160 feet of said Lot 3;
THENCE along said west line, South 00°15'48" West, a distance of 14.42 feet, to the north line of the south 130.08 feet of said Lot 3;
THENCE leaving said west line, along said north line, South 89°45'21" East, a distance of 100.00 feet, to the west line of the east 60 feet of said Lot 3;
THENCE leaving said north line, along said west line, South 00°15'48" West, a distance of 130.08 feet, to the north right-of-way line of said Main Street;

THENCE leaving said west line, along said north right-of-way line, North 89°45'21" West, a distance of 271.53 feet, to the **POINT OF BEGINNING**.

Containing 37,802 square feet or 0.8678 acres, more or less. Subject to existing right-of-ways and easements.

This legal description is based on client provided information and is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of June, 2026. Any monumentation noted in this legal description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey

EXPIRES 12-31-26



WOOD PATEL

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
48932
GABRIEL S.
RIOS
Date Signed 07-07-26
ARIZONA, U.S.A.

EXPIRES 12-31-26

EXHIBIT "A"
AC HOTEL MESA AZ
LOT 1
07/07/2026
WP# 255775
PAGE 3 OF 4
NOT TO SCALE
Z:\2025\255775\Survey\Legal\5775-L01.dwg

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N00°14'39"E	66.00'
L2	S00°15'46"W	14.42'
L3	S89°45'21"E	100.00'
L4	S45°02'54"E	66.92'
L5	N45°55'54"E	60.32'
L6	S45°02'54"E	60.26'
L7	N45°55'54"E	59.45'
L8	S34°27'07"E	52.82'
L9	N35°08'32"E	52.33'
L10	S34°27'07"E	52.46'
L11	N35°08'32"E	52.66'

WOOD
PATEL

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
48932
GABRIEL S.
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WP# 255775
PAGE 4 OF 4
NOT TO SCALE
Z:\2025\255775\Survey\Legal\5775-L01.dwg

Exhibit B to Development Agreement
Form of Lease

[See attached]

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GOVERNMENT PROPERTY IMPROVEMENT LEASE

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1. **Date**. The date of this Government Property Improvement Lease (the "**Lease**") is ___________, 202_ (the "**Execution 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 500
P. O. Box 1466
Mesa, Arizona 85211-1466
Attn: Lisa Davis, Real Estate Manager

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

______________________, a(n)________________ ("**Tenant**")

B. 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. This Lease is part of a larger multi-phased, multi-document commercial transaction entered into by and between City and Tenant, with respect to the redevelopment of an important parcel of real property located in a redevelopment area within the single central business district of the City of Mesa and represents only a portion of the consideration exchanged by and between the Parties in connection with the overall transaction.

B. In partial consideration for Landlord's promise to execute and deliver this Lease, Tenant has agreed separately to construct, operate, and maintain a redevelopment project on the Land in accordance with the terms of a development agreement dated _______ (the "**Development Agreement**"), which was recorded on _______, as Recording No. __________ in the Official Records of Maricopa County, Arizona ("**Official Records**").

C. The Land is located in City's Central Main Plan, which was unanimously adopted by the Mesa City Council in January 2012. The Land is also located in the Town Center redevelopment area within City's Central Business District which was adopted by the Mesa City Council in 1999, and which designation of slum and blight was renewed by resolution adopted April 6, 2020. City has determined that the redevelopment of this unique Property located near the center of downtown Mesa, the Center/Main Street light rail station, and the Hibbert Parking Garage, and the development of the Project in conformity with the Development Agreement will reduce the blight in the City's Central Business District and further promote City's vision to redevelop and revitalize its downtown and the Town Center redevelopment area.

D. Pursuant to the Development Agreement, Tenant (as the named Developer) agreed to construct certain improvements and to conduct redevelopment activities on the Land (the "**Project**").

E. Further pursuant to the Development Agreement, Tenant (as the named Developer of the Project) agreed to dedicate, at no cost or expense to Landlord, certain public improvements constructed by Tenant as part of its redevelopment construction activities on the Land.

F. Further pursuant to the Development Agreement, Tenant (as the named Developer of the Project) agreed to certain operating covenants and use restrictions with respect to the construction, operation, and maintenance of its redevelopment project as contemplated in the Development Agreement.

G. All of the foregoing obligations of Developer, *inter alia*, were referred to collectively in the Development Agreement as the "**Developer Undertakings**."

H. In consideration of Tenant's completion of the Developer Undertakings required by the Development Agreement, and in further recognition of the direct, tangible benefits to be received by Landlord as a result of Tenant's performance under the Development Agreement (including, but not limited to, the construction of the Project in a formerly blighted area) (as the named Developer of the Project)), upon 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.

I. Tenant, as Developer under 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 legal title to the Land and the Improvements has now vested in Landlord.

J. It is intended by Landlord and Tenant that (i) this Lease be subject to the provisions of A.R.S. § 42-6201 et seq.; (ii) Landlord is a "Government Lessor" as defined in A.R.S. § 42-6201; and (iii) the Improvements on the Land, whether presently existing, having been constructed in accordance with the Development Agreement, or to be constructed on the Land, are intended to be Government Property Improvements for all purposes as defined in A.R.S. § 42-6201.

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) all surface and subsurface rights on and above the real property more particularly described in Exhibit A attached to and incorporated into this Lease (the "**Land**"); and (ii) all improvements presently situated on the Land, or which may be constructed on the Land hereafter by Tenant (the

"**Improvements**"; the Land and the Improvements collectively, "**Premises**"); subject, however, to:

(1) All covenants, restrictions, easements, agreements, and reservations of record;

(2) Present and future building restrictions and regulations, entitlements, permits, 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 of Mesa;

(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 (i) designed and constructed the Improvements, (ii) owned the Land and Improvements prior to their conveyance to Landlord, and (iii) has been in continuous, uninterrupted possession of the Land and Improvements since the date of Tenant's acquisition of the Land; and by executing this Lease and entering onto the Premises, Tenant 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. Term. Notwithstanding the actual date of conveyance of the Land and Improvements by Tenant to Landlord, the term of this Lease ("**Term**") shall commence on the date of the certificate of occupancy issued for all Improvements constructed on the Land ("**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. Concurrently with their execution of this Lease, Landlord and Tenant shall execute a Certificate of Commencement Date in form attached hereto as Exhibit E. Notwithstanding the foregoing, Tenant may terminate this Lease at any time during the Term 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 the terms of Section 33. Upon termination or expiration of this Lease or for any other reason whatsoever, and notwithstanding the conveyance of fee title to the Land and Improvements to Tenant, all public easements in favor of the City of Mesa shall survive pursuant to the terms of Section 33.

5. **Definitions**.

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

(a) "**Additional Payments**" means as defined in Section 7.

(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) "**Applicable Laws**" means as defined in Section 12(A).

(d) "**Commencement Date**" means as defined in Section 4(C).

(e) "**Commence**" or "**Commencement of Construction**" has the meaning given in the Development Agreement.

(f) "**Complete**" or "**Completion of Construction**" has the meaning given in the Development Agreement.

(g) "**Default Rate**" means a rate of interest equal to four percent (4%) 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.

(h) "**Developer Undertakings**" means as defined in Section 3(J).

(i) "**Development Agreement**" means as defined in Section 3(B).

(j) "**Environmental Laws**" means as defined in Section 32(A)(1).

(k) "**Event of Default**" means as defined in Section 20(A).

(l) "**Exceptions**" means as defined in Section 13(A).

(m) "**Force Majeure**" means as defined in Section 31.

(n) "**Impositions**" means as defined in Section 7(A).

(o) "**Improvements**" means as defined in Section 4(A).

(p) “**Indemnify**” and “**Indemnity**” and “**Indemnification**” mean as defined in Section 16(A).

(q) “**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, provided the same be organized under the laws of the United States or of any State thereof, or a Real Estate Investment Trust as defined in Section 856 of the Internal Revenue Code of 1986 as amended.

(r) “**Land**” means as defined in Section 4(A), and as legally described in Exhibit A.

(s) “**Landlord**” means the City of Mesa, Arizona, a municipal corporation.

(t) “**Landlord Claims**” means as defined in Section 7(F).

(u) “**Landlord Deed**” means as defined in Section 13(A).

(v) “**Landlord Indemnified Parties**” means as defined in Section 16(A).

(w) “**Lease**” means this Government Property Improvements Lease.

(x) “**Major Work**” means as defined in Section 17(A).

(y) “**Maintenance Costs**” means as defined in Section 6(B).

(z) “**Minor Work**” means as defined in Section 17(A).

(aa) “**Monetary Default**” means as defined in Section 20(A).

(bb) “**Mortgagee**” means the holder, trustee, or beneficiary of any Permitted Mortgage.

(cc) “**Net Rent**” means as defined in Section 6(A).

(dd) “**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 Project, and which complies with the requirements of Section 19.

(ee) “**Permitted Mortgagee**” means the beneficiary, secured party or mortgagee under any Permitted Mortgage, and its successors and assigns and purchasers at any foreclosure sale.

(ff) “**Premises**” means as defined in Section 4(A) and described in Exhibit A.

(gg) “**Project**” means the Land and the Improvements, and other construction and redevelopment activities on the Land conducted by Tenant, in accordance with the Development Agreement, as defined in Section 3(D).

(hh) “**Public Health Event**” means as defined in Section 31.

(ii) "**Purchase Price**" means as defined in Section 33(C).

(jj) "**Regulated Substances**" means as defined in Section 32(A)(2).

(kk) "**Release**" means as defined in Section 32(A)(3).

(ll) "**Rental Period**" means the period beginning on the date of the certificate of occupancy issued for all Improvements constructed on the Land, and terminating eight (8) years after such date; provided, however, that in accordance with A.R.S. §42-6209(G), the Rental Period may not exceed eight (8) years including any abatement period.

(mm) "**Tenant**" means the Tenant named herein and its permitted successors and assigns.

(nn) "**Term**" means as defined in Section 4(C).

(oo) "**Transfer**" means as defined in Section 19(B).

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 23, during the Term of this Lease net rental ("**Net Rent**") in the amount of $10,000.00 per year. The amount of Net Rent reflects the fact that Tenant owned the Land and Improvements prior to the conveyance of the Land and Improvements to Landlord at no cost to Landlord and is intended to compensate Landlord for Landlord's administrative and other expenses in maintaining this Lease, rather than to reflect fair market rental value.

(2) Annual Installments. All payments of Net Rent will be made in annual installments, in advance, without notice, 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 (collectively, "**Maintenance Costs**") will be paid by Tenant; and Tenant will

Indemnify, defend, pay and hold harmless Landlord Indemnified Parties 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 operate and maintain the Project) 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 Indemnified Parties).

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 to Landlord, with and in addition to its payment of Net Rent, all sums, impositions, costs, expenses and other payments and all taxes (including personal property taxes and taxes on rents, leases or occupancy, if any, and government property improvement lease excise tax), assessments, special assessments, enhanced municipal services district assessments, water and sewer rents, rates and charges, charges for public utilities, excises, levies, licenses, and permit fees, any expenses incurred by Landlord on behalf of Tenant pursuant to this Lease (including the Administrative Fee provided for herein), 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 (A) 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, so that Tenant shall pay that portion of such Imposition attributable to the tenancy period and Landlord shall pay the remainder thereof.

B. Rental Taxes. Tenant shall pay to Landlord, with and in addition to its payment of Net Rent, all taxes imposed by any governmental unit on Net Rent and Additional Payments received by Landlord.

C. Payments In-Lieu. Because of the applicability to this Lease of GPLET as defined in Section 7(G), Tenant recognizes and acknowledges that the removal of the Land and Improvements from the ad valorem tax rolls may reduce revenue to local school districts. Accordingly, and in order to address such reduction in revenue, Tenant, in lieu of payment of such ad valorem taxes, will make a one-time, lump sum payment to the Maricopa Community College District, Mesa Public School District, and East Valley Institute of Technology District (collectively, the "**School Districts**") as follows:

Maricopa Community College District	$2,532.00
Mesa Public School District	$14,238.00
East Valley Institute of Technology District	$117.00
Total	*$16,887.00*

The in-lieu payments must be delivered to City through escrow associated with the conveyance of the Land to City as described in Section 5.1 of the Development Agreement on or before the closing date, shall be non-refundable, and shall not be off-set against any Payments due under this Lease. City will subsequently deliver the in-lieu payments to the Maricopa Community College District, Mesa Public School District, and East Valley Institute of Technology District. The termination of this Lease at any time prior to the expiration of the Rental Period will not entitle Tenant to a refund of any portion of the in-lieu payments.

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; provided, that upon request by Landlord at any time after the same shall have become due, Tenant shall deposit with the Landlord any amount sufficient to pay such contested item together with the interest and penalties thereon (as reasonably estimated by Landlord), which amount shall be applied to the payment of such item when the amount thereof shall be finally fixed and determined. Nothing herein contained, however, shall be so construed as to allow such item to remain unpaid for a length of time that permits the Premises or any part thereof, or the lien thereon created by such Imposition, to be sold for the nonpayment of the same. If the amount so deposited shall exceed the amount of such payment, the excess shall be paid to

Tenant or, in case there shall be any deficiency, the amount of such deficiency shall be promptly paid by Tenant to Landlord together with all interest, penalties or other charges accruing thereon. At any time that the Tenant hereunder is an Institutional Lender, the requirements for deposits set forth in this Section shall be waived by Landlord.

E. Assessment Reduction. Tenant, at its sole cost and expense, may seek at any time to obtain a lowering of an Imposition or assessment upon the Premises for the purpose of reducing the amount thereof. However, in such event, 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 Indemnified Parties harmless for, from and against any and all costs, expenses, claims, loss or damage by reason of, in connection with, on account of, growing out of or resulting from, any such action or proceeding (collectively, "**Landlord Claims**").

G. Government Property Lease Excise Tax. As required under A.R.S. § 42-6206, Tenant is hereby notified of its potential tax liability under the Government Property Lease Excise Tax provisions of A.R.S. § 42-6201, *et seq* ("**GPLET**").

(1) Failure of Tenant to pay the tax if and when due and after 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.

(2) In accordance with A.R.S. § 42-6209(B), Tenant will notify the Maricopa County Treasurer and Landlord and apply for the abatement before the taxes under A.R.S. § 42-6201 *et seq*. are due and payable in the first year after the certificate of occupancy is issued.

(3) 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, then either Landlord or Tenant may terminate this Lease by delivering not less than thirty (30) days written notice to the other, 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 as though Tenant had exercised

the Purchase Option granted in Section 33. In the event of a termination hereunder, Landlord shall execute and record a Special Warranty Deed to Tenant in form attached hereto as Exhibit D.

H. SID 228. Tenant further agrees to make an annual, lump-sum in-lieu payment in the amount that would have been specially assessed by City of Mesa Special Improvement District No. 228 ("**SID 228**") and paid by Tenant if Tenant were the fee owner of the Land and Improvements. Landlord (or the Downtown Mesa Association) will determine the amounts of such annual in-lieu payments, and Tenant will pay that amount within thirty (30) days of Tenant's receipt of an invoice for each such amount.

8. **Insurance**.

A. Tenant 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 B attached hereto. Additionally, Tenant shall be responsible for carrying fire and extended risk insurance coverage for the full replacement value of the Improvements. The Landlord shall be named as Loss Payee on all property insurance policies because Landlord is the fee title owner of the Land (and all proceeds from insurance policies obtained by Landlord shall be used in accordance with Section 17(B)); provided further, if Tenant's insurance is not sufficient to pay claim(s) which arise in connection with this Lease, the Landlord's insurance (or self-insurance retention) will not be obligated to, and will not pay, any claims including, but not limited to, any claims for damage to the Land or the Improvements. Notwithstanding the foregoing, in the event of casualty to the Project (whether or not such casualty is insured or fully insured with respect to the cost of restoration), Tenant must promptly repair, restore or rebuild the Project to its pre-casualty condition or, within sixty (60) days of such casualty, exercise its option to repurchase the Premises pursuant to Section 33.

B. Failure to Maintain Insurance. If Tenant fails or refuses to provide a copy of the renewal insurance certificates, together with evidence of payment of premiums therefor, or otherwise fails or refuses to procure or maintain insurance as required by this Lease, Landlord shall have the right, at Landlord's election, and without prior notice, 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. 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, is 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 Indemnified Parties. 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 32, and elsewhere in this Lease.

9. **<u>Waste</u>**. Tenant shall not commit or suffer to be committed any waste on or impairment of the Premises.

10. **<u>Landlord's Performance for Tenant</u>**. If Tenant shall fail 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 and Tenant's failure to cure under <u>Section 20</u>, Landlord, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default for the account and at the expense of Tenant, without additional notice and without unreasonable interference with any occupants, guests, or permittees on the Premises. Tenant will promptly pay (but no later than thirty (30) days from Landlord's Notice to Tenant and evidence of such payment by Landlord) all 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 and administrative fees involved in collection or endeavoring to collect Net Rent, 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 provided, 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 within; and if not paid within thirty (30) days, the amount thereof shall immediately become due and payable (together with interest at the Default Rate) with no further Notice required, as Additional Payments.

11. **<u>Uses and Maintenance</u>**.

A. <u>Absence of Warranties</u>. 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 of the Premises, as well as the title to the Premises and with knowledge of its present uses and all restrictions on use. Tenant accepts the same 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. Tenant may, at its expense, obtain a leasehold policy of title insurance. 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. <u>Permitted Uses</u>. Tenant agrees that it shall use the Premises only for those purposes and uses described in the Development Agreement. In no event shall the Premises (or any part) be used for any purpose (i) prohibited by any Applicable Laws or (ii) prohibited by this Lease. 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 C are expressly prohibited. Additionally, during the Rental Period use of the Premises by Tenant or related subtenants is hereby restricted to the maintenance and operation of the Project and its reasonably related activities; and the Premises may not be used for any other purpose without the prior written consent of Landlord, which may be given or withheld at Landlord's sole and absolute discretion. Moreover, any permitted use which involves the handling, production and/or storage of Hazardous Materials on the Premises shall be subject to all applicable federal, state and local laws rules and regulations.

C. Maintenance, Repairs, and Indemnity. Tenant, at its sole cost and expense, shall take good care of the Premises, make all repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Premises and the sidewalks, curbs, and landscaping in commercially acceptable order, repair, and condition in accordance with City of Mesa standards and this Lease, whichever is more stringent. As stated in Section 6(B), 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 Project (or any part of the Project). Tenant shall also keep the sidewalks in front of the Premises and any adjacent alley free and clear from rubbish and shall not obstruct the same or allow the same to be obstructed in any manner. Tenant shall Indemnify, defend, pay and hold the Landlord Indemnified Parties harmless for, from and against any and all claims or demands, upon or arising out of any accident, injury, or damage to any person or property occurring in or upon the Premises or any part thereof, or upon the sidewalks about the Premises, however caused, or any act (whether intentional or negligent) of any employee, agent, director, officer, contractor or invitee of Tenant, and shall keep the Premises free and clear of any and all mechanics' liens or other similar liens or charges incidental to work done or material supplied in or about the Premises.

D. Tenant's Failure to Maintain or Repair. In the event Tenant fails to maintain and repair the Premises in the condition required by Section 11(C) of this Lease, Landlord may send the notice required under Sections 20 and 23 of this Lease, and after the expiration of the cure period set forth therein, may terminate this Lease in accordance with Section 20(F).

E. Alterations. After the Commencement Date, Tenant shall not, absent compliance with all Applicable Laws, erect any 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 (other than trade fixtures removable without injury to the Premises) except in compliance with all Applicable Laws. No Landlord consent shall be required in connection with the foregoing work, except for normal municipal approvals required for plans, permits, approvals, and the like. In the event of any failure on the part of Tenant to comply with this requirement, Landlord may terminate this Lease in accordance with Section 20(F).

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 present and future laws, acts, rules, requirements, orders, directions, ordinances, and/or regulations, ordinary or extraordinary, foreseen or unforeseen, concerning the Premises or any part thereof, or the use thereof, or the streets adjacent thereto, of any federal, state, municipal, or other public department, bureau, officer, or authority, or other body having similar functions ("**Applicable Laws**"), or of any liability, fire, or other insurance company having policies outstanding with respect to the Premises, whether or not such laws, acts, rules, requirements, orders, directions, ordinances and/or regulations 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 Indemnified Parties harmless for, from and against all such matters, so that at all times the rental 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 that does not require the payment of money 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 the risk of any fine or penalty or to prosecute for a crime, or to cause the Premises or any part thereof to be condemned, vacated, untenantable 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. During the Term, title to Premises is vested in Landlord free and clear of all liens, claims, encumbrances and conditions other than those set forth in the deed conveying title from Tenant to Landlord (the "**Landlord Deed**") and in the title insurance policy issued to Landlord as owner (collectively, the "**Exceptions**"). During the Term, and subject to lawful acts undertaken by Landlord in its capacity as a municipality, Landlord will not impair title to the Premises.

B. Tenant's Management and Operating Covenant. During the Term, Tenant shall prudently manage and operate (or cause to be managed and operated) the Project, in accordance with the requirements of this Lease and 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 mechanic's, 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 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 mechanic's, laborer's, or materialman's lien shall at any time be filed against the Premises or any part thereof, Tenant, within thirty (30) days after Tenant's receipt of a notice of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise. Tenant shall notify Landlord in writing of its action to either satisfy or contest the lien and, if contested, of the matter's status on a monthly basis until concluded. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by Landlord and costs and expenses incurred by Landlord in connection therewith, shall constitute an Additional Payment payable by Tenant and shall be paid by Tenant to Landlord within thirty (30) days from demand therefor, together with proof of payment and detailed invoices.

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.

15. **Inspection**. Landlord has and retains the right to enter upon the Premises, or any part thereof, for the purpose of confirming that Tenant is observing and performing the obligations assumed by it under this Lease, all without hindrance from Tenant; provided that (absent an emergency) such entry does not interfere with Tenant's business operations; and provided further that Landlord shall give Tenant at least three (3) days written notice prior to any inspection of any building interior. This three-day Notice provision shall not be construed to prohibit or delay any entry by Landlord (i) in the event of an emergency; (ii) in its capacity as a municipality exercising its police power or in its criminal law enforcement capacity; (iii) authorized by any writ or warrant issued by any court; or (iv) authorized by any health or welfare statute, code, ordinance, rule or regulation.

16. **Indemnification**.

A. Indemnification. Tenant shall indemnify, defend, pay and hold Landlord, its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys (collectively, including Landlord, the "**Landlord Indemnified Parties**") harmless for, from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses including property damage, personal injury and wrongful death and further including, without limitation, architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against Landlord Indemnified Parties by reason of any of the following occurring during the Term unless caused solely by the gross negligence or willful misconduct of the Landlord Indemnified Parties:

(1) Tenant's construction of any Improvements constituting the Project, or any other work done therein, on or about the Premises or any part thereof by Tenant or its agents;

(2) any use, nonuse, possession, occupancy, alteration, repair, condition, operation, maintenance or management of the Premises or Improvements;

(3) any nuisance made or suffered on the Premises or Improvements;

(4) any failure by Tenant to keep the Premises or Improvements, or any part thereof, in a safe condition;

(5) any acts or omissions of the Tenant or any subtenant or any of its or their respective agents, contractors, employees, licensees or invitees;

(6) any fire, accident, injury (including death) or damage to any person or property occurring in, on or about the Premises or any part thereof;

(7) any failure on the part of Tenant to pay Net Rent or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with and the exercise by Landlord of any remedy provided in this Lease with respect thereto;

(8) any lien or claim which may be alleged to have arisen against or on the Premises or Improvements or any part thereof or any of the assets of, or funds appropriated to, Landlord or any liability which may be asserted against Landlord with respect thereto to the extent arising, in each such case, out of the acts of Tenant, its contractors, agents, subtenants;

(9) any failure on the part of Tenant to keep, observe, comply with and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the subleases or other contracts and agreements affecting the Premises or Improvements or any part thereof, on Tenant's part to be kept, observed or performed;

(10) any transaction relating to or arising out of the execution of this Lease or other contracts and agreements affecting the Premises or Improvements, the Project or any part thereof or any activities performed by any party, person or entity which are required by the terms of this Lease or such other contracts and agreements;

(11) any tax including any tax attributable to the execution, delivery or recording of this Lease, with respect to events occurring during the term of this Lease; and

(12) any loss of or reduction in state shared monies arising in connection with a claim brought or maintained under A.R.S. §41-194.01 to the extent that Tenant prevents or delays any termination of this Lease pursuant to <u>Section 29(O)</u> of this Lease.

Any or all of the foregoing obligations may be referred to as an "**Indemnification**" or "**Indemnity**"; and the obligation of Tenant to provide Indemnification of Landlord Indemnified Parties may be referred to as an obligation to "**Indemnify**."

B. Tenant will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises and Improvements at the sole risk of Tenant and Indemnify, defend, pay and hold the Landlord Indemnified Parties harmless for, from and against any and all loss or damage thereto by any cause whatsoever, other than ordinary wear and tear and repair and replacement arising out of Tenant's maintenance obligations.

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. If any claim, action or proceeding is made or brought against the Landlord Indemnified Parties by reason of any event to which reference is made in this Section, then, upon demand by Landlord, Tenant, at its sole cost and expense, shall resist or defend such claim, action or proceeding in Landlord's name, if necessary, by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys as Landlord shall approve, which approval shall not be unreasonably withheld or delayed.

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

17. **Damage or Destruction**.

A. Tenant's Obligations to Repair and Restore. If, at any time during the Term, the Premises, or any Improvement thereon, or any part thereof, shall be damaged or destroyed by fire, casualty or other occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant, at its sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, shall repair, alter, restore, replace, or rebuild the same as nearly as possible to its value, and equal to or better than condition, and character immediately prior to such damage or destruction. The restoration shall comply with the timeframes in Subsections 17(A)(1) and 17(A)(2), as applicable, and must be performed by licensed and bondable Arizona contractors. Alternatively, if Tenant elects not to repair any such damage or destruction, then Tenant, within sixty (60) days of such damage or destruction, must exercise its option to repurchase the Premises pursuant to Section 33. Anything herein to the contrary notwithstanding, Tenant shall immediately secure the Premises and undertake temporary repairs and work necessary to protect the public and to protect the Premises from further damage.

(1) Minor Repairs or Restoration. Repair, alteration, or restoration estimated to cost ten thousand dollars ($10,000) or less and temporary repairs for the protection of other property pending the completion of any thereof, are considered and referred to in this Section as the "**Minor Work**." Minor Work shall Commence within thirty (30) days from the date of the

damage or destruction and must be Completed within one hundred twenty (120) days after timely commencement of the Minor Work.

(2) Major Repairs, Restoration or Replacement. Any repair, alteration, restoration estimated to cost more than ten thousand dollars ($10,000), or any replacement or rebuilding, are considered and referred to in this Section as "**Major Work**." Major Work shall Commence within one hundred eighty (180) days from the date of the damage or destruction and must be Completed within two hundred forty (240) days after timely commencement of the Major Work.

B. Payment of Insurance Proceeds. Subject to the requirements or limitations imposed by a Permitted Mortgagee, all proceeds from insurance policies obtained by Tenant to cover such damage or destruction (except proceeds to cover loss for Tenant's personal property) shall be used to repair and restore the Premises as required under this Lease. Additionally, as a Loss Payee on all property insurance policies as required by Section 8, all proceeds from insurance policies obtained by Landlord shall be used to repair and restore the Premises as required under this Lease.

C. Property Insurance. Tenant shall be responsible for carrying fire and extended risk insurance as set forth in Section 8(A).

D. Lease Obligations Continue. Tenant shall not be entitled to any abatement, allowance, reduction, or suspension of Net Rent because part or all of the Premises shall be untenantable owing to the partial or total destruction thereof. No such damage or destruction shall affect in any way the obligation of Tenant to pay Net Rent, Additional Payments, and other charges required to be paid, or release Tenant from any non-monetary obligations imposed upon Tenant under this Lease.

18. **Condemnation**.

A. Taking. Landlord acknowledges that, due to the nature of the structure of the Premises, if at any time during the Term of this Lease, title to any portion of the Premises shall be taken in condemnation proceedings or by any right of eminent domain or by agreement in lieu of such proceedings, Tenant shall have the right to terminate this Lease effective as of 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. If No Tenant Termination. If Tenant does not elect to terminate this Lease, then, in the event of any taking of less than the whole or substantially all of the Premises, Tenant may, at its sole election and if Tenant is reasonably able to do so, continue to operate and maintain the remaining Premises as contemplated by the Development Agreement, in which case, neither the Net Rent nor the Rental Period of this Lease will be reduced or affected in any way, and the 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 notify the other Party of the receipt and contents thereof within five (5) days from receipt of the notice.

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. **Encumbrances and Assignments**.

A. Tenant may encumber its leasehold interest in the Premises to obtain a collateral loan, permanent financing or refinancing for the Project (a "**Permitted Mortgage**"), subject to the following:

(1) Tenant may encumber its interest in this Lease and Premises only if Tenant is not then in default of any of its obligations under this Lease beyond any applicable cure period. There may be only one (1) Permitted Mortgage in existence with respect to this Lease at any time, and junior liens or encumbrances of any kind are prohibited. The holder of a Permitted Mortgage shall be a "**Permitted Mortgagee**."

(2) With respect to such leasehold financing, Landlord will agree to a form of commercially reasonable non-disturbance and recognition agreement with not more than one (1) Permitted Mortgagee as well as other reasonable, non-material or administrative modifications to this Lease requested by a recognized Institutional Lender. In no event will Landlord subordinate its interest in the Land or the Premises to such leasehold financing.

(3) A Permitted Mortgage cannot secure obligations other than costs, obligations and expenses in connection with the Project or obligations of any person other than Tenant.

(4) A Permitted Mortgage shall cover no interest in the Land and Improvements other than Tenant's interest in this Lease.

(5) 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

(6) For the purpose of this Section, 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; 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.

B. No assignment, subletting or other transfer of this Lease, or any rights granted by this Lease to Tenant (each, a "**Transfer**"), will be permitted without the prior written consent of Landlord, which will not be unreasonably withheld, conditioned or delayed. Any Transfer will require the express assumption in writing by the transferee of all of Tenant's obligations under this Lease including all obligations of Indemnification of Landlord and the Landlord Indemnified Parties. Any assignment, subletting or transfer in violation of this Lease will be void, and not voidable, and shall confer no rights or the proposed assignee, subtenant or transferee. In addition, this Lease may not be assigned apart from the Development Agreement, and any assignee or transferee of Tenant must assume all of the obligations (including obligations of Indemnity) of the Developer in the Development Agreement. Notwithstanding the foregoing, nothing herein shall be deemed to limit or impact Tenant's right and ability to lease residential or commercial premises within the Project to residential and commercial tenants in the ordinary course of its business.

C. A Transfer is not deemed to include the rental of individual commercial or residential premises within the Project to subtenants. All such subleases shall be on terms that are commercially reasonable.

20. **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. If default shall be made in the due and punctual payment of any Net Rent or Additional Payments (a "**Monetary Default**") within twenty (20) days after written notice thereof to Tenant.

(2) Non-Monetary Default. If default shall be made by Tenant 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 a period of thirty (30) days after written Notice thereof from Landlord to Tenant; provided, that if Tenant proceeds with due diligence during such thirty (30) day period to substantially cure such default and is unable by reason of the nature of the work involved, to cure the same within the required thirty (30) days, its time to do so shall be extended by the time reasonably necessary to cure the same, but in no event more than one hundred twenty (120) days.

(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 and not dismiss such actions within sixty (60) days.

(4) Bankruptcy—Involuntary. If a petition shall be filed against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statue, law or regulation, and has not been dismissed, vacated or stayed for ninety (90) days, or if any trustee, receiver or liquidator of Tenant, or of all or substantial part of its properties, shall be appointed without the consent or acquiescence of Tenant and such appointment has not been dismissed, vacated or stayed for ninety (90) days.

(5) Insurance. The lapse, termination or cancellation of any policy of insurance required to be maintained by Tenant herein, in whole or in part for the benefit of Landlord, shall be an Event of Default unless cured within twenty (20) days of such lapse. 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.

(6) Development Agreement. Any Event of Default (as defined in the Development Agreement) of Developer under the Development Agreement, subject to all grace periods, cure periods, and periods of Enforced Delay (as defined in the Development Agreement) provided in the Development Agreement.

(7) Sublicense Agreement of Parking Spaces. Any default of Tenant (as the "Licensee") under the Parking License (as defined in the Development Agreement), subject to all grace periods and cure periods provided in the Parking License.

B. Tenant Liability Continues. No such expiration or termination of this Lease shall relieve Tenant of its obligations of Indemnity under this Lease, and all such obligations of Indemnity arising prior to the Lease expiration or termination shall survive any such expiration or termination of this Lease for a period of two (2) years and shall apply to any claim or action that is commenced within such two (2) year period.

C. No Implied Waivers. No failure by Landlord to insist upon the 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 rent 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.

D. Remedies Cumulative. In the event of any breach by Tenant of any of the covenants, agreements, terms or conditions hereof, Landlord, in addition to any and all other rights, 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 law, but this shall in no way limit any claim for damages for Landlord for any breach or default by Tenant, except that Landlord shall not be entitled to special, consequential or punitive damages.

E. 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 ten (10) days after the due date thereof, a late charge may, at Landlord's option, be charged, following Notice to Tenant, and shall become an Additional Payment in an amount equal to ten percent (10%) of the late payment.

F. Termination of Lease. If an Event of Default is not cured within any applicable time period after service of Notice of the Event of Default and Landlord serves an additional Notice to Tenant of Landlord's intent to terminate and quitclaim pursuant to this Section and the Event of Default is not cured within ten (10) days of the additional Notice, Landlord may terminate this Lease and quitclaim the Land and all 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 to Indemnify Landlord Indemnified Parties as required in this Lease.

21. **Default By Landlord**. In the event of any breach by Landlord of any of the covenants, agreements, terms, or conditions hereof, Tenant, as its sole and exclusive remedy, may enjoin such breach through petition for specific performance, and Tenant will have no right to seek or recover (and hereby expressly waives such right to seek or recover) any and all damages incurred by Tenant including actual, special, exemplary, consequential, multiple or punitive damages.

22. **Unenforceable Terms**. If any term or provision hereof or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision hereof shall be valid and be enforced to the fullest extent permitted by law.

23. **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**"), shall 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 85201

and

City of Mesa
Attn: Real Estate Manager
20 East Main Street
Mesa, Arizona 85201

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

If to Tenant:

With a required copy to:

If to Lender:

With a required copy to:

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 to any Party shall be deemed sufficiently given, served, or sent for all purposes hereunder (i) upon personal delivery, or (ii) one business day after deposit with any recognized courier or express service for next business day delivery. Communications delivered by telephone or digitally shall not constitute "Notice."

24. **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 that 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, except as such uses are permitted under the Development Agreement.

25. **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.

26. **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; and

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.

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.

27. **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 required fails to notify the other Party in writing within thirty (30) 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. Except as otherwise provided in Applicable Laws, Landlord's City Manager may execute and deliver any consent required by this Lease.

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, conditioned or delayed, 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 or delayed such consent or approval, shall be limited to injunction or declaratory judgment and in no event shall such other Party be liable for a money judgment.

28. **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 or the streets, sidewalks or vaults adjacent thereto; and Tenant agrees that it will not hold Landlord in any way responsible or liable therefor and will Indemnify the Landlord Indemnified Parties pursuant to Section 16. Landlord shall not be liable for interference with light 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.

29. **Miscellaneous**.

A. Landlord's Right of Cancellation. All Parties hereto acknowledge that this agreement 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. 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.

C. Memorandum. Landlord and Tenant agree that at the request of either, each will execute a "Memorandum of Lease" in form attached hereto as Exhibit F 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.

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, that do not materially revise any business or policy provision of this Lease, that otherwise are ministerial in nature, and that have been reasonably approved by Tenant.

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 Council of the City of Mesa at its sole discretion, except as set forth in Subsection (E) above). In addition, in compliance with A.R.S. § 42-6209(C)(3), Landlord may not approve an amendment to change the use of the Premises during the period that any statutory abatement of GPLET applies unless:

"(a) The government lessor notifies the governing bodies of the county and any city, town and school district in which the government property improvement is located at least sixty days before the approval. The notice must include the name and address of the prime lessee, the location and proposed use of the government property improvement and the remaining term of the lease or development agreement.

"(b) The government lessor determines that, within the remaining term of the lease or development agreement, the economic and fiscal benefit to this state and the county, city or town in which the government property improvement is located will exceed the benefits received by the prime lessee as a result of the change in the lease or development agreement on the basis of an estimate of those benefits prepared by an independent third party in a manner and method acceptable to the governing body of the government lessor. The estimate must be provided to the government lessor and the governing bodies of the county and any city, town and school district in which the government property improvement is located at least thirty days before the vote of the

governing body. A change in use under a lease or development agreement between a prime lessee and a government lessor to residential rental housing is exempt from the economic estimate analysis requirements of this subdivision."

G. Captions. The captions of Sections in this Lease and any 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," and "him" appearing herein shall be construed to be the singular or plural, masculine, feminine, or neutral 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 previously have executed and acknowledged in recordable form and given a notice (which has not theretofore 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 previously 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 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.

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 the Land
Exhibit B Required Insurance
Exhibit C Prohibited Uses
Exhibit D Special Warranty Deed Conveying Property to Tenant
Exhibit E Certificate of Commencement Date
Exhibit F Memorandum of Lease

M. 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.

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

O. 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, 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. 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), City shall be entitled to terminate this Lease, except if Tenant timely posts such bond, if required; and provided further, that if the Arizona Supreme Court determines that this Lease violates any provision of state law or the Constitution of Arizona, City may terminate this Lease and convey or quitclaim the Land and Improvements to Tenant; and the Parties shall have no further obligations hereunder.

30. **Equal Employment Opportunity**. Tenant shall comply with all ordinances and other requirements of the City of Mesa relating to nondiscrimination and equal employment opportunity. In performing under this contract, Tenant shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age, sexual orientation or disability, nor otherwise commit an unfair employment practice. Tenant will take affirmative action to ensure that applicants are employed, and that employees are dealt with during employment, without regard to their race, color, religion, gender, national origin, age, sexual orientation or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. Tenant further agrees that this clause will be incorporated in all subcontracts entered into with suppliers of materials or services, and all labor organization furnishing skilled, unskilled and union labor, or who may perform such labor or services in connection with this contract.

31. **<u>Force Majeure; Extension of Time of Performance</u>**. In addition to specific provisions of this Lease, performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes, lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; a Public Health Event (as defined below); freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability (when either Party is faultless) of any contractor, subcontractor or supplier; acts of the other Party (each, an event of "**Force Majeure**"). For purposes of this Agreement, "**Public Health Event**" means any one or more of the following but only if and as ordered by an applicable governmental authority: epidemics; pandemics; plagues; viral, bacterial or infectious disease outbreaks; public health crises; national health or medical emergencies; governmental restrictions on the provision of goods or services or on citizen liberties including travel, movement, gathering or other activities, in each case arising in connection with any of the foregoing, and including governmentally-mandated closure, quarantine, "stay-at-home," "shelter-in-place" or similar orders or restrictions; or workforce shortages or disruptions of material or supply chains resulting from any of the foregoing. A lack of funds or inability to obtain funds shall not be included in this definition of Force Majeure; nor shall events of Force Majeure excuse any required payment by Tenant to Landlord that are required under this Lease. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. If, however, notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice.

32. **<u>Compliance With Environmental Laws</u>**.

A. <u>Definitions</u>.

(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. §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 Agreement.

(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 own 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 a third party in a manner that would constitute or result in a violation of any Environmental Law or that would give rise to liability under an Environmental Law.

C. Indemnification.

(1) Tenant shall indemnify, defend, pay and hold harmless, upon written demand, the Landlord Indemnified Parties (as defined in Section 16(A)), for, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, claims, legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons, property, the environment or the Premises and any and all claims or actions brought by any person, entity or governmental body, 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 any use of the Premises during the Term of this Lease or any previous lease or uses of the Premises by Tenant or its owners or affiliated entities, agents, employees, invitees, contractors, visitors or licensees. Regardless of the date of termination of this Lease, Tenant's obligations and liabilities under this Section_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 the Landlord Indemnified Parties 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 because of Regulated Substances located on the Premises or present in the soil or

ground water on, or under the Premises. The Parties agree that Landlord's right to enforce this covenant to Indemnify is not an adequate remedy at law for Tenant's violation of any provision of this Section and that Landlord shall also have the rights set forth in this Section in addition to all other rights and remedies provide 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 demised Premises or any adjacent real property during the Term of this Lease, Tenant shall promptly take all actions at its sole cost and expense as are necessary to mitigate any immediate threat to human health or the environment. Tenant shall then undertake any further action necessary to return the Premises or other property to the condition existing prior to the introduction of any Regulated Substance to the Premises; provided that Landlord's written approval of such actions shall first be obtained, such consent not to be unreasonably withheld, conditioned or delayed, Tenant shall undertake such actions without regard to the potential legal liability of any other person, however, 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. At no cost or expense to Landlord, Tenant shall promptly provide all information requested by Landlord pertaining to the applicability of the Environmental Laws to the Premises, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination.

In addition, Landlord shall have the right to access, within ten (10) days of Tenant's receipt of written request, and copy any and all records, test results, studies and/or other documentation, other than trade secrets, regarding environmental conditions relating to the use, storage, or treatment of Regulated Substances by the Tenant on, or under the Premises.

(4) Tenant shall immediately notify Landlord, and Landlord shall immediately notify Tenant, as applicable, of any of the following: (a) any correspondence or communication from any governmental agency regarding the application of Environmental Laws to the Premises or Tenant's use of the Premises, (b) any change in Tenant's or Landlord'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 assertion of a claim or other occurrence for which Tenant or Landlord may incur an obligation under this Section.

(5) Tenant shall insert the provisions of this Section in any sublease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

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

(7) Tenant shall obtain and maintain compliance with any applicable financial responsibility requirements of 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 present evidence thereof to Landlord, as may be applicable.

D. Noncompliance.

(1) Tenant's failure or the failure of its agents, employees, contractors, invitees or of a third party to comply with any of the requirements and obligations of this Section or applicable Environmental Law shall constitute a material default of this Lease. Notwithstanding any other provision in this Lease to the contrary, after applicable notice and right to cure, Landlord shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Law on, or under the Premises, without waiving any of its rights under this Lease. The exercise by Landlord of any of its rights under this Section shall not release Tenant from any obligation it would otherwise have hereunder.

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

33. **Purchase and Re-acquisition of Premises**. The Parties acknowledge the requirement of A.R.S. §42-6209(G) that the Term of this Lease is prohibited from extending beyond eight (8) years from the issuance of a certificate of occupancy for the Project. In recognition of this limitation and requirement, Tenant agrees to re-acquire its fee interest in the Premises at the end of the Term (or earlier termination of this Lease). Landlord and Tenant hereby confirm Tenant's obligation to purchase the Premises according to the terms and conditions hereinafter set forth.

A. Requirement of Exercise. Notwithstanding anything in this Lease to the contrary, Tenant is obligated to purchase the Premises 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 quitclaim its interest in the Premises to Tenant (subject to all public easements and public utility easements existing in favor of or benefiting the City of Mesa, Arizona), but will retain all rights of Indemnification granted in this Lease including (but not limited to) Section 16 and Section 32.

B. Exercise of Obligation. Tenant's obligation to purchase the Premises is effective, and Tenant has the right to 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 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 Five Thousand and no/100 Dollars ($5,000.00). 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 intended to cover Landlord's administrative, legal and related expenses in connection with the transfer of the Premises to Tenant.

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 shall convey title to the Premises to Tenant (by Special Warranty Deed in the form attached to this Lease as Exhibit D) in the same condition as title was transferred to Landlord in the Landlord Deed, and subject to the Exceptions and all other matters of record, and further subject to all easements and similar rights in favor of the City of Mesa with Tenant accepting all matters, claims, liens, instruments and exceptions (and Landlord having no liability or responsibility therefor) recorded against (or otherwise affecting) the Land and Improvements from and after the date of the Landlord Deed. Landlord has no responsibility to eliminate, cure or "endorse over" any exceptions to title; and provided further, the Parties agree that all public easements in favor of the City of Mesa are approved title exceptions on the Land. Landlord's then acting 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 deliver a Reacquisition Notice to Landlord at the expiration of the Rental Period 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 Indemnified Parties will retain all rights of Indemnification granted in this Lease including (but not limited to) Section 16 and Section 32. The terms of this Section 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.

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

LANDLORD:

CITY OF MESA, ARIZONA,
a municipal corporation

By: ________________________________

Name: ________________________________

Its: ________________________________

TENANT:

Exhibit A to Government Property Improvements Lease

Legal Description of the Land

[See attached]

11 LEGAL DESCRIPTION
AC Hotel Mesa AZ Lot
1

A portion of Lots 3 and 4, Block 8, Mesa Arizona, recorded in Book 23, page 18, Maricopa County Records (MCR), lying within the northeast quarter of Section 22, Township 1 North, Range 5 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

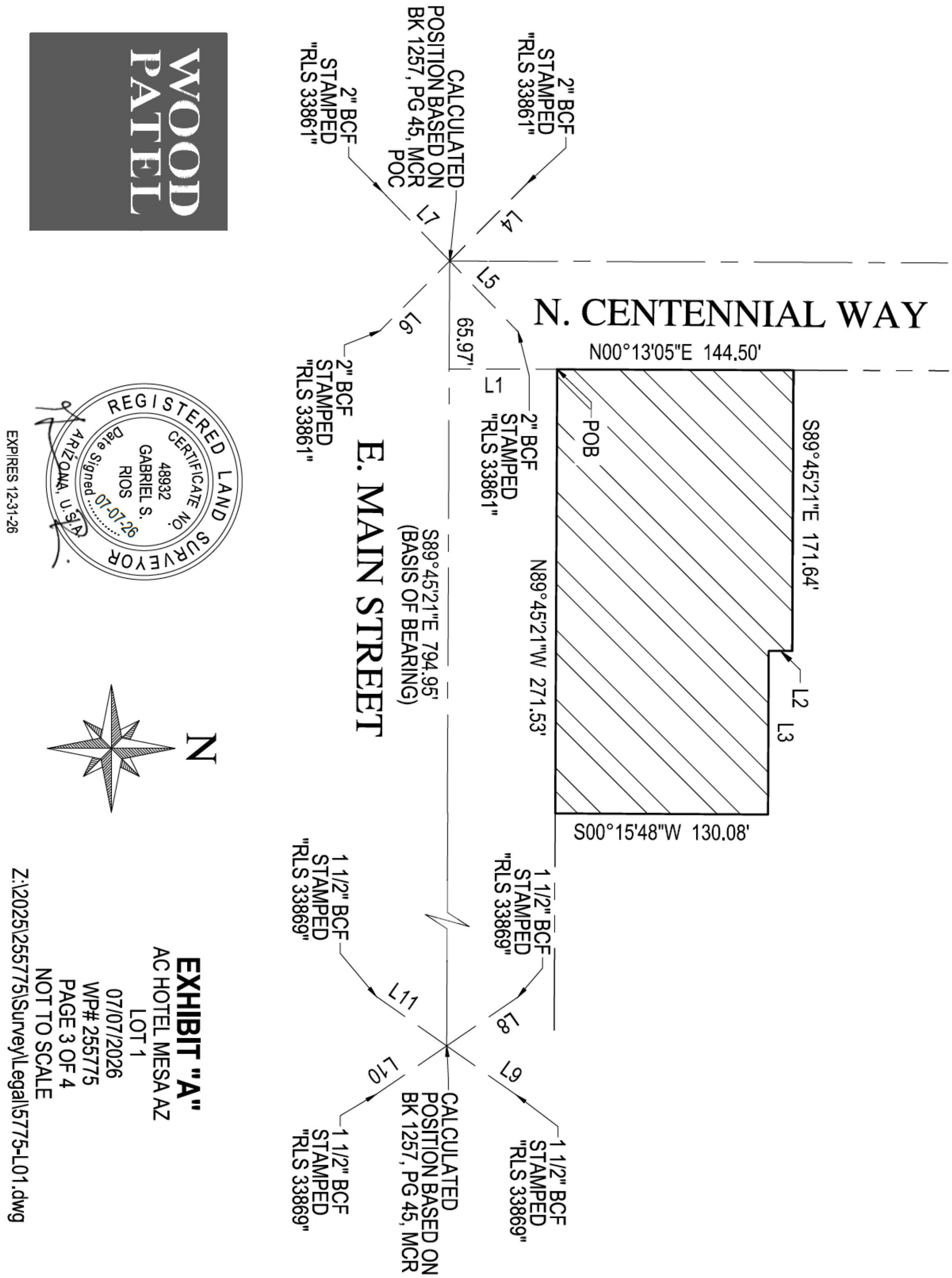
COMMENCING at the intersection of Main Street and Centennial Way, a calculated position based on the Record of Survey for Central Mesa Light-Rail Extension, recorded in Book 1257, page 45, MCR, from which the intersection of Main Street and Hibbert, a calculated position based on said Record of Survey, bears South 89°45'21" East (basis of bearing), a distance of 794.95 feet;
THENCE along the centerline of said Main Street, South 89°45'21" East, a distance of 65.97 feet;
THENCE leaving said centerline, North 00°14'39" East, a distance of 66.00 feet, to the east right-of-way line of said Centennial Way and the **POINT OF BEGINNING**;
THENCE along said east right-of-way line, North 00°13'05" East, a distance of 144.50 feet;
THENCE leaving said east right-of-way line, South 89°45'21" East, a distance of 171.64 feet, to the west line of the east 160 feet of said Lot 3;
THENCE along said west line, South 00°15'48" West, a distance of 14.42 feet, to the north line of the south 130.08 feet of said Lot 3;
THENCE leaving said west line, along said north line, South 89°45'21" East, a distance of 100.00 feet, to the west line of the east 60 feet of said Lot 3;
THENCE leaving said north line, along said west line, South 00°15'48" West, a distance of 130.08 feet, to the north right-of-way line of said Main Street;

THENCE leaving said west line, along said north right-of-way line, North 89°45'21" West, a distance of 271.53 feet, to the **POINT OF BEGINNING**.

Containing 37,802 square feet or 0.8678 acres, more or less. Subject to existing right-of-ways and easements.

This legal description is based on client provided information and is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of June, 2026. Any monumentation noted in this legal description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey

EXPIRES 12-31-26



WOOD PATEL
N. CENTENNIAL WAY
E. MAIN STREET
N00°13'05"E 144.50'
S89°45'21"E 171.64'
N89°45'21"W 271.53'
S00°15'48"W 130.08'
S89°45'21"E 794.95' (BASIS OF BEARING)
65.97'
POB
L1
L2
L3
L4
L5
L6
L7
L8
L9
L10
L11
2" BCF STAMPED "RLS 33861"
CALCULATED POSITION BASED ON BK 1257, PG 45, MCR POC
1 1/2" BCF STAMPED "RLS 33869"
CALCULATED POSITION BASED ON BK 1257, PG 45, MCR
REGISTERED LAND SURVEYOR
CERTIFICATE NO. 48932
GABRIEL S. RIOS
Date Signed 07-07-26
ARIZONA, U.S.A.
EXPIRES 12-31-26
N
EXHIBIT "A"
AC HOTEL MESA AZ
LOT 1
07/07/2026
WP# 255775
PAGE 3 OF 4
NOT TO SCALE
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LINE TABLE		
LINE	BEARING	DISTANCE
L1	N00°14'39"E	66.00'
L2	S00°15'46"W	14.42'
L3	S89°45'21"E	100.00'
L4	S45°02'54"E	66.92'
L5	N45°55'54"E	60.32'
L6	S45°02'54"E	60.26'
L7	N45°55'54"E	59.45'
L8	S34°27'07"E	52.82'
L9	N35°08'32"E	52.33'
L10	S34°27'07"E	52.46'
L11	N35°08'32"E	52.66'

WOOD PATEL

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
48932
GABRIEL S.
RIOS
Date Signed
ARIZONA, U.S.A.

EXPIRES 12-31-26

EXHIBIT "A"
AC HOTEL MESA AZ
LOT 1
07/07/2026
WP# 255775
PAGE 4 OF 4
NOT TO SCALE
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<u>Exhibit B to Government Property Improvements Lease</u>

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 ("**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 $3,000,000 combined single limit per occurrence and not less than $5,000,000 general aggregate.	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Property (all risks of loss including risks covered by fire and extended coverage, terrorism, vandalism and malicious mischief)	In an amount not less than full replacement cost of structure and all fixtures.	Coverage shall be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.
Commercial Automobile Liability	With limits not less than $1,000,000 each occurrence, Combined Single Limit for bodily injury and property damage covering owned, non-owned and hired auto coverage as applicable.	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Workers' Compensation Employers' Liability	Statutory Limits	Coverage shall be in effect upon or prior to and remain in

	$500,000 each accident, each employee	effect for the Term of the Lease.
Liquor Liability	$5,000,000	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease, provided Tenant sells and/or serves alcohol
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 final certificate of occupancy is obtained.
Blanket Crime Policy	$1,000,000	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Equipment Breakdown Coverage	$5,000,000 (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 the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.

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

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

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

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

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

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

6. Landlord shall be named as Loss Payee on all property insurance policies. Proceeds of any property damage insurance shall be applied as required by Section 17 of this Lease.

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

D. NOTICE OF CANCELLATION: Tenant shall use good faith efforts to obtain from each insurance company a provision in each insurance policy to the effect that it shall not be suspended, voided, cancelled, or reduced in coverage except after thirty (30) days' prior written notice has been given to Landlord. Such notice shall be sent directly to Risk Management, City Attorney's Office, City of Mesa, 20 E. Main Street, P.O. Box 1466, MS-1077, Mesa, Arizona 85211-1466.

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

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

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

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

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

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

Exhibit C to Government Property Improvements Lease

Prohibited Uses

1. Alcohol Beverage Sales, as defined by Section 11-64-4 of the Zoning Ordinance, except as part of a restaurant or bar concept, room service at the Hotel, or in-room bars at the Hotel (e.g., mini bars).

2. Kennel, as defined by Section 11-64-4 of the Zoning Ordinance.

3. Marijuana Cultivation Facility, Marijuana: Dual Licensee Facility, Marijuana Establishment, Marijuana Infusion Facility, and Medical Marijuana Dispensary, each as defined by Section 11-86-5 of the Zoning Ordinance.

4. Non-chartered Financial Institution, as defined by Section 11-64-4 of the Zoning Ordinance.

5. Off-Track Betting Establishment, as defined by Section 11-86-4 of the Zoning Ordinance.

6. Pawn Shops, as defined by Section 11-64-4 of the Zoning Ordinance.

7. Social Service Facility, as defined by Section 11-64-4 of the Zoning Ordinance.

8. Tattoo and Body Piercing Parlors, as defined by Section 11-64-4 of the Zoning Ordinance, to the maximum extent such prohibition is allowed by law.

Exhibit D to Government Property Improvements Lease

When Recorded, Mail to:

City of Mesa
Real Estate Services
20 East Main Street, Suite 500
Mesa, Arizona 85201

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SPECIAL WARRANTY DEED

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

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF (the "**Property**");

Subject to all matters of record as of the date of recording of this deed in the Official Records of the Maricopa County Recorder's Office; municipal and public taxes and assessment; conditions, easements, encroachments, rights-of-way, or restrictions, which a physical inspection or accurate ALTA survey of the Property would reveal; and 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 done or performed in Grantor's capacity and status as holder of fee title to the Property pursuant to the terms of that certain Government Property Improvements Lease dated _____________ and which has expired, but not as against the lawful acts of Grantor in its capacity as a municipal corporation) 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 ______, 202__.

(Signatures on the following pages)

GRANTOR:

City of Mesa, Arizona, an Arizona municipal corporation

By:______________________________
Name: _______________________
Its:___________________________

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this the ____ day of __________, 20___, before me, the undersigned Notary Public, personally appeared _______________________________, who acknowledged ____self to be the _________________________ of the City of Mesa, Arizona, an Arizona municipal corporation, and that, being authorized so to do, __he executed the foregoing instrument for the purposes herein contained on behalf of the Grantor.

In witness whereof, I hereunto set my hand and official seal.

____
Notary Public

My Commission Expires:

____

IN WITNESS WHEREOF, Grantee has approved and accepted this Special Warranty Deed as of this ___ day of ______, 20___.

GRANTEE:

Exhibit "A" to Special Warranty Deed

Exhibit E to Government Property Improvements Lease

==

CERTIFICATE OF COMMENCEMENT DATE

==

Landlord and Tenant under that certain Government Property Improvements Lease dated with an Execution Date of ________________, and to which this Exhibit "E" is attached (the "**Lease**"), hereby certify and confirm that the "Commencement Date" of the Lease (as defined in Section 4(C) of the Lease) is _____________ (notwithstanding a different Execution Date or date of execution of this Certificate), and that the Lease expires at the end of the eighth (8^{th}) year following the Commencement Date.

DATED: _________, 202__.

[Signature Page Follows]

[Signature Page to Certificate of Commencement]

TENANT:

LANDLORD:
City of Mesa, Arizona, an Arizona municipal corporation

By: ____________________________________

Printed Name: ____________________________

Its: ______________________________________

Exhibit F to Government Property Improvements Lease

Form of Memorandum of Lease

WHEN RECORDED RETURN TO:

City of Mesa
Real Estate Services
20 East Main Street, Suite 500
Mesa, Arizona 85201

==

MEMORANDUM OF LEASE

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This memorandum of lease constitutes constructive notice of record that there is in existence a government property improvement lease as generally described in this memorandum (the "**Lease**"). This memorandum is executed by the Landlord and the Tenant for recording purposes only as to the Lease, and it is not intended and shall not modify, amend, supersede or otherwise effect the terms and provisions of said Lease. In the event of a conflict or ambiguity between anything contained in the Lease, and anything contained in this memorandum, the Lease will control and prevail. Capitalized terms in this memorandum of lease that are not defined herein have the meanings ascribed to them in the Lease.

1.	Name of Document:	Government Property Improvement Lease
2.	Name of Landlord:	City of Mesa, Arizona, an Arizona municipal corporation (the "**Landlord**")
3.	Name of Tenant:	(the "**Tenant**")
4.	Address of Landlord:	City of Mesa 20 East Main Street, Suite 200 Mesa, Arizona 85211-1466
5.	Address of Tenant:	
6.	Date of Lease:	____
7.	Lease Term:	Commencing on the Commencement Date and expiring eight (8) years thereafter.
8.	Commencement Date:	____

9.	Title Transfer:	Landlord will convey title to the Leased Premises at the end of the Lease Term, on the conditions set forth in the Lease.
10.	Leased Premises:	The real property legally described in Exhibit "A" attached hereto and made a part hereof, together with the government property improvements, and all other improvements, related rights, and appurtenances thereto

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

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease on __________ , 2025.

(Signatures and acknowledgments are on the following two pages)

LANDLORD'S SIGNATURE PAGE

Landlord:

City of Mesa, Arizona, an Arizona municipal corporation

By: ___
Name:
Its: ___

STATE OF ARIZONA)
) SS
COUNTY OF MARICOPA)

The foregoing was acknowledged before me this _____ day of _________, 20__, by _______________the __________________of the CITY OF MESA, ARIZONA, an Arizona municipal corporation, on behalf of the City.

____
Notary Public

My commission expires: ________________

TENANT'S SIGNATURE PAGE

TENANT:

Exhibit "A" to Memorandum of Lease

Exhibit C to Development Agreement
Program Compliance

1. All new construction by Developer for the commercial project will be designed and constructed to LEED Silver Standard or equivalent other green/sustainable building rating method, such as WELL Building (https://www.wellcertified.com/) agreed upon with City. Developer may, at its election and sole cost and expense, have the buildings certified by the chosen rating agency. In the event Developer chooses to self-certify compliance with the chosen rating method, Developer will promptly provide City, through the building permitting and inspection process, certification of compliance with the rating standards, but in no event later than Completion of Construction.

2. Developer will implement a waste recycling program during construction, with a goal of recycling 75% of construction waste and a requirement of recycling no less than 50% of construction waste, which program will include, without limitation, diverting construction and land-clearing debris, except soils, from disposal in landfills and incinerators, redirecting recyclable recovered resources back to the manufacturing process, and redirecting reusable materials to appropriate sites.

3. Developer is to obtain from City and provide to hotel trash disposal and recyclable bins/dumpster/compactor for their use for solid refuse. Developer will participate in the City of Mesa Multi-Unit Recycling Program. Developer will work in good faith with the Mesa Environmental Management and Sustainability Department to promote and educate employees on commercial recycling. Developer also agrees to contract for and use the City of Mesa solid waste and recycling services.

4. Developer will design to Crime Prevention Through Environmental Design (CPTED) principles and will participate in the Tri-Star Program of the Mesa Police Department as a Level Three Property.

Exhibit D to Development Agreement
Prohibited Uses

1. Alcohol Beverage Sales, as defined by Section 11-64-4 of the Zoning Ordinance, except as part of a restaurant or bar concept, room service at the Hotel, or in-room bars at the Hotel (e.g., mini bars).

2. Kennel, as defined by Section 11-64-4 of the Zoning Ordinance.

3. Marijuana Cultivation Facility, Marijuana: Dual Licensee Facility, Marijuana Establishment, Marijuana Infusion Facility, and Medical Marijuana Dispensary, each as defined by Section 11-86-5 of the Zoning Ordinance.

4. Non-chartered Financial Institution, as defined by Section 11-64-4 of the Zoning Ordinance.

5. Off-Track Betting Establishment, as defined by Section 11-86-4 of the Zoning Ordinance.

6. Pawn Shops, as defined by Section 11-64-4 of the Zoning Ordinance.

7. Social Service Facility, as defined by Section 11-64-4 of the Zoning Ordinance.

8. Tattoo and Body Piercing Parlors, as defined by Section 11-64-4 of the Zoning Ordinance, to the maximum extent such prohibition is allowed by law.

Exhibit E to Development Agreement
Encroachment Permit

[See attached]

WHEN RECORDED RETURN TO:

City of Mesa
Attn: Real Estate Services
20 East Main Street, Suite 500
Mesa, Arizona 85201

**PERMIT FOR ABOVE-GRADE ENCROACHMENT
INTO A PUBLIC RIGHT-OF-WAY OR PUBLIC EASEMENT**

This Permit for Above-Grade Encroachment into a Public Right-of-Way or Public Easement (this "**Encroachment Permit**") is entered by the City of Mesa, Arizona, an Arizona municipal corporation ("**City**"), and ___________________, a _________________________ ("**Developer**"). City and Developer are referred to herein collectively as the "Parties," or individually as a "Party."

RECITALS

A. Developer holds fee title to that certain real property located near the northeast corner of E. Main Street and N. Centennial Way within the jurisdictional limits of City, totaling approximately 32,496 square feet, as legally described on Exhibit A (the "**Property**").

B. Pursuant to that certain Development Agreement (DA__-_____) entered by City and Developer contemporaneously with this Encroachment Permit (the "**Development Agreement**"), Developer agreed, in addition to other things, to develop the Project on the Property, which includes an approximately 85,000 square foot hotel with 150 hotel rooms and an approximately 2,000 square foot restaurant.

C. As part of the Project, Developer desires to construct, install, and maintain above-grade encroachments in a portion of City's right-of-way or public easement.

D. Under the Mesa City Code ("**City Code**"), encroachments in City's right-of-way and public easements are prohibited except with the authorization of a right-of-way encroachment permit by the City Engineer under City Code 9-2-3(A), and this Encroachment Permit is intended to be such right-of-way encroachment permit.

E. Subject to compliance with the Development Agreement, this Encroachment Permit, and Applicable Laws, City will allow, for purposes of City Code 9-2-3(A), the construction and maintenance of only those certain encroachments in City's right-of-way or public easements described on Exhibit B and at the location depicted on Exhibit C (the "**Encroachment**").

ENCROACHMENT PERMIT

Now, therefore, in consideration of the promises and agreements contained in this Encroachment Permit, the Parties agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by

this reference.

2. Definitions. Unless otherwise defined in this Encroachment Permit, the capitalized terms in this Encroachment Permit are as defined in the Development Agreement.

3. Encroachment Allowed. City will allow construction and maintenance only of the Encroachment described on Exhibit B and at the location depicted on Exhibit C. All portions of the Encroachment must remain a minimum height of 15 feet above the finished floor and extend only into that portion of the right-of-way or public easement depicted on Exhibit C. For the avoidance of doubt, this Encroachment Permit does not allow any of the following in City's right-of-way or public easements, or portions thereof: (a) at-grade improvements or encroachments; or (b) water lines, water pipes, or plumbing; except as may be modified pursuant to Section 4.

4. Modification. Developer may request modifications to the Encroachment related to design or construction matters discovered after execution of this Encroachment Permit by submitting, in writing, the proposed modification to the City Engineer for review. The City Engineer, in their sole, absolute, and unfettered discretion, may approve or deny the proposed modification. If the City Engineer approves a proposed modification, the City Engineer will provide to Developer written approval of the proposed modification that cites to this Section. Additionally, the City Engineer, at their sole, absolute, and unfettered discretion, may impose additional terms, requirements, and restrictions on the proposed modification as conditions of approval that will be included in the written approval. All modifications to the Encroachment will be subject to Applicable Laws and Developer will be required to obtain all applicable permits and approvals required by City for the construction, installation, and maintenance of the approved modification, and to comply with all requirements of the City Code including Sections 9-1-2 and 9-2-3.

5. Construction; Maintenance; Repair.

a. Developer Obligation. Developer must, at its sole cost and expense, and in a first-class, sound, clean, and attractive manner and in compliance with Applicable Laws: (i) design, construct, and install the Encroachment; (ii) at all times maintain the Encroachment; and (iii) repair any and all damage to the Encroachment including damage caused by persons, vehicles, vandalism, and by City, contractors, and utility companies working in the right-of-way or public easement, except for damage solely and exclusively arising from or caused by the gross negligence or intentional misconduct of City. Developer must obtain all applicable permits and approvals as required by City for the construction, installation, maintenance, and repair of the Encroachment, and Developer must comply with all requirements of the City Code including Sections 9-1-2 and 9-2-3. City has no obligation to design, construct, install, maintain, or repair the Encroachment, except for repairing damage solely and exclusively arising from or caused by the gross negligence or intentional misconduct of City.

b. Notice to City; Inspection. Developer must submit Notice to the City Engineer 20 days prior to commencement, and within five days of completion, of (i) construction of the Encroachment; (ii) all repairs to the Encroachment; and (iii) all non-routine maintenance to the Encroachment. The City Engineer has sole, absolute, and unfettered discretion to inspect the construction, repair, or non-routine maintenance to determine whether such complies with this Encroachment Permit and Applicable Laws. For purposes of this Encroachment Permit, "**non-routine maintenance**" means any maintenance to the Encroachment involving or addressing concrete patching, welding, erosion of metal, or any maintenance not performed on a routine schedule or basis.

6. Repair or Replacement.

a. Danger of Bodily Injury or Death. If the City Engineer determines the Encroachment presents a danger of bodily injury or death (a "**Bodily Hazard**"), the requirements of this Subsection apply.

i. Emergency Safety Measures. Upon Notice from City of a Bodily Hazard, Developer, at its sole cost and expense, must proceed immediately to construct and install emergency safety measures designed to minimize the Bodily Hazard to the fullest extent possible, until Developer can permanently repair or replace the Encroachment. Developer must use all and best efforts to complete the construction and installation of the emergency safety measures within 48 hours of Notice from City. The emergency safety measures must remain in place until Developer completes permanent repairs or replacement of the Encroachment as required by Subsection (a)(ii) below.

ii. Repair or Replacement. In addition to its obligations in Subsection (a)(i) above, upon Notice from City of a Bodily Hazard, Developer, at its sole cost and expense, must proceed immediately and use best efforts to repair or replace the Encroachment to bring the Encroachment into compliance with this Encroachment Permit and Applicable Laws and to eliminate the Bodily Hazard. Developer must use all and best efforts to complete the required repair or replacement within 30 days of Notice from City; provided, however, if the required repair or replacement cannot reasonably be completed within 30 days of Notice from City, and Developer promptly commenced physical construction of the required repair or replacement and diligently and continuously pursues completion of, and uses all and best efforts to complete, the required repair or replacement, the timeframe to complete the required repair or replacement will be extended for an additional 90 days or other length of time as approved by the City Engineer.

b. Danger of Damage to Real or Personal Property or to Encroachment. If the City Engineer determines the Encroachment presents a danger of damage to real or personal property (including sidewalks, curbs, gutters, building facades, or colonnades) or to the Encroachment, or Developer failed to design, construct, install, or maintain the Encroachment as required by this Encroachment Permit (collectively, a "**Property Hazard**"), but the Encroachment does not present a Bodily Hazard, the requirements of this Subsection apply. Upon Notice from City of a Property Hazard, Developer, at its sole cost and expense, must proceed promptly to repair or replace the Encroachment to bring the Encroachment into compliance with this Encroachment Permit and Applicable Laws. Developer must diligently and continuously pursue the completion of the required repair or replacement. Both Developer and City will agree to a commercially reasonable timeframe for Developer to complete the required repair or replacement.

c. Notice to City; Inspection. Developer's obligations under Subsections (a) and (b), above, will not be complete until approved by City, and such approval will not be unreasonably denied. Developer must submit Notice to the City Engineer within five days of installing the emergency safety measures and within five days of finishing work on the required repair or replacement. City or a third-party engineer retained by City will inspect the emergency safety measures and the required repair or replacement to determine compliance with this Encroachment Permit and Applicable Laws.

d. Notice to Developer. The ability of City to provide Notice to Developer of a danger presented by the Encroachment as set forth in Section 6 is not an obligation of City to do so, nor a waiver of any obligations of Developer to inspect and maintain the Encroachment in accordance with this Encroachment Permit and Applicable Laws.

e. Time Periods. City may extend the time periods in Section 6 if the City Engineer determines the circumstances warrant an extension.

7. Inspections. In addition to the inspections City may perform pursuant to Sections 5 and 6 above, from time to time, but not more often than annually, City may require Developer, at Developer's sole cost and expense, to retain a third-party engineer to inspect the Encroachment and to certify the Encroachment complies with this Encroachment Permit and Applicable Laws. Inspection by City or a third-party engineer pursuant to Section 5 or 6 above or this Section will not release Developer of its obligations to design, construct, install, at all times maintain, repair, and replace the Encroachment in a first-class, sound, clean, and attractive manner and in compliance with this Encroachment Permit and Applicable Laws.

8. Compliance with City Code. This Encroachment Permit does not modify, change, or alter City Code requirements, ordinances, or regulations. Accordingly, separate from the Development Agreement and this Encroachment Permit, Developer will obtain all applicable permits and approvals as required by City for the construction, installation, and maintenance of the Encroachment, and Developer will comply with all requirements of the City Code including Sections 9-1-2 and 9-2-3.

9. Request for Additional Encroachment. All requests by Developer for additional encroachments not explicitly allowed by this Encroachment Permit must be made through the standard City process and evidenced by a separate City right-of-way encroachment permit in compliance with City Code 9-2-3(A) and must comply with Applicable Laws.

10. Indemnification. Developer will be solely responsible and liable for, and defend, indemnify, pay, and hold harmless City and City's officers, employees, elected and appointed officials, agents, and representatives (all of the foregoing, including City, collectively, "**City Indemnified Parties**") from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits, including attorneys' fees, experts' fees, and court costs associated with such matters (all of the foregoing, collectively, "**Claims**") arising from or related to, in whole or part: (a) the design, construction, installation, location, maintenance, repair, replacement, removal, or use of the Encroachment; (b) the use of the right-of-way or public easement for the Encroachment; (c) the maintenance, repair, or replacement of sidewalk, curb, and gutter improvements of, on, or adjacent to E. Main Street; (d) any person or

object falling from the Encroachment, whether intentionally or negligently; and (e) any act or omission by Developer, or its employees, contractors, subcontractors, agents, representatives, tenants, subtenants, or invitees pursuant to or related to the Encroachment; except those Claims solely and exclusively arising from or caused by the gross negligence or intentional misconduct of a City Indemnified Party. Developer's obligations pursuant to this Section extend to and encompass all costs incurred by Developer in defending such Claims, including attorney, witness, and expert witness fees, and any other litigation related expenses. The obligations to defend, indemnify, pay, and hold harmless in this Section are in addition to, and do not limit, Developer's obligations set forth in the Development Agreement.

11. Insurance.

11.1. Types of Insurance. Developer must, at its sole cost and expense, procure and maintain for the duration of this Encroachment Permit the following types of insurance:

a. General liability insurance (including contractual liability coverage) for personal injury, bodily injury (including wrongful death), and damage to property, in, on, or at the Encroachment, with a combined single limit of not less than three million dollars ($3,000,000.00) per occurrence and not less than five million dollars ($5,000,000.00) general aggregate limit, insuring against any and all liability and claims for injury to persons or damage to property that may arise from or in connection to the use or maintenance of the Encroachment or criminal acts, and for injuries to persons or damages to property that may arise from or in connection with this Encroachment Permit by Developer, its agents, subtenants, employees, contractors, licensees, or invitees. The general liability insurance must include contractual liability coverage of Developer's indemnification obligations under this Encroachment Permit.

b. Professional liability insurance for personal injury, bodily injury (including wrongful death), and damage to property, in, on, or at the Encroachment, with a combined single limit of not less than three million dollars ($3,000,000.00) per occurrence and not less than five million dollars ($5,000,000.00) general aggregate limit, insuring against any and all liability and claims for injury to persons or damage to property that may arise from or in connection to the design, construction, installation, use, or maintenance of the Encroachment or criminal acts, and for injuries to persons or damages to property that may arise from or in connection with this Encroachment Permit by Developer, its agents, subtenants, employees, contractors, licensees, or invitees. Developer must require all design professionals and consultants (*e.g.,* architects, engineers) to obtain professional liability insurance with limits of liability not less than those stated in this Subsection.

c. At the time of this Encroachment Permit, the amount of general liability and professional liability insurance described herein is reasonable; however, this Encroachment Permit creates a potentially perpetual obligation of, and relationship among, Developer and City; and inflation and other economic pressures arising after the date of this Encroachment Permit may, over time, cause the amount stated above to be inadequate and may need to be adjusted to provide the protection reasonably required and expected by City. Accordingly, Developer must maintain general liability and professional liability insurance in amounts that are standard and reasonable for the sorts of activities being conducted at or from the

Encroachment, in amounts sufficient to provide adequate public liability as contemplated by this Encroachment Permit. City will review the general liability and professional liability insurance coverage amounts every five years and work in good faith to adjust the coverages to provide the protection required and expected by City but in no event less than three million dollars ($3,000,000.00) per occurrence with respect to any one accident in, on, or at the Encroachment and not less than five million dollars ($5,000,000.00) general aggregate limit.

11.2. Additional Insurance Requirements. Developer and all policies of insurance procured by Developer with respect to the Encroachment must meet the additional insurance requirements of this Section.

a. All policies of insurance procured by Developer must be from insurance companies authorized to do business in the state of Arizona and with an "AM Best" rating of not less than A-VII. City in no way warrants that the above-required minimum insurer rating is sufficient to protect Developer from potential insurer insolvency.

b. City Indemnified Parties must be named as additional insureds (up to the full coverage limit and to the same extent of coverage as the insurance purchased by Developer, even if those limits of coverage exceed those required by this Encroachment Permit) and added by endorsements on all general liability policies of insurance procured by Developer. All required Certificates of Insurance and endorsements must be provided to City, for City's review and approval, before the applicable coverage period, sent directly to:

Mesa City Attorney's Office
Attn: Risk Management
P.O. Box 1466
Mesa, Arizona 85211

and

City of Mesa
Attn: Real Estate Services
P.O. Box 1466
Mesa, Arizona 85211
With a required copy to: propertymanagement@mesaaz.gov

City may require complete copies of the required insurance policies at any time, but not more than once each 12 consecutive month period during the term of this Encroachment Permit.

c. All policies of insurance procured by Developer (i) will be primary and non-contributory with respect to all of City's insurance sources; (ii) will include a waiver of subrogation rights in favor of City Indemnified Parties; and (iii) must include provisions to the effect that they will not be suspended, voided, cancelled, or reduced in coverage except after 30 days' prior Notice to City.

d. In addition to a primary policy, an excess or umbrella policy may be used to meet the minimum requirements if the excess or umbrella policy is written on a "following form" basis.

e. All deductibles and self-insured retention in excess of $250,000 will be declared to, and subject to approval by, City. Developer will be solely responsible for payment of any deductible or self-insured amounts and waives all rights it may have to seek recovery of such amounts from City Indemnified Parties.

11.3. Failure to Procure or Maintain. If Developer fails to procure or maintain any insurance required by this Encroachment Permit, City may, but is not required to, procure and maintain any and all insurance required by this Encroachment Permit and Developer must fully reimburse City for all costs incurred in procuring or maintaining such insurance within 10 days of City requesting reimbursement.

12. Breach; Notice and Cure.

12.1. Breach. Failure by either Party to comply with any provision of this Encroachment Permit will be a breach of this Encroachment Permit.

12.2. Notice and Cure. Upon occurrence of a breach of this Encroachment Permit by either City or Developer, the breaching Party will, upon Notice from the non-breaching Party, proceed immediately to cure or remedy such breach; and, in any event, such breach must be cured within 30 days of the breaching Party's receipt of such Notice.

13. Remedies of City.

a. General. The Parties agree if a Default occurs, monetary damages would not be an adequate remedy and City will be entitled to equitable relief, including a temporary restraining order, an injunction, and specific performance of this Encroachment Permit, in addition to any other remedy available (including damages, costs, and attorney fees), without any requirement to post a bond or other security or to prove actual damages or that monetary damages would not afford an adequate remedy. Developer agrees not to oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this Encroachment Permit. City's rights and remedies are cumulative, and the exercise by City of one or more of such rights or remedies will not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same breach or any other breach by Developer.

b. Breach of Maintenance or Repair Obligations. In addition to the remedies in Subsection (a) above, if an uncured breach by Developer involves Developer failing to meet any of its obligations under Section 5 to maintain or repair the Encroachment, City may, but does not have an obligation to, maintain or repair the Encroachment. If City maintains or repairs the Encroachment, Developer must reimburse City, within 30 days of receipt of invoice and supporting documents, if needed, for all costs incurred by City, including administrative fees and legal fees incurred to collect the reimbursement.

c. Breach of Repair or Replacement Obligations. In addition to the remedies in Subsection (a) above, if an uncured breach by Developer involves Developer failing to meet any of its obligations under Section 6 to repair or replace the Encroachment, City will have the following remedies:

i. City may repair or replace the Encroachment. If City repairs or replaces the Encroachment, Developer must reimburse City, within 30 days of receipt of invoice and supporting documents, if needed, for all costs incurred by City, including administrative fees and legal fees incurred to collect the reimbursement. The ability of City to repair or replace the Encroachment, as set forth in this Subsection, is not an obligation of City to do so.

ii. City may revoke this Encroachment Permit. If City revokes this Encroachment Permit, upon Notice or revocation from City, Developer, at its sole cost and expense, must proceed immediately to remove the Encroachment and restore the right-of-way or public easement to a condition equal to or better than the condition of the right-of-way or public easement property immediately adjacent to where the Encroachment was located. Developer must use all and best efforts to complete the removal of the Encroachment and restoration of the right-of-way or public easement within 30 days of revocation of this Encroachment Permit; provided, however, if the removal and restoration cannot reasonably be completed within 30 days of Notice from City, and Developer promptly commenced the removal and restoration and diligently and continuously pursues completion of, and uses all and best efforts to complete, the removal and restoration, the timeframe to complete the removal and restoration will be extended for an additional 90 days or other length of time as approved by the City Engineer.

City will not incur expense or liability for revoking this Encroachment Permit. If Developer fails to remove the Encroachment or restore the right-of-way or public easement as required by Subsection (c), City may, but does not have an obligation to, remove the Encroachment or restore the right-of-way or public easement, and Developer must reimburse City, within 30 days of receipt of invoice and supporting documents, if needed, for all costs incurred by City, including administrative fees and legal fees incurred to collect the reimbursement.

14. Remedies of Developer. Developer's sole and exclusive remedy for an uncured breach by City will consist of and will be limited to a special action or other similar relief (whether characterized as mandamus, injunction, specific performance, or otherwise), requiring City to undertake and to fully and timely perform its obligations under this Encroachment Permit, and Developer hereby waives any and all right to recover actual, punitive, consequential, special, and any other type of damages whatsoever.

15. Nonexclusive License. This Encroachment Permit is a nonexclusive license, and nothing in this Encroachment Permit will be construed to prevent or restrict, in any way, City from using or granting others the right to use the right-of-way or public easement where the Encroachment is located so long as such use does not unreasonably interfere with Developer's use as allowed by this Encroachment Permit.

16. Runs with the Property; Restriction on Assignment. All provisions of this Encroachment Permit, including the benefits and burdens, run with the Property and are binding upon Developer and all future Developers and tenants of the Property and their respective heirs and successors in interest, will inure to the benefit of City, and will survive the expiration or termination of the Development Agreement; provided, however, this Encroachment Permit will expire if the Encroachment is not constructed or installed by the applicable Compliance Date, including any Extended Compliance Date. Developer may not assign its rights under this Encroachment Permit apart from an assignment of the Development Agreement in compliance with the Development Agreement. Any purported assignment of this Encroachment Permit in violation of this Encroachment Permit or the Development Agreement will be void, and not voidable.

17. General Provisions.

17.1. Notice. All notices and demands required or permitted by this Encroachment Permit (each, a "**Notice**") must be in writing and must be given by (a) personal delivery, or (b) any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid for "next business day" delivery, and addressed to City or Developer at the following addresses:

To City:

City of Mesa
Attn: Manager of Urban Transformation
26 N. MacDonald, Suite 200
Mesa, Arizona 85201

and

City of Mesa
Attn: City Engineer
20 E. Main Street, Suite 500
Mesa, Arizona, 85201

and

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

To Developer:

Breakwell Group LLC
Attn: Blake Bunker
3626 East Sagebrush Street
Gilbert, Arizona 85296
Telephone: 480-665-9085
Email: blake@breakwellgroup.com

and

Huber Barney PLLC
Attn: Aaron Huber
4915 East Baseline Road, Suite 105
Gilbert, Arizona 85234
Telephone: 480-305-7007
Email: ahuber@huberbarney.com

Communications sent by United States Postal Service or digitally will not be sufficient as Notices but will be regarded only as courtesies. A Notice personally delivered will be deemed effective upon its receipt (or refusal to accept receipt) by the addressee. A Notice sent by a nationally recognized express or overnight delivery service will be deemed effective one business day after deposit with such service. Either Party may designate a different person or entity or change the address to which a Notice must be given by providing Notice in compliance with this Section. Attorneys for each Party may give Notice on behalf of the Party they represent.

17.2. Existing Easements and Licenses. This Encroachment Permit is subject to all existing easements, licenses, permits, leases, and encumbrances of record. Developer is responsible for ascertaining the rights of all third parties in the right-of-way or public easement where the Encroachment is located.

17.3. Amendments. Any amendments to this Encroachment Permit must be in writing, signed by both Parties, and approved by the City Engineer.

17.4. Waiver. Neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Encroachment Permit will operate as a waiver of such right, remedy, power or privilege, nor will any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor will any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver will be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

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

17.6. Governing Law; Choice of Forum. This Encroachment Permit will be deemed to be made under, will be construed in accordance with, and will be governed by the laws of the State of Arizona. Any action brought to interpret, enforce or construe any provision of this Encroachment Permit must be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa.

17.7. Severability. If any term, covenant, condition, or provision of this Encroachment Permit is held by a court of competent jurisdiction to be invalid, void, or unenforceable, such term, covenant, condition, or provision will be deemed severed from this Encroachment Permit and this Encroachment Permit will otherwise remain in full force and effect.

17.8. No Third-Party Beneficiaries. No person or entity will be a third-party beneficiary to this Encroachment Permit and no third party has any right or cause of action under this Encroachment Permit.

17.9. Surviving Provisions. All obligations of Developer to pay, indemnify, defend, and hold harmless will survive the expiration, revocation, or termination of the Development Agreement or this Encroachment Permit. Additionally, any other provisions that reasonably should survive will survive the expiration, revocation, or termination of this Encroachment Permit.

17.10. Entire Agreement. This Encroachment Permit, together with the Development Agreement, constitutes the entire agreement between the Parties pertaining to the encroachments allowed in City's right-of-way and public easements for the Project. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, pertaining to the encroachments allowed in City's right-of-way and public easements for the Project are hereby superseded.

17.11. Recordation. This Encroachment Permit will be recorded in the Official Records of Maricopa County, Arizona and will burden title to the Property.

17.12. Estoppel Certificate. City will, at any time upon reasonable request by Developer, provide to any Lender an estoppel certificate or other document evidencing that (i) this Encroachment Permit is in full force and effect and (ii) no breach or default by Grantor exists hereunder (or, if appropriate, specifying the nature and duration of any existing breach or default).

17.13. Counterparts. This Encroachment Permit may be executed in multiple counterparts, each of which will be deemed an original and all of which, taken together, will constitute one Encroachment Permit, as if the Parties signed the Encroachment Permit on the same signature page. A facsimile or other electronically delivered signature to this Agreement will be deemed an original and binding upon the Party against whom enforcement is sought.

17.14. Exhibits. The following exhibits that are attached to this Encroachment Permit are incorporated herein by this reference:

Exhibit A: Legal Description of the Property
Exhibit B: Description of Encroachment
Exhibit C: Encroachment Section

Signatures are on the following page.

In witness whereof, the Parties have executed this Encroachment Permit on the dates set forth below.

CITY

CITY OF MESA, an Arizona municipal corporation

____
Lance Webb, City Engineer

Date: ____

DEVELOPER

OZ16 QOZB, LLC, a Utah limited liability company

____

By: ____

Date: ____

Title: ____

STATE OF)
) ss
County of)

The foregoing instrument was acknowledged before me this_____ day of______________, 202_, by ____, who acknowledged they signed the foregoing instrument on behalf of Developer.

____
Notary Public

My Commission Expires:

____

EXHIBIT A TO ENCROACHMENT PERMIT
LEGAL DESCRIPTION OF PROPERTY

Wood, Patel & Associates, Inc.
602.335.8500
www.woodpatel.com

July 7, 2026
WP# 255775

LEGAL DESCRIPTION
AC Hotel Mesa AZ
Lot 1

A portion of Lots 3 and 4, Block 8, Mesa Arizona, recorded in Book 23, page 18, Maricopa County Records (MCR), lying within the northeast quarter of Section 22, Township 1 North, Range 5 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the intersection of Main Street and Centennial Way, a calculated position based on the Record of Survey for Central Mesa Light-Rail Extension, recorded in Book 1257, page 45, MCR, from which the intersection of Main Street and Hibbert, a calculated position based on said Record of Survey, bears South 89°45'21" East (basis of bearing), a distance of 794.95 feet;
THENCE along the centerline of said Main Street, South 89°45'21" East, a distance of 65.97 feet; **THENCE** leaving said centerline, North 00°14'39" East, a distance of 66.00 feet, to the east right-of-way line of said Centennial Way and the **POINT OF BEGINNING**;
THENCE along said east right-of-way line, North 00°13'05" East, a distance of 144.50 feet;
THENCE leaving said east right-of-way line, South 89°45'21" East, a distance of 171.64 feet, to the west line of the east 160 feet of said Lot 3;
THENCE along said west line, South 00°15'48" West, a distance of 14.42 feet, to the north line of the south 130.08 feet of said Lot 3;
THENCE leaving said west line, along said north line, South 89°45'21" East, a distance of 100.00 feet, to the west line of the east 60 feet of said Lot 3;
THENCE leaving said north line, along said west line, South 00°15'48" West, a distance of 130.08 feet, to the north right-of-way line of said Main Street;

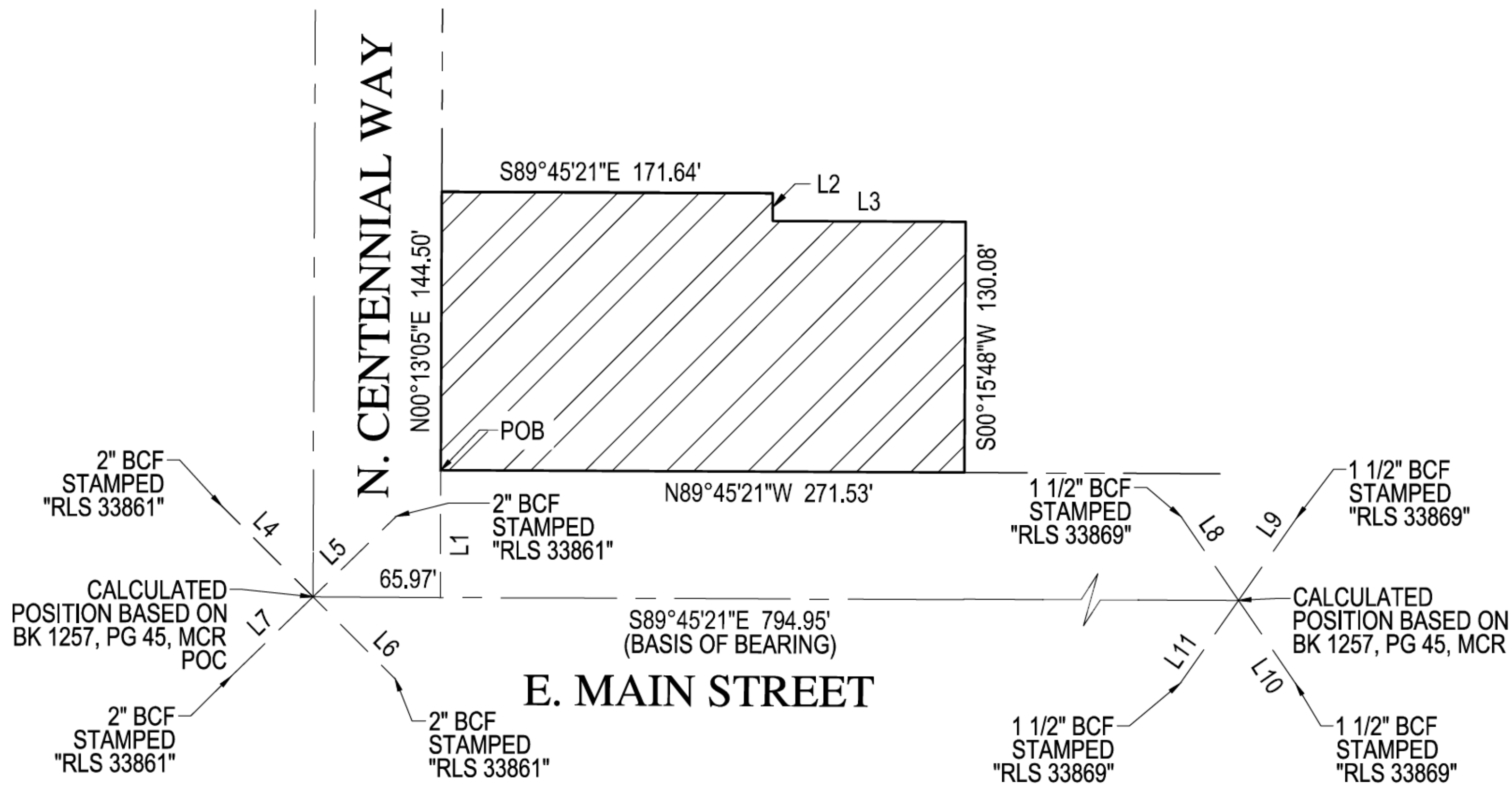
THENCE leaving said west line, along said north right-of-way line, North 89°45'21" West, a distance of 271.53 feet, to the **POINT OF BEGINNING**.

Containing 37,802 square feet or 0.8678 acres, more or less. Subject to existing right-of-ways and easements.

This legal description is based on client provided information and is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of June, 2026. Any monumentation noted in this legal description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
48932
GABRIEL S.
RIOS
Date Signed
ARIZONA, U.S.A.

EXPIRES 12-31-26



WOOD PATEL

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
48932
GABRIEL S.
RIOS
Date Signed 07-07-26
ARIZONA, U.S.A.

EXPIRES 12-31-26

N

EXHIBIT "A"
AC HOTEL MESA AZ
LOT 1
07/07/2026
WP# 255775
PAGE 3 OF 4
NOT TO SCALE
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LINE TABLE		
LINE	BEARING	DISTANCE
L1	N00°14'39"E	66.00'
L2	S00°15'46"W	14.42'
L3	S89°45'21"E	100.00'
L4	S45°02'54"E	66.92'
L5	N45°55'54"E	60.32'
L6	S45°02'54"E	60.26'
L7	N45°55'54"E	59.45'
L8	S34°27'07"E	52.82'
L9	N35°08'32"E	52.33'
L10	S34°27'07"E	52.46'
L11	N35°08'32"E	52.66'

WOOD PATEL

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
48932
GABRIEL S.
RIOS
Date Signed 07-07-26
ARIZONA, U.S.A.

EXPIRES 12-31-26

EXHIBIT "A"
AC HOTEL MESA AZ
LOT 1
07/07/2026
WP# 255775
PAGE 4 OF 4
NOT TO SCALE
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EXHIBIT B TO ENCROACHMENT PERMIT
DESCRIPTION OF ENCROACHMENT

The Encroachment allowed at the Project is described as follows:

-

See also, Encroachment Section attached to this Encroachment Permit as Exhibit C.

<u>EXHIBIT C TO ENCROACHMENT PERMIT</u>
ENCROACHMENT SECTION

Exhibit F to Development Agreement
Form of Parking License

[See attached]

PARKING LICENSE AGREEMENT

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

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

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

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

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

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

AGREEMENT

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

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

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

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

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

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

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

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

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

4. Licensed Spaces.

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

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

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

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

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

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

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

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

6. Access and Security.

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

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

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

7. Insurance; Indemnity.

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

7.2. In addition, Licensee will pay, defend, indemnify, and hold harmless City and its City Council members, officers, and employees (collectively, "**City Indemnified Party(-ies)**") from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and court costs associated with such matters; all of the foregoing, collectively, "**Claims**") imposed upon or asserted against City, its agents, representatives, officers, directors, elected or appointed officials, and employees, caused by, arising from, or related to, in whole or in part, the acts or omissions of Licensee, Licensee Parties, and Licensee's tenants, subtenants, employees, agents, contractors, and invitees for reason of any of the following: (i) any act or omission by Licensee, Licensee Parties, or Licensee's tenants, subtenants, employees, agents, contractors, invitees, or representatives undertaken in fulfillment of Licensee's obligations under this Agreement; (ii) any use or nonuse of, or any condition created by Licensee, a Licensee Party, or Licensee's tenant, subtenant, employee, agent, contractor, invitee, or representative on or at the Garage or any part thereof; and (iii) any accident, injury to or death of persons (including workmen), or loss of or damage to property occurring on or about the Garage or any part thereof caused or created by, or arising from, in whole or in part, any act or omission of Licensee, a Licensee Party, or Licensee's tenant, subtenant, employee, agent, contractor, invitee, or representative; except those Claims solely and exclusively arising from or caused by the gross negligence or intentional misconduct of a City Indemnified Party (collectively, "**Indemnity**"). Licensee's obligations of Indemnity will survive the expiration or earlier termination of this Agreement.

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

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

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

11. Default.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To Licensee:	Breakwell Group LLC Attn: Blake Bunker 3626 East Sagebrush Street Gilbert, Arizona 85296
With a copy to:	Huber Barney PLLC Attn: Aaron Huber 4915 East Baseline Road, Suite 105 Gilbert, Arizona 85234
If to City:	City of Mesa Attn: City Manager 20 East Main Street Mesa, Arizona 85211 and City of Mesa Attn: Manager of Urban Transformation 20 East Main Street Mesa, Arizona 85211
With a copy to:	City of Mesa Attn: City Attorney 20 East Main Street, Suite 850 Mesa, Arizona 85201

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

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

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

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

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

"**CITY**"

CITY OF MESA, ARIZONA,
an Arizona municipal corporation

____
By: Scott Butler
Its: City Manager

Date: ________________________

"**LICENSEE**"

____

By: ______________________________

Its: ______________________________

Date: ______________________________

<u>EXHIBIT A TO PARKING LICENSE AGREEMENT</u>

Description and Depiction of Licensed Area

[Insert Description and Depiction]

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

EXHIBIT B TO PARKING LICENSE AGREEMENT

Insurance Requirements

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

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

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

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

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

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

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

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

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

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

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

6. City will be named as Loss Payee on all property insurance policies. Proceeds of any property damage insurance will be applied as required by Section 17 of the Lease.

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

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

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

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

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

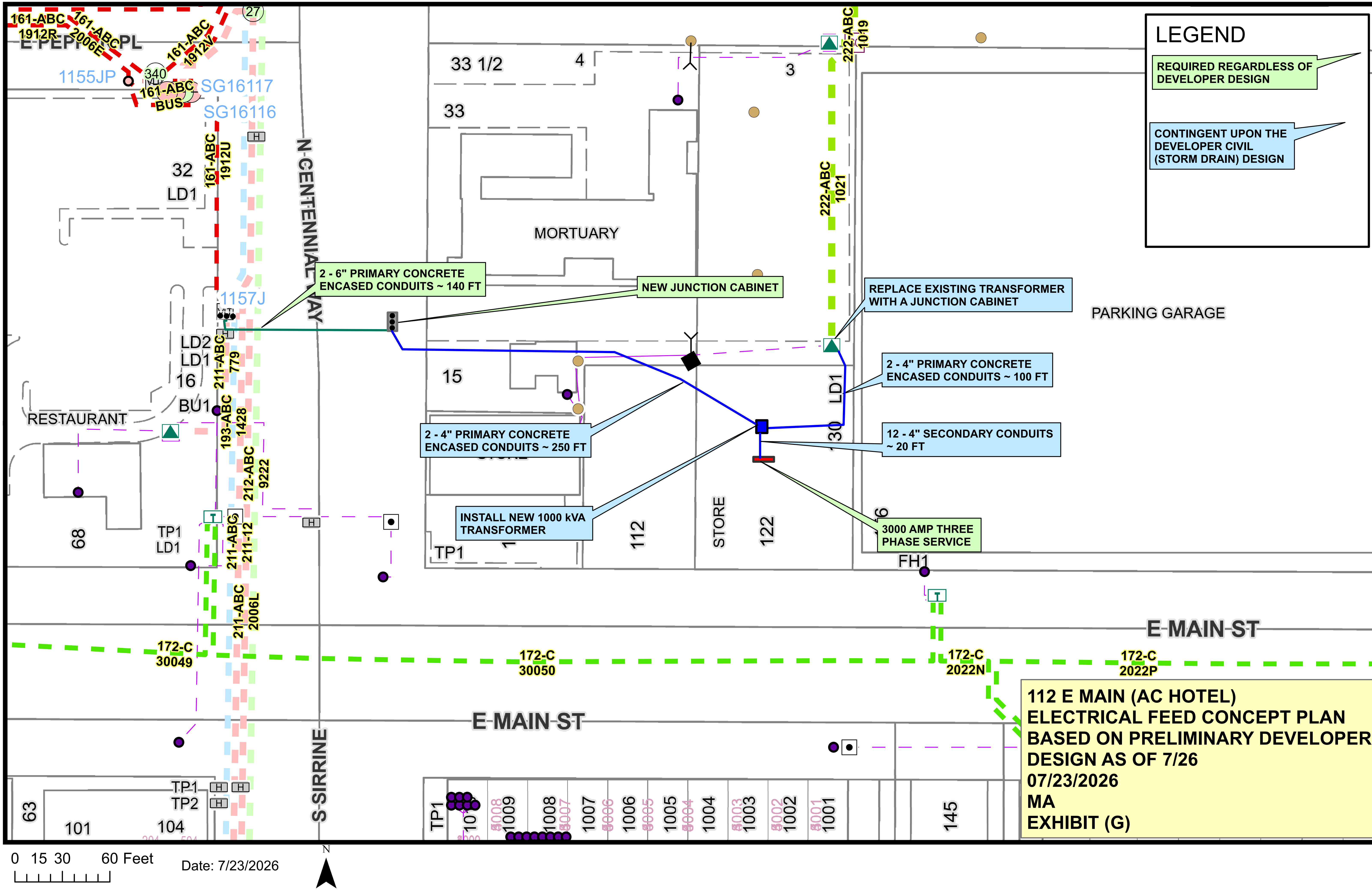
H. LICENSEE'S CONTRACTORS AND DESIGN PROFESSIONALS: Licensee will require and verify that the general contractor and all subcontractors maintain reasonable and adequate insurance with respect to any work on or at the Garage, all such policies will include: (i) a waiver of subrogation rights in favor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

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

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

Exhibit G to Development Agreement
Description and Depiction of the Electric Improvements

[See attached]



112 E MAIN (AC HOTEL)
ELECTRICAL FEED CONCEPT PLAN
BASED ON PRELIMINARY DEVELOPER DESIGN AS OF 7/26
07/23/2026
MA
EXHIBIT (G)

ELECTRIC GENERAL NOTES
(REVISED 12-22-21)

1. THE SCOPE OF WORK SHALL INCLUDE THE SUPPLY OF MATERIAL, LABOR, EQUIPMENT AND RESOURCES NECESSARY TO INSTALL ALL UNDERGROUND ELECTRICAL FACILITIES ASSOCIATED WITH THE PROJECT.

2. ALL CONSTRUCTION SHALL CONFORM TO APPLICABLE REQUIREMENTS OF THE LATEST REVISIONS OF THE UNIFORM STANDARD SPECIFICATIONS AND DETAILS AS PUBLISHED BY THE MARICOPA ASSOCIATION OF GOVERNMENTS (MAG) AS ADOPTED BY THE CITY OF MESA AND THE NATIONAL ELECTRICAL SAFETY CODE (NESC).

3. CONTRACTOR SHALL OBTAIN REQUIRED PERMITS TO PERFORM WORK ON APPROVED PLAN INCLUDING, BUT NOT LIMITED TO: TRAFFIC CONTROL, RIGHT OF WAY, DUST CONTROL, ETC.

4. CONTRACTOR SHALL PROVIDE ALL SITE TRENCHING, ENCASEMENT, BACKFILL AND SURFACE RESTORATION.

5. CONTRACTOR SHALL HAVE THE SUPPLIER ELECTRONICALLY SUBMIT PRELIMINARY MANUFACTURER'S FABRICATION DRAWINGS TO COM AND RECEIVE APPROVAL TO PROCEED FROM THE ELECTRIC UTILITY METER SHOP PRIOR TO MANUFACTURE OF THE SERVICE ENTRANCE SECTION (SES).

6. CONTRACTOR SHALL BE RESPONSIBLE TO INSTALL AND SUPPLY ALL APPLICABLE SERVICE GROUND RODS AND GROUNDING MATERIALS PER PLANS.

7. IF APPLICABLE, COM TO PROVIDE THE PULL BOX BELOW THE TRANSFORMER PAD. CONTRACTOR TO INSTALL PULL BOX PER COM STANDARD.

8. THE AREA BELOW THE PAD SHALL BE COMPACTED TO 95% DENSITY AND LEVELED. HALF-SACK SLURRY IS RECOMMENDED TO BE USED TO MEET COMPACTION REQUIREMENTS. TOP OF TRANSFORMER PAD SHALL BE 3 INCHES (POLYMER) 6 INCHES (CONCRETE) ABOVE FINAL GRADE.

9. THE TRANSFORMER PAD SHALL BE PROVIDED AND INSTALLED BY COM. REFER TO THE PROVIDED VERSION OF THE U-30XX STANDARD. THE CONTRACTOR SHALL PROVIDE BLUETOP/ELEVATION STAKES PRIOR TO THE SETTING OF THE PAD.

10. COM TO PROVIDE AND INSTALL ALL PRIMARY CABLE TO THE TRANSFORMER, AND SECONDARY/SERVICE CABLE FROM TRANSFORMER TO SES UTILITY TERMINATION.

11. COM SHALL PROVIDE AND INSTALL ALL TERMINALS FOR TRANSFORMER AND SES.

12. EASEMENTS FOR ANY EXISTING AND NEW FACILITIES SHALL BE OBTAINED PRIOR TO METER SET AND ENERGIZING OF NEW SERVICE(S). CONTRACTOR SHALL PROVIDE SURVEY AND LEGAL DESCRIPTION BY A REGISTERED LAND SURVEYOR FOR ELECTRIC UTILITY EASEMENTS AND SUBMIT TO CITY OF MESA REAL ESTATE SERVICES.

13. THE CONTRACTOR SHALL INSTALL A MINIMUM QUANTITY OF BOLLARDS (GUARD POSTS) TO PROTECT THE TRANSFORMER(S) AND SERVICE SECTION INSTALLATION AS REQUIRED PER MAG 140- TYPE 1, 4" UNLESS OTHERWISE SPECIFIED.

14. FOR SERVICES OVER 1000 AMPS, THE CONTRACTOR SHALL HAVE A HIGH POTENTIAL (HYPOT) TEST PERFORMED ON THE SERVICE ENTRANCE SECTION (SES) AND SHALL PROVIDE ELECTRONIC DOCUMENTATION TO COM.

15. IN ORDER FOR A METER TO BE SET, A "GREEN TAG" OR "CLEARANCE" FROM THE BUILDING DEPARTMENT MUST HAVE BEEN COMPLETED. THE CUSTOMER OF RECORD MUST CALL CUSTOMER SERVICE, 480-644-2221 AND REQUEST THE METER TO BE SET, PAY ALL NECESSARY DEPOSITS OR OTHER REQUIREMENTS AS APPLICABLE.

CONDUIT NOTES
(REVISED 7-2-26)

1. CONTRACTOR SHALL PROVIDE AND INSTALL ALL CONDUIT AS NOTED IN THE APPROVED PLANS.

2. CONDUIT SHALL BE PLACED IN ACCORDANCE WITH THE LINES, GRADES, SIZES, DETAILS AND DIMENSIONS AS SHOWN ON APPROVED PLANS.

3. ALL CONDUITS SHALL BE CONFIGURED TO MINIMIZE CONDUIT DEFLECTIONS AND BENDS THAT ARE NOT CALLED OUT SPECIFICALLY IN THE APPROVED PLANS. ADDITION OF VERTICAL BENDS TO AVOID OTHER UTILITIES SHALL NOT BE PERMITTED UNLESS APPROVED BY COM ELECTRIC INSPECTOR.

4. UNDERGROUND PRIMARY CONDUITS SHALL BE INSTALLED WITH A MINIMUM COVER DEPTH OF 48". ALL OTHER CONDUITS SHALL BE INSTALLED WITH A MINIMUM COVER OF 36" UNLESS OTHERWISE SHOWN ON THE APPROVED PLANS.

5. ALL CONDUIT SHALL BE SCHEDULE 40 PVC, GRAY IN COLOR, 10- OR 20-FOOT LENGTHS, MANUFACTURED IN ACCORDANCE WITH UL-651 AND NEMA TC-2 SPECIFICATIONS WITH BELL-END COUPLINGS.

6. NON-METALLIC CONDUIT BENDS AND FITTINGS 36", 48", AND 60" RADIUS SWEEPS AND OTHER CONDUIT ACCESSORIES NOT SPECIFICALLY MENTIONED SHALL BE SCHEDULE 40 PVC UNLESS OTHERWISE SHOWN ON THE APPROVED PLANS.

7. ELBOWS SHALL BE MANUFACTURED IN ACCORDANCE WITH UL-651 AND NEMA TC-3. MINIMUM ELBOW RADIUS FOR 2", 3", AND 4" SHALL BE 36" FOR VERTICAL BENDS AND HORIZONTAL BENDS. MINIMUM ELBOW RADIUS FOR 5" AND 6" CONDUIT SHALL BE 60" FOR VERTICAL BENDS AND HORIZONTAL BENDS. ONLY FACTORY-MADE BENDS SHALL BE ACCEPTABLE.

8. USE OF CONDUIT SCHEDULE 40, HEAVY WALL, SHALL BE CARLON SUPPLIED OR EQUAL.

9. ANY FIELD CUT PVC CONDUIT SHALL HAVE THE CUT EDGE FILED DOWN TO REMOVE ANY PROTRUSIONS OR ROUGH/SHARP EDGES TO ENSURE WIRE WILL NOT BE DAMAGED UPON INSTALLATION.

10. SWEEPS/ELBOWS SHALL NOT BE CUT. ADJUST TRENCH DEPTH AS NEEDED TO ACCOMMODATE COMPLETE SWEEPS/ELBOWS.

11. JOINTS SHALL BE SOLVENT WELDED WITH THE USE OF CONDUIT MANUFACTURER'S APPROVED PRIMER AND SOLVENT/CEMENT.

12. ALL CONDUIT TERMINATIONS IN PAD MOUNTED EQUIPMENT AND FLOOR MOUNTED SERVICE ENTRANCE PULL SECTIONS SHALL HAVE AN UNGLUED BELL-END FITTING AND TAPERED PVC PLUG WITH PULL TAB. CONDUIT TERMINATIONS FLUSH WITH FINAL GRADE OF CONCRETE SHALL NOT REQUIRE BELL-ENDS.

13. WHERE MORE THAN TWO (2) CONDUITS ARE INSTALLED IN A TRENCH, PLACE CONDUITS IN A SPACER RACK.

13.a. FOR 6-INCH CONDUITS AND A COMBINATION OF SMALLER CONDUITS. USE SNAP-LOC SPACERS FROM CARLON SALES OR EQUAL. CARLON PART NUMBERS ARE S288RJN FOR THE BASE SPACER AND S289RJN FOR THE INTERMEDIATE SPACER.

13.b. USE PLASTIC TIE WRAPS SUCH AS CARLON SALES PART #S28612 OR EQUAL AS NEEDED. DO NOT USE WIRE.

13.c. USE OF SRP APPROVED SPACERS ARE ALSO ACCEPTABLE UPON RECEIPT OF APPROVAL FROM COM ELECTRIC

14. CONTRACTOR SHALL COORDINATE THE APPROACH AND CONDUIT INSTALLATION TO AN EXISTING TRANSFORMER PAD. UNDER NO CIRCUMSTANCES IS THE CONTRACTOR PERMITTED TO PROCEED UNTIL UNDER DIRECT SUPERVISION BY A COM ENERGY RESOURCES DESIGNATED REPRESENTATIVE. CONTRACTOR IS EXPECTED TO PLUMB THE CONDUIT INTO THE PAD, WITH SUPERVISION FROM A COM ELECTRIC WORKER.

15. CONTRACTOR SHALL COORDINATE THE APPROACH AND CONDUIT INSTALLATION INTO A VAULT WITH COM. THE CONTRACTOR SHALL FULLY EXPOSE THE SPECIFIED FACE OF THE VAULT. IT SHALL BE THE RESPONSIBILITY OF COM TO PENETRATE THE VAULT WALL USING AVAILABLE KNOCKOUTS. CONTACT ENGINEERING IF KNOCKOUTS ARE NOT AVAILABLE. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO PENETRATE THE VAULT WALL WHEN KNOCKOUTS ARE NOT AVAILABLE. ALL ACTIVITIES RELATED TO THIS SHALL BE COORDINATED. UNDER NO CIRCUMSTANCES IS THE CONTRACTOR PERMITTED INSIDE THE VAULT. CONTRACTOR IS EXPECTED TO PLUMB THE CONDUIT INTO THE VAULT, WITH SUPERVISION FROM A COM ELECTRIC WORKER.

16. THE CONTRACTOR SHALL CLEAN THE COMPLETED CONDUIT SYSTEM WITH COMPRESSED AIR BEFORE INSTALLATION OF PAD-MOUNTED EQUIPMENT. THE CONTRACTOR SHALL PULL A NON-COMPRESSIBLE METALLIC OR OTHER APPROVED MATERIAL MANDREL OF THE SAME DIAMETER AS THE NOMINAL CONDUIT DIAMETER TO ENSURE THAT THE CONDUIT IS NOT DEFORMED AND DEMONSTRATE CONDUIT INTEGRITY. IF THE MANDREL ENCOUNTERS A DEFORMITY IN THE CONDUIT SYSTEM, THE CONTRACTOR SHALL LOCATE THE DAMAGED PORTION OF CONDUIT AND REPAIR IT AT NO COST. THE CONDUIT SYSTEM SHALL BE RETESTED AFTER REPAIR.

17. 2500 LB. NYLON PULL TAPE SHALL BE INSTALLED IN EACH CONDUIT, INCLUDING SPARES, AFTER SUCCESSFUL MANDREL TEST.

18. ALL PRIMARY AND RACKED CONDUITS SHALL BE ENCASED IN 2000 LB. CONCRETE. AGGREGATE SHALL BE 3/8 INCH MINUS. SPACERS SHALL BE INSTALLED A MINIMUM OF EVERY SIX (6) FEET. A MINIMUM OF THREE INCHES OF CONCRETE SHALL BE PLACED AROUND THE CONDUIT. ANY OTHER OVER POUR SHOULD BE AVOIDED. ENCASEMENT SHALL NOT ENTRAP ANY POLE.

19. ALL PRIMARY AND RACKED CONDUITS SHALL BE SECURED TO PREVENT CONDUIT FLOATING DURING CONCRETE ENCASEMENT. THE SECURING MATERIAL SHALL NOT BE BIODEGRADABLE NOR SUSCEPTIBLE TO RUST OR OTHER CORROSION. ENCIRCLEMENT OF CONDUITS WITH METALLIC MATERIALS SUCH AS STEEL WIRE OR REBAR ARE NOT PERMITTED AS EXCESSIVE HEATING WILL RESULT.

20. ALL OTHER BACKFILL SHALL BE HALF-SACK CLSM SLURRY WITH COARSE AGGREGATE PER MAG SECTION 728. NATIVE SOIL MAY BE USED OUTSIDE ROADWAY, SIDEWALK, AND ELECTRICAL EQUIPMENT PAD FOOTPRINTS, BUT MUST BE COMPACTED TO 90% OR GREATER. SEE CITY OF MESA STANDARD DETAIL M-19.4 IF FINAL GRADE IS ROADWAY, SIDEWALK OR CONCRETE.

21. INSTALL 6" WIDE WARNING TAPE 12" ABOVE CONDUIT OR DUCT BANK. USE BRADY #91296 OR APPROVED EQUAL.

22. THERE SHALL BE A MINIMUM OF 12" PHYSICAL SEPARATION BETWEEN ELECTRIC CONDUIT OR DUCT BANK AND OTHER PUBLIC OR PRIVATE UTILITY UNLESS APPROVED BY THE ENGINEER/INSPECTOR. EXAMPLES INCLUDE, BUT NOT LIMITED TO: WATER, WASTEWATER, GAS, TELEPHONE, CATC, STORM DRAIN, IRRIGATION, ETC.

23. DIRECTIONAL BORING IS ONLY PERMITTED WHEN AUTHORIZED BY COM ELECTRIC AND APPROVED BY SUBMITTAL FOR THE PROJECT BY COM ELECTRIC. THE SUBMITTAL MUST INCLUDE PROPOSED COUPLINGS AND GLUES. DIRECTIONAL BORING IS NOT PERMITTED FOR PRIMARY CONDUITS. BORE PROFILES WITH EXISTING FACILITIES IDENTIFIED ARE REQUIRED AFTER INSTALLATION.

24. ALL SECONDARY CONDUIT INSTALLED BY DIRECTIONAL BORING SHALL BE GRAY OR RED SCHEDULE 40 PVC, SCHEDULE 40 HDPE (PREFERRED), OR SDR 13.5 HDPE. RED COATINGS AND RED JACKETS ARE NOT PERMITTED ALTERNATIVES FOR RED EXTRUDED MATERIALS.

INSPECTION NOTES
(REVISED 12-22-21)

1. CONTRACTOR SHALL COORDINATE WORK ACTIVITIES WITH THE ELECTRIC DIVISION OF ENERGY RESOURCES DEPARTMENT AS REQUIRED BY THE FINAL DRAWINGS.

2. A "GREEN TAG" (INSPECTION AND CLEARANCE) FROM BUILDING SAFETY WILL BE REQUIRED BEFORE THE ELECTRIC UTILITY WILL ENERGIZE THE TRANSFORMER AND SERVICE. THE ELECTRIC UTILITY WILL COORDINATE THE INSTALLATION WITH THE CONTRACTOR AFTER THE SES HAS BEEN INSTALLED FOR THE METER.

3. THE CONTRACTOR SHALL REQUEST INSPECTIONS FOR ANY OPERATION DEEMED NECESSARY BY THE ELECTRIC UTILITY AT THE FOLLOWING TIMES (BUT NOT LIMITED TO)

3.a. DURING THE PLACEMENT OF THE CONDUIT OR DUCT BANK AND PRIOR TO ANY ENCASEMENT OR BACKFILL.

3.b. DURING THE MANDREL TEST OF THE CONDUITS.

3.c. AFTER THE EXCAVATION FOR THE VAULTS.

3.d. AFTER THE INSTALLATION OF VAULTS AND PRIOR TO BACKFILLING.

3.e. DURING THE INSTALLATION OF THE CONDUCTORS, TERMINATIONS, AND SPLICES (IF APPLICABLE).

OVER 1000 VOLTS NOTES

(REVISED 12-22-21)

1. AN INSULATED NEUTRAL IS REQUIRED AND SHALL HAVE FULL-VOLTAGE RATED INSULATION FROM THE METERING CUBICLE. THE INSULATED NEUTRAL SHALL EXTEND FROM THE CT COMPARTMENT TO THE VT COMPARTMENT AND THE CUSTOMER'S DISCONNECT SECTION BEFORE GROUNDING. THE MAIN BONDING JUMPER SHALL BE MADE IN THE CUSTOMER SECTION AND SHALL BE INSTALLED BY THE CUSTOMER. THE UTILITY SHALL PROVIDE THE TERMINATION LUGS AND ADDITIONAL JUMPER FROM THE CONCENTRIC NEUTRAL TO THE FULLY INSULATED NEUTRAL BUS.

2. ALL SERVICES SHALL REQUIRE A CONCRETE PAD TO BE PROVIDED WITH AN ADDITIONAL THREE (3) FEET EXTENDING FROM THE FRONT OF ANY DOOR PROVIDING ACCESSIBILITY TO ANY OF THE FOLLOWING:
SERVICE WIRE TERMINATIONS, CTS, VTS, UTILITY METER, OR MAIN DISCONNECT. THE PAD SHALL BE AT THE SAME LEVEL AS THE SECTION, AND IT SHALL BE SLOPED TO PROVIDE DRAINAGE AWAY FROM THE SERVICE ENTRANCE SECTION.

3. A MINIMUM OF TEN (10) FEET OF CLEAR SPACE MUST BE PROVIDED IN FRONT OF ANY DOOR PROVIDING ACCESS TO ANY OF THE FOLLOWING IF THE NOMINAL PROVIDED VOLTAGE IS ABOVE 600V: SERVICE WIRE TERMINATIONS, CTS, VTS, UTILITY METER, OR MAIN DISCONNECT.

4. SERVICES ARE SUBJECT TO SPECIAL INSPECTION BY THE UTILITY. THIS SHALL INCLUDE, BUT IS NOT LIMITED TO: VISUAL VERIFICATION OF ALL BUSSING, SWITCHES, ETC. UP TO THE 2ND OVERCURRENT PROTECTIVE DEVICE, HIGH POTENTIAL AND RESISTANCE TESTING OF ALL COMPONENTS UP TO THE 2ND OVERCURRENT PROTECTIVE DEVICE, ETC.

5. SES MANUFACTURER SHALL PROVIDE ALL VT WIRE AND ASSOCIATED LUGS PER COM REVISIONS OF EUSERC 2011 DATED 09-06-2011. SES SHALL ALSO CONFORM TO THIS DOCUMENT.

Exhibit H to Development Agreement
Description and Depiction of ROW Improvements

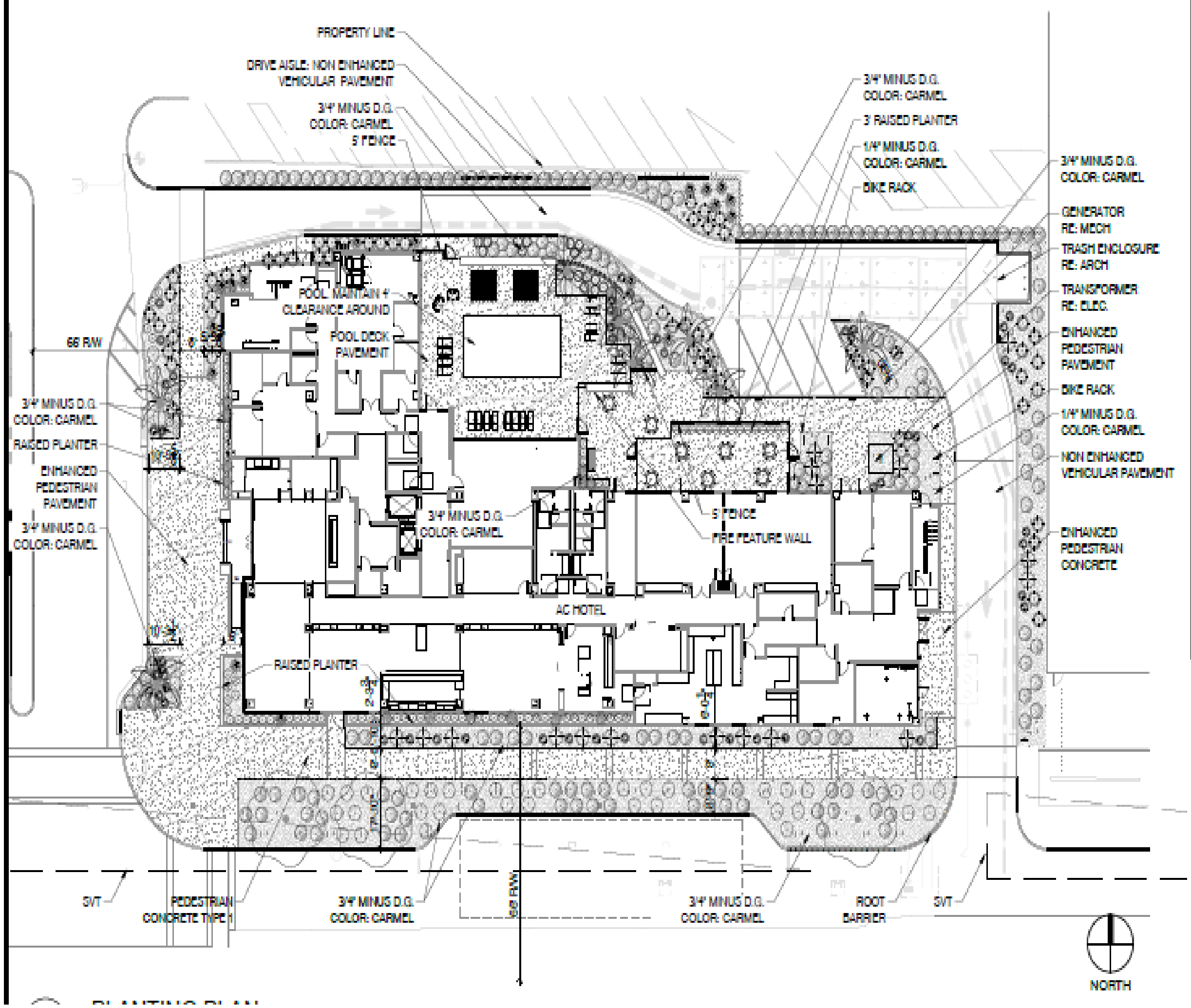
[See below and attached]

1. The Project will accommodate wide sidewalks consistent with the Sub-Area Plan's typical twenty (20) to twenty-five (25)- foot widths. The concrete used will be pedestrian concrete type 1. These sidewalks are intended to support high pedestrian volumes, outdoor seating, streetscape elements, and enhanced walkability in the downtown core.

2. Streetlight enhancements within the ROW will be completed consistent with the Approved Plans.

3. Landscape planters along Main Street and Centennial Way will include root barriers. There will be ¾" minus D.G. in the color of caramel. Plants that will be used in the ROW will be consistent with the Approved Plans, examples are Phoenix Dactylifera date palm, Pistacia Chinensis Chinese Pistache, Agave Americana Century Plant, and Muhlenbergia Rigida Nashville Purple Muhly.

4. Additional work related to the ROW Improvements for which Developer is responsible in accordance with the Approved Plans.



PLANT SCHEDULE

SYMBOL	QTY	BOTANICAL / COMMON NAME	CONT
TREES			
	8	PHOENIX DACTYLIFERA DATE PALM	18` HT
	3	PISTACIA CHINENSIS CHINESE PISTACHE	36" BOX, 2" CAL
SHRUBS			
	17	AGAVE AMERICANA CENTURY PLANT	5 GAL
	19	ALOE X 'ANDORA' SAFARI ORANGE ALOE	5 GAL
	203	EREMOPHILA PROSTRATA 'OUTBACK SUNRISE' EMU BUSH	5 GAL
	83	PORTULACARIA AFRA ELEPHANT'S FOOD	5 GAL
	18	RUSSELIA EQUISETIFORMIS FIRECRACKER PLANT	5 GAL
	65	TRADESCANTIA PALLIDA 'PURPLE HEART' PURPLE HEART SPIDERWORT	5 GAL
ACCENTS			
	51	AGAVE DESMETIANA SMOOTH AGAVE	5 GAL
	17	DASYLIRION LONGISSIMUM TOOTHLESS DESERT SPOON	15 GAL
GRASSES			
	46	MUHLENBERGIA RIGIDA 'NASHVILLE' NASHVILLE PURPLE MUHLY	5 GAL

811 Know what's below. Call before you dig.

Exhibit I to Development Agreement
Description of Developer Public Improvement Work

1. The excavating of trenches, conduit installation, backfilling of trenches, and surface restoration related to the Electric Improvements, and other work related to the portion of the Electric Improvements for which Developer is responsible in accordance with the Approved Plans and/or depicted in Exhibit G.

2. All work, including the planning, designing, constructing, and installation, related to the ROW Improvements described and depicted in Exhibit H.

Exhibit J to Development Agreement
Form of Deed

[See attached]

When recorded, return to:

City of Mesa
Real Estate Services
20 E. Main Street, Suite 500
Mesa, AZ 85201

SPECIAL WARRANTY DEED

For the consideration of ten dollars ($10.00) and other valuable consideration, the receipt of which is hereby acknowledged, [Grantor Name], a(n) [entity type] ("**Grantor**"), hereby conveys to the City of Mesa, Arizona, an Arizona municipal corporation ("**Grantee**"), the following real property situated in Mesa, Maricopa County, Arizona, together with all improvements thereon and all rights, title, interest, and privileges appurtenant thereto:

See **Exhibit "A"** attached hereto and incorporated herein by this reference (the "**Property**");

Subject to all matters of record as of the date of recording of this deed in the Official Records of the Maricopa County Recorder's Office and all matters which an accurate survey of the Property or a physical inspection of the Property would disclose.

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

Signature of Grantor on the following page.

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed as of this ___ day of __________, 202_.

GRANTOR:

Exhibit "A" to Special Warranty Deed
Legal Description

Exhibit K to Development Agreement
Insurance Requirements

Developer, at its sole cost and expense, will maintain insurance coverage as follows:

A. Property. During the period of any construction involving the Public Improvements, builder's risk insurance on an all-risk, replacement cost basis for the Public Improvements.

B. Liability. During the period of any construction involving the Public Improvements, insurance covering the Developer and (endorsing as an additional insured) City against liability imposed by law or assumed in any written contract, and/or arising from personal injury, bodily injury or property damage, with a limit of liability of five million dollars ($5,000,000.00) per occurrence with a five million dollar ($5,000,000.00) products/completed operations limit and a ten million dollar ($10,000,000.00) general aggregate limit. Such policy must be primary and written to provide blanket contractual liability, broad form property damage, premises liability, and products and completed operations.

C. Contractor. During the period of any construction involving the Public Improvements, each of the general or other contractors with which the Developer contracts for any such construction will be required to carry liability insurance of the type and providing the minimum limits set forth below:

(1) Workman's Compensation insurance and Employer's Liability with limits of one million dollars ($1,000,000.00) per accident, one million dollars ($1,000,000.00) per disease and one million dollars ($1,000,000.00) policy limit disease.

(2) Commercial general liability insurance on a five million dollars ($5,000,000.00) per occurrence basis providing coverage for (and endorsing the City as additional insured for):

Products and Completed Operations Blanket Contractual Liability Personal Injury Liability
Broad Form Property Damage X.C.U.

(3) Business automobile liability including all owned, non-owned and hired autos with a limit of liability of not less than one million dollars ($1,000,000.00) combined single limit for personal injury, including bodily injury or death, and property damage.

D. Architect. In connection with any construction involving the Public Improvements, the Developer's architect will be required to provide architect's or engineer's professional liability insurance with a limit of one million dollars ($1,000,000.00) per claim. This policy, or other policies, will cover claims for a period of not less than three (3) years after the Completion of Construction involving the Property and the Public Improvements.

E. Engineer. In connection with any construction involving the Public Improvements, the Developer's soils engineer or environmental contractor will be required to provide engineer's professional liability insurance with a limit of one million dollars ($1,000,000.00) per claim. This policy, or other policies, will cover claims for a period of not less than three (3) years after the Completion of the Construction involving the Property and the Public Improvements.

F. CPI Adjustments. The minimum coverage limits set forth above will be adjusted every five (5) years by rounding each limit up to the million-dollar amount which is nearest the percentage of change in the Consumer Price Index ("CPI") determined in accordance with this paragraph. In determining the percentage of change in the CPI for the adjustment of the insurance limits for any year, the CPI for the month October in the preceding year, as shown in the column for "All Items" in the table entitled "All Urban Consumers" under the "United States City Averages" as published by the Bureau of Labor Statistics of the United States Department of Labor, will be compared with the corresponding index number for the month of October one (1) year earlier.

G. Primary Coverage. Developer's insurance coverage will be primary insurance with respect to City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by City, its officers, officials, agents, and employees will be in excess of the coverage provided by Developer and will not contribute to it.

H. Indemnities. Coverage provided by the Developer will not be limited to the liability assumed under the indemnification provisions of the Agreement.

I. Waiver of Subrogation. All policies will contain a waiver of subrogation against City, its officers, officials, agents, and employees.

J. Notice of Cancellation. Developer will use reasonable and good faith efforts to cause each insurance policy to include provisions to the effect that it may not be suspended, voided, cancelled, or reduced in coverage except after thirty (30) days' prior written notice has been given to City. Such notice must be provided directly to City in accordance with the provisions of Section 11.5 of the Agreement.

K. Acceptability of Insurers. Insurance is to be placed with insurers duly licensed of approved unlicensed companies in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. City in no way warrants that the above-required minimum insurer rating is sufficient to protect Developer from potential insurer insolvency.

L. Endorsements and Verification of Coverage. Developer will furnish City with endorsements naming the City, its officers, officials, agents, and employees as additional insureds. The endorsements will be original certificates of insurance on ACCORD forms approved by City. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict of limit coverage will be clearly noted on the certificate of insurance.

(1) All certificates are to be received and approved by City before the Commencement of Construction. Each insurance policy must be in effect at or prior to the Commencement of Construction and must remain in effect for the duration of the Agreement.

Failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal will be considered a material breach of the Agreement.

(2) All certificates required by this Agreement will be sent directly to City of Mesa, Attn: Lisa Lorts, Risk Manager, 20 E. Main Street, P.O. Box 1466, Mesa, Arizona 85201-1466. City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Exhibit K at any time.

M. Approval. Any modification or variation from the insurance requirements in this Exhibit K must have prior approval from the City Manager (or designee), whose decision will be final. Such action will not require formal contract amendment, but may be made by administrative action.

N. Miscellaneous. References to "Developer" in this Exhibit K will mean Developer and include its general contractor(s). References to "the Agreement" will mean the Development Agreement of which this Exhibit K is a part. Capitalized terms not otherwise defined in this Exhibit K will have the meanings set forth in the Agreement. City in no way warrants that the minimum limits contained herein are sufficient to protect Developer from liabilities that might arise, and Developer may purchase such additional insurance as Developer determines necessary.

Exhibit L to Development Agreement
Form of Non-Disturbance and Recognition Agreement

[See attached]

When recorded, return to:

City of Mesa
Attn: Real Estate Services
20 East Main Street, Suite 500
Mesa, Arizona 85201

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NON-DISTURBANCE AND RECOGNITION AGREEMENT

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This Non-Disturbance and Recognition Agreement ("**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) _____ ("**Developer**"); (b) ______("**Lender**"); and (c) City of Mesa, Arizona, an Arizona municipal corporation ("**City**").

1. Recitals.

1.1 Developer is the present developer under a Development Agreement entered into with City, dated__, 20 ___ , and recorded in the Official Records of Maricopa County, Arizona, at_________("**Agreement**"), which Agreement sets forth certain rights and responsibilities of Developer with respect to the development 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 Developer's obligations arising under the Agreement include but are not limited to the leasing and development of the Property, and the construction of improvements upon the Property, and the construction of certain "**Public Improvements**" (as defined in the Agreement) in and around the Property (collectively, "**Obligations**").

1.3 Lender has agreed to lend money to Developer, and Developer will execute certain loan documents ("**Loan Documents**") including but not limited to a leasehold deed of trust for the use and benefit of Lender ("**Deed of Trust**") and an assignment of Developer's rights under the Agreement ("**Assignment**") to secure the loan from Lender to Developer ("**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 Developer of its obligations either under the Loan Documents or the Agreement, including but not limited to the right of Lender to be substituted for Developer under the Agreement and to assume Developer's position with respect to the Agreement; and the Agreement states in Section 16.23 thereof that a Lender may be allowed to assume Developer's rights and obligations with respect to the Agreement (collectively, "**Developer'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 Developer's Position with respect to the Agreement; and (ii) Section 4 of this NDRA regarding non-disturbance and recognition, all rights of Developer 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 Developer Default.

3.1 If Lender is a "Designated Lender" as defined in Section 16.23 of the Agreement, City will give Lender written notice of any claimed Default by Developer ("**Notice**") under the Agreement and thirty (30) days following the expiration of Developer's cure period under the Agreement to cure such claimed 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 a Default of Developer, in its sole election either: (a) to cure the Default of Developer, in which event Developer 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 Developer'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 Developer's Position with respect to the Agreement, Lender and City will execute an amendment to the Agreement ("**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 Developer's Position with respect to the Agreement, and that Lender is thereafter substituted for Developer with respect to all Obligations, payment and performance rights and responsibilities arising under or in connection with the Agreement. The execution or approval by Developer 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 Developer 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 Developer 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, "**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 ("**Purchaser**"), the Developer's Position under the Agreement will accompany and be deemed covenants running with the Property, and the Purchaser will be deemed to have assumed Developer's Position with respect to the Agreement. Upon the acquisition of the Property by a

Purchaser, City will (i) look to Purchaser and/or Developer 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 Developer under the Agreement.

3.5 Until an Assumption as defined herein, nothing in this NDRA will constitute an assumption by Lender of any Obligation. Developer 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 Developer, 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 Developer of any Obligation.

4. Non-disturbance and Recognition.

4.1 If 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 Developer 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 Developer has acted or failed to act in a manner giving rise to a Default under the Agreement;

b. The Agreement has not been assigned, modified or amended in any way except as set forth in Section 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, Developer 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 6.2; 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, Suite 750
Mesa, Arizona 85201
Telephone: 480-644-2066
Email: scott.butler@mesaaz.gov

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 85201
Telephone: 480-644-3497
Email: jim.smith@mesaaz.gov

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

If to Developer:

With required copy to:

If to Lender:

With required copy to:

(Telephone numbers and email addresses are provided for informational

purposes only and shall not be deemed notice.)

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 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 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.

[*Signatures Appear on the Following Three (3) Pages*]

"**CITY**"

CITY OF MESA, ARIZONA,
an Arizona municipal corporation

____
By: Scott Butler
Its: City Manager

Date: ________________________

STATE OF ARIZONA)
)ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me, a notary public, this ___ day of ______________, 2026, by Scott Butler as City Manager of the City of Mesa, an Arizona municipal corporation, who acknowledged that he signed the foregoing instrument on behalf of City.

____
Notary Public

My Commission Expires:

____

"**DEVELOPER**"

____

By: ___________________________

Its: ___________________________

Date: ___________________________

STATE OF)
)ss.
COUNTY OF_______________)

The foregoing instrument was acknowledged before me, a notary public, this ___ day of _______________, 2026, by , as__________________________ of ___________________________, a ____________________________, who acknowledged that he/she signed the foregoing instrument on behalf of Developer.

____

Notary Public

My Commission Expires:

____

"LENDER"

____

By: ______________________________

Its: ______________________________

Date: ______________________________

STATE OF)
)ss.
COUNTY OF________________)

The foregoing instrument was acknowledged before me, a notary public, this ___ day of _______________, 2026, by , as_________________________ of __________________________, a ___________________________, who acknowledged that he/she signed the foregoing instrument on behalf of Lender.

____
Notary Public

My Commission Expires:

____

Exhibit "A" to NDRA

Legal Description and Depiction of Property