

When recorded, return to:

City of Mesa  
Attn: Real Estate Department  
20 East Main Street  
Mesa, Arizona 85211

## FIFTH AMENDMENT TO DEVELOPMENT AGREEMENT

This Fifth Amendment to Development Agreement (this “Amendment”) is made and entered into as of \_\_\_\_\_, 2020 by and between City of Mesa, a municipal corporation (“City”), and The Grid at Mesa, LLC, a Delaware limited company (“Developer”). City and Developer are sometimes referred to in this Amendment collectively as the “Parties,” or individually as a “Party.”

### RECITALS

A. City and 3W Management, LLC, an Arizona limited partnership and, subsequently by assignment dated May 9, 2018, Palladium Grid, LLC, an Arizona limited liability company are parties to that certain Development Agreement dated December 7, 2017 and recorded in the Maricopa County Recorder’s Office as Recording No. 20170915520, that certain First Amendment to Development Agreement dated February 27, 2018, and recorded in the Maricopa County Recorder’s Office as Recording No. 20180149429, that certain Second Amendment to the Development Agreement dated July 25, 2018, and recorded in the Maricopa County Recorder’s Office as Recording No. 20180565588, and that certain Third Amendment to Development Agreement dated December 11, 2018, and recorded in the Maricopa County Recorder’s Office as Recording No. 20180921635, and that Fourth Amendment to the Development Agreement dated February 25, 2019, and recorded in the Maricopa County Recorder’s Office as Recording No. 20190149140, (collectively, the “Development Agreement”). The Development Agreement is for a mixed-use commercial and residential development described and defined as the “Project” in the Development Agreement.

B. As of the date of this Fifth Amendment, the Parties acknowledge that Developer is not in compliance with Section 4.17.1, as added and stated in the First Amendment and the Fourth Amendment to the Development Agreement, and therefore is not currently entitled to the Economic Development Credits stated therein until and when the requirements for the Economic Development Credits are satisfied as stated in the Amended and Restated Ground and Air Lease, attached hereto as Exhibit A.

C. On October 28, 2019, The Grid at Mesa, LLC, a Delaware limited liability company was formed; and contemporaneously with the execution of this Amendment Palladium Grid, LLC has assigned the rights and obligations of the Development Agreement to The Grid at Mesa, LLC and The Grid at Mesa, LLC has assumed all of its rights and obligation under the Development Agreement.

D. The City consents to the assignment of the Development Agreement to The Grid at Mesa, LLC so long as The Grid at Mesa, LLC assumes all of the rights and obligations under the Development Agreement.

E. Additionally, Developer desires, and City is willing, to further modify the compliance dates and requirements in Section 4.12 of the Development Agreement as set forth in this Amendment

F. Due to the failure to meet certain compliance dates of the Lease, License, and the Development Agreement, and to integrate the provisions of the Development Agreement as amended in the Lease and the License, and to acknowledge both (i) Tenant's obligations to cause certain conditions to be met, and (ii) Tenant's obligations to make certain payments or reimbursements in the event of a failure of such conditions to be satisfied (including, but not limited to, a default of the Targeted Subtenant), the Parties agree that it is in the best interest of the Parties and the Project to amend and restate the Lease and License. The Lease attached to the Development Agreement as Exhibit P and the License attached to the Lease as Exhibit B are hereby deleted in their entirety and replaced with the Amended and Restated Lease and the Amended and Restated License attached hereto as Exhibit A and Exhibit B.

G. Accordingly, the Parties are willing to modify the terms of the Development Agreement, including certain Exhibits, as set forth in this Amendment.

## AGREEMENT

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

1. Definitions. All capitalized words and phrases used in this Amendment will have the same meanings as set forth in the Development Agreement (and in the exhibits to the Development Agreement, as applicable), unless a different definition is set forth in this Amendment.

2. Amendment to Compliance Dates and Requirements in Section 4.12. The Parties now amend the Development Agreement by modifying the dates and requirements (which were previously amended in the Second and Fourth Amendments to the Development Agreement) in Section 4.12; accordingly, the Parties agree Section 4.12 (and all subsections thereto) are hereby deleted and replaced and set forth in full as follows:

4.12 Compliance Dates. Developer will perform or complete each of the following on or before the date set forth below for the applicable act (each, a "Compliance Date"):

(a) On or before February 1, 2020, Developer will provide information to the City's City Manager to demonstrate Developer's financial capacity to fully fund the design and construction of the Project.

(b) On or before March 15, 2020, Developer will Commence Construction on the "First Phase of the Project," which term includes and means site demolition, site grading and utilities and vertical construction of the Commercial Project and Main Street Apartments.

(c) On or before September 15, 2020, Developer will Commence Construction on the "Second Phase of the Project", which term includes and means the Pomeroy Garage Improvements and vertical construction of the Sky Apartments and Row Homes.

(d) On or before December 31, 2020, Developer shall Complete Construction of the First Phase of the Project.

(e) On or before December 31, 2021, Developer shall complete construction of Second Phase of the Project, all Minimum Improvements, all Minimum Public Improvements, and any Additional Public Improvements.

The City Manager, in his sole discretion, may extend any of the foregoing dates for a period of time not to exceed forty-five (45) days per extension, with a maximum of three (3) extensions per event (each, an "Extended Compliance Date"). In the event of any extension by the City Manager, each subsequent Compliance Date (including any corresponding dates for performance or acts by City set forth in Article 5 of this Agreement) will automatically be adjusted in conformity.

3. Economic Development Credits and Permit Reimbursements-Developer's Reimbursement. As of the date of this Fifth Amendment, the Parties acknowledge that Developer is not in compliance with Section 4.17.1 and Section 4.17.2, as added and stated in the First Amendment to the Development Agreement, and therefore is not entitled to the Economic Development Credits, stated therein, until and when the requirements of Section 4.17.1 and Section 4.17.2 are satisfied. The Parties agree to change the compliance dates in Section 4.17 and to clarify that the Economic Developments Credits are intended to be solely a reduction in the rental rates that Developer charges the Target Subtenant. Accordingly, Section 4.17 and Section 5.11 are deleted in its entirety and replaced with the following:

4.17.1 Developer's Obligations for Economic Development Credit. In order to be eligible to receive and retain the Economic Development Credit described in Section 5.11.1, Developer (or its permitted assignee, as the Tenant named in the Amended and Restated Lease and the Licensee named in the Amended and Restated License) must enter into a sublease with a Targeted Subtenant that satisfies the requirements of Section 4.17.1(a) through (f), or cause the Targeted Subtenant to satisfy, all of the following requirements:

(a) On or before December 31, 2021, the Targeted Subtenant must enter into a sublease with Developer (or its permitted assignee) for

not less than 13,000 square feet of the Project's commercial space (the "Subleased Premises") for a sublease term of not less than ten (10) years (the "Sublease Term"); the Targeted Subtenant must be open to the public for business in the entire Subleased Premises on or before the Opening Date (as defined in Section 4.17.1(g) below); and the Targeted Subtenant must remain open to the public for business in the entire Subleased Premises for not fewer than ten (10) years from the Opening Date.

- (b) The Targeted Subtenant must provide free public programs, workshops or seminars to assist new businesses and entrepreneurs ("Public Events") for each year for the first ten (10) years of the Sublease Term. In the first year of the Sublease Term, the Targeted Subtenant will provide not fewer than fifty (50) Public Events; in the second year of the Sublease Term, the Targeted Subtenant will provide not fewer than one hundred (100) Public Events; and in the third through tenth years, inclusive, of the Sublease Term, the Targeted Subtenant will provide not fewer than one hundred and fifty (150) Public events during each such year.
- (c) The Targeted Subtenant must provide, for each year for the first ten (10) years of the Sublease Term, not fewer than fifteen (15) scholarships per year to secondary school students residing in the City of Mesa for coding, programming and related business technology classes (or other educational classes as approved by City, through its City Manager or designee, in the Manager's or designee's reasonable discretion) provided by the Target Subtenant and at the Subleased Premises or at another facility within the City of Mesa.
- (d) The Targeted Subtenant must use commercially reasonable, good faith efforts to enter into an agreement with a post-secondary institution located in the City of Mesa to provide programming classes and entrepreneurial courses as part of an advanced degree or certificate program, and the Targeted Subtenant will demonstrate to Developer (or its permitted assignee, as the Tenant named in the Amended and Restated Lease and the Licensee named in the Amended and Restated License) and City that the Targeted Subtenant has either entered into such an agreement with a post-secondary institution located in the City of Mesa prior to the Opening Date, or has used commercially reasonable, good faith efforts to do so.
- (e) During each year of the Sublease Term, the Targeted Subtenant will offer (and will demonstrate to Developer [or its permitted assignee, as the Tenant named in the Amended and Restated Lease and the Licensee named in the Amended and Restated License] and City that it has so offered) (i) assistance, including but not limited to technical support, for Qualifying Businesses within the Subleased Premises

with respect to attracting investors and capital, (ii) an updated directory of investors seeking to capitalize business of the nature of the Qualifying Businesses, and (iii) events to introduce investors to Qualifying Businesses.

- (f) Within thirty (30) days of a date specific requirement in the above subsections (*i.e.*, Section 4.17.1(a) and Section 4.17.1(d) above), Developer (or its permitted assignee, as the Tenant named in the Amended and Restated Lease and the Licensee named in the Amended and Restated License) must provide commercially reasonable evidence to Landlord establishing compliance with each requirement. Every year within sixty (60) days of the annual anniversary of a yearly requirement (*i.e.*, Section 4.17.1(b), Section 4.17.1(c), and Section 4.17.1(e) above), Developer (or its permitted assignee, as the Tenant named in the Amended and Restated Lease and the Licensee named in the Amended and Restated License) must provide commercially reasonable evidence to Landlord establishing compliance with each annual requirement; provided further that the Parties may agree in writing upon a single annual anniversary date to establish compliance with the requirements in Section 4.17.1(b), Section 4.17(c), and Section 4.17.1(e) above.
- (g) “Opening Date” in this Agreement means the earliest of (i) the date on which the Subleased Premises is first open to the public for business, or (ii) the date on which the final certificate of occupancy is approved for the Subleased Premises, or (iii) December 31, 2021; provided that the Parties can agree in writing to a different date as the Opening Date so long as such date is within three (3) months of either of the three (3) dates described in this definition.
- (h) Developer represents and warrants to City that rental rates for the Subleased Premises being paid (or to be paid) by the Targeted Subtenant reflect the Economic Development Credits and Permit Reimbursements being provided to Developer by this Agreement. Under no circumstances was it intended that the credits be paid in cash back to Developer by the City

4.17.2 Developer’s Obligations for Permit Reimbursements. In order to be eligible to receive and retain the Permit Reimbursements (as defined in Section 5.11.2(b)), Developer (or its permitted assignee, as the Tenant named in the Amended and Restated Lease and the Licensee named in the Amended and Restated License) must satisfy, or cause the Targeted Subtenant to satisfy, all of the following requirements:

- (a) The Targeted Subtenant must create twenty-five (25) Qualifying New Businesses at the Project within ten (10) years of the Opening Date. To be a “Qualifying New Business” means that either of the following is satisfied: (1) it is a business that subleases (or

sublicenses) office space within the Subleased Premises from the Targeted Subtenant for twelve (12) consecutive months and uses such office space as its primary professional office (including but not limited to the receipt of physical mail or other deliveries), or (2) it is a business located in the City of Mesa and started by a tenant that subleases (or sublicenses) office space from the Targeted Subtenant and is open for twelve (12) consecutive months. A Qualifying New Business expressly excludes any existing business located in the City of Mesa that relocates to office space within the Subleased Premises.

- (b) The Targeted Subtenant, or Qualifying New Businesses, must create five hundred (500) Qualifying New Jobs at the Project within ten (10) years of the Opening Date, of which Three Hundred (300) of the Five Hundred (500) Qualifying New Jobs must be filled by employees who are residents of the City of Mesa for at least twelve (12) consecutive months. To be a “Qualifying New Job” means that all of the following are satisfied: (1) the job (or position) is a paid employment position where the employee is paid for at least thirty-five (35) hours each week for twelve (12) months within any given consecutive sixteen-month period by the Targeted Subtenant or a Qualifying New Business, (2) the position must be filled by an employee (or employees) of the Targeted Subtenant or a Qualifying New Business for twelve (12) consecutive months, and (3) the principal place of work of the employee (or employees) filling the position must be within the Targeted Subtenant’s space at the Project (or within an expanded premises of the Targeted Subtenant or a Qualifying New Business that is located within the City of Mesa) for twelve consecutive months. The City Manager (or designee) will have the authority to review and reasonably determine compliance with this provision.
- (c) Within thirty (30) days of the date required for compliance with the above Section 4.17.2(a) and Section 4.17.2(b), Developer (or its permitted assignee, as the Tenant named in the Amended and Restated Lease and the Licensee named in the Amended and Restated License) must provide commercially reasonable evidence establishing compliance with these requirements; and the Parties will agree in writing to one compliance date for both above subsections.

#### 4.17.3 Additional Remedies, Repayment, and Extinguishment.

- (a) For any uncured Event of Default, the Economic Development Credits and Permit Reimbursements will be automatically deemed fully extinguished, and Developer will not be entitled to any additional or future Economic Development Credits or Permit Reimbursements.

(b) Upon any uncured Event of Default relating to Section 4.17.1 or Section 4.17.2 relating to performance by the Targeted Subtenant, Developer (or its permitted assignee, as the Tenant named in the Amended and Restated Lease and the Licensee named in the Amended and Restated License) will pay to City that amount of money equal to the Economic Development Credits and Permit Reimbursement received by Developer, which (i) will be paid as Rent under the Amended and Restated Lease and as the License Fee under the Amended and Restated License; (ii) will be paid in equal installments over the same period of time in which such credits and reimbursements were received by Developer; and (iii) will commence with the first payment of Rent (under the Amended and Restated Lease) or License Fee (under the Amended and Restated License) owing after the uncured Event of Default, as follows:

	<b>Economic Development Incentive (due back to City)</b>	<b>New Job Creation Permit Reimbursements (due back to City)</b>	
<b>Vacate Years 1-5</b>	100%	100%	
<b>Vacate Year 6</b>	50%	If 500/300* New Jobs Created: 50%	If less than 500/300* New Jobs Created: 100%
<b>Vacate Year 7</b>	40%	If 500/300* New Jobs Created: 40%	If less than 500/300* New Jobs Created: 80%
<b>Vacate Year 8</b>	30%	If 500/300* New Jobs Created: 30%	If less than 500/300* New Jobs Created: 60%
<b>Vacate Year 9</b>	20%	If 500/300* New Jobs Created: 20%	If less than 500/300* New Jobs Created: 40%
<b>Vacate Year 10</b>	10%	If 500/300* New Jobs Created: 10%	If less than 500/300* New Jobs Created: 20%

\*500 total Qualifying New Jobs, of which 300 are filled by Mesa residents

4.17.4 Additional Limitations. The Economic Development Credits and Permit Reimbursements: (i) are not transferrable (directly or by operation of law) to any leasehold mortgagee that succeeds to the interest of Developer (as Tenant) pursuant to Section 17 of the Amended and Restated Lease, and will be deemed fully extinguished in such event; (ii) will not reduce any obligation of Developer (as Tenant or Licensee) owing to City (as Landlord or Licensor) as a result of Developer's (as Tenant or Licensee) Default under the Amended and Restated Lease or Amended and Restated License; and (iii) to the extent of any unutilized or unpaid portion of the Economic Development Credits and Permit Reimbursements, will not reduce the Purchase Price for

the Premises in the event Developer (as Tenant) exercises its Purchase Option pursuant to the Amended and Restated Lease.

#### 5.11 Economic Development Credits and Permit Reimbursements – City Requirements.

5.11.1 Economic Development Credits for the Rent and License Fee. If the Targeted Subtenant is open to the public for business on or before the Opening Date and so long as Developer (or its permitted assignee, as the Tenant named in the Amended and Restated Lease and the Licensee named in the Amended and Restated License) has complied with and remains in compliance with the requirements of Section 4.17.1, City will provide Economic Development Credits for years three (3) through seven (7), inclusive, of the terms of the Amended and Restated Lease and Amended and Restated License in the amount of 25% of the Base Monthly Lease Rate and 25% of the Base Monthly License Rate (the “Economic Development Credits”) as more fully described and under the terms and limitations provided in Section 4.17.3 and Section 4.17.4 and in Exhibit C (Schedule of Rent) attached to the Amended and Restated Lease and in Exhibit D (Schedule of License Fees) attached to the Amended and Restated License. If Developer (or its permitted assignee, as the Tenant named in the Amended and Restated Lease and the Licensee named in the Amended and Restated License) does not comply with all the requirements of Section 4.17.1, Developer (or its permitted assignee, as the Tenant named in the Amended and Restated Lease and the Licensee named in the Amended and Restated License) will repay City an amount equal to the Economic Development Credits City provided to Developer, subject to Section 4.17.3(b).

5.11.2 Permit Reimbursement. In order to facilitate new job and business creation, City will reimburse a portion of the City permit fees (e.g., construction permitting fees but excluding all impact fees) paid by Developer related to the construction of the Subleased Premises, to be used to reduce the Rent to be paid by the Targeted Subtenant, under the Lease, to the Developer, under the following terms and limitations:

- (a) For each new Qualifying New Job and Qualifying New Business that Developer timely establishes in compliance with the requirements of this Section 5.11.2, City will reimburse Developer a portion of the permit fees paid by Developer to City as credits to be used by Developer to reduce the rental rates paid by the Subtenant to the Developer under the Lease (individually a “Permit Reimbursements”; and collectively “Permit Reimbursements”) within ninety (90) days of receipt of Developer’s annual submission or the additional information submission as may be required thereunder. The Permit Reimbursements will be One Thousand Dollars (\$1,000.00) for each Qualifying New Job filled by a resident of Mesa, and Five Hundred Dollars (\$500.00) for each Qualifying New Job filled by a non-Mesa resident.



- (b) Developer will only be eligible to receive the Permit Reimbursements for each Qualifying New Job and Qualifying New Business as defined in this Agreement.
- (c) Within sixty (60) days of each annual anniversary of the Opening Date, Developer (or its permitted assignee, as the Tenant named in the Amended and Restated Lease and the Licensee named in the Amended and Restated License), or the Targeted Subtenant on behalf of Developer, must submit proof to City, by providing commercially reasonable evidence of compliance with all requirements and written certification of, the number of Qualifying New Jobs and Qualifying New Businesses for the twelve-month period starting from the Opening Date (and annually thereafter). Within thirty (30) days of receiving Developer's proof of such compliance, City may request, and Developer will promptly provide, additional information necessary to reasonably establish all requirements have been satisfied to qualify each Qualifying New Job or Qualifying New Business, as applicable. Developer may make only one request for Permit Reimbursements per year.
- (d) The City's total of Permit Reimbursements is capped at, and will not exceed, \$375,000.00.
- (e) The eligibility period for entitlement for Permit Reimbursements is ten (10) years from the Opening Date.
- (f) If Developer (or its permitted assignee, as the Tenant named in the Amended and Restated Lease and the Licensee named in the Amended and Restated License) does not comply with all the requirements of Section 4.17.2, Developer (or its permitted assignee, as the Tenant named in the Amended and Restated Lease and the Licensee named in the Amended and Restated License) will repay City an amount equal to the Permit Reimbursements provided to Developer, subject to Section 4.17.3(b).

4. Pomeroy Garage. The Parties agree to amend the first sentence of Section 5.2 to align the date that the City will execute and enter into the Amended and Restated License with the new Compliance Dates in Section 2 above; accordingly, the Parties agree the first sentence of Section 5.2 is hereby deleted in its entirety and replaced with the following:

5.2 Pomeroy Garage. Upon timely compliance by Developer with the requirements of Section 4.12(a) and before compliance with Section 4.12(b) (or any applicable Extended Compliance Date) of this Agreement, City will enter into the Amended and Restated License (the "**License**") in the form attached as Exhibit B to the Lease, to grant to Developer the right, *inter alia*, to enter into the Pomeroy Garage and construct the Pomeroy Garage Improvements and to sub-license parking spaces in the Pomeroy Garage to Developer's commercial, office and residential subtenants ("**Tenants**")

5. Lease of Premises. The Parties agree to revise Section 5.7 to align the date that the City will execute and enter into the Amended and Restated Lease with the new Compliance Dates in Section 2 above; accordingly, the Parties agree Section 5.7 is deleted in its entirety and replaced with the following:

5.7 Lease of Premises. Upon timely compliance by Developer with Section 4.12(a) and before compliance with Section 4.12(b) (or any applicable Extended Compliance Date) of the Agreement as amended by this Fifth Amendment, the City will enter into the Amended and Restated Lease to the Developer.

6. The Parties agree to amend Section 9.3(b) to align the exception to the requirement for Notice and cure with the revised Completion of Construction Dates in Section 2 of this Fifth Amendment above; accordingly, the Parties agree Section 9.3(b) is deleted in its entirety and replaced with the following:

9.3 Grace Periods; Notice of Cure.

(b) Notwithstanding the foregoing, the requirements of Notice and opportunity to cure described in Section 9.3(a) will not apply to any Event of Default arising or occurring as a result of Developer's failure to perform or satisfy any Compliance Date (or any applicable Extended Compliance Date) set forth in Section 4.12 of this Agreement (except for the Completion of Construction in Section 4.12(d) and (e) of this Agreement); and the failure of Developer to perform or satisfy any such Compliance Date or any applicable Extended Compliance Date other than Section 4.12(d) and (e) will entitle City immediately, and without further act or Notice required, to have any of its remedies set forth in Section 9.4(a), including, but not limited to, termination of this Agreement and the Amended and Restated Lease.

7. Restrictions on Assignment and Transfer. Notwithstanding the restrictions on assignment and transfer stated in Section 11.2.1, the Parties agree to consent to a new member being added as the Developer, as amended in the Second Amendment to the Develop Agreement, and to change the entity to be named as the Developer. Accordingly, the Parties agree to the addition of Sections 8.9 to the Development Agreement as follows:

8.9. Developer, as stated in this Amendment, represents and warrants that it has assumed all the rights and obligations of the Development Agreement.

8. Exhibits. The parties agree that Exhibit D to the Development Agreement is deleted in its entirety and replaced with the Exhibit D attached hereto.

9. Preservation of State Shared Revenue. Due to the passage of A.R.S.41-194.01 and the impact an allegation under this statute would have on the City, the Parties agree to add the new Section 11.25 as follows:

11.25. 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 Attorney General determines that this Agreement violates any provision of state law or the Constitution of Arizona, City and Developer shall amend the Development

Agreement to come into compliance to the satisfaction of the Attorney General. If the City and Developer, after a good faith effort, are not able to modify the Agreement so as to resolve the violation with the Attorney General 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), this Agreement 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 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 shall be entitled to terminate this Agreement, except if Developer posts such bond; 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 may terminate this Agreement and the Parties shall have no further obligations hereunder.

10. Severability. Except as expressly amended by this Amendment and its exhibits, there are no other amendments, modifications or revisions to the Development Agreement (and its exhibits), and all terms and conditions of the Development Agreement (including its exhibits) are and remain in full force and effect.

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

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

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

**CITY**

CITY OF MESA, ARIZONA,  
an Arizona municipal corporation

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

Its: City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by Christopher J. Brady the City Manager of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged that he signed the foregoing instrument on behalf of City.

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

My commission expires:

\_\_\_\_\_

**DEVELOPER**  
The Grid at Mesa, LLC  
A Delaware limited liability company

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

Its: \_\_\_\_\_  
Managing Partner

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by Tony Wall, the Managing Partner of The Grid at Mesa, LLC, a Delaware limited liability company, who acknowledged that he/she signed the foregoing instrument on behalf of Developer.

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

My commission expires:

\_\_\_\_\_

Exhibit A  
Amended and Restated Lease

## AMENDED AND RESTATED GROUND AND AIR LEASE

This Amended and Restated Ground and Air Lease ("Lease") is made as of the \_\_\_ day of \_\_\_\_\_ 2020 ("Effective Date") , by and between the City of Mesa, Arizona, an Arizona municipal corporation ("Landlord"), and The Grid at Mesa, LLC, a Delaware limited liability company ("Tenant"). Landlord and Tenant may be referred to herein individually as a "Party" or collectively as the "Parties."

### RECITALS

As background to this Amended and Restated Lease, the Parties state, recite, acknowledge and agree as follows, each of which will be a material term of this Lease:

A. Landlord is the owner of certain real property and real property interests located near the intersection of Pomeroy and Main Street in Mesa, Arizona (collectively, the "Premises").

B. On July 25<sup>th</sup>, 2018, Landlord and Palladium Grid, LLC, the predecessor in interest to Tenant, entered into both the Ground and Air Lease approved by Resolution No. 11068 and that certain First Amendment to Ground and Air Lease on July 25, 2018, approve by Resolution No.11093 ("Prior Lease").

C. Tenant is the successor in interest to the Tenant in the Prior Lease and the Developer in the Development Agreement. The Tenant has assumed all rights and obligations of the Development Agreement and the City consents to the assignment.

D. The Prior Lease automatically terminated due to non-compliance with the requirements of Section 4.12 of the Development Agreement, as stated in the Second and Fourth Amendments to the Development Agreement. Therefore, the Prior Lease is hereby null and void and no longer binding on the Parties and any provisions or obligations of the Prior Lease that is not included in this Lease is not enforceable.

E. Despite termination of the Prior Lease, the Parties desire to continue the development of the Premises consistent with the Development Agreement, as amended, to integrate the provisions of the Development Agreement, as amended, and to acknowledge both (i) Tenant's obligations to cause certain conditions to be met, and (ii) Tenant's obligations to make certain payments or reimbursements in the event of a failure of such conditions to be satisfied, the Parties agree that it is in the best interest of the Parties and the Project to enter into this Amended and Restated Lease.

F. Landlord wishes to cause the development of the Premises by Tenant for the construction of a mixed-use residential, commercial and office building, and certain public improvements, all in accordance with that certain "Development Agreement", as stated in Recital H, between Landlord (as "City" named in the Development Agreement) and Tenant (as "Developer" named in the Development Agreement), and to cause the construction of certain

other improvements on the appurtenant Licensed Area as defined in the Development Agreement.

G. The Premises consists of (i) portions of the parcel of land on which the Pomeroy Garage (the "Pomeroy Garage"), is located as legally described in Exhibit A-1 to this Lease (the "Pomeroy Parcel"), which is immediately adjacent to the Pomeroy Garage but does not include the Pomeroy Garage; (ii) certain property formerly in the public right-of-way, but which has been abandoned ("ROW") as legally described in Exhibit A-2 to this Lease; (iii) air rights immediately above the Pomeroy Garage ("Air Rights") as legally described in Exhibit A-3 to this Lease; and (iv) certain adjacent unimproved real property ("Land") as legally described in Exhibit A-4 to this Lease. The Premises is generally depicted in Exhibit A-5 to this Lease

H. The Project that is the subject of this Lease is governed by the Development Agreement between City and Tenant, acting as Developer, the assignee and successor in interest to Pallidum GRID, LLC, an Arizona limited liability company, which was the assignee and successor in interest to 3W Management, LLC, an Arizona limited liability company dated December 7, 2017, and recorded in the Maricopa County Recorder's Office ("Official Records") as Recording No. 20170915520, that certain First Amendment to Development Agreement dated February 27, 2018, and recorded in the Maricopa County Recorder's Office as Recording No. 20180149429, that certain Second Amendment to the Development Agreement dated July 24, 2018, and recorded in the Maricopa County Recorder's Office as Recording No. 20180565588, and that certain Third Amendment to Development Agreement dated July 25, 2018, and recorded in the Maricopa County Recorder's Office as Recording No. 20180565588, and that Fourth Amendment to the Development Agreement dated February 25, 2019, and recorded in the Maricopa County Recorder's Office as Recording No. 20190149140, and that Fifth Amendment the Parties contemplates entering into prior to this Lease (collectively the "Development Agreement").

I. The Development Agreement is for a mixed-use commercial and residential development that includes a minimum of 18,000 rentable square feet of commercial, retail/restaurant or office space; 180,000 square feet of apartment space; 24,000 square feet of row homes; parking garage improvements; and public improvements; all of which are described and defined as the "Project" in the Development Agreement.

J. The Parties now agree to enter into this Lease on the terms and conditions set forth below.

**SECTION 1 – FUNDAMENTAL LEASE PROVISIONS**

Commencement Date: \_\_\_\_\_, 2020.

Landlord: City of Mesa, Arizona, an Arizona municipal corporation, and any successor, assign or person or entity hereafter acquiring the Landlord's interest in all or a portion of this Lease.



Tenant: The Grid at Mesa, LLC, a Delaware limited liability company, and any permitted successors, assigns or persons or entities hereafter acquiring all of Tenant's interest in this Lease.

Premises: As defined in Recital A. For purposes of clarity, the Premises in this Lease does not include any Improvements, which does not include the Pomeroy Garage or any private improvements on the real property.

Project: Any and all buildings, structures, facilities, infrastructure and improvements erected, constructed or situated by Tenant on, over, under and upon the Premises or any part thereof during the Term, including any site improvements or temporary improvements, including improvements to the Licensed Area, and all as more particularly described in, and required to be constructed in accordance with, the Development Agreement (including, but not limited to, the Minimum Improvements and the Minimum Public Improvements, as defined in the Development Agreement).

Lease Term: As defined in Section 3.

Rent: As defined in Section 4.

Permitted Uses: As defined in Section 8.1.

Prohibited Uses: As defined in Section 8.2.

Project Documents: This Amended and Restated Lease, the Development Agreement, and the Amended and Restated License Agreement

The foregoing Fundamental Lease Provisions are an integral part of this Lease, and each reference in the body of this Lease to any Fundamental Lease Provision will be construed to incorporate all of the terms set forth above with respect to such Provisions. In the event there is any conflict between any provisions contained in this Section 1 and the balance of this Lease, the balance of this Lease will control. All of the foregoing Recitals and all Exhibits to this Lease are fully incorporated into this Lease and are made a part of this Lease for all purposes.

## **SECTION 2 - LEASE OF PREMISES**

2.1. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the promises, terms and conditions contained in this Lease, Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord. Tenant acknowledges that, as of the Commencement Date, it has inspected the Premises, is familiar with the condition of the Premises and the condition of title to the Premises, and accepts the same "as is" in its present condition, with no representation by, of or from Landlord, except as expressly set forth in Subsection 28.1.

2.2. The Premises do not include any improvements presently existing; nor do the Premises include any improvements to be constructed on the Premises by Tenant during the Term of the Lease. The Parties agree and acknowledge that no “government property improvement” as defined in A.R.S. §42-6201 is included in this Lease, however if it is determined during the term of this Lease that A.R.S. §42-6201 applies, Tenant shall pay and be responsible for any applicable government lease excise tax.

2.3. In connection with its development and use of the Premises, Tenant requires access into the Garage for the construction of certain required improvements and, subsequently, the right to use certain parking spaces within the Garage (the “Licensed Area”). Tenant agrees and acknowledges that the Licensed Area is not being leased to Tenant by Landlord, and is not subject to this Lease; however, Tenant’s use of the Licensed Area will be in accordance with a separate “Amended and Restated License Agreement” executed by Landlord (as Licensor) and Tenant (as Licensee) concurrently with this Lease and in the form attached to this Lease as Exhibit B (the “Amended and Restated License Agreement”).

2.4 Tenant is permitted to maintain projections from the Premises onto or over certain Landlord-owned real property, as shown on the Approved Plans (as defined in the Development Agreement).

2.5 Notwithstanding the lease of the Premises to Tenant, Tenant agrees and acknowledges that, during the Term of this Lease, the public shall have access to certain sidewalks, walkways stairs and elevators as generally depicted on Exhibit A-6. This public access will not be a breach by Landlord of Tenant’s right of quiet enjoyment of the Premises.

### **SECTION 3 - TERM**

3.1. The term of this Lease (“Term”) commences on the Commencement Date and will continue thereafter for a period of fifty (50) years, unless the Term is sooner terminated [or extended as permitted in this Lease]. Provided Tenant is not then in default hereunder beyond the expiration of any applicable cure period, Tenant may exercise its option to extend the lease term for one (1) additional term of forty-nine (49) years upon the same terms and conditions set forth in this Lease. In order to exercise such option to extend the lease term, Tenant will give to Landlord written notice of its election to do so not more than sixty (60) months, and not less than twenty-four (24) months, prior to the commencement date of any applicable extension period. If this Lease is extended in accordance with this Section 3.1, the Term will include any applicable extension period.

3.2. “Commencement Date” means the date set forth in Section 1 (Fundamental Lease Provisions).

3.3. This Lease will terminate automatically with no further action or notice necessary if Tenant fails to have met any of the Compliance Dates (as defined in the Development Agreement) required by Development Agreement with respect to the phased Commencement of Construction (as defined in the Development Agreement) of the Minimum Improvements and the Public Improvements (each as defined in the Development Agreement) as set forth in Section 4.12(b) and Section 4.12(c) of the Development Agreement (or such later

date as may be permitted by the terms of the Development Agreement). If this Lease terminates pursuant to this Section 3.3, both Landlord and Tenant acknowledge and agree that they will have no claims of any kind, whether legal, equitable or otherwise, against the other Party related to the Lease termination or the Project Documents, and each Party will bear its respective fees and costs incurred in connection with the Project and this Lease.

#### **SECTION 4 – RENT**

4.1. Beginning on the Lease Commencement Date and continuing throughout the term of the Lease, Tenant will pay “Rent” to Landlord, without notice or demand, for the use and occupancy of the Premises during the Term of this Lease, as set forth on Exhibit C.

4.2. Rent and any Additional Charges (as defined and provided for in Section 5), will be paid in lawful money of the United States of America to the “City of Mesa, Arizona” payable at 20 East Main Street, Mesa, Arizona 85211, Attn: Real Estate Administrator, or to such other place or person as Landlord may designate in writing to Tenant from time to time.

4.3. If Tenant fails or neglects to pay any amount due and payable to Landlord hereunder, and the delinquency continues for five (5) days after such amount is due (or in the case of payments other than Rent, within fifteen (15) days after Tenant receives written notice of such amount), then beginning on the sixteenth (16th) day, Tenant will pay to Landlord a late payment charge in the amount of ten percent (10%) of the delinquent amount; and said late payment charge will be in addition to, and not in lieu of, any other rights Landlord may have, including (but not limited to) Landlord’s rights granted in Section 20 of this Lease.

4.4 Pursuant to the Development Agreement, Tenant is entitled to a credit against Rent (“Rent Credit”) for its Reimbursable Public Improvement Costs (as defined in the Development Agreement), in accordance with the PI Cap Credit described on Exhibit C. At any time that Tenant is not in default of any term or condition of this Lease, and provided that a portion of the PI Cap Credit remains available for offset, Tenant may offset, against any applicable monthly charge of Rent then owing (but not against Additional Charges, or any other amounts owing under or in connection with this Lease), the amounts shown in Exhibit C. Notwithstanding the foregoing, (i) in the event of a Default, the Rent Credit will be deemed fully extinguished; (ii) the Rent Credit is not transferrable to any leasehold mortgagee that succeeds to the interest of Tenant pursuant to Section 17 of this Lease, and will be deemed fully extinguished in such event; (iii) the Rent Credit will not reduce any obligation of Tenant owing to Landlord as a result of Tenant’s Default pursuant to Section 18 of this Lease; and (iv) any unutilized portion of the Rent Credit will not reduce the Purchase Price for the Premises in the event Tenant exercises its Purchase Option pursuant to Section 30 of this Lease.

#### **SECTION 5 - ADDITIONAL CHARGES**

All taxes, including the City transaction privilege tax, assessments, insurance premiums, charges, costs and expenses which Tenant assumes, agrees or is obligated by law to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Tenant’s failure to pay the same as herein provided, and all other damages, costs and expenses

which Landlord may suffer or incur for which Tenant is liable under this Lease, and any and all other sums which may become due, by reason of any default of Tenant or failure on Tenant's part to comply with the agreements, terms, covenants and conditions of this Lease on Tenant's part to be performed, will be referred to herein as "Additional Charges" and, in the event of their nonpayment, Landlord will have, with respect thereto, all rights and remedies herein provided and available in law or equity in the event of nonpayment of Rent. If not paid when due, all Rent and any Additional Charges payable to Landlord will accrue interest at ten percent (10%) per annum from their due date until paid.

## **SECTION 6 – NO COUNTERCLAIM OR ABATEMENT OF RENT**

Except for the Rent Credit, Rent and Additional Charges and all other sums payable by Tenant hereunder will be paid without notice, demand, counterclaim, setoff, recoupment, deduction or defense of any kind or nature and without abatement, suspension, deferment, diminution or reduction.

## **SECTION 7 - TAXES, ASSESSMENTS AND UTILITIES**

7.1. It is the intention of the Parties hereto that, insofar as the same may be lawfully done, Landlord will be free from all costs, expenses, obligations and all such taxes, assessments and all such other governmental impositions and charges, and that this Lease will yield net to Landlord not less than the Rent reserved hereunder, throughout the Term. Tenant will pay and discharge, as and when the same become due and payable without penalty, all real estate, personal property, business, transaction privilege, occupation, government lease excise taxes (if applicable) and occupational license taxes and assessments (including, but not limited to, amounts that would customarily be assessed by SID 228 and paid [whether as a required or a voluntary payment] by a private property owner) and all other governmental taxes, impositions and charges of every kind and nature, general or special, foreseen or unforeseen, whether similar or dissimilar to any of the foregoing, which at any time during the Term of this Lease be or become due and payable by Landlord or Tenant and which are levied, assessed or imposed:

a. Upon or with respect to, or will be or become liens upon, the Premises and the Garage, or any portion thereof or any interest of Landlord or Tenant therein or under this Lease (other than liens created or granted by Landlord in its capacity as the fee owner of the real property constituting the Premises, as opposed to liens created by Landlord in its capacity as a municipality, which are subject to this Section 7);

b. Upon or with respect to the possession, operation, management, maintenance, alteration, repair, rebuilding, use or occupancy of the Premises and the Garage, or any portion thereof; and

c. Upon this transaction or any document to which Tenant is a party or is bound, creating or transferring an interest or an estate in the Premises, under or by virtue of any present or future law, statute, charter, ordinance, regulation, or other requirement of any governmental authority.

7.2. Tenant has the right to contest any claim, tax or assessment levied against the Premises or any interests therein and property thereon during the term of the Lease or from Tenant's activities by posting bonds to prevent enforcement of any lien resulting therefrom. Tenant agrees to protect and hold Landlord harmless (and all interest of Landlord in the Premises) and all interests therein and improvements thereon for, from and against any and all claims, taxes, assessments and like charges and from any lien therefor or sale or other proceedings to enforce payment thereof, and all costs in connection therewith, but only as to those that arise or occur during the Term of this Lease. Landlord agrees to cooperate with Tenant and will promptly execute and deliver for filing any appropriate documents with reference to any such contest when so requested by Tenant.

7.3. Tenant, upon Landlord's written request, will furnish to Landlord, within twenty (20) days thereafter, proof of the payment of any taxes, impositions or charges which Tenant and not Landlord has the obligation to pay under the provisions of this SECTION 7.

7.4. Tenant will be solely responsible for, and will pay the cost of, constructing or installing utility hookups from existing utility installations to the Premises and will be solely responsible for, and will pay the cost of, all utility services consumed by Tenant on the Premises.

## **SECTION 8 – USE OF PREMISES**

8.1. Permitted Uses. Subject to Section 8.2, the Project and Premises will be developed in accordance with the Development Agreement and used in accordance with Applicable Laws, including the Zoning (collectively, the "Permitted Uses"). Tenant will use the Premises solely for the Permitted Uses and not for any other purpose without the prior written consent of Landlord, which consent may be withheld, conditioned or delayed in Landlord's sole, absolute and unfettered discretion. Tenant will not use or permit the Premises to be used in violation of the Regulatory Requirements as defined in Section 11, below. Use of the Premises in violation of the terms of this Section 8 will cause Tenant to be in default hereunder; however, Tenant will have the right to cure said default pursuant to the provisions of Section 18 of this Lease.

8.2. Prohibited Uses. Tenant will not use, or permit the use of, the Premises for any use or purpose listed in Exhibit D to this Lease (the "Prohibited Uses").

## **SECTION 9 – CONSTRUCTION OF IMPROVEMENTS**

Tenant, at its sole cost and expense, will cause to be constructed and completed the Minimum Improvements, the Public Improvements, Additional Public Improvements and all other buildings, structures, facilities and other leasehold improvements, fixtures, and equipment constituting the Project (collectively, the "Improvements") on the Premises in compliance with the Development Agreement, the City-approved Site Plan, the Zoning, and all generally applicable City requirements which are consistent with the use of the Premises as permitted by the Development Agreement. During the Term, Tenant will operate and maintain, at its sole cost and expense, all Improvements on the Premises in compliance with all Applicable Laws, including but not limited to, the Americans with Disabilities Act. Tenant will pursue diligently the construction of all Improvements to completion. For purposes of this Lease, the term

“Applicable Laws” means the federal, state, county and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City of Mesa, as they may be amended from time to time, which apply to the development, use and operation of the Premises and the Improvements during the Term of this Lease.

### **SECTION 10 – MAINTENANCE AND REPAIRS**

10.1. Tenant at all times during the Term of this Lease, and at Tenant’s sole cost and expense, will keep and maintain the Premises in good order and repair and in a clean and sanitary condition, including but not limited to all buildings, facilities, structures, driveways, landscaped areas, and other improvements included within the Premises (including all exterior painted surfaces of all buildings, structures and improvements included within the Premises), and all equipment and appurtenances, both interior and exterior, structural and non-structural, ordinary or extraordinary, howsoever the necessity or desirability of repairs may occur, but excluding any Public Improvements and Additional Public Improvements (as defined in the Development Agreement) conveyed to, and accepted by the City in accordance with Section 4.14 of the Development Agreement located on or within the Premises. All repairs, replacements and renewals will be made promptly and be equal in quality and class to the original work. Tenant waives any right created by any legal requirement (now or hereafter in force) to make repairs to the Premises at Landlord’s expense, it being understood that Landlord will in no event be required to make any alterations, improvements or repairs during the Term; except that if any damage to the buildings, facilities, structures, or improvements on the Premises, or to any equipment or appurtenances located thereon, will have been solely as a result of Landlord’s grossly negligent or intentional actions (but expressly excluding any matter pertaining to or arising from the condition of the Premises as of the Effective Date), Landlord will pay the cost therefore to Tenant.

10.2. Tenant will provide and maintain a solid waste compactor to benefit the Premises at a location within the Licensed Area set forth in the Approved Plans, in which to place any solid waste, and cause such solid waste to be removed for recycling or disposal as often as is required to maintain a sanitary condition. Tenant (and any subtenants) are obligated to utilize City of Mesa commercial solid waste services at rates established by the City Council, for so long as the City is willing to continue to provide such services.

### **SECTION 11 – REGULATORY REQUIREMENTS**

11.1. Tenant will promptly observe and comply with all present and future laws, ordinances, requirements, rules and regulations of all governmental authorities having or claiming jurisdiction over the Premises or any part thereof and of all requirements in written insurance policies covering the Premises or any part thereof required in this Section 11 below (the “Regulatory Requirements”). Without limiting the generality of the foregoing, Tenant will also procure each and every permit, license, certificate or other authorization required in connection with the lawful and proper use of the Premises or required in connection with any building, structure or improvement hereafter erected thereon.

11.2. Tenant covenants and agrees not to use, generate, release, manage, treat, manufacture, store, or dispose of, on, under or about, or transport to or from (any of the

foregoing hereinafter described as “Use”) the Premises any Hazardous Materials (other than De Minimis Amounts). Tenant further covenants and agrees to pay all costs and expenses associated with enforcement, removal, remedial or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to Use of any Hazardous Materials in any amount by Tenant, its employees, agents, invitees, subtenants, licensees, assignees or contractors. For purposes of this Lease (1) the term “Hazardous Materials” includes but not be limited to asbestos, urea formaldehyde, polychlorinated biphenyls, oil, petroleum products, pesticides, radioactive materials, hazardous wastes, biomedical wastes, toxic substances and any other related or dangerous, toxic or hazardous chemical, material or substance defined as hazardous or regulated or as a pollutant or contaminant in, or the Use of or exposure to which is prohibited, limited, governed or regulated by, any Hazardous Materials Laws; (2) the term “De Minimis Amounts” means, with respect to any given level of Hazardous Materials, that such level or quantity of Hazardous Materials in any form or combination of form (i) does not constitute a violation of any Hazardous Materials Laws and (ii) is customarily employed in, or associated with, similar facilities; and (3) the term “Hazardous Materials Laws” means any federal, state, county, municipal, local or other statute, law, ordinance or regulation now or hereafter enacted which may relate to or deal with the protection of human health or the environment, including but not be limited to the Comprehensive Environment Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, et seq.; the Toxic Substances Control Act of 1976, 15 U.S.C. Section 2601, et seq.; Ariz. Rev. Stat. Ann., Title 49 (the “Arizona Environmental Quality Act of 1986”); and any rules or regulations legally adopted or promulgated pursuant to any of the foregoing as they may be amended or replaced from time to time.

11.3. Either party has the right, at its sole cost and expense, to contest the validity of any Regulatory Requirements applicable to the Premises by appropriate proceedings diligently conducted in good faith provided, however, that no such contest will subject the other party to any liability, cost or expense.

11.4. Landlord agrees to join in the execution of any instruments which may reasonably be required in order for Tenant to procure the issuance of any licenses, occupational permits, building permits or other government approvals required by Tenant in its use, occupancy or construction of the Premises in accordance with the Development Agreement. Tenant will indemnify, defend, pay and hold harmless Landlord for, from and against any expense or loss whatsoever occasioned by Landlord’s presence as a party to any such instrument, application or permit, except to the extent caused solely by the grossly negligent or intentional bad acts of Landlord, its agents, representatives, officers, directors, elected and appointed officials and employees.

## **SECTION 12 – LIENS**

12.1. Subject to Section 17 of this Lease, Tenant has no authority to do any act or make any contract that may create or be the basis for any lien, mortgage or other encumbrance upon any interest of Landlord in the real property included within the Premises, provided however that Tenant is not prohibited from entering into any contracts in Tenant’s capacity as a

tenant, rather than as the title holder of said real property. Should Tenant cause any construction, alterations, rebuildings, restorations, replacements, changes, additions, improvements or repairs to be made on the Premises, or cause any labor to be performed or material to be furnished thereon, therein or thereto, neither Landlord nor the real property included within the Premises will, under any circumstances, be liable for the payment of any expense incurred or for the value of any work done or material furnished, and Tenant will be solely and wholly responsible to contractors, laborers and materialmen performing such labor and furnishing such material.

12.2. If, because of any error, act, or omission (or alleged error, act or omission) of either Tenant or Landlord, any mechanics', materialmen's or other lien, charge or order for the payment of money will be filed or recorded against the real property included within the Premises or against Landlord (whether or not such lien, charge or order is valid or enforceable as such). Tenant or Landlord, as the case may be, will, at its own expense, either cause the same to be discharged of record or bonded over pursuant to A.R.S. § 33-1004 within thirty (30) days after either has received from the other a written notice requesting such discharge.

12.3. Landlord will keep the fee title free and clear of all liens and encumbrances that may adversely affect Tenant's leasehold interest in this Lease.

### **SECTION 13 – PROPERTY AND PUBLIC LIABILITY INSURANCE**

Tenant will at all times, throughout the Term of this Lease, keep the Premises insured pursuant to the requirements set forth in Exhibit E.

### **SECTION 14 – DAMAGE OR DESTRUCTION**

14.1. In the event of damage to or destruction of any of the buildings, structures or improvements included within the Premises by fire or other casualty, Tenant will give Landlord and any mortgagee immediate notice thereof and will at its own expense and whether or not the insurance proceeds are sufficient for the purpose, promptly commence and thereafter diligently pursue completion of the repair, restoration or rebuilding of the same so that upon completion of such repairs, restoration or rebuilding, the value and rental value of the buildings, structures or improvements will be substantially equal to the value and rental value thereof immediately prior to the occurrence of such fire or other casualty.

14.2. Notwithstanding anything to the contrary contained herein, if the buildings, structures or improvements included within the Premises should be rendered untenable by fire or other casualty during the last five (5) years of the Lease to the extent of fifty percent (50%) or more of the replacement cost of said buildings, structures or improvements, Tenant may, at Tenant's option, terminate this Lease, provided however, that Tenant will pay all casualty insurance proceeds received or receivable by reason of the destruction of said buildings, structures or improvements in the following order of priority: (1) to any leasehold mortgagees in the order of their priority for the outstanding balances of said mortgages; (2) to Tenant for the costs of restoring the Premises substantially to its condition on the Lease commencement Date; (3) to Landlord for any unpaid Rent; and (4) any residual to Tenant. Tenant's option to terminate will be evidenced by a written notice given to Landlord within sixty (60) days after the occurrence of such damage or destruction.



## SECTION 15 – INDEMNIFICATION

15.1. Tenant will indemnify, defend, pay and hold Landlord, its agents, representatives, officers, directors, elected and appointed officials and employees harmless for, from and against any and 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 Landlord, its agents, representatives, officers, directors, elected or appointed officials, and employees, by reason of any of the following: (i) any act or omission by Tenant, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Tenant's obligations under this Lease; (ii) any use or nonuse of, or any condition created by Tenant on the Premises or any part thereof; (iii) any accident, injury to or death of persons (including workmen) or loss of or damage to property occurring on or about the Premises or any part thereof; (iv) performance of any labor or services or the furnishing of any materials or other property with respect to the Premises or any part thereof; (v) any failure on the part of Tenant to comply with any of the matters set forth in Section 11 of this Lease, including but not limited to any failure by Tenant to clean up any Hazardous Materials; and (iv) all Claims relating to or arising from design, construction and structural engineering acts or omissions related in any way to, of or in connection with, the existing Garage, and all subsequent design, construction, engineering and other work and improvements by or on behalf of Tenant (collectively, "Indemnity").

15.2. In the event Landlord, its agents, representatives, officers, directors, elected and appointed officials, and employees should be made a defendant in any action, suit or proceeding brought by reason of any the occurrences described in this Section 15, Tenant 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 Tenant and reasonably approved by Landlord. Except for the negligent or intentional acts of Landlord, its agents, representatives, officers, directors, elected and appointed officials, and employees, if any such action, suit or proceeding should result in a final judgment against Landlord, Tenant will promptly satisfy and discharge such judgment or will cause such judgment to be promptly satisfied and discharged.

15.3. Notwithstanding the terms and conditions contained in Subsection 15.2 above, Tenant is required to indemnify, defend, pay and hold harmless Landlord, its agents, representatives, officers, directors, elected and appointed officials, and employees in the event negligence is imputed by operation of law against Landlord, its agents, representatives, officers, directors, elected and appointed officials, and employees as a result of the actions or non-action of Tenant, its agents, servants, employees, directors, representatives, officials, customers, vendors, guests, licensees or invitees on the Premises.

15.4. Tenant's obligations of Indemnity will survive the expiration or earlier termination of this Lease.

## **SECTION 16 – ASSIGNMENT AND SUBLETTING**

### **16.1. Assignment.**

a. Prior to Completion of Construction (as defined in the Development Agreement) of all of the Minimum Improvements, Minimum Public Improvements, and Additional Public Improvements (each as defined in the Development Agreement), no assignment or similar transfer of Tenant's interest in the Premises or this Lease, or in the current management, ownership or control of Tenant (each, a "Transfer") may occur without the prior written consent of Landlord, which consent may be given or withheld in Landlord's sole and unfettered discretion. The restrictions on Transfer set forth in this Section 16.1(a) will terminate automatically, and without further notice or action, upon Completion of Construction (as defined in the Development Agreement); provided, however, that no Transfer will release or discharge Tenant from any of its obligations arising in or under this Lease, including but not limited to the obligations of Indemnity set forth in Section 15; 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 Tenant arising in or under this Lease, including but not limited to all obligations of Indemnity set forth in Section 15. No voluntary or involuntary successor in interest to Tenant will acquire any rights or powers under this Lease, except as expressly set forth herein, and any Transfer in violation of this Lease will be void, and not voidable.

b. Notwithstanding any term or provision of Section 16.1(a) or Section 17 to the contrary, this Lease (and Tenant's interest in the Premises) may not be transferred, assigned or hypothecated separately or apart from Tenant's (as Developer) interest in, and rights and obligations under, the Development Agreement, and Tenant's (as Licensee) interest in, and rights and obligations under, the License; and any transfer, assignment or hypothecation in violation of this Section 16.1(b) will be void, and not voidable.

c. Tenant has the right at any time and from time to time during the Term of this Lease to assign or otherwise encumber by way of mortgages, deeds of trust or other documents or instruments, all or any part of its right, title and interest in and to this Lease to any person or entity for the purpose of obtaining financing in accordance with the terms and conditions of Section 17.

16.2. Subleases. Tenant may sublet all or any portion of the Premises and all or any portion of or any space within any building or structure located on the Premises, for any Permitted Use without first obtaining the written consent of Landlord, but Landlord is hereby given the right to inspect all subleases upon reasonable notice to Tenant. A sublease will (i) not relieve Tenant of its liability for the full performance of all of the terms, agreements, covenants and conditions of this Lease unless otherwise agreed to by Landlord; (ii) not grant any rights to the subtenant which are inconsistent with the rights of Tenant under this Lease; (iii) be expressly subject and subordinate to each and every provision of this Lease; (iv) have a term that expires on or before the expiration of the Term; and (v) provide that if Landlord succeeds to Tenant's position, Landlord will not be liable to subtenant for any prepayment of more than one (1) month's Base Rent, or for deposits or other payments which have not been actually delivered to Landlord by the subtenant, provided however, that the rent and common area maintenance

(CAM) charges may be allocated in differing amounts between each sublease. Any and all sublease agreements will also provide that in the event of termination, re-entry, or dispossession by Landlord under this Lease, Landlord may, at its option, take over all of the right, title and interest of Tenant as sublessor under such sublease, and such subtenant will, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of the sublease, except that Landlord will not (a) be liable for any previous act or omission of Tenant under the sublease; (b) be subject to any offset not expressly provided in the sublease, that theretofore accrued to the subtenant against Tenant; or (c) be bound by any previous modification of such sublease or by any previous prepayment of more than one (1) month's Base Rent.

16.3 Sublease with Targeted Subtenant. On or before December 31, 2021, in order to receive the Economic Development Credits and the Permit Reimbursements, Tenant must enter into a sublease with an anchor tenant, which satisfies all of the requirements of Sections 4.17.1, 4.17.2, 5.11.1, and 5.11.2 of the Development Agreement and the requirements stated below, in the Premises that provides collaborative co-working spaces to encourage entrepreneurial endeavors (particularly emphasizing technology and innovation), (the "Targeted Subtenant").

a. Required Sublease Terms. The Targeted Subtenant's sublease must be for not fewer than 13,000 square feet of the Premise's commercial space (the "Subleased Premises") for a sublease term of not fewer than ten (10) years (the "Sublease Term"); the Targeted Subtenant must be open to the public for business in the entire Subleased Premises on or before the Opening Date; and the Targeted Subtenant must remain open to the public for business in the entire Subleased Premises for not fewer than ten (10) years from the Opening Date. "Opening Date" in this Lease means the earliest of (i) the date on which the Subleased Premises is first open to the public for business, or (ii) the date on which the final certificate of occupancy is approved for the Subleased Premises, or (iii) December 31, 2021; provided, however, the Parties may agree in writing to a different date as the Opening Date so long as such date is within three (3) months of either of the three (3) dates described in this definition.

b. Agreement with Post-Secondary Institution. The Targeted Subtenant must use commercially reasonable, good faith efforts to enter into an agreement with a post-secondary institution located in the City of Mesa to provide programming classes and entrepreneurial courses as part of an advanced degree or certificate program, and the Targeted Subtenant will demonstrate to Tenant and Landlord that the Targeted Subtenant has either entered into such an agreement with a post-secondary institution located in the City of Mesa prior to the Opening Date, or has used commercially reasonable, good faith efforts to do so.

c. Public Events. The Targeted Subtenant must provide free public programs, workshops or seminars to assist new businesses and entrepreneurs ("Public Events") for each year for the first ten (10) years of the Sublease Term. In the first year of the Sublease Term, the Targeted Subtenant will provide not fewer than fifty (50) Public Events; in the second year of the Sublease Term, the Targeted Subtenant will provide not fewer than one hundred (100) Public Events; and in the third through tenth years, inclusive, of the Sublease Term, the Targeted Subtenant will provide not fewer than one hundred and fifty (150) Public events during each such year.

d. Scholarships. The Targeted Subtenant must provide, for each year for the first ten (10) years of the Sublease Term, not fewer than fifteen (15) scholarships per year to secondary school students residing in the City of Mesa for coding, programming and related business technology classes (or other educational classes as approved by City, through its City Manager or designee, in the Manager's or designee's reasonable discretion) provided by the Target Subtenant and at the Subleased Premises or at another facility within the City of Mesa.

e. Entrepreneurial Assistance. During each year of the Sublease Term, the Targeted Subtenant will offer (i) assistance, including but not limited to technical support, for Qualifying Businesses within the Subleased Premises with respect to attracting investors and capital, (ii) an updated directory of investors seeking to capitalize business of the nature of the Qualifying Businesses, and (iii) events to introduce investors to Qualifying Businesses.

f. Qualifying New Businesses. The Targeted Subtenant must create twenty-five (25) Qualifying New Businesses at the Project within ten (10) years of the Opening Date. To be a "Qualifying New Business" means that either of the following is satisfied: (1) it is a business that subleases (or sublicenses) office space within the Subleased Premises from the Targeted Subtenant for twelve (12) consecutive months and uses such office space as its primary professional office (including but not limited to the receipt of physical mail or other deliveries), or (2) it is a business located in the City of Mesa and started by a tenant that subleases (or sublicenses) office space from the Targeted Subtenant and is open for twelve (12) consecutive months. A Qualifying New Business expressly excludes any existing business located in the City of Mesa that relocates to office space within the Subleased Premises.

g. Qualifying New Jobs. The Targeted Subtenant, or Qualifying New Businesses, must create five hundred (500) Qualifying New Jobs at the Project within ten (10) years of the Opening Date, of which Three Hundred (300) of the Five Hundred (500) Qualifying New Jobs must be filled by employees who are residents of the City of Mesa for at least twelve (12) consecutive months. To be a "Qualifying New Job" means that all of the following are satisfied: (1) the job (or position) is a paid employment position where the employee is paid for at least thirty-five (35) hours each week for twelve (12) months within any given consecutive sixteen-month period by the Targeted Subtenant or a Qualifying New Business, (2) the position must be filled by an employee (or employees) of the Targeted Subtenant or a Qualifying New Business for twelve (12) consecutive months, and (3) the principal place of work of the employee (or employees) filling the position must be within the Targeted Subtenant's space at the Project (or within an expanded premises of the Targeted Subtenant or a Qualifying New Business that is located within the City of Mesa) for twelve consecutive months. The City Manager (or designee) will have the authority to review and reasonably determine compliance with this provision.

h. Demonstration of Compliance with Requirements.

(1) Within thirty (30) days of a date specific requirement in Section 16.3(a) and Section 16.3(b), Tenant must provide commercially reasonable evidence to Landlord establishing compliance with each requirement. Every year during the Sublease Term but within sixty (60) days of each annual anniversary of a yearly requirement in Section 16.3(c),

Section 16.3(d) and Section 16.3(e), Tenant must provide commercially reasonable evidence to Landlord establishing compliance with each annual requirement. Landlord and Tenant may agree in writing upon a single annual anniversary date to establish compliance for the requirements in Section 16.3(c), Section 16.3(d) and Section 16.3(e).

(2) No later than sixty (60) days after the first anniversary of the Opening Date, and no later than sixty (60) days after each anniversary of the Opening Date thereafter, for the first ten (10) years of the Sublease Term, Tenant, or the Targeted Subtenant on behalf of Tenant, must submit proof to City, by providing commercially reasonable evidence of the progress of the Targeted Subtenant's compliance with all requirements and written certification of, the number of Qualifying New Jobs and Qualifying New Businesses for the twelve-month period from and after the Opening Date. Within thirty (30) days of receiving the submissions, City may request, and Tenant, or the Targeted Subtenant on behalf of Tenant will promptly provide, additional information necessary to reasonably establish all requirements have been satisfied to qualify each Qualifying New Job or Qualifying New Business, as applicable.

i. Repayment Upon Default. Upon any uncured Event of Default relating to this Section 16.3, relating to performance by the Targeted Subtenant, Tenant will pay to City that amount of money equal to the Economic Development Credits and Permit Reimbursements received by Developer, which payments by Tenant (i) will be paid as Rent under the Lease and as the License Fee under the License; (ii) will be paid in equal installments over the same period of time in which such credits and reimbursements were received by Developer; and (iii) will commence with the first payment of Rent (under the Lease) or License Fee (under the License) owing after the uncured Event of Default, as follows:

	<b>Economic Development Incentive (due back to City)</b>	<b>New Job Creation Permit Reimbursement (due back to City)</b>	
<b>Vacate Years 1-5</b>	100%	100%	
<b>Vacate Year 6</b>	50%	If 500/300 <sup>1</sup> New Jobs Created: 50%	If less than 500/300 <sup>1</sup> New Jobs Created: 100%
<b>Vacate Year 7</b>	40%	If 500/300 <sup>1</sup> New Jobs Created: 40%	If less than 500/300 <sup>1</sup> New Jobs Created: 80%
<b>Vacate Year 8</b>	30%	If 500/300 <sup>1</sup> New Jobs Created: 30%	If less than 500/300 <sup>1</sup> New Jobs Created: 60%
<b>Vacate Year 9</b>	20%	If 500/300 <sup>1</sup> New Jobs Created: 20%	If less than 500/300 <sup>1</sup> New Jobs Created: 40%
<b>Vacate Year 10</b>	10%	If 500/300 <sup>1</sup> New Jobs Created: 10%	If less than 500/300 <sup>1</sup> New Jobs Created: 20%

<sup>1</sup>500 total New Jobs, of which 300 are filled by Mesa residents

j. Additional Limitations. The Economic Development Credits and Permit Reimbursements (as defined in the Development Agreement, as amended) (i) are not transferrable (directly or by operation of law) to any leasehold mortgagee that succeeds to the interest of Tenant pursuant to Section 17 of the Lease, and will be deemed fully extinguished in

such event; (ii) will not reduce any obligation of Tenant owing to Landlord as a result of Tenant's Default under the Lease; and (iii) to the extent of any unutilized or unpaid portion of the Economic Development Credits and Permit Reimbursements, will not reduce the Purchase Price for the Premises in the event Tenant exercises its Purchase Option pursuant to Section 30 of the Lease.

### **SECTION 17 – HYPOTHECATION OF LEASEHOLD ESTATE**

17.1. Subject to Section 16.1(b), Tenant has the right to mortgage its interest in this Lease (but in no event the fee interest of the real property included within the Premises and the Licensed Area) to a bank, insurance company or other bona fide institutional lender without first obtaining the written consent of Landlord, provided that any leasehold mortgage will be subject and subordinate to the rights of Landlord hereunder. As used in this Section 17 and throughout this Lease, the noun "mortgage" includes a deed of trust, the verb "mortgage" includes the creation of a deed of trust, and the word "mortgagee" includes the beneficiary under a deed of trust. Within five (5) days of entering into a leasehold mortgage, Tenant will provide written notice to Landlord of such leasehold mortgage.

17.2. If Tenant mortgages this Lease in accordance with Subsection 17.1 and has furnished Landlord the name and mailing address of the mortgagee, then Landlord will not be empowered to terminate this Lease by reason of the occurrence of any default hereunder (except as expressly provided in Section 3.3), unless Landlord has given the mortgagee under such leasehold mortgage a copy of its notice to Tenant of such default and the default has continued for ninety (90) days after the mortgagee has been given such notice.

17.3. The leasehold mortgagee will have the right to remedy any Default under this Lease and Landlord will accept such performance by or at the instance of such leasehold mortgagee as if the same had been made by Tenant.

17.4. In case of Default, Landlord may not terminate this Lease by reason of the occurrence of such Default if leasehold mortgagee, within ninety (90) days after the giving of notice of such Default as provided in Subsection 17.2, has commenced foreclosure or similar proceedings under the mortgage for the purpose of acquiring Tenant's interest in this Lease and thereafter diligently prosecutes the same; provided that during the pendency of such foreclosure proceedings and the period of redemption, the leasehold mortgagee remedies any existing Defaults under this Lease that are capable of being remedied by the leasehold mortgagee, pays to Landlord, when due, all Rent, Additional Charges and other sums due hereunder and performs or causes to be performed all other agreements, terms, covenants and conditions arising out of or contained herein in this Lease.

17.5. The leasehold mortgagee, or a third-party purchaser, may become the legal owner or successor and holder of the leasehold estate under this Lease without first obtaining the written consent of Landlord, by foreclosure of its leasehold mortgage or as a result of the assignment of this Lease in lieu of foreclosure. Upon becoming the owner or successor and holder of the leasehold estate, leasehold mortgagee or third party purchaser may have all rights, privileges, obligations and liabilities of the original Tenant, except that leasehold mortgagee or third party purchaser may have the right to assign its interest under this Lease and, provided the

assignee assumes and agrees to perform and be bound by all of the terms hereof, to be relieved of further liability hereunder.

17.6. Landlord agrees that the name of the leasehold mortgagee may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant under this Lease, and provided the leasehold mortgagee remains a mortgagee or becomes the legal owner and holder of the leasehold estate under this Lease, it may receive and hold insurance proceeds thereunder on the condition that the insurance proceeds be applied in the manner specified in this Lease.

17.7. Landlord agrees that in the event of termination of this Lease by reason of the bankruptcy of Tenant or any Default by Tenant, that Landlord will enter into a new lease for the Premises with the leasehold mortgagee or its nominee for the remainder of the Term effective as of the date of such termination, at the Rent, and upon the terms, provisions, covenants and agreement contained in this Lease, subject to the rights, if any, of the parties then in possession of any part of the Premises, provided:

a. The mortgagee or its nominee must make written request upon Landlord for the new lease agreement within thirty (30) days after the date the mortgagee receives written notice from Landlord of such termination and the Rent due and unpaid. The written request must be accompanied by any then due payments of Rent under this Lease and the satisfaction of all uncured defaults of Tenant (expressly including all matters required in Section 17.7(c) below); and the mortgagee or nominee must execute and deliver the new lease agreement within thirty (30) days after Landlord has delivered it.

b. The mortgagee or its nominee must pay to Landlord, at the time of execution and delivery of the new lease agreement, any and all sums which would then be due pursuant to this Lease but for such termination and, in addition thereto, any reasonable expenses, including reasonable attorney's fees, which Landlord has incurred by reason of such default, including the costs of negotiation, approval and recording the new lease agreement.

c. In order to succeed to Tenant's interest under this Lease, and to receive a new lease agreement pursuant to Section 17.7(c), the mortgagee or its nominee must perform and observe all covenants in this Lease to be performed by Tenant and must further remedy any other defaults under covenants which Tenant was obligated to perform under the terms of this Lease. If there are any continuing or past defaults that the mortgagee cannot cure due solely to the circumstances of the default, then the performance requirement will be waived.

d. The new lease agreement will be expressly made subject to the rights that survive, if any, of Tenant under this Lease and the rights of any subtenants.

e. The tenant under the new lease agreement will have the same right, title and interest in and to the Premises as Tenant has under this Lease.

f. If, after receiving a notice of default under this Lease, the leasehold mortgagee decides to foreclose or otherwise exercise remedies against Tenant, Landlord agrees to forebear from the exercise of any remedies available to Landlord under this Lease for so long as the leasehold mortgagee pays all Rent hereunder, and otherwise performs or causes to be performed

the obligations of Tenant hereunder, as and when due, and diligently pursues the exercise of such remedies, including without limitation, any period during which the leasehold mortgagee seeks possession of the Premises pursuant to judicial proceedings (including any period during which the leasehold mortgagee is subject to a stay imposed by any court). Notwithstanding anything to the contrary, Landlord agrees to recognize as "Tenant" under this Lease the leasehold mortgagee, its nominee or any purchaser at a foreclosure sale or by assignment in lieu of foreclosure.

17.8. Except in connection with a leasehold mortgagee's exercise of any right it may have to obtain a new lease under Subsection 17.6 above, or any purchase, assumption or other acquisition in Subsection 17.6 above, a leasehold mortgagee will not, as a condition to the exercise of its rights hereunder, be required to assume any personal liability for the payment and performance of the obligations of Tenant hereunder, and any such payment or performance or other act by the leasehold mortgagee hereunder will not be construed as an undertaking by such leasehold mortgagee to assume such personal liability.

### **SECTION 18 – DEFAULTS BY TENANT**

18.1. Each of the following occurrences will be a default ("Default") of this Lease:

a. If Tenant fails to pay any Rent, Additional Charges or any other sum due hereunder promptly when due (a "Payment Breach") and such Payment Breach continues for twenty (20) days after notice thereof in writing to Tenant.

b. If Tenant fails to perform or comply with any of the other covenants, agreements, conditions or undertakings herein to be kept, observed and performed by Tenant other than a Payment Breach (but expressly not including the occurrence of any event referred to in subparagraphs (c) and (d) of this Subsection 18.1, for which no cure period is given) and such failure continues for thirty (30) days after notice thereof in writing to Tenant (or such longer period as may be specified in this Lease, e.g., Section 19.2); provided, however, that no period to cure will be permitted with respect to the defaults listed in Section 3.3.

c. If Tenant voluntarily files any petition, or has an involuntary petition filed on its behalf, under any chapter or section of the Federal Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing, or files an answer admitting insolvency or inability to pay its debts; provided however, that Tenant shall not remain in Default if Tenant continues timely to pay all Rent and Additional Charges and otherwise fully comply with all other terms and conditions of this Lease.

d. If Tenant makes an assignment for the benefit of its creditors.

e. If Tenant breaches any term or provision of the Development Agreement, beyond any applicable cure period granted in the Development Agreement.

f. If Tenant breaches any term or provision of the License, beyond any applicable cure period granted in the License.

18.2. Upon the occurrence of any Default, Landlord will have the right, at its election, to reenter the Premises and the buildings, structures and improvements then situated



thereon, or any part thereof, and to expel, remove and put out Tenant and all persons occupying or upon the same under Tenant, using such force as may be necessary in so doing, and again to possess the Premises and enjoy the same as in their former estate and to take full possession of and control over the Premises and the buildings, structures and improvements thereon and to have, hold and enjoy the same and to receive all rental income of and from the same. No reentry by Landlord will be deemed an acceptance of a surrender of this Lease, nor will it absolve or discharge Tenant from any liability under this Lease. Upon such reentry, all rights of Tenant to occupy or possess the Premises will cease and terminate.

18.3. Upon the occurrence of any Default, Landlord may give written notice to Tenant stating that this Lease will terminate on the date specified by such notice, and upon the date specified in such notice this Lease and the real property hereby demised and all rights of Tenant hereunder will terminate. Upon such termination, Tenant will quit and peacefully surrender to Landlord the Premises and the buildings, structures and improvements then situated thereon.

18.4. Notwithstanding the foregoing, in the event of a Default specified in Section 3.3, this Lease, all rights of Tenant under this Lease, will automatically and without notice terminate. Upon such termination, Tenant will quit and peacefully surrender to Landlord the Premises and the buildings, structures and improvements then situated thereon.

18.5. At any time and from time to time after such reentry, Landlord may re-let the Premises and the buildings, structures and improvements thereon, or any part thereof, in the name of Landlord or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Lease), and on such conditions (which may include concessions or free rental) as Landlord, in its reasonable discretion, may determine and may collect and receive the rental therefore. Even though it may re-let the Premises, Landlord will have the right thereafter to terminate this Lease and all of the rights of Tenant in or to the Premises.

18.6. Unless Landlord has notified Tenant in writing that it has elected to terminate this Lease, no such reentry or action in lawful detainer or otherwise to obtain possession of the Premises will relieve Tenant of its liability and obligations under this Lease; and all such liability and obligations will survive any such reentry. In the event of any such reentry, whether or not the Premises and the buildings, structures and improvements thereon, or any part thereof, have been relet, Tenant will pay to Landlord the entire Rent and all other Additional Charges required to be paid by Tenant up to the time of such reentry under this Lease, and thereafter Tenant, until the end of what would have been the Term of this Lease in the absence of such reentry, will be liable to Landlord and will pay to Landlord, as and for liquidated and agreed damages for Tenant's Default:

- a. The amount of Rent and Additional Charges which would be payable under this Lease by Tenant if this Lease were still in effect, less
- b. The net proceeds of any reletting, after deducting all of Landlord's reasonable expenses in connection with such reletting, including without limitation all reasonable

repossession costs, brokerage commissions, legal expenses, attorneys' fees, alteration costs and expenses of preparation for such reletting.

18.7. In the event of any Default by Tenant, Landlord will have, in addition to any specific remedies provided in this Lease, the right to invoke any right or remedy allowed by law or in equity or by statute or otherwise, including the right to enjoin such breach.

18.8. Each right and remedy of Landlord provided for in this Lease will be cumulative and in addition to every other right or remedy provided for in this Lease now or hereafter existing at law or in equity or by statute or otherwise; and the exercise or beginning of the exercise by Landlord of any one or more of such rights or remedies will not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

18.9. Any violation of any covenant or provision of this Lease, whether by act or omission, by any subtenant or any other persons occupying any portion of the Premises or any buildings, structures or improvements thereon under the rights of Tenant will be deemed a violation of such provision by Tenant and a Default under this Lease; provided, however, that any such violation will not be deemed to be a Default under this Lease if and so long as Tenant in good faith and at its own expense takes and diligently pursues any and all steps it is entitled to take and which steps if completed will cure said Default and otherwise fully and timely performs all of Tenant's obligations under this Lease.

18.10. Notwithstanding any other provision of this Section 18, but expressly subject to Section 3.3, Landlord agrees that if the Default complained of (other than for (i) a Payment Breach; (ii) the occurrence of any event referred to in subparagraphs (c) and (d) of this Subsection 18.1; (iii) a Default specified in Section 3.3 of this Lease; or (iv) a breach of Section 19.2 of this Lease), is of such a nature that the same cannot reasonably be cured within the thirty (30) day period for curing as specified in the written notice given to Tenant in connection with such default, then such default will be deemed to be cured if Tenant, within such period of thirty (30) days, will have commenced the curing of the default and will continue with all due diligence to effect such curing and completes such cure; but no extension of time permitted by this Section 18.10 may exceed ninety (90) days.

## **SECTION 19 – OPERATING COVENANT**

19.1. Tenant covenants and agrees that following completion of the Improvements contemplated by this Lease and for the remainder of the Term, it will continuously and without interruption offer for sublease, at "market" rent, any vacant space within the Improvements and will have available to the Premises competent personnel (who may be employees or independent contractors) to sublease and maintain the improvements in a manner which conforms to commercially reasonable management practices for comparable facilities, ("Operating Covenant"); provided, however, that the Operating Covenant will not apply during any period when the Premises are untenable by reason of fire or other casualty or by eminent domain. The Parties acknowledge that the occurrence of vacancies from time to time will not constitute a breach of the Operating Covenant. Notwithstanding the foregoing, Tenant

may request of Landlord a waiver of the provisions of this Section 19 if it determines that economic factors and conditions make it impractical to comply therewith.

19.2. Subject to the rights of any leasehold mortgagee otherwise set forth herein, if Tenant fails to use commercially reasonable efforts to fulfill the Operating Covenant and such failure is not cured within the applicable cure period, then, as Landlord's exclusive remedy for such failure, Landlord may terminate this Lease upon ninety (90) days prior written notice to Tenant after which all obligations of Tenant and Landlord under this Lease will terminate and be of no further force and effect.

### **SECTION 20 – ASSIGNMENT OF RENTS, INCOME AND PROFITS**

Subject to the rights of its leasehold mortgagee, Tenant hereby absolutely and irrevocably assigns to Landlord all rents, income and profits accruing to Tenant from permitted subtenants of all or a portion of the Premises and the buildings, structures or improvements thereon, together with the right to collect and receive the same; provided that so long as Tenant is not in default hereunder, Tenant will have the right to collect and retain such rents, income and profits. Landlord will apply to rent and other monies due hereunder the net amount (after deducting all costs and expenses incident to the collection thereof and the operation and maintenance, including repairs, of the Premises) of any rents, income and profits so collected and received by it. Notwithstanding the foregoing, if Tenant mortgages its leasehold interest pursuant to Subsection 17.1 and the mortgagee requires an assignment of rents, income and profits as part of its security, then during the Term of this Lease, the assignment herein will be junior to the assignment in favor of the mortgagee.

### **SECTION 21 – WAIVER OF PERFORMANCE**

No failure by Landlord or Tenant to insist upon the strict performance of any term or condition hereof or to exercise any right, power or remedy consequent upon a breach thereof and no submission by Tenant or acceptance by Landlord of full or partial Rent or Additional Charges during the continuance of any such breach will constitute a waiver of any such breach or of any such term. No waiver of any breach will affect or alter this Lease, which will continue in full force and effect, nor the respective rights of Landlord or Tenant with respect to any other then existing or subsequent breach.

### **SECTION 22 – REMEDIES CUMULATIVE**

Each right, power and remedy provided for in this Lease or now or hereafter existing at law, in equity or otherwise is cumulative and concurrent and will be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law, in equity or otherwise; and the exercise or beginning of the exercise of any one or more of the rights, powers or remedies provided in this Lease will not preclude the simultaneous or later exercise of any or all such other rights, powers or remedies.

## **SECTION 23 – TITLE TO BUILDINGS AND IMPROVEMENTS**

23.1. During the Term, title to all Improvements constructed on the Premises by Tenant (except the Public Improvements constructed by Tenant pursuant to the Development Agreement and dedicated to Landlord) will be in the Tenant.

23.2. Subject to the exercise by Tenant of its Purchase Option pursuant to Section 30, on the expiration or sooner termination of this Lease term, title to all Improvements which constitute or are a part of the Premises, exclusive of trade fixtures and personal property of Tenant and subtenants, will (without the payment of compensation to Tenant or others) vest in Landlord free and clear of all claims and encumbrances on such Improvements by Tenant, and anyone claiming under or through Tenant. The Improvements will be surrendered to Landlord in “as is” condition. Upon request, Tenant will then quitclaim to Landlord its possessory interest in the Improvements. Tenant agrees to and will defend, indemnify and hold Landlord harmless from and against all liability and loss which may arise from the assertion of any claims and any encumbrances on such Improvements that arose during the Lease Term; provided, however, such duty to indemnify and hold harmless will not apply to any claims or encumbrances which are attributable to the acts or conduct of the Landlord. Additionally, Tenant will assign to Landlord without representation or warranty of any kind, and Landlord will be entitled to the benefit of, any licenses, warranties or guarantees applicable to equipment, systems, fixtures or personal property conveyed or otherwise transferred to, or for the benefit of, Landlord under this Lease. The foregoing notwithstanding, Tenant will not quitclaim its possessory interest in the aforementioned Improvements to Landlord until such Improvements have been inspected by Landlord and they have been determined not to present a potential environmental hazard. This Section 23 will survive the expiration or earlier termination of this Lease. Notwithstanding anything contained herein to the contrary, while this Lease remains in effect, Tenant alone will be entitled to claim depreciation on the buildings, structures, improvements, additions and alterations therein included within the Premises, and all renewals and replacements thereof, for all taxation purposes.

## **SECTION 24 – ATTORNEYS FEES**

In the event Landlord should bring suit for possession of the Premises, for the recovery of any sum due hereunder, or for any other relief against Tenant, declaratory or otherwise, arising out of a breach of any term or condition of this Lease, or in the event Tenant should bring any action for any relief against Landlord, declaratory or otherwise, arising out of this Lease, the prevailing Party will be entitled to receive from the other Party reasonable attorneys’ fees and reasonable costs and expenses, which have accrued on the commencement of such action and will be enforceable whether or not such action is prosecuted to judgment.

## **SECTION 25 – PROVISIONS SUBJECT TO APPLICABLE LAW**

All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law and are intended to be limited to the extent necessary so that they will not render this Lease invalid or unenforceable under any applicable law. If any term or condition of this Lease is held to be invalid, illegal or unenforceable or against public policy, such provision will be deemed stricken from this Lease

and the validity of the other terms of this Lease will in no way be affected thereby and this Lease, absent the stricken provision, will otherwise remain in full force and effect.

**SECTION 26 – RIGHT TO CURE TENANT’S DEFAULTS**

Except with respect to Tenant’s failure to operate its business, in the event Tenant is in default of this Lease, which default remains uncured after the expiration of any applicable cure period provided herein, and if such default continues for thirty (30) days after written notice from Landlord of the default and of Landlord’s intent to cure such default, Landlord may at any time, without further notice, cure such breach for the account and at the expense of Tenant. If Landlord at any time, by reason of such breach, is compelled to pay or elects to pay any sum of money or to do any act that will require the payment of any sum of money, or is compelled to incur any expense, including reasonable attorneys’ fees, in instituting, prosecuting or defending any actions or proceedings to enforce Landlord’s rights under this Lease or otherwise, the sum or sums so paid by Landlord, with all interest, costs and damages, will be deemed to be Additional Charges and will be due from Tenant to Landlord on the first day of the month following the incurring of such expenses or the payment of such sums.

**SECTION 27 – NOTICES**

All notices, demands, requests, consents, approvals and other communications required or permitted hereunder will 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), or within three (3) days after the same has been mailed by registered or certified mail, postage prepaid and return receipt requested, at the address shown below:

To Tenant: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to: AZ Strategies LLC  
Attn: Karrin Taylor Robson  
3344 East Camelback Road, Suite 100  
Phoenix, Arizona 85018

With a copy to: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to: The Grid at Mesa, LLC  
Attn: Tony Wall  
7349 N. Via Paseo del Sur, Suite 515  
Scottsdale, Arizona 85258

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

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

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

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

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

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

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

**SECTION 28 – WARRANTIES OF THE PARTIES**

28.1. Landlord hereby makes the following representations and warranties, each of which (i) is material and is being relied upon by Tenant in entering into this Lease, and (ii) is true in all respects as of the date hereof:

- a. Landlord owns the real property included within the Premises.
- b. Landlord has the full right, power and authority to enter into and perform Landlord's obligations pursuant to this Lease and to lease the real property included within the Premises to Tenant in the manner contemplated in this Lease subject only to the consent and approval of the Mesa City Council.
- c. Except as otherwise disclosed in this Lease, no other person or entity other than Tenant has a right to possession of all or any part of the real property included within the Premises.

d. To the extent of Landlord's actual knowledge, this Lease does not violate any contract, agreement or instrument to which Landlord is a party, or is otherwise subject.

e. No third party has any option or preferential right to purchase all or any part of the Premises.

f. Landlord has not received or given any written notice that the Premises or the operations thereon are in violation of any governmental law or regulation, including, without limitation, any Hazardous Materials Laws or the Americans with Disabilities Act, nor is Landlord aware of any such violation.

For the purposes of this Section 28.1, the actual knowledge of Landlord will be and mean the actual knowledge, without further duty of inquiry, of the Downtown Transformation Manager of the City of Mesa.

28.2. Upon Tenant performing all covenants of this Lease to be performed by Tenant, and upon compliance with all of the requirements of Tenant (as Developer) set forth in the Development Agreement, Tenant will have quiet, exclusive and undisturbed use, possession and enjoyment of the Premises, together with all appurtenances thereto without hindrance or ejection by any person lawfully claiming by, through or under Landlord.

28.3. Tenant hereby makes the following representations and warranties to Landlord, each of which (i) is material and is being relied upon by Landlord in entering into this Lease, and (ii) is true in all respects as of the date hereof:

a. Tenant is a duly formed and validly existing Delaware limited liability company, formed under the laws of the State of Delaware.

b. Tenant has the full right, power and authority to enter into and perform Tenant's obligations pursuant to this Lease and to lease the real property included within the Premises from Landlord in the manner contemplated in this Lease.

c. To the extent of Tenant's actual knowledge, neither this Lease nor Tenant's contemplated use of the Premises, as contemplated by this Lease, violates any contract, agreement or instrument to which Tenant is a party, or is otherwise subject.

For the purposes of this Subsection 28.3, the actual knowledge of Tenant will be and mean the actual knowledge, without further duty of inquiry, of Tony Wall, the Managing Partner of Tenant.

### **SECTION 29 – UNSUBORDINATED LEASE**

This is an unsubordinated lease. Landlord is not and will not be obligated to subordinate its rights and ownership interest in the real property included within the Premises to any loan, encumbrance or other lien that Tenant may place against Tenant's leasehold interest.

## SECTION 30 – PURCHASE OPTION

30.1. Option to Purchase. Landlord hereby grants to Tenant the exclusive option to purchase the Premises ("Purchase Option") according to the terms and conditions hereinafter set forth. For purposes of clarity, the Premises does not include the Pomeroy Garage or the real property below the Pomeroy Garage. The Parties agree that the Air Rights, as described in Exhibit A-3, is not the legal description for the Air Rights. The Air Rights is meant to be the air space above the Pomeroy Garage and prior to closing the Parties will have to agree on a legal description of the Air Rights.

30.2. Exercise of Purchase Option. The Purchase Option granted herein will become effective and Tenant will have the right to exercise the Purchase Option hereunder at any time during the Term after the Completion of Construction of the Minimum Improvements and Minimum Public Improvements as defined in the Development Agreement ("Option Period"), provided that Tenant's right to exercise the Purchase Option will be conditioned upon Tenant curing any default then existing under this Lease. The Purchase Option granted herein may be exercised by Tenant at any time during the Option Period by Tenant delivering written notice of exercise to Landlord.

### 30.3. Conveyance of Premises.

a. Purchase Price. The Purchase Price for the Premises will be the fair market value of the Premises at the time of Tenant's exercise of its Purchase Option. In the event that Landlord and Tenant are unable to agree on the fair market value of the Premises, then Landlord and Tenant will select an appraiser who is a member of MAI or AIA and has at least twenty years' experience in appraising commercial properties ("Appraiser"), and then deliver to the Appraiser each of such Party's determination of the fair market value of the Premises. The Appraiser will then select one value that the Appraiser reasonably determines to be the closer to the fair market value of the Premises, and that value will be the Purchase Price. In the event one Party does not submit its determination of fair market value of the Premises to the Appraiser, then the Purchase Price will be the fair market value of the Premises as determined and submitted by the other Party.

b. Conveyance of Title and Delivery of Possession. Landlord and Tenant agree to perform all acts necessary for conveyance in sufficient time for the Premises to be conveyed within ninety (90) days after delivery to Landlord of Tenant's notice of exercise of the Purchase Option or on the last day of the Rental Period, whichever first occurs. Landlord's entire interest in the Premises will be conveyed by Special Warranty Deed in the form of Exhibit E. 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), will be paid by Tenant.

c. In addition to the foregoing, Tenant's exercise of the Purchase Option is conditioned upon Tenant's assumption, in perpetuity, of all of the obligations of Licensee of the License.

d. Concurrently with the delivery of the Special Warranty Deed to Tenant, Tenant will grant to Landlord, in a form reasonably satisfactory to Landlord, a permanent, non-exclusive easement for the benefit of the public, on and over all private walks and walkways



along the street known as East Pomeroy. In the alternative, Landlord may elect to reserve such easement in the Special Warranty Deed.

e. In the event of a breach of Landlord of its obligations arising under this Section 30, Tenant's sole remedy will be to seek specific enforcement (or comparable equitable remedy) of this Lease. Any such action must be commenced by Tenant within ninety (90) days of the alleged breach, and any action commenced later than such date will be deemed barred. Tenant waives all right to seek damages (whether actual, consequential, special, exemplary, speculative, or punitive) from or against Landlord in the event of a breach by Landlord of this Section 30.

### **SECTION 31 - ESTOPPEL CERTIFICATE**

Landlord or Tenant, as the case may be, will execute, acknowledge and deliver to the other, within fifteen (15) days following request therefor, a written certificate in a recordable form certifying (a) that this Lease is in full force and effect without modification except as to those specified in said certificate, and (b) the dates, if any, to which Rent, Additional Charges and other sums payable hereunder have been paid, (c) that no notice has been received by Landlord or Tenant of any default which has not been cured, except as to defaults specified in said certificate, and (d) any other matters as may be reasonably so requested. Any such certificate may be relied upon by any prospective purchaser, assignee, subtenant or encumbrancer of the Premises or any part thereof. Either Party's failure to deliver such certificate within the time permitted hereby will be conclusive upon such Party that this Lease is in full force and affect, except to the extent any modification has been represented by the requesting Party, that there are no uncured defaults in such Party's performance, and that not more than one years rent has been paid in advance.

### **SECTION 32 – COOPERATION**

To further the cooperation of the Parties in implementing the provisions of this Lease, Landlord and Tenant each will designate and appoint a representative to act as a liaison between the Landlord and its various departments and Tenant. The initial representative for Landlord (the "Landlord Representative") will be the Downtown Transformation Manager of the City of Mesa (or equivalent employee); and the initial representative for the Tenant (the "Tenant Representative") will be Tony Wall, the Tenant's Managing Partner. The representatives will be available at all reasonable times to discuss and review the performance of the Parties to this Lease and the development and maintenance of the Premises and the Licensed Area.

### **SECTION 33 – MEMORANDUM FOR RECORDING**

Within ten (10) days after the Commencement Date of this Lease, Landlord and Tenant will execute and cause to be recorded with the Maricopa County Recorder's Office, and any other public or private official, a Memorandum of Ground Lease in substantially the form set forth in Exhibit G evidencing the existence of this Lease.

### **SECTION 34 – PARTIES BOUND**

This Lease will be binding upon and inure to the benefit of and be enforceable by the Parties hereto, their personal representatives, their respective successors in office and permitted assigns of the Parties hereto for the entire Term of this Lease.

### **SECTION 35 – TIME OF ESSENCE**

Time is declared to be of the essence of this Lease.

### **SECTION 36 -- SECTION HEADINGS; REFERENCES; INTERPRETATION**

The section headings contained in this Lease are for purposes of convenience and reference only and will not limit, describe or define the meaning, scope or intent of any of the terms or provisions hereof. All grammatical usage herein will be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require. If the last day of any time period stated herein falls on a Friday, Saturday, Sunday or legal holiday in the State of Arizona, then the duration of such time period will be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday in the State of Arizona.

### **SECTION 37 – IMPASSE**

The Parties agree that if at any time Tenant reasonably believes an impasse has been reached with Landlord on any issue affecting the Premises, Tenant will have the right to immediately appeal the issue to the City Manager for an expedited decision pursuant to this Section 37. If the issue on which an impasse is reached is an issue where a final decision can be reached by City staff, the City Manager will give Tenant a final decision within 30 days after Tenant's request for an expedited decision. If the issue is one where a final decision requires action by the City Council, the City Manager will schedule a City Council hearing on the issue within 30 days after Tenant's request for an expedited decision; provided, however, that if the issue is appropriate for review by City's Planning and Zoning Commission, the matter will be first submitted to the Planning and Zoning Commission within 30 days, and then to the City Council.

### **SECTION 38 – SEVERABILITY**

If any provision of this Lease is declared void, unenforceable or against public policy, such provision will be deemed stricken and severed from this Lease, with the remainder of the Lease to remain in full force and effect.

### **SECTION 39 – GOVERNING LAW AND CHOICE OF FORUM**

This Lease will be governed by and construed in accordance with the substantive laws of the State of Arizona without giving effect to the principles of conflict of laws. Any action brought to interpret, enforce or construe any provision of this Lease will be commenced and maintained solely and exclusively in the Superior Court of Maricopa County, Arizona (or, as may be appropriate, in the Justice Courts of Maricopa County or in the United States District

Court for the District of Arizona if, and only if, the Maricopa County Superior Court lacks or declines jurisdiction over such action).

#### **SECTION 40 – PAYMENT OF COSTS AND EXPENSES**

Whenever, in this Lease, anything is to be done or performed by Tenant or Landlord, unless otherwise expressly provided to the contrary, it will be done or performed at the sole cost and expense of Tenant or Landlord as the case may be.

#### **SECTION 41 – NO WARRANTIES**

Tenant acknowledges and covenants to Landlord that it has made a complete investigation of the real property included within the Premises, the surface and sub-surface conditions thereof, the present and proposed uses thereof, and agrees to accept all the same “as is” except as expressly provided in Section 2. Tenant further agrees that, except as expressly provided herein, no representation or warranty, expressed or implied, in fact or by law, has been made by Landlord or anyone else, as to any matter, fact, condition, prospect or anything else of any kind or nature.

#### **SECTION 42 – BROKERS OR AGENTS**

Each party represents and warrants to the other that such party has had no dealings or discussions with any broker or agent (licensed or otherwise) in connection with this Lease and each party covenants to pay, hold harmless and indemnify the other party from and against any and all losses, liabilities, damages, costs and expenses (including reasonable legal fees) arising out of or in connection with any breach of this representation and warranty.

#### **SECTION 43 – CONSENT OR APPROVAL**

Except as otherwise expressly provided herein, any consent or approval required in this Lease will not be unreasonably withheld, conditioned or delayed, and if neither approval nor rejection is given within a time period specified in this Lease as to any particular approval which may be requested by one party of the other (or, if no such time is specified, then within thirty (30) days after request for approval is given by a Notice), then the approval thus requested will be conclusively and irrevocably deemed to have been given. The requesting Party will be entitled to seek specific performance at law and will have such other remedies as are reserved to it under this Lease, but in no event will Landlord or Tenant be responsible for damages to anyone for such failure to give consent or approval.

#### **SECTION 44 – DELAY OF PERFORMANCE**

Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, acts of terrorism, and other causes beyond the control of the Party obligated to perform, will excuse the performance by such Party for a period equal to any

such prevention, delay or stoppage, except the obligations imposed with regard to rental and other monies to be paid by Tenant pursuant to this Lease.

#### **SECTION 45 – RELATIONSHIP**

This is a ground lease. This Lease will not be construed as creating a joint venture, partnership or any other cooperative or joint arrangement between Landlord and Tenant, and it will be construed strictly in accordance with its terms and conditions. Nothing contained herein is intended to confer a benefit upon any third parties.

#### **SECTION 46 – LEASE AMENDMENT**

This Amended and Restated Lease may be amended only upon written agreement by the Parties. In the event a Party wishes to amend one or more provisions of this Lease, it will make a written request to the other Party setting forth the nature of the request. In the event the Parties agree upon the terms of the proposed Lease modifications, Landlord's approval of any proposed amendments will be subject to its City Council's review and approval. Notwithstanding the foregoing, administrative and non-material amendments to this Lease may be made by the City Manager on behalf of Landlord without the requirement of public hearing and City Council approval.

#### **SECTION 47 – FURTHER INSTRUMENTS AND DOCUMENTS**

Landlord and Tenant will, upon request from the other, promptly acknowledge and deliver to the other any and all further documents, instruments or assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Lease.

#### **SECTION 48 – INTEGRATION CLAUSE; NO ORAL MODIFICATION**

This Lease is the result of arms-length negotiations between parties of roughly equivalent bargaining power and represents the entire agreement of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Lease are hereby revoked and superseded by this Lease. This Lease will not be construed for or against either Party as a result of its participation, or the participation of its counsel, in the preparation and/or drafting of this Lease or of any exhibits or documents prepared to carry out the intent of this Lease. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Lease. This Lease may not be changed, modified or rescinded, except as provided for herein, absent a written agreement signed by Landlord and Tenant. Any attempt at oral modification of this Lease will be void and of no effect.

#### **SECTION 49-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 shall

amend the Lease in such a manner that resolves the violation to the satisfaction of the Attorney General. If Landlord and Tenant, after a good faith effort, are not able to modify this Lease so as to resolve the violation with the Attorney General 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), 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 Agreement. Additionally, if the Attorney General determines that this Lease may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and the Arizona Supreme Court requires the posting of a bond under A.R.S. § 41-194.01(B)(2), City shall be entitled to terminate this Lease, except if Company posts such bond; 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 the Parties shall have no further obligations hereunder.

#### **SECTION 50 – COUNTERPARTS**

This Lease may be executed in any number of counterparts, each of which will be deemed to be an original and all of which together will comprise but a single instrument.

#### **SECTION 51 – CONFLICT OF INTEREST**

This Lease is subject to cancellation pursuant to the provisions of A.R.S. §38-511 relating to conflicts of interest.

#### **SECTION 52 – 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.

*The balance of this page is blank; signature are on the following page*

IN WITNESS WHEREOF, the Parties have executed this Ground Lease to be effective as of the Effective Date.

<p>Landlord:</p> <p>City of Mesa, Arizona, an Arizona municipal corporation</p> <p>By: _____ Christopher J. Brady, City Manager</p> <p>ATTEST:</p> <p>By: _____ DeeAnn Mickelsen, City Clerk</p> <p>APPROVED AS TO FORM:</p> <p>By: _____ James N. Smith, City Attorney</p>	<p>Tenant:</p> <p>The Grid at Mesa, LLC, A Delaware limited liability company</p> <p>By: _____</p> <p>Name: Tony Wall Its: Managing Partner</p>
---	---

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

The foregoing Amended and Restated Ground and Air Lease was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2020, by Tony Wall, the Managing Partner of The Grid at Mesa, LLC, a Delaware limited liability company corporation, on behalf of the Tenant.

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

My Commission Expires:  
  
\_\_\_\_\_

Exhibit A-1  
LEGAL DESCRIPTION OF THE POMEROY PARCEL

EXHIBIT A-1 - LEGAL DESCRIPTION OF POMEROY PARCEL

*Wood, Patel & Associates, Inc.*  
(602) 335-8500  
[www.woodpatel.com](http://www.woodpatel.com)

November 6, 2017  
WP# 174663  
Page 1 of 4  
See Exhibit "A"

**PARCEL DESCRIPTION**  
**The Grid**  
**Parcel 2 Lease**

A portion of that certain parcel of land described in Docket 14814, page 0174, Maricopa County Records (M.C.R.), lying within 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 Pomeroy Street (north) and Pomeroy Street (east), a brass cap in handhole, from which the intersection of Pomeroy Street (west) and Pomeroy Street (south), a brass cap in handhole, bears South 89°48'22" East (basis of bearing), a distance of 240.98 feet;

**THENCE** South 00°11'38" West, a distance of 2.92 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street;

**THENCE** along said parallel line, North 89°48'22" West, a distance of 6.50 feet, to a line parallel with and 6.50 feet west of the north/south monument line of said Pomeroy Street;

**THENCE** leaving said east/west parallel line, along said north/south parallel line, South 00°11'21" West, a distance of 39.58 feet, to the south right-of-way line of said Pomeroy Street and the **POINT OF BEGINNING**;

**THENCE** along said south right-of-way line, South 89°48'22" East, a distance of 223.02 feet, to the east line of said certain parcel of land and an angle point in the right-of-way line of said Pomeroy Street;

**THENCE** leaving said south right-of-way line, along said east line and the west right-of-way of said Pomeroy Street, South 00°07'45" West, a distance of 225.00 feet;

**THENCE** leaving said east line and said west right-of-way line, North 89°48'22" West, a distance of 48.79 feet;

**THENCE** North 00°00'00" East, a distance of 20.76 feet;

**THENCE** South 89°47'56" East, a distance of 29.22 feet;

**THENCE** North 00°11'23" East, a distance of 163.63 feet;

**THENCE** North 89°44'03" West, a distance of 19.62 feet;

**THENCE** North 00°07'41" West, a distance of 19.26 feet;

**THENCE** North 89°47'12" West, a distance of 321.93 feet;

**THENCE** South 00°20'17" West, a distance of 19.32 feet;

**THENCE** North 89°42'26" West, a distance of 19.76 feet;

**THENCE** South 00°11'39" West, a distance of 154.05 feet;

**THENCE** North 90°00'00" West, a distance of 1.69 feet;

**THENCE** South 00°00'00" East, a distance of 19.29 feet;

**THENCE** North 90°00'00" East, a distance of 18.67 feet;

**THENCE** South 00°11'38" West, a distance of 11.20 feet;

**THENCE** North 89°48'22" West, a distance of 35.92 feet, to the west line of said certain parcel of land;

**THENCE** along said west line, North 00°07'45" East, a distance of 225.00 feet;



EXHIBIT A-1 - LEGAL DESCRIPTION OF POMEROY PARCEL

Parcel Description  
The Grid  
Parcel 2 Lease

November 6, 2017  
WP# 174663  
Page 2 of 4  
See Exhibit "A"

**THENCE** leaving said west line, South 89°48'22" East, a distance of 176.98 feet, to the **POINT OF BEGINNING**.

Containing 17,885 square feet or 0.4106 acres, more or less

Subject to existing right-of-way and easements.

This parcel description was prepared without the benefit of survey field work and is based on the client provided unrecorded ALTA Survey of 34 S. Pomeroy Street, prepared by Alliance Land Surveying LLC, dated April 26, 2017, job number 170416, and other client provided information. Any monumentation noted in this parcel description is based on said ALTA Survey.

Y: WP:Parcel Descriptions\2017\174663 The Grid Parcel 2 Lease L04 11-06-17.docx

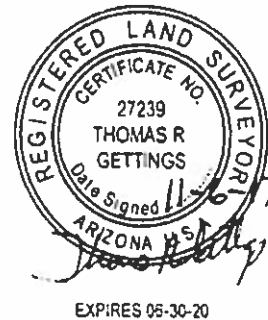
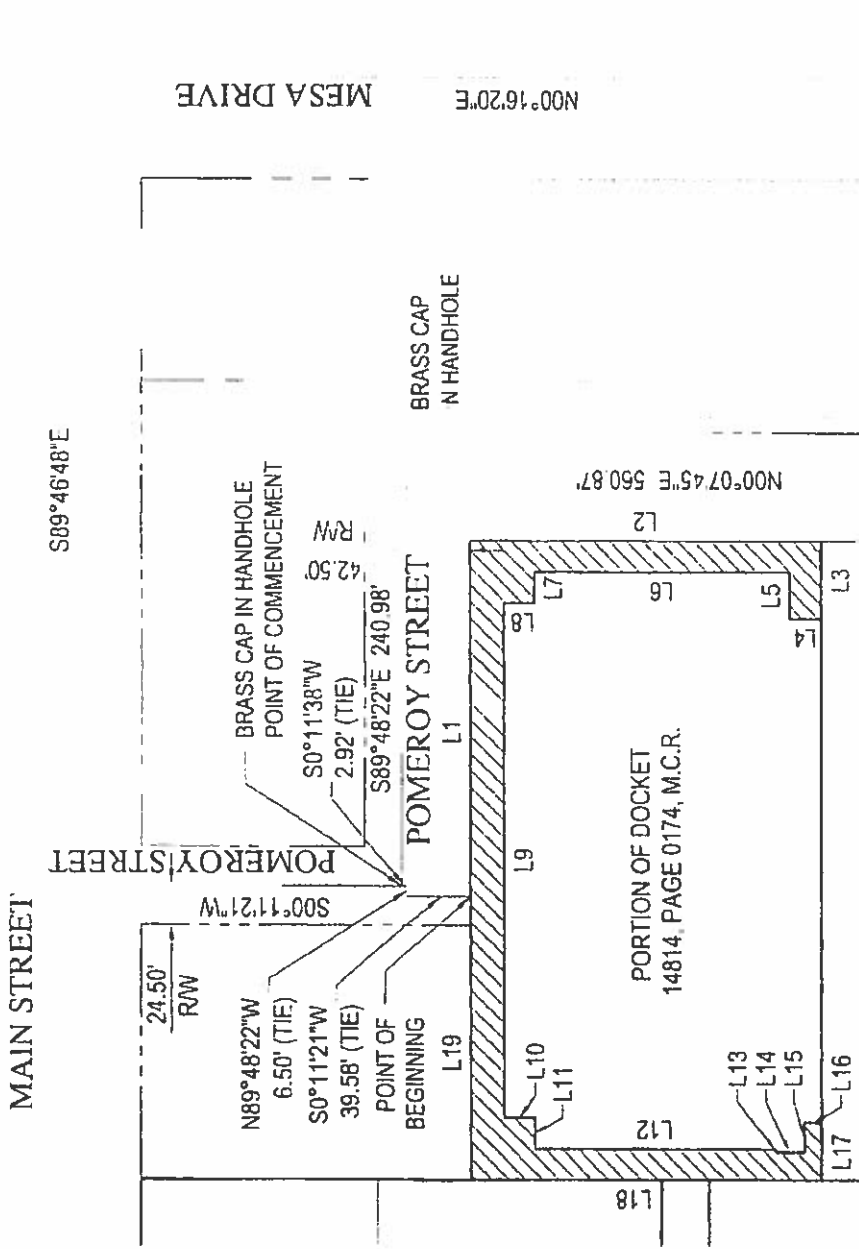


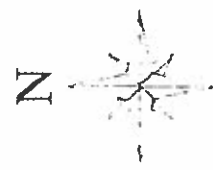
EXHIBIT A-1 - LEGAL DESCRIPTION OF POMEROY PARCEL



IST AVENUE EXHIBIT "A"

THE GRID  
 PARCEL 2 LEASE  
 11/06/2017  
 WP#174663  
 PAGE 3 OF 4  
 NOT TO SCALE

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**WOOD/PATEL**  
 MISSION: CLIENT SERVICE.  
 (602) 335-8500  
 WWW.WOODPATEL.COM

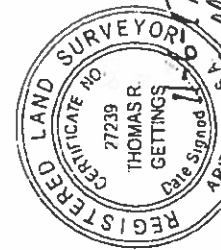
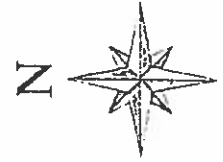
EXHIBIT A-1 - LEGAL DESCRIPTION OF POMEROY PARCEL

LINE TABLE			LINE TABLE		
LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE
L1	S89°48'22"E	223.02'	L11	N89°42'26"W	19.76'
L2	S00°07'45"W	225.00'	L12	S00°11'39"W	154.05'
L3	N89°48'22"W	48.79'	L13	N90°00'00"W	1.69'
L4	N00°00'00"E	20.76'	L14	S00°00'00"E	19.29'
L5	S89°47'56"E	29.22'	L15	N90°00'00"E	18.67'
L6	N00°11'23"E	163.63'	L16	S00°11'38"W	11.20'
L7	N89°44'03"W	19.62'	L17	N89°48'22"W	35.92'
L8	N00°07'41"W	19.26'	L18	N00°07'45"E	225.00'
L9	N89°47'12"W	321.93'		S89°48'22"E	176.98'
L10	S00°20'17"W	19.32'			

EXHIBIT "A"

THE GRID  
 PARCEL 2 LEASE  
 11/06/2017  
 WP#174663  
 PAGE 4 OF 4  
 NOT TO SCALE

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EXPIRES 06-30-20

**WOOD/PATEL**

MISSION: CLIENT SERVICE®  
 (602) 335-8500

WWW.WOODPATEL.COM

Exhibit A-2  
LEGAL DESCRIPTION OF THE ROW

EXHIBIT A-2 - LEGAL DESCRIPTION OF ROW

Wood, Patel & Associates, Inc.  
(602) 335-8500  
www.woodpatel.com

Revised October 31, 2017  
October 27, 2017  
WP# 174663  
Page 1 of 2  
See Exhibit "A"

**PARCEL DESCRIPTION**  
**The Grid**  
**Right-of-Way Abandonment**

A parcel of land lying within Section 22, Township 1 North, Range 5 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

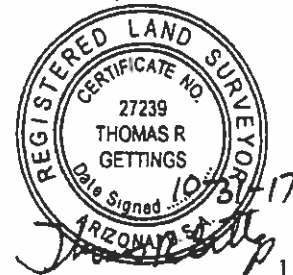
**COMMENCING** at the intersection of Pomeroy Street (north) and Pomeroy Street (east), a brass cap in handhole, from which the intersection of Pomeroy Street (west) and Pomeroy Street (south), a brass cap in handhole, bears South 89°48'22" East (basis of bearing), a distance of 240.98 feet;  
**THENCE** South 00°11'38" West, a distance of 2.92 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street;  
**THENCE** along said parallel line, North 89°48'22" West, a distance of 6.50 feet, to a line parallel with and 6.50 feet west of the north/south monument line of said Pomeroy Street, and the **POINT OF BEGINNING**;  
**THENCE** leaving said east/west parallel line, along said north/south parallel line, South 00°11'21" West, a distance of 39.58 feet, to the south right-of-way line of said Pomeroy Street;  
**THENCE** leaving said north/south parallel line, along said south right-of-way line, North 89°48'22" West, a distance of 18.00 feet, to an angle point in the right-of-way line of said Pomeroy Street;  
**THENCE** leaving said south right-of-way line, along the west right-of-way line of said Pomeroy Street, North 00°11'21" East, a distance of 208.09 feet, to the south right-of-way line of Main Street;  
**THENCE** leaving said west right-of-way line, along the easterly prolongation of said south right-of-way line, South 89°46'48" East, a distance of 18.00 feet, to said north/south parallel line;  
**THENCE** along said north/south parallel line, South 00°11'21" West, a distance of 168.51 feet, to the **POINT OF BEGINNING**.

Containing 3,746 square feet or 0.0860 acres, more or less

Subject to existing right-of-way and easements.

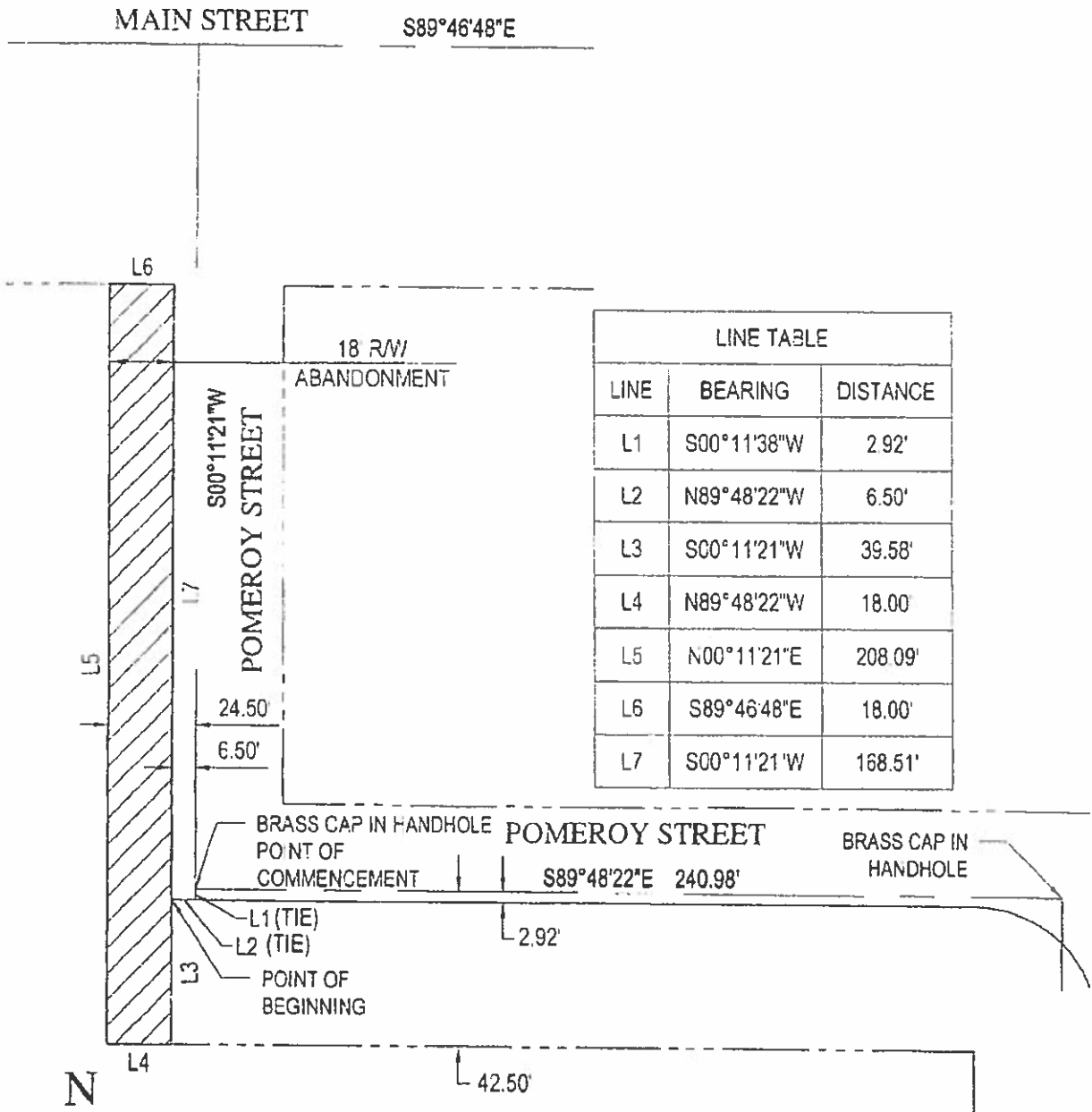
This parcel description was prepared without the benefit of survey field work and is based on the client provided unrecorded ALTA Survey of 34 S. Pomeroy Street, prepared by Alliance Land Surveying LLC, dated April 26, 2017, job number 170416, and other client provided information. Any monumentation noted in this parcel description is based on said ALTA Survey.

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1 of 5  
EXPIRES 06-30-20 15 Nov 17

EXHIBIT A-2 - LEGAL DESCRIPTION OF ROW



N

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REGISTERED LAND SURVEYOR  
CERTIFICATE NO. 27239  
THOMAS R. GETTINGS  
Date Signed 10/31/17  
ARIZONA, U.S.A.  
EXPIRES 06-30-20

**EXHIBIT "A"**  
THE GRID  
RIGHT-OF-WAY ABANDONMENT  
REVISED 10/31/2017  
WP# 174663  
PAGE 2 OF 2  
NOT TO SCALE  
Z:\2017\174663\Survey\Legal\4663-L01R01.dwg  
2 of 5  
15 Nov 17

## EXHIBIT A-2 - LEGAL DESCRIPTION OF ROW

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October 27, 2017  
WP# 174663  
Page 1 of 3  
See Exhibit "A"

### PARCEL DESCRIPTION The Grid Right-of-Way Abandonment

A parcel of land lying within 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 Pomeroy Street (north) and Pomeroy Street (east), a brass cap in handhole, from which the intersection of Pomeroy Street (west) and Pomeroy Street (south), a brass cap in handhole, bears South 89°48'22" East (basis of bearing), a distance of 240.98 feet;

**THENCE** South 00°11'38" West, a distance of 2.92 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street, and the **POINT OF BEGINNING**;

**THENCE** along said parallel line, South 89°48'22" East, a distance of 217.02 feet, to the beginning of a curve;

**THENCE** leaving said parallel line, southeasterly along said curve to the right, having a radius of 34.50 feet, concave southwesterly, through a central angle of 89°56'06", a distance of 54.15 feet, to a line parallel with and 10.50 feet east of the north/south monument line of said Pomeroy Street, and the curves end;

**THENCE** along said parallel line, South 00°07'45" West, a distance of 200.15 feet, to the beginning of a curve;

**THENCE** leaving said parallel line, southerly along said curve to the right, having a radius of 34.50 feet, concave westerly, through a central angle of 21°21'06", a distance of 12.86 feet, to the curves end;

**THENCE** South 21°28'51" West, a distance of 18.67 feet;

**THENCE** North 89°48'22" West, a distance of 25.83 feet, to the west right-of-way line of said Pomeroy Street;

**THENCE** along said west right-of-way line, North 00°07'45" East, a distance of 225.00 feet, to an angle point in the right-of-way line of said Pomeroy Street;

**THENCE** leaving said west right-of-way line, along the south right-of-way line of said Pomeroy Street, North 89°48'22" West, a distance of 223.02 feet, to a line parallel with and 6.50 feet west of the north/south monument line of said Pomeroy Street;

**THENCE** leaving said south right-of-way line, along said parallel line, North 00°11'21" East, a distance of 39.58 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street;

EXHIBIT A-2 - LEGAL DESCRIPTION OF ROW

Parcel Description  
The Grid  
Right-of-Way Abandonment

October 27, 2017  
WP# 174663

THENCE leaving said north/south parallel line, along said east/west parallel line, South 89°48'22" East, a distance of 6.50 feet, to the **POINT OF BEGINNING**.

Containing 17,721 square feet or 0.4068 acres, more or less

Subject to existing right-of-way and easements.

This parcel description was prepared without the benefit of survey field work and is based on the client provided unrecorded ALTA Survey of 34 S. Pomeroy Street, prepared by Alliance Land Surveying LLC, dated April 26, 2017, job number 170416, and other client provided information. Any monumentation noted in this parcel description is based on said ALTA Survey.

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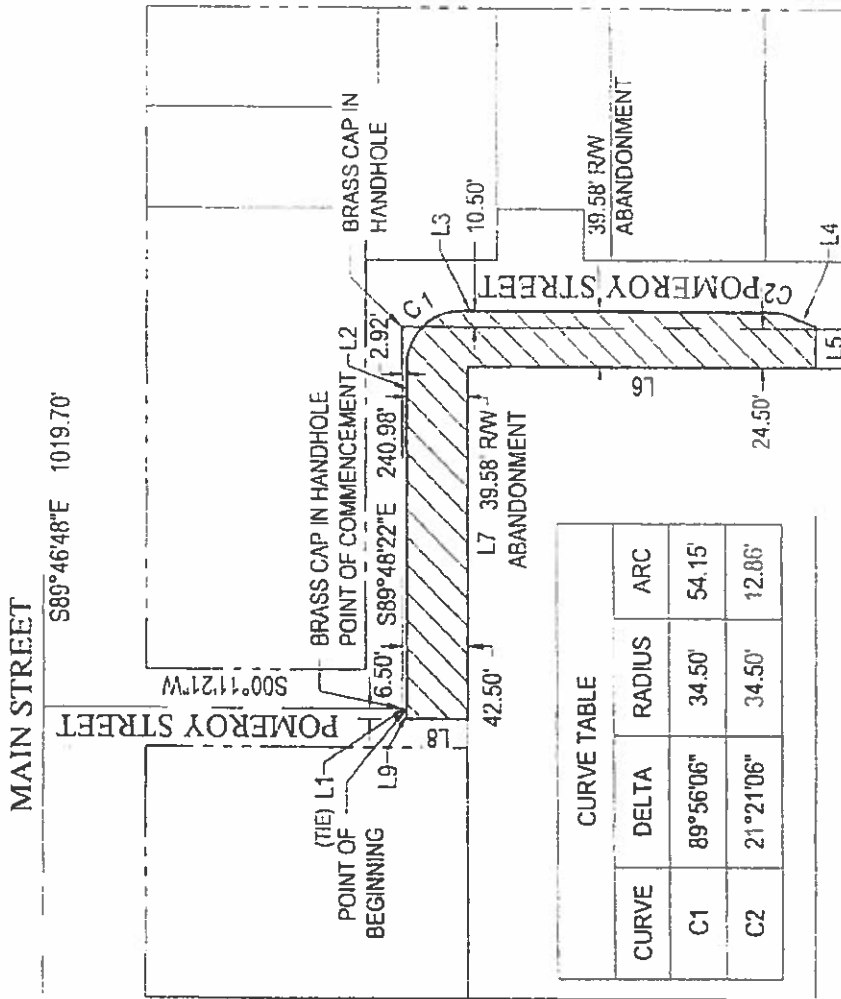




EXHIBIT A-2 - LEGAL DESCRIPTION OF ROW

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S00°11'38"W	2.92'
L2	S89°48'22"E	217.02'
L3	S00°07'45"W	200.15'
L4	S21°28'51"W	18.67'
L5	N89°48'22"W	25.83'
L6	N00°07'45"E	225.00'
L7	N89°48'22"W	223.02'
L8	N00°11'21"E	39.58'
L9	S89°48'22"E	6.50'

MESA DRIVE

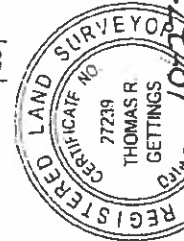
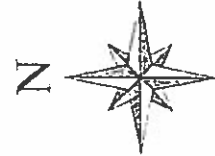


CURVE TABLE		
CURVE	DELTA	RADIUS
C1	89°56'06"	34.50'
C2	21°21'06"	34.50'

EXHIBIT "A"

THE GRID  
 RIGHT-OF-WAY ABANDONMENT  
 10/27/2017  
 W/P#174663  
 PAGE 3 OF 3  
 NOT TO SCALE

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Exhibit A-3  
LEGAL DESCRIPTION OF PARCEL  
OVER WHICH AIR RIGHTS ARE LOCATED

EXHIBIT A-3 - LEGAL DESCRIPTION OF PARCEL OVER WHICH  
AIR RIGHTS ARE LOCATED

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November 6, 2017  
WP# 174663  
Page 1 of 3  
See Exhibit "A"

PARCEL DESCRIPTION  
The Grid  
Parcel 2 Air Space Lease

A portion of that certain parcel of land described in Docket 14814, page 0174, Maricopa County Records (M.C.R.), lying within 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 Pomeroy Street (north) and Pomeroy Street (east), a brass cap in handhole, from which the intersection of Pomeroy Street (west) and Pomeroy Street (south), a brass cap in handhole, bears South 89°48'22" East (basis of bearing), a distance of 240.98 feet;  
**THENCE** South 00°11'38" West, a distance of 2.92 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street;  
**THENCE** along said parallel line, North 89°48'22" West, a distance of 6.50 feet, to a line parallel with and 6.50 feet west of the north/south monument line of said Pomeroy Street;  
**THENCE** leaving said east/west parallel line, along said north/south parallel line, South 00°11'21" West, a distance of 60.85 feet, to the **POINT OF BEGINNING**;  
**THENCE** South 89°47'12" East, a distance of 183.90 feet;  
**THENCE** South 00°07'41" East, a distance of 19.26 feet;  
**THENCE** South 89°44'03" East, a distance of 19.62 feet;  
**THENCE** South 00°11'23" West, a distance of 163.63 feet;  
**THENCE** North 89°47'56" West, a distance of 29.22 feet;  
**THENCE** South 00°00'00" East, a distance of 20.76 feet;  
**THENCE** North 89°48'22" West, a distance of 315.29 feet;  
**THENCE** North 00°11'38" East, a distance of 11.20 feet;  
**THENCE** South 90°00'00" West, a distance of 18.67 feet;  
**THENCE** North 00°00'00" East, a distance of 19.29 feet;  
**THENCE** North 90°00'00" East, a distance of 1.69 feet;  
**THENCE** North 00°11'39" East, a distance of 154.05 feet;  
**THENCE** South 89°42'26" East, a distance of 19.76 feet;  
**THENCE** North 00°20'17" East, a distance of 19.32 feet;

EXHIBIT A-3 - LEGAL DESCRIPTION OF PARCEL OVER WHICH  
AIR RIGHTS ARE LOCATED

Parcel Description  
The Grid  
Parcel 2 Air Space Lease

November 6, 2017  
WP# 174663  
Page 2 of 3  
See Exhibit "A"

**THENCE** South 89°47'12" East, a distance of 138.03 feet, to the **POINT OF BEGINNING**.

Containing 72,115 square feet or 1.6555 acres, more or less

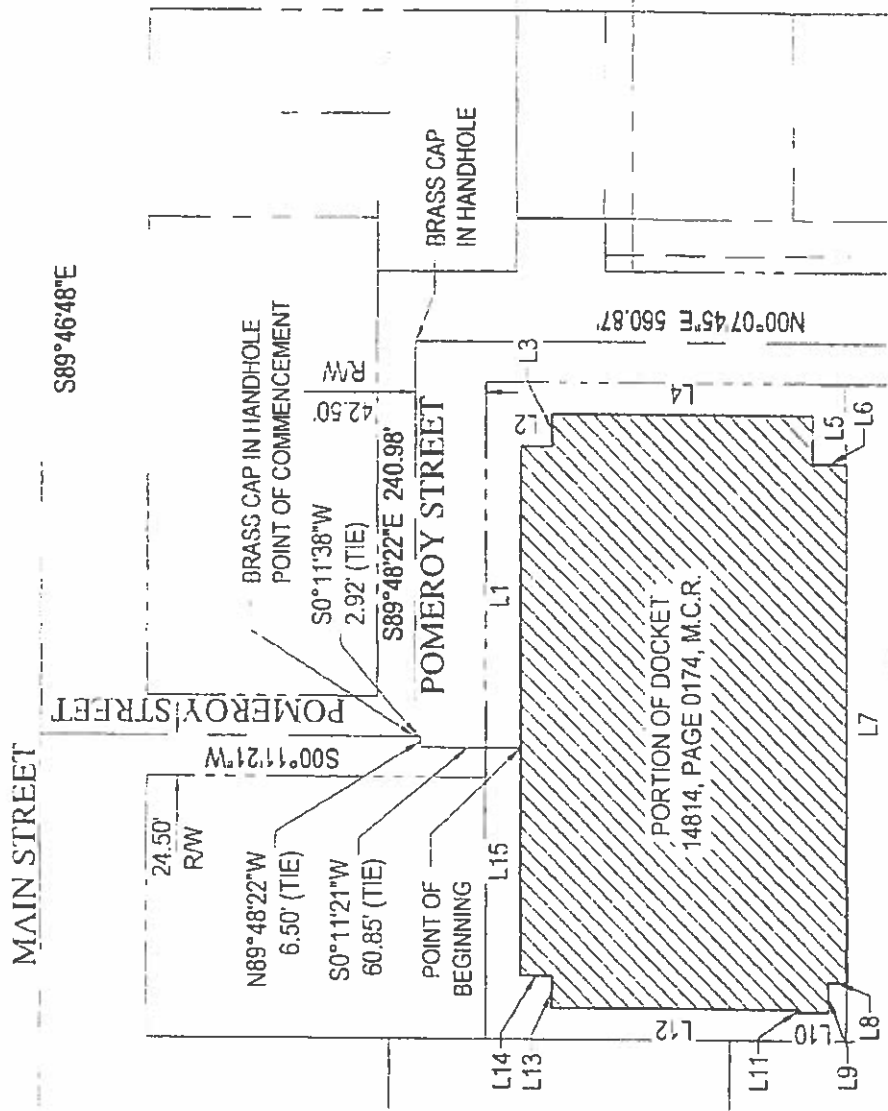
Subject to existing right-of-way and easements.

This parcel description was prepared without the benefit of survey field work and is based on the client provided unrecorded ALTA Survey of 34 S. Pomeroy Street, prepared by Alliance Land Surveying LLC, dated April 26, 2017, job number 170416, and other client provided information. Any monumentation noted in this parcel description is based on said ALTA Survey.

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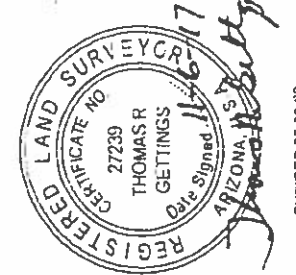


EXHIBIT A-3 - LEGAL DESCRIPTION OF PARCEL OVER WHICH  
AIR RIGHTS ARE LOCATED



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S89°47'12"E	183.90'
L2	S00°07'41"E	19.26'
L3	S89°44'03"E	19.62'
L4	S00°11'23"W	163.63'
L5	N89°47'56"W	29.22'
L6	S00°00'00"E	20.76'
L7	N89°48'22"W	315.29'
L8	N00°11'38"E	11.20'
L9	S90°00'00"W	18.67'
L10	N00°00'00"E	19.29'
L11	N90°00'00"E	1.69'
L12	N00°11'39"E	154.05'
L13	S89°42'26"E	19.76'
L14	N00°20'17"E	19.32'
L15	S89°47'12"E	138.03'

EXHIBIT "A"



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Exhibit A-4  
LEGAL DESCRIPTION OF LAND

## EXHIBIT A-4 - LEGAL DESCRIPTION OF LAND

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November 6, 2017  
WP# 174663  
Page 1 of 3  
See Exhibit "A"

### PARCEL DESCRIPTION The Grid Parcel 1

That certain parcel of land described in Document 2012-0629802, Maricopa County Records (M.C.R.), lying within 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 Pomeroy Street (north) and Pomeroy Street (east), a brass cap in handhole, from which the intersection of Pomeroy Street (west) and Pomeroy Street (south), a brass cap in handhole, bears South 89°48'22" East (basis of bearing), a distance of 240.98 feet;

**THENCE** South 00°11'38" West, a distance of 2.92 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street;

**THENCE** along said parallel line, North 89°48'22" West, a distance of 6.50 feet, to a line parallel with and 6.50 feet west of the north/south monument line of said Pomeroy Street, and the **POINT OF BEGINNING**;

**THENCE** leaving said east/west parallel line, along said north/south parallel line, South 00°11'21" West, a distance of 39.58 feet, to the south right-of-way line of said Pomeroy Street;

**THENCE** leaving said north/south parallel line, along said south right-of-way line, North 89°48'22" West, a distance of 18.00 feet, to an angle point in the right-of-way line of said Pomeroy Street, also being the southeast corner of said certain parcel of land, and the **POINT OF BEGINNING**;

**THENCE** leaving said south right-of-way line, along the south line of said certain parcel of land, North 89°48'22" West, a distance of 158.98 feet, to the southwest corner of said certain parcel of land;

**THENCE** leaving said south line, along the west line of said certain parcel of land, North 00°07'45" East, a distance of 208.16 feet, to the northwest corner of said certain parcel of land, also being the south right-of-way line of Main Street;

**THENCE** leaving said west line, along the north line of said certain parcel of land and said south right-of-way line, South 89°46'48" East, a distance of 159.20 feet, to the northeast corner of said certain parcel of land;

EXHIBIT A-4 - LEGAL DESCRIPTION OF LAND

Parcel Description  
The Grid  
Parcel 1

November 6, 2017  
WP# 174663  
Page 2 of 3  
See Exhibit "A"

**THENCE** leaving said north line and said right-of-way line, along the east line of said certain parcel of land and the west right-of-way line of Pomeroy Street, South 00°11'21" West, a distance of 208.09 feet to the **POINT OF BEGINNING**.

Containing 33,110 square feet or 0.7601 acres, more or less

Subject to existing right-of-way and easements.

This parcel description was prepared without the benefit of survey field work and is based on the client provided unrecorded ALTA Survey of 34 S. Pomeroy Street, prepared by Alliance Land Surveying LLC, dated April 26, 2017, job number 170416, and other client provided information. Any monumentation noted in this parcel description is based on said ALTA Survey.

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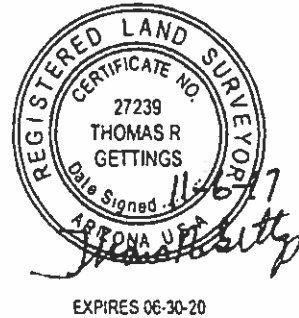




EXHIBIT A-4 - LEGAL DESCRIPTION OF LAND

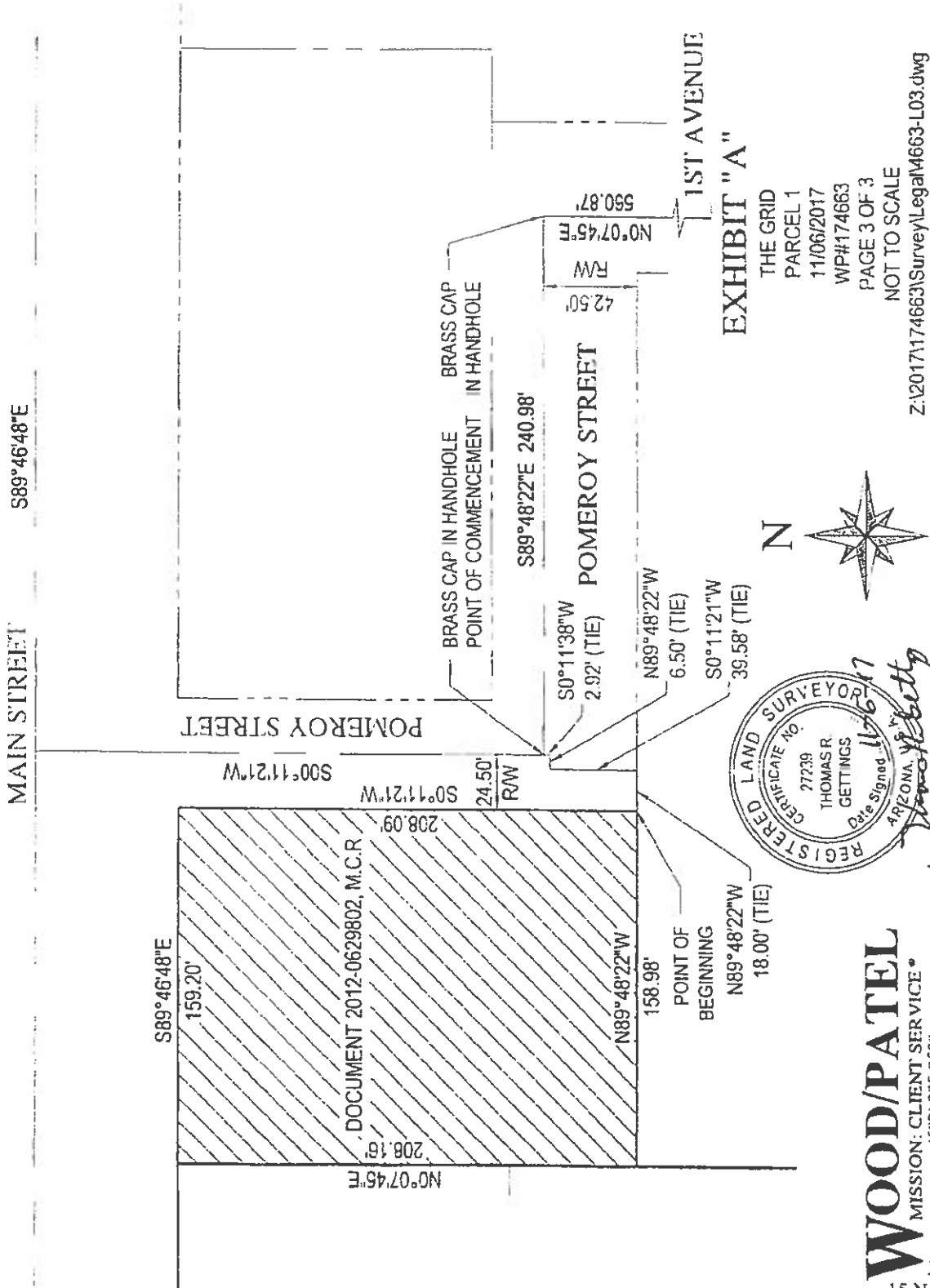
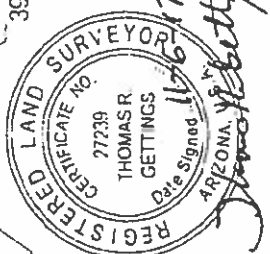


EXHIBIT "A"

THE GRID  
PARCEL 1  
11/06/2017  
WP#174663  
PAGE 3 OF 3  
NOT TO SCALE

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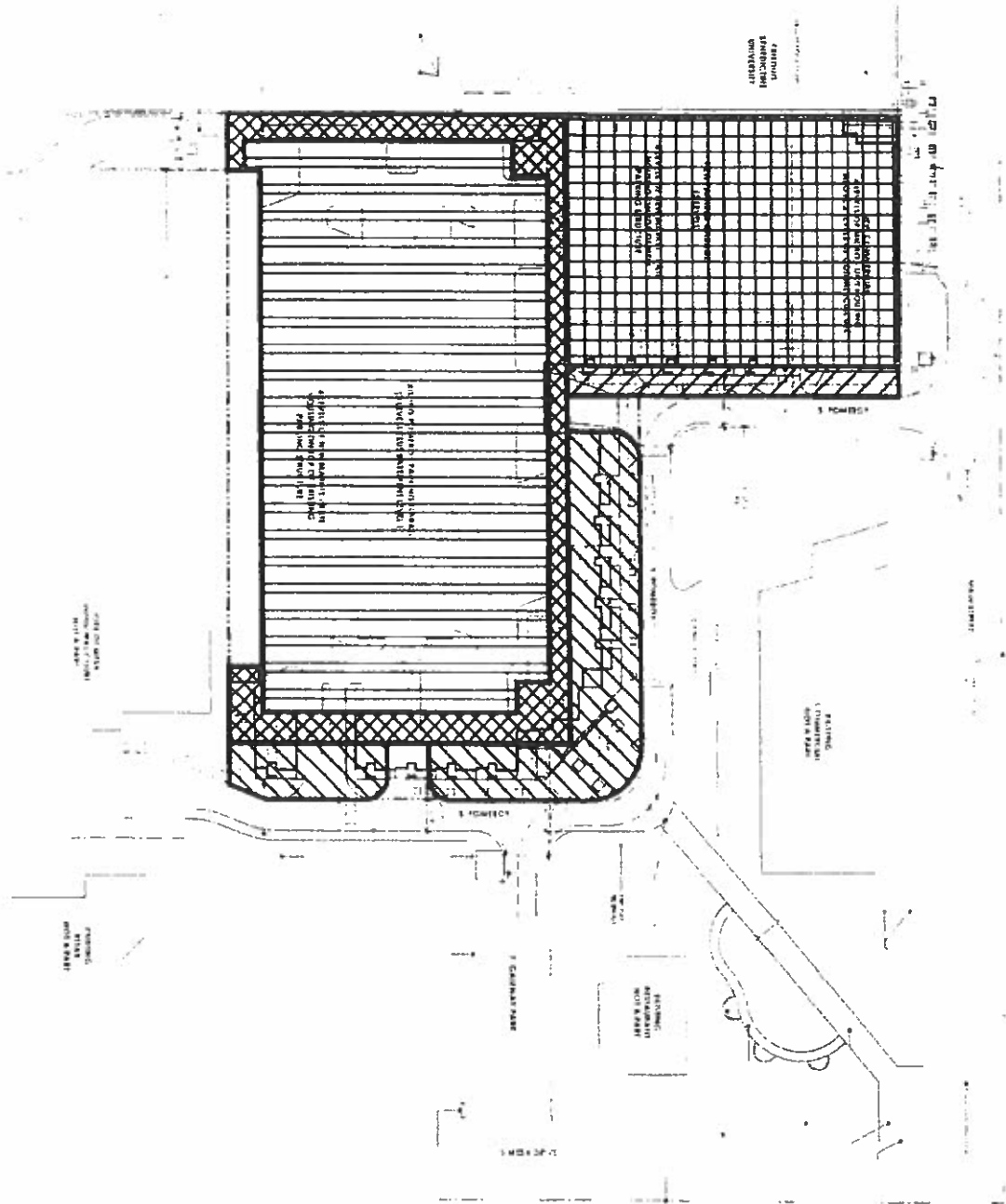


EXPIRES 06-30-20

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Exhibit A-5  
GENERAL DEPICTION OF THE PREMISES

# EXHIBIT A-5 - GENERAL DEPICTION OF LEASED AREA








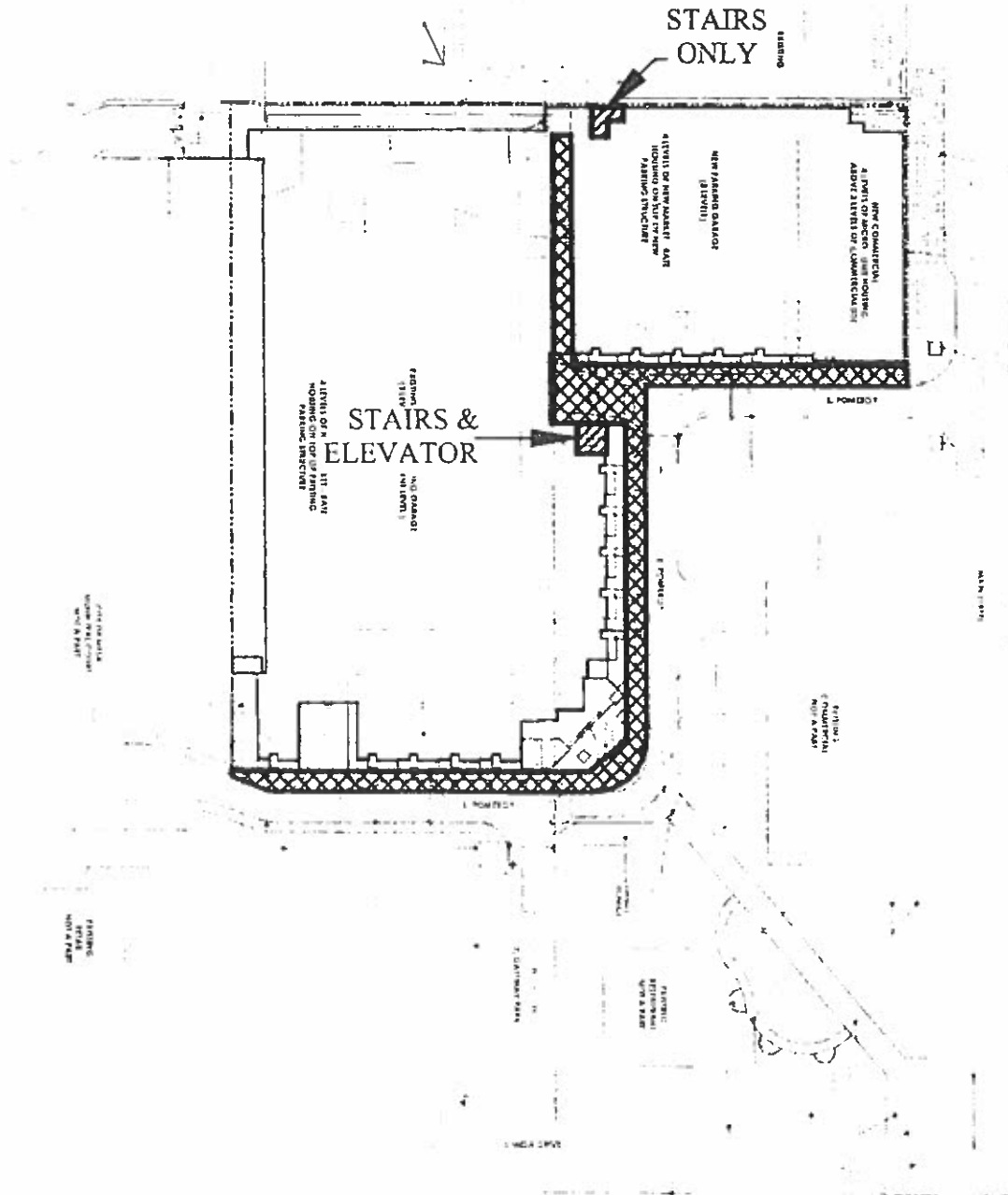
-  Land
-  Pomeroiy Parcel
-  ROW
-  ROW
-  Parcel Over Which Air Rights Are Located

Exhibit A-6  
DEPICTION OF PUBLIC ACCESS AREAS

EXHIBIT A-6 - DEPICTION OF PUBLIC ACCESS AREAS





-  Public Stairs & /or Elevator Access (Approx. Location)
-  Public Access Sidewalk and Mid Block Passage

Exhibit B  
AMENDED AND RESTATED LICENSE AGREEMENT

## AMENDED AND RESTATED LICENSE AGREEMENT

This Amended and Restated License Agreement (the “License Agreement”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2020 (the “Effective Date” of this License), by and between the City of Mesa, an Arizona municipal corporation (“Licensor”) and The Grid at Mesa, LLC, a Delaware limited liability company (“Licensee”). Each of Licensor and Licensee may be referred to in this License Agreement as a “Party,” or collectively as the “Parties.”

### RECITALS

A. Licensor is the owner of that certain real property located in Maricopa County, Arizona, a portion of which has been leased to Licensee (as “Tenant” named therein) by Licensor (as “Landlord” named therein) pursuant to the terms of the Amended and Restated Lease (the “Lease”). The portion of Licensor’s real property that has been leased to Licensee pursuant to the Lease is referred to in this License Agreement as the “Premises.”

B. Licensor additionally is the owner of a public parking garage (“Garage”) on real property that is adjacent to a portion of the Premises. A portion of the Premises consists of the “air rights” which is above the Garage. Whereas Licensor will remain the owner and operator of the Garage, Licensee now assumes certain maintenance, repair, and other obligations as set forth in this License Agreement.

C. On July 25<sup>th</sup>, 2018, Licensor and Palladium Grid, LLC, the predecessor in interest to Licensee, entered into that certain License Agreement, amended by the First Amendment dated July 25, 2018 and the Second Amendment dated February 25, 2019 (the “Prior License Agreement”).

D. On October 28<sup>th</sup>, 2019, The Grid at Mesa, LLC, a Delaware limited liability company was formed; and contemporaneously with the execution of this Amended and Restated License Agreement, Palladium Grid, LLC has assigned the rights and obligations of the Prior License Agreement to The Grid at Mesa, LLC (“Licensee”) and The Grid at Mesa, LLC has assumed all of its rights and obligations under the Prior License Agreement.

E. The Prior License Agreement terminated due to Licensee, acting as Developer in the Development Agreement and Tenant in the Prior Lease, failure to meet the compliance dates in the Development Agreement and the Prior Lease. Therefore, the Prior License Agreement is null and void and no longer in force or effect and no longer binding on the Parties.

F. Despite the termination of the Prior Lease and the Prior License Agreement, the Parties desire to continue the development of the Premises and to integrate the provisions of the Development Agreement, as amended, and the Amended and Restated Lease into this Amended and Restated License Agreement. Any provisions of the Prior License Agreement that are not included in this Amended and Restated License Agreement is not enforceable.

G. Licensor (as “City” named therein) and Licensee (as “Developer” named therein) are also parties to a development agreement dated December 7, 2017, and recorded in the Maricopa County Recorder’s Office (“Official Records”) as Recording No. 20170915520, that certain First

Amendment to Development Agreement dated February 27, 2018, and recorded in the Maricopa County Recorder's Office as Recording No. 20180149429, that certain Second Amendment to the Development Agreement dated July 25, 2018, and recorded in the Maricopa County Recorder's Office as Recording No. 20180565588, and that certain Third Amendment to Development Agreement dated December 11, 2018, and recorded in the Maricopa County Recorder's Office as Recording No. 20180565588, and that Fourth Amendment to the Development Agreement dated February 25, 2019, and recorded in the Maricopa County Recorder's Office as Recording No. 20190149140, and that certain Fifth Amendment to the Development entered into by the Parties prior to the date of this License Agreement (collectively the "Development Agreement") in which Licensor and Licensee have undertaken certain obligations with respect to the development of the Premises by Licensee (as Developer), which includes certain improvements required to be made by Licensee (as Developer) to the Garage at Licensee's sole cost and expense.

H. Licensee requires access to the Garage during the term of the Lease in order to accomplish its construction obligations under the Development Agreement, and to provide parking in connection with its operation and subleasing of the Premises pursuant to the Lease.

I. Licensor has agreed to grant to Licensee, and Licensee desires to receive from Licensor, an irrevocable, nonexclusive (subject, however, to the terms of this License), non-delegable license on, over and across the Licensed Area (as defined below) for the purpose of using the Licensed Area for (i) certain construction work required by the Development Agreement, (ii) parking only of non-commercial automobiles and motorcycles (no boats, jet skis, trailers, etc.), and (iii) maintenance and other reasonably related purposes (including but not limited to required repairs and replacements) in connection with Licensee's permitted use of the Premises pursuant to the Lease (collectively, the "Licensed Activities"), subject to the terms, conditions and limitations set forth in this License.

J. The Parties now agree to enter into this License Agreement on the terms and conditions set forth below.

### **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grant of License. Licensor hereby grants to Licensee an irrevocable, non-exclusive (subject, however to the terms of this License Agreement), non-delegable license upon, over and across those portions of the Garage depicted on Exhibit A (the "Licensed Area") to the extent reasonably necessary or appropriate for the Licensed Activities to be conducted or performed on or at the respective Licensed Area (collectively, the "License").

2. Term of Agreement. The License granted by this License Agreement is effective from and after the date of this Agreement, and the term of this License Agreement is concurrent with the Lease. In the event that Licensee (as Tenant named in the Lease) exercises its option granted in the Lease to purchase the Premises, then the License granted by this License Agreement will be deemed to run with the land in perpetuity, and the obligations of Licensee as set forth and



described in this License Agreement will thereupon be fully and automatically assumed by the fee owner upon the transfer of title.

3. Not a Lease; Encumbrances Prohibited. This License Agreement constitutes a license with respect to the Licensed Activities in the Licensed Area, and not a lease or other 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. Relationship to Development Agreement and Lease. Pursuant to the Development Agreement, Licensee has certain construction obligations with respect to the Licensed Area, and those obligations are governed in all respects by the Development Agreement. Licensee's obligations with respect to its use and maintenance of the Licensed Area are governed solely by this License Agreement.

5. Licensed Activities. Licensee is permitted to conduct and perform only the Licensed Activities described in Exhibit B, and only with respect to the applicable Licensed Areas depicted on Exhibit A. Although Licensee is not required to cause its subtenants and sublicensees to use all of the Spaces (as defined in this License Agreement), Licensee is obligated to make all payments required by Section 10 of this License Agreement; and all other Licensed Activities described in this License Agreement are mandatory, and not permissive.

6. Parking. Parking in the Garage is permitted only in designated "striped" stalls or spaces (each, a "Space"; or collectively, "Spaces"). Subject to the payment by Licensee of the License Fee and Licensee's compliance with all other terms and conditions of this License Agreement, parking by Licensee and its sublicensees is permitted pursuant to this License Agreement in those Spaces described on Exhibit C to this License Agreement (each, a "Licensed Space"; or, if more than one, the "Licensed Spaces"). Parking in the Licensed Spaces is permitted only for non-commercial automobiles and motorcycles; the parking of trailers, commercial vehicles, boats, jet-skis and similar motorized forms of transportation are expressly prohibited in the Garage. No vehicle may be parked or maintained in the Garage pursuant to this License Agreement as a form of advertising for any subtenant or sublicensee of Licensee.

(a) Licensor retains the right to all Spaces except the Licensed Spaces described on Exhibit C ("City Spaces"). Licensee may sublicense the Licensed Spaces only to Licensee's permitted residential and commercial subtenants existing under the Lease. Nothing in this License Agreement is intended to restrict the use of Licensed Spaces by commercial invitees of Licensee and its subtenants at the Premises.

(b) Licensee, at its sole cost and expense, may construct, and thereafter operate and maintain, an entry "gate" or similar control device (the "Gate"), to restrict entry to the Licensed Spaces to Licensee's sublicensees. The Gate will be placed within the Garage at a location agreed by Licensor and Licensee that does not restrict or impede Licensor's access to the City Spaces. Any Spaces within the Garage that are used (in whole or in part) for the placement and maintenance of the Gate, turn-around areas, and other purposes related to the design and placement of the Gate, will be included within the number of Licensed Spaces allocated to Licensee and subject to the License Fee described in Section 10.

(c) Not more than five (5) months nor less than three (3) months before each anniversary date of this License Agreement, Licensee may submit a request to Licensor for reallocation of the Licensed Spaces, which reallocation may reduce the number of Licensed Spaces subject to this License Agreement, but may not increase the number of Licensed Spaces subject to this License Agreement. The reallocation may be approved by the City Manager (or designee) on behalf of the Licensor. Following Licensor's approval of the requested reallocation, which approval will not be unreasonably withheld, Licensee will be responsible, at its sole cost and expense, for relocating the Gate to a location approved by Licensor that reflects the reduced number of Licensed Spaces allocated to Licensee. The cost of such relocation must include all required repairs to the Garage caused by the removal of the existing Gate, including (but not limited to) restriping of the affected Spaces. The reallocation will be deemed effective on the applicable anniversary date of this License Agreement. In the event that Licensee does not submit a timely request for reallocation of the Licensed Spaces, the number of Licensed Spaces allocated to Licensee will remain the same as the allocation for the previous year. Once the reallocation reduces the number of Licensed Spaces, the reallocation becomes the permanent allocation of Licensed Spaces. Licensee may request a reallocation increasing the number of Licensed Spaces. Licensor will consider the request but is not required to approve the request.

(d) Notwithstanding the foregoing, Licensee is not permitted to reduce its number of allocated Licensed Spaces below one hundred and fifty (150) Spaces.

(e) Licensee may charge its sublicensees a sublicense fee for each Licensed Space.

(f) The City Spaces are not intended to, and shall not be, used by Licensee/Developer, and/or its subtenants, sublicensees, employees, and/or invitees (collectively "Project Users"). Licensor may enforce and restrict the use of the City Spaces in any manner permitted by the Mesa City Code or state law, including, without limitation, time limitations on spaces, permitting spaces, and enforcement by fines and towing. Licensee/Developer shall provide reasonable notifications to its subtenants, sublicensees, and employees not to park in the City Spaces.

(g) Licensor may require Licensee, at its sole cost and expense, to install the Gate, as described and set forth in the Subsection 6(b) above, in order to facilitate compliance of Project Users in not using the City Spaces.

(h) Licensee shall reimburse Licensor for all Licensor's costs and fees related to enforcement to prevent Project Users from parking in the City Spaces and shall make such reimbursement within thirty days of invoice to Licensee. Licensor may contract with a third party for such enforcement; Licensee shall reimburse such third party directly within thirty days of invoice or to Licensor as directed by Licensor. Licensee acknowledges that Licensor currently contracts with the Downtown Mesa Association ("DMA") for such enforcement; and Licensee agrees to enforcement of any and all parking restrictions by DMA (on behalf of Licensor) and to reimburse DMA for such costs within thirty days of invoice.

(i) If enforcement of the restrictions contained in Subsection 6(f) and (h) above do not reasonably prevent (as determined by Licensor in its City Manager's or his delegee's

reasonable discretion) the use of the City Spaces by the Project Users (all such uses are misuses of the City Spaces), within ninety (90) days of written notice from Licensor to Licensee of such misuse of the City Spaces to Licensee, Licensee shall, at its sole cost and expense, lease or license parking spaces for Project Users (e.g., Project User employees or subtenants) at another location and in a sufficient number so as to eliminate the improper use of the City Spaces by Project Users; and Licensee shall requires such Project Users to park in the leased/licensed parking spaces at the other location.

(j) If Licensor, through its City Manager's or his delegee's sole discretion, determines that there is a need to increase the number of Shared Use Spaces (as that term is described and defined in Exhibit C, hereto) to allow for additional public parking in the Garage (e.g., for users of the Mesa Municipal Court), Licensor may send written notice to Licensee to increase the number of Shared Use Spaces by up to an additional 75 Licensed Spaces so that the Shared Use Spaces are increased from 92 to up to 167. Within thirty days of such written notice, Licensee shall increase the number of Shared Use Spaces by the number identified in the written notice (not to exceed a total of 167 Shared Use Spaces). Licensor shall identify in its written notice the number of increased Shared Use Spaces and may incrementally increase the number of Shared Use Spaces in separate, subsequent notices up to the cap of 75 additional Licensed Spaces (167 total). If a gate (as described in Subsection 6(b) above) has been installed, Licensee, at its sole cost and expense, shall relocate the gate in order to allow public use of the additional Shared Use Spaces.

(k) Licensee's compliance with the terms, conditions, and requirements of this Section 6 and all its subsections (including, but not limited to, Licensee having to lease/license parking spaces at another location under Section 6(i) and increasing the number of Shared Use Space under Section 6(j), if and when applicable) shall not result in a reduction, modification, or any other change to the License Fee.

7. Construction and Maintenance within Licensed Area. Licensee accepts the Licensed Area in its current "as-is", "where-is" condition, with all faults, whether latent or patent. Licensee will cause all required construction within the Licensed Area to be completed at Licensee's sole cost and expense, and in accordance with the Development Agreement. Thereafter, Licensee will maintain the Licensed Area during the term of this License Agreement at Licensee's sole cost and expense, in good condition and repair (including all repairs and replacements) and in accordance with all requirements of the Approved Plans (as defined in the Development Agreement) and all applicable laws, including Hazardous Materials Laws (as defined in the Lease). Further, Licensee will be solely responsible for: (i) all structural repairs, replacements, and structurally related maintenance costs for the Garage and Licensed Areas, which will include, but is not limited to, all pillars, walls, and ramps for exiting Garage on all levels; (ii) all repair and replacement costs for the stairwells and elevators. Licensor will only be obligated to repair and maintain the non-structural improvements in the basement of the Garage and to make routine repairs (i.e., normal wear and tear) in areas of the Garage that are not licensed to Licensee under this License Agreement.

8. Security. Licensee acknowledges and understands that the Licensor provides no security at or for the Garage and agrees that the Licensor will have no obligation to provide security at the Garage. In the event that Licensor elects, in its sole discretion, to provide security for the

basement or any other portion of the Garage, it will do so solely for the benefit of Licensor, and Licensor's employees and invitees, and Licensee and Licensee's employees, agents, contractors, subtenants, sublicensees and invitees 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's, and Licensee's subtenants' and sublicensees', employees, agents, clients, and invitees at the Garage; (ii) the security for the personal property (including all vehicles) of Licensee, and of Licensee's subtenants and sublicensees, and their employees, agents, clients, 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 or are related to Licensee's, or Licensee's subtenants' or sublicensees' (including their employees, agents, clients, and invitees) use of the Garage. Licensee will ensure that it, and its tenants and subtenants (including their employees, agents, clients, and invitees) use the Property in a safe and secure manner and in compliance with all applicable laws. Licensor agrees Licensee, at its sole cost and expense, may implement security measures at the Garage provided that Licensee gives reasonable prior notice to Licensor 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 Licensor and the public to use those portions of the Garage that are not subject to the exclusive use granted to Licensee by this License Agreement. In addition to, and without limiting any other indemnity in this License Agreement, Licensee will indemnify, defend, pay and hold Licensor and its City Council members, officers and employees harmless for, from and against any and all claims or damages (including, but not limited to, injury and death to persons and loss of or damage to property) arising from or related to Licensee's, or its subtenants' or sublicensees', employees', agents', clients', and invitees' use of the Garage or the security at the Garage (including, but not limited to, adequacy of security, lack of security, and types of security installed).

9. Reserve Fund. Licensee will pay into and fund an account for the payment of anticipated capital repair and replacement costs for Licensee's required maintenance of the Licensed Area (the "Reserve Fund"). The Reserve Fund will not be used by Licensee to pay routine and regular maintenance costs or costs of repairs or replacements under \$5,000.00 per event or item, as applicable.

(a) Promptly following completion of Licensee's required construction within the Licensed Area, but before the use of the Licensed Area by Licensee's sublicensees, Licensee will deposit the sum of \$25,000.00 (the "Initial Deposit") into the Account (as defined below), which amount must be maintained in the Account until the fifth (5<sup>th</sup>) anniversary of the Effective Date.

(b) Thereafter, on the fifth (5<sup>th</sup>) anniversary of the Effective Date, and for each of the next four (4) years, Licensee will deposit \$5,000.00 into the Account (the "Annual Deposit"). Thereafter, on the tenth (10<sup>th</sup>) anniversary of the Effective Date, and each fifth anniversary thereafter, Licensor and Licensee will review the repair and replacement history of the Licensed Area for the previous five (5) years and reasonably determine whether the amount of the Annual Deposit should be increased; and if the Parties so determine, the Annual Deposit will be as determined by the Parties until the next fifth anniversary. Any change in the amount of the Annual Deposit may be approved by the City Manager (or designee) on behalf of the Licensor.

(c) At no time will the Account be funded in an amount less than the Initial Deposit.

(d) The Account will be maintained by Licensee in a federally chartered bank or a bank licensed by the State of Arizona or an agreed upon escrow account, as reasonably approved by Licensor, and all withdrawals will require the signatures of authorized representative of both Licensor and Licensee. Licensee will cause statements of the Account to be delivered to Licensor not less frequently than annually.

(e) Licensor will reasonably approve all withdrawals from the Account for approved capital repairs and replacements upon delivery to Licensor of a statement from Licensee describing the capital repair and replacement and including bids or estimates from the entity proposed to make the capital repair or replacement. Upon completion of the capital repair or replacement in accordance with the request and Licensor's approval, and the delivery of a statement or certification that the work has been completed, Licensor will co-sign a check from the Account (or otherwise approve a withdrawal or debit from the Account) to the vendor in the authorized amount. In no event will Licensor be required to deposit any monies into the Account, and any shortfall will be paid solely by Licensee. In the event that Licensor reasonably determines that any capital repair or replacement is governed by any applicable public bidding or similar requirements, Licensee will comply with all such requirements at Licensee's sole cost and expense.

10. License Fee. In consideration of Licensee's construction of the Licensed Area Improvements in and on the Licensed Areas as required by the Development Agreement, and Licensee's maintenance of the License Area at Licensee's sole cost and expense during the term of this License Agreement, Licensee will pay a monthly fee to Licensor for the License (the "License Fee") as set forth in Exhibit D.

10.1 The Parties agree that Licensee may be eligible for Economic Development Credits and Permit Reimbursement Credits, as stated in the Development Agreement, to reduce the License Fees under this License Agreement, as shown in the Schedule of License Fees, attached hereto as Exhibit D, if Licensee complies with the requirements, both in the Development Agreement and the Lease, for the Targeted Subtenant. If Licensee is not in compliance with the requirements, as it pertains to the Targeted Subtenant, as stated in Section 4.17.1 of the Development Agreement and Section 16.3 of the Lease, Licensee agrees and acknowledges that the failure by Licensee (as Tenant in and under the Lease) to cause certain requirements to be met by the Targeted Subtenant (as defined in the Lease) will require Licensee to repay the Economic Development Credits and Permit Reimbursements that have been provided to Licensee as reductions in the License Fee which otherwise would be required to be paid by Licensee in the absence of such requirements to have been met. Accordingly, with respect to any uncured Event of Default relating to the failure of required performance by the Targeted Subtenant pursuant to Section 16.3 of the Lease, Licensee will pay to Licensor that amount of money equal to the Economic Development Credits and Permit Reimbursements received by Developer for the benefit of Licensee, which payments by Licensee (i) will be paid as an additional License Fee under this License Agreement; (ii) will be paid in equal installments over the same period of time in which such Economic Development Credits and Permit Reimbursements were received by Developer for the benefit of Licensee and reduced the License Fee that otherwise would have been paid during

such period of time; and (iii) will commence with the first payment of the License Fee owing after the uncured Event of Default, as follows:

	<b>Economic Development Incentive (due back to City)</b>	<b>New Job Creation Permit Reimbursement (due back to City)</b>	
<b>Vacate Years 1-5</b>	100%	100%	
<b>Vacate Year 6</b>	50%	If 500/300 <sup>1</sup> New Jobs Created: 50%	If less than 500/300 <sup>1</sup> New Jobs Created: 100%
<b>Vacate Year 7</b>	40%	If 500/300 <sup>1</sup> New Jobs Created: 40%	If less than 500/300 <sup>1</sup> New Jobs Created: 80%
<b>Vacate Year 8</b>	30%	If 500/300 <sup>1</sup> New Jobs Created: 30%	If less than 500/300 <sup>1</sup> New Jobs Created: 60%
<b>Vacate Year 9</b>	20%	If 500/300 <sup>1</sup> New Jobs Created: 20%	If less than 500/300 <sup>1</sup> New Jobs Created: 40%
<b>Vacate Year 10</b>	10%	If 500/300 <sup>1</sup> New Jobs Created: 10%	If less than 500/300 <sup>1</sup> New Jobs Created: 20%

<sup>1</sup>500 total New Jobs, of which 300 are filled by Mesa residents

11. Open to the Public; Non-Exclusive Use by Licensee. Subject to reasonable periods of closure for maintenance and repair (such as re-striping or re-surfacing of the parking and drive areas), and Licensee’s exclusive right to use and sublicense the designated Licensed Spaces (except the Shared Use Spaces), the Licensed Area will at all times be open to the public, and Licensee’s use of the Licensed Areas is non-exclusive. Licensee acknowledges that the basement floor of the Garage is restricted, and Licensee’s access to the basement floor of the Garage is limited solely to construction required by the Development Agreement, and structural repairs required by this License Agreement.

12. Utility Fees and Services. Licensee, at Licensee’s sole cost and expense, and during the term of this License Agreement, will provide all utility services required for the Licensed Areas (excluding the basement of the Garage) and will pay, before delinquency, all charges (including but not limited to any deposits) for utilities so provided. To the extent practicable, all utilities provided to the Licensed Areas will be metered separately from utilities provided to the basement of the Garage; but electric service for existing (that is, in place and in operation as of the Effective Date) components (e.g., lighting) in the Garage, will be paid by Licensor. Electrical service for new components (e.g., completed by Licensee pursuant to the terms of the Development Agreement), and particularly including (and not limited to) all elevators in the Garage, will be paid solely by Licensee. Licensor will not be liable in damages or otherwise for any failure or interruption of any utility services to the Licensed Area.

13. Taxes and Assessments. It is the intention of the Parties that this License Agreement creates a License and is not a “government property improvement” as defined in A.R.S. §42-6201, however if it is determined during the term of this License Agreement that A.R.S. §42-6201 applies, Licensee shall pay and be responsible for any applicable government lease excise taxes

14. Insurance; Indemnity.

(a) Throughout the term of this License 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 of the Licensed Area and Garage, and the obligations set forth in this License Agreement including, but not limited to, the maintenance and repair obligations and indemnity obligations of this License Agreement. The terms and coverages for the insurance will be as set forth in Exhibit E to this License Agreement.

(b) In addition, Licensee will pay, defend, indemnify and hold harmless Licensor and its City Council members, officers and employees 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 Licensor, its agents, representatives, officers, directors, elected or appointed officials, and employees, by reason of any of the following: (i) any act or omission by Licensee, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Licensee's obligations under this License Agreement; (ii) any use or nonuse of, or any condition created by Licensee on or at the Garage or any part thereof; (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 in whole or in part by Licensee or its employees, contractors, subcontractors, agents, representatives, sublicensees or subtenants under the Lease (and invitees of any of the foregoing); (iv) performance of any labor or services or the furnishing of any materials or other property with respect to the Garage or any part thereof relating to an obligation of Licensee under this License Agreement; (v) any failure on the part of Licensee to comply with Hazardous Materials Laws; and (vi) all Claims relating to or arising from design, construction and structural engineering acts or omissions related in any way to, of or in connection with, the existing Garage, and all subsequent design, construction, engineering and other work and improvements by or on behalf of Licensee (collectively, "Indemnity"). Licensee's obligations of Indemnity will survive the expiration or earlier termination of this License Agreement; but the obligations of Indemnity expressly exclude criminal acts by third parties that occur in the Garage other than theft of or damage to property in the Mail Room and in any portion of the Licensed Area provided for bicycle parking and storage. For the purposes of the foregoing sentence, "criminal acts by third parties" do not include criminal acts committed by, upon or involving Licensor's (as Tenant named in the Lease) subtenants at the Premises or Licensee's sublicensees, or any invitees or such subtenants or sublicensees.

15. Storage and Nuisances Prohibited. The Licensed Area will not be used for the storage of vehicles, equipment or materials; provided, however, that nothing in this License Agreement will be deemed to prohibit secure bicycle parking for Licensee's subtenants and sublicensees. All vehicles parked in the Garage must be fully operational. 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.

16. Permits. Licensee will, at its sole cost and expense, obtain all permits, licenses and authorizations which may be required by Licensor 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 or governmental regulation, or which violates the terms of this License Agreement.

17. Default. If Licensee fails to pay any sum due under this License Agreement promptly when due and such failure continues for ten (10) days after notice thereof in writing to Licensee, or if Licensee fails to perform or comply with any of the other agreements, conditions or undertakings of this License Agreement and such default continues for thirty (30) days after notice thereof in writing to Licensee (each, a "Default"), Licensor will have the right, at its election, to seek any remedy available to Licensor under the Development Agreement or the Lease. Notwithstanding the foregoing, a Default of this License Agreement by Licensee will be a breach or default both of the Lease and of the Development Agreement, and a breach or default of either the Lease by Tenant or the Development Agreement by Developer will be a breach of this License Agreement; and notice of such breach or default under either the Lease or the Development Agreement, sent either to the Tenant named in the Lease or the Developer named in the Development Agreement, as applicable, and in accordance with the "Notice" provisions of the Lease or the Development Agreement, as applicable, will, without further act or notice required, constitute Notice to Licensee of a Default of this License Agreement.

18. 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 Licensor or Licensee (or their respective successors or permitted assigns) be liable for any special, consequential, incidental, punitive or exemplary damages.

19. No Partnership; Assignment. It is not intended by this License Agreement to, and nothing contained in this License Agreement will, create any partnership, joint venture, landlord-tenant or similar arrangement between the Parties, other than that of Licensor and Licensee. No term or provision of this License 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 Lease of Licensee's entire leasehold interest in the Premises, and an express assumption by an assignee of all of Licensee's obligations under this License Agreement, Licensee may not assign its rights under this License Agreement or grant to any other person the right to utilize the Licensed Area (other than Licensee's permitted residential sublicensees) without the prior written consent of Licensor, which consent Licensor may grant or withhold in its sole discretion.

20. Preservation of State Shared Revenue. Notwithstanding any other provision of, or limitation in, this License Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this License Agreement violates any provision of state law or the Constitution of Arizona, Licensor and Licensee shall amend this License Agreement in such a manner that resolves the violation to the satisfaction of the Attorney General. If the Licensor and Licensee, after a good faith effort, are not able to modify this License Agreement so as to resolve the violation with the Attorney General 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), this License Agreement 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 License Agreement. Additionally, if the Attorney General determines that this License 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), Licensors shall be entitled to terminate this License Agreement, except if Licensee posts such bond; and provided further, that if the Arizona Supreme Court determines that this License Agreement violates any provision of state law or the Constitution of Arizona, Licensors may terminate this License Agreement and the Parties shall have no further obligations hereunder.

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

22. Applicable Law. This License 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.

23. Incorporation of Recitals and Exhibits. Each of the recitals set forth above and each of the exhibits attached hereto are hereby incorporated into this License Agreement and made a part hereof. Subject in all events to Licensee's obligations under the Development Agreement and the Lease, this License Agreement constitutes the entire License Agreement between Licensors 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 License Agreement may not be modified, amended, supplemented or otherwise changed except by a writing executed by both Licensors and Licensee. Licensee agrees, acknowledges and understands that certain amendments to this License Agreement may require the approval of the City Council acting in its sole discretion.

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

25. Severability. If any term, provision or covenant contained in this License Agreement will, to any extent, be invalid or unenforceable, the remainder of this License 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.

26. Notices. All notices, demands, requests, consents, approvals and other communications required or permitted in this License Agreement (each, a "Notice"), will 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), or within three (3) days after the same has been mailed by registered or certified mail, postage prepaid and return receipt requested, at the address shown below:

To Licensee:                      Tony Wall  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to: The Grid at Mesa, LLC  
Attn: Tony Wall  
7349 N. Via Paseo del Sur, Suite 515  
Scottsdale, Arizona 85258

With a copy to: AZ Strategies LLC  
Attn: Karrin Taylor Robson  
3344 East Camelback Road, Suite 100  
Phoenix, Arizona 85018

With a copy to: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

and

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

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

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

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

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

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

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

27. 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 License Agreement will not engage in, a boycott of Israel.

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

**LICENSOR:**

**THE CITY OF MESA**, an Arizona municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LICENSEE:**

The Grid at Mesa LLC, a Delaware Arizona limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**Depiction of Licensed Area**



**EXHIBIT B**  
**Description of Licensed Activities**

<u>Licensed Area</u> (portion of Garage)	<u>Licensed Activity Permitted</u>
Basement floor	Structural, mechanical and plumbing improvements required by the Development Agreement to support and service the addition of four stories of residential development and landscaping above the Garage; thereafter, all required repairs and replacements (including but not limited to structural repairs and replacements) as reasonably determined by Licensor. Access for routine maintenance and parking is prohibited.
First floor; ramp to second floor; second floor; ramp to third floor; third floor	Structural, mechanical and plumbing improvements required by the Development Agreement to support and service the addition of four stories of residential development and landscaping above the Garage; restriping of parking stalls; thereafter, all required maintenance, repairs and replacements (including but not limited to structural repairs and replacements) as reasonably determined by Licensor. Construction, operation and maintenance of an entry gate on an upper level to restrict access to higher floors to permitted sublicensees. Parking by Licensee's subtenants is permitted in accordance with Exhibit C.
Roof	Structural, mechanical and plumbing improvements required by the Development Agreement to support and service the addition of four stories of residential development and landscaping above the Garage; thereafter, all required maintenance, repairs and replacements (including but not limited to structural repairs and replacements) as elected by Licensee or reasonably determined by Licensor.
Mail Room	Ownership and maintenance of United States Postal Service approved mailboxes for Licensee's subtenants in the Premises;

	ownership and maintenance of private delivery service lockers or similar systems (e.g., Amazon® Hub®) which may be in an enclosed, secured room built within the ground level of the Garage; all improvements owned and maintained solely by Licensee.
Trash Compactor and Sanitation Yard	Ownership, maintenance and continuous operation (including collection) of a trash compactor, recycling dumpster, grease trap interceptor (or similar devices as may be reasonably approved by Licensor as technologies develop) in the area of the Garage depicted in Exhibit A-2, including all repair and replacement of the compactor (or similar device); all clean-up costs beyond normal trash collection. This Licensed Activity is subject to all City of Mesa Ordinances, rules, terms and conditions applicable to solid waste maintenance, collection and pick up, as the same may be amended from time-to-time. The use of these facilities may be shared with the City Courts of the City of Mesa, as Licensor may elect.
Row Home Entry Points	Licensee will have the right to modify exterior enclosing walls to allow direct access (for vehicles and pedestrians) from the existing Garage to the new garage, from the Garage to the mail room, from the mail room to the new building, and from the Garage to the row homes (individually or in common). Licensee will have the right to physical access to the Garage at all of these locations (and similar locations as reasonably determined by Licensor).
Secure Bicycle Parking and Storage	Throughout the Garage, Licensee may install secure bicycle parking and storage. This may take the form of lockers, elevated locking racks, enclosed areas or as reasonably determined by Licensor.
Stairwells	Licensee will have the right to: (i) remove and replace the existing stair wells at the southwest and southeast corners of the garage (the new stair wells may also

	<p>include mechanical and sanitation facilities); (ii) remove all staircases from the basement level and replace them with staircases in common, but secured from the upper levels at the southwest and southeast corners; (iii) remove the staircases at the northeast and northwest corners and not replace them; (iv) add a new staircase (owned by Licensee) with City/public access to levels 1-3 north of the existing staircase in the northwest corner (outside of but proximate to the Licensed Area); (v) add a staircase (owned by Licensee) (outside of but proximate to the Licensed Area) with City/public access to levels basement-3 at the mid-point north of the garage (this staircase must be secured at the basement level); and (vi) remove the staircase at the midpoint of the west end of the garage and replace it with vehicular or bicycle parking. All of the staircases may also be used by the Licensee to provide access to the residential and landscape areas above the garage (such access may be secured by the Licensee). All City/public access to staircases owned by Licensee will be solely for the benefit of the public properly using the parking garage facility. See Exhibit E-2 to the Development Agreement (“Stairwell Access and Elevator Improvements”) for approximate locations.</p>
Elevators	<p>Licensee will provide an elevator, outside of but proximate to the Licensed Area, with City/public access to levels basement-3 at the mid-point north of the garage. This access will be solely for the benefit of the public properly using the parking garage facility. This elevator will be owned by the Licensee and must be secured at the basement level. The elevator may also be used by the Licensee to provide access to the residential and landscape areas above the Garage. Such access may be secured by the Licensee.</p>



Southern boundary (exterior of Garage)	Licensee may use the area south of the garage for support columns for Sky Apartments (as defined in the Development Agreement). Licensee may also use the same area (above the existing Garage) for shade devices and architectural embellishments as reasonably determined and approved by Licensor. These areas will not be included in the leasable area of the Premises.
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**EXHIBIT C**  
**Description of Spaces**

The number and location of the Licensed Spaces are as described in this Exhibit; however, after the completion of the improvements to the Pomeroy Parking Garage (the "Garage") and the construction by Licensee of a new parking garage on the leased Premises (the "New Garage"), the Parties will create a detailed depiction of the parking spaces to show where the Licensed Spaces, City Spaces (and other improvements) are located.

Upon Completion of Construction, the Garage will have 604 spaces on levels 1 through 3 (the basement spaces are exclusively for Licensor's use and are not being licensed). Licensee is licensed 339 spaces subject to the following reduction in spaces: Licensee will be making certain improvements to the Garage (such as adding support columns for improvements above the Garage), and these improvements will reduce the current number of spaces in the Garage. For every space lost (below 604) in the Garage (levels 1-3) due to construction, improvements, and re-stripping, the number of Licensed Spaces will be reduced on a one-for-one basis. By way of example, if after the construction, improvements, and re-stripping to the Garage there are 532 spaces on levels 1-3 (a loss of 72 spaces), then the Licensed Spaces would be 267 ( $339 - 72 = 267$ ). After the construction, improvements, and re-stripping, the Parties shall agree upon the number of Licensed Spaces. As to parking in the Garage and the New Garage and the location of certain spaces, the Parties further agree:

Garage

1. Ten (10) of the Licensed Spaces will be located on the east end of the ground level of the Garage and will be for exclusive use by the Grid Rowhomes.
2. Ten (10) of the Licensed Spaces will be located on the north end of the ground level of the Garage and will be for exclusive use by the Grid Rowhomes.
3. One (1) of the Licensed Spaces will be located in the northeast corner of the ground level of the Garage for use by tenants using the Grid Mail Room.
4. Ninety-two (92) of the Licensed Spaces will be located on the ground level of the Garage and will be at all times shared, non-exclusive, free, and available for all public and commercial uses (the "Shared Use Spaces"). Pursuant to Section 6(j) of the License, Licensor may increase the number of Shared Use Spaces by up to an additional 75 Licensed Spaces and in such event 167 of the Licensed Spaces would be Shared Use Spaces.
5. Other than the Licensed Spaces described in numbered paragraphs 1 through 4 above (which consists of 113 Licensed Spaces, not including the additional Shared Use Spaces as may be required under Section 6(j)), all the remaining Licensed Spaces will be on Garage levels 2 and 3 and the ramps, and these Licensed Spaces may be gated (provided the Shared Use Spaces and any additional Shared Use Spaces required under Section 6(j) shall not be gated).
6. Thirteen (13) spaces in the Garage will continue to be handicapped stalls for use by all handicap users of the Garage.

**EXHIBIT D**  
**Schedule of License Fees**

	Base Monthly Rate (300 spaces) <sup>1,2</sup>	Base Yearly Rate (300 spaces) <sup>1,2</sup>	PI Cap Credit (Monthly)	PI Cap Credit (Yearly)	Monthly Rate w/PI Cap Credit	Yearly Rate w/PI Cap Credit	Economic Dev Credit (Monthly) <sup>5</sup>	Economic Dev Credit (Yearly) <sup>5</sup>	Monthly Rate w/All Credits	Yearly Rate w/All Credits
<b>During Construction</b>	Developer shall provide replacement parking for current permitted parking spaces and Mesa Courts employees displaced during construction, at its sole costs.									
<b>Years 3 -5 (\$20/space)<sup>3</sup></b>	\$6,000	\$72,000	\$3,000	\$36,000	\$3,000	\$36,000	\$3,000	\$36,000	\$0.00	\$0.00
<b>Years 6-7 (\$25/space)<sup>3</sup></b>	Base Monthly Rate (250 spaces) <sup>1,2</sup> \$6,250	Base Yearly Rate (250 spaces) <sup>1,2</sup> \$75,000	PI Cap Credit (Monthly) \$3,125	PI Cap Credit (Yearly) \$37,500	Monthly Rate w/PI Cap Credit \$3,125	Yearly Rate w/PI Cap Credit \$37,500	Economic Dev Credit (Monthly) <sup>5</sup> \$3,125	Economic Dev Credit (Yearly) <sup>5</sup> \$37,500	Monthly Rate w/All Credits \$0.00	Yearly Rate w/All Credits \$0.00
<b>Years 8-10 (\$25/space)<sup>4</sup></b>	\$6,250	\$75,000	\$4,687.50	\$56,250	\$1,562.50	\$18,750	N/A	N/A	\$1,562.50	\$18,750
<b>Year 11 (\$30/space)</b>	\$7,500	\$90,000	\$5,625	\$67,500	\$1,875	\$22,500	N/A	N/A	\$1,875	\$22,500
<b>Year 12 (\$35/space)<sup>4</sup></b>	\$8,750	\$105,000	\$6,562.50	\$78,750	\$2,187.50	\$26,250	N/A	N/A	\$2,187.50	\$26,250
<b>Years 13-99<sup>4</sup></b>	Based on then Council approved parking rate/space/month, or if such fee ceases to exist in the future, the Parties shall negotiate in good faith and agree upon a commercially reasonable rate (which shall in no event be less than the previously applicable rate)									

<sup>1</sup> Developer shall have the right to reduce the number of parking spaces licensed on a yearly basis, but at no time will the developer license less than 150 parking spaces. After monthly/annual payments for the minimum 150 licensed parking spaces, the additional parking license fee will be assessed per/space licensed, up to the maximum 340 spaces.

<sup>2</sup> PI Cap Credit available only to reimburse for those Minimum Public Improvements and Additional Public Improvements that have been completed and accepted by the City Engineer, up to the \$3,000,000 Cap. License Fee Credits are only available beginning in Year 3 of the Lease. Calculations shown in this table represent assumed number of parking spaces licensed. Actual monthly and yearly License Rates will be based on actual number of parking spaces licensed. Additionally, if Licensee is entitled to License Fee Credits (i.e., PI Cap Credits) under the terms of the Development Agreement, the PI Cap Credits will be used as described in this Exhibit and Lease Exhibit C to reduce the License Fee (and the Rent under the Lease) until the Credits are used (up to the Cap) between the License Fees and Rent or are extinguished under the terms of the Development Agreement, Lease, or License at which point the License Fee shall be as described in the "Base Monthly Rate" and "Base Yearly Rate" columns. Because the use of the Credits will be based on future variables (such as the number of licensed parking spaces and the use of the Credits under the Lease) this Exhibit does not show or establish when the Credits will be used up, which the Parties shall agree to when all such future variable are determined.

<sup>3</sup> For Years 3-7, the maximum Public Infrastructure License Fee Credit that can be used to offset the License Fees shall not exceed 50% of the Rent and the maximum Economic Development Rent Credit that can be used to offset the License Fees shall not exceed 50% of the Rent.

<sup>4</sup> For Years 8-15, the maximum PI Cap Credit shall not exceed 75% of the License Rate. After Year 7, no Economic Development Rent Credits are available to offset License Fees. After Year 15, the maximum PI Cap Credit shall not exceed 50% of the License Rate.

<sup>5</sup> Eligibility for, and continued right to, the Economic Development Credits is subject to compliance with all the terms, conditions, and limitations set forth in the First Amendment to the Development Agreement and First Amendment to License (First Amendment to Lease, for Lease exhibit) Agreement.

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

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

<u>Type</u>	<u>Amount</u>	<u>Coverage Period</u>
General Liability (which will include operations, products, completed operations, and contractual liability coverage)	With limits not less than \$25,000,000 combined single limit per occurrence and not less than \$25,000,000 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 when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage will thereafter remain in effect for the remainder of 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,	Coverage will be in effect upon or prior to and remain in effect for the Term of the License.

	non-owned and hired auto coverage as applicable.	
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 when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage will thereafter remain in effect for the remainder of 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 and a temporary or final certificate of occupancy is obtained.
Owner's and Contractor's Protective Liability	\$25,000,000	Coverage will be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Professional Liability	\$2,000,000	Coverage will be in effect upon or prior to any construction activities and maintained until the

		substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Blanket Crime Policy	\$5,000,000	Coverage will be in effect upon or prior to and remain in effect for the Term of the License.
Boiler and Machinery Coverage	\$25,000,000	Coverage will be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage will thereafter remain in effect for the remainder of the Term of the License.

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

1. Licensor, 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 Licensor is to be named as an additional insured, the Licensor 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 Licensor insurance sources.

4. All policies will include a waiver of subrogation rights in favor of the Licensor, 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 Licensor 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. Licensor will be named as Loss Payee on all property insurance policies. Proceeds of any property damage insurance will be applied as required by Section 14 of this License.

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 Licensor. 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. Licensor 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 Licensor 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 Licensor 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. Licensor 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 Licensor. 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 Licensor 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 Licensor, its agents,



officials, volunteers, officers, elected officials, and employees, (ii) a waiver of liability in favor of the Licensor, 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) Licensor, 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. LICENSOR'S RIGHT TO ADJUST. With written notice to Licensee of not less than 60 days, Licensor may reasonably adjust the amount and type of insurance Licensee is required to obtain and maintain under this License as reasonably required by Licensor from time-to-time.

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

Exhibit C  
SCHEDULE OF RENT

	Base Monthly Lease Rate	Base Yearly Lease Rate	PI Cap Credit (Monthly)	PI Cap Credit (Yearly)	Monthly Lease w/PI Cap Credit	Yearly Lease w/PI Cap Credit	Economic Dev Credit (Monthly) <sup>6</sup>	Economic Dev Credit (Yearly) <sup>6</sup>	Monthly Lease w/All Credits	Yearly Lease w/All Credits
<u>Year 1</u> <sup>1</sup>										
Construction Rate	\$1,000	\$12,000	N/A	N/A	\$1,000	\$12,000	N/A	N/A	\$1,000	\$12,000
<u>Year 2</u> <sup>1</sup>										
Lease up period	\$2,500	\$30,000	N/A	N/A	\$2,500	\$30,000	N/A	N/A	\$2,500	\$30,000
<u>Years 3-7</u> <sup>2,3</sup>										
6% Lease	\$18,850	\$226,200	\$9,425	\$113,100	\$9,425	\$113,100	\$9,425	\$113,100	\$0.00	\$0.00
<u>Years 8-15</u> <sup>2,4</sup>										
6% Lease	\$18,850	\$226,200	\$14,137.50	169,650	\$4,712.50	\$56,550	N/A	N/A	\$4,712.50	\$56,550
<u>Years 16-20</u> <sup>4</sup>										
7% Lease	\$22,000	\$264,000	\$11,000	\$132,000	\$11,000	\$132,000	N/A	N/A	\$11,000	\$132,000
<u>Years 21-99</u> <sup>5</sup>										
			Based on 7% monthly/annually of the then appraised value of the property every 7 years							

<sup>1</sup> If Developer does not meet the Compliance Dates in Section 4.12, including but not limited to timely submittal of plans, paying for permits, and Commencing Construction timely, the Rent for the remainder of the Construction Rate and Lease Up periods shall be \$22,000/month.

<sup>2</sup> Rent Credit available only to reimburse for those Minimum Public Improvements and Additional Public Improvements that have been completed and accepted by the City Engineer, up to the \$3,000,000 Cap. Rent Credits are only available beginning in Year 3 of the Lease. Additionally, if Tenant is entitled to Rent Credits (i.e., PI Cap Credits) under the terms of the Development Agreement, the PI Cap Credits will be used as described in this Exhibit and License Exhibit D to reduce the Rent (and the License Fees under the License) until the Credits are used (up to the Cap) between the Rent and License Fees or are extinguished under the terms of the Development Agreement. Lease, or License at which point the Rent shall be as described in the "Base Monthly Lease Rate" and "Base Yearly Lease Rate" columns. Because the use of the Credits will be based on future variables (such as the number of licensed parking spaces and the use of the Credits under the Lease) this Exhibit does not show or establish when the Credits will be used up, which the Parties shall agree to when a such future variable are determined.

<sup>3</sup> For Years 3-7, the maximum Public Infrastructure Rent Credit that can be used to offset the Rent shall not exceed 50% of the Rent and the maximum Economic Development Rent Credit that can be used to offset the Rent shall not exceed 50% of the Rent.

<sup>4</sup> For Years 8-15, the maximum Public Infrastructure Rent Credit that can be used to offset the Rent shall not exceed 75% of the Rent. After Year 7, no Economic Development Rent Credits are available to offset the Rent. After Year 15, the maximum Public Infrastructure Rent Credit to offset the Rent shall not exceed 50% of the Rent.

<sup>5</sup> Starting in the 21<sup>st</sup> year of the Lease and every 7 years thereafter, the Rent shall be based on 7% of the fair market value of the Premises (as unimproved property and air rights) as follows: one hundred and twenty days before the 21<sup>st</sup> year of the Lease (and every 7 years thereafter), the Parties (if they Parties are unable to agree upon the fair market value of the Premises unimproved) shall each create a list of three appraisers and provide such list to the other Party. The appraisers on the lists shall be members of the American Institute of Real Estate Appraisers ("M.A.I.") with at least 10 years of experience in appraising commercial real property. The Parties shall act in good faith to select one appraiser from one of the lists as the primary appraiser (the "Primary Appraiser") and to select from the other list another appraiser to be the review appraiser (the "Review Appraiser") (the Primary Appraiser and Review Appraiser shall be from different lists). If the Parties cannot so agree within thirty (30) days of providing the lists, either Party may, upon at least 5 days prior written notice to the other Party, apply to the American Institute of Real Estate Appraisers or to the presiding judge of the Maricopa County Arizona Superior Court, for selecting such appraisers. Within 45 days after selecting the Primary Appraiser, the Primary Appraiser shall provide the Parties with an appraisal of the Premises that determines the fair market value of the Premises (as

unimproved). Within 15 days after receiving such appraisal, either Party may provide notice to the other Party that they disagree with the Primary Appraiser's fair market value of the Premises and engage the Review Appraiser to appraise the Premises. If such notice is not provided, the fair market value of the Premises shall be as stated in the Primary Appraiser's appraisal, unless the Parties agree in writing to another amount for the fair market value of the Premises. If notice that a Party disagrees with the Primary Appraiser's determination is provided, the Parties agree that the Premises shall be appraised by the Review Appraiser, and, then, within 30 days of engaging the Review Appraiser, the Review Appraiser shall provide the Parties with an appraisal of the Premises that determines the fair market value of the Premises (as unimproved); the Parties shall negotiate in good faith based on the two appraisals to agree upon a fair market value of the Premises that falls within the range of the two appraisals. If the Parties cannot so agree within thirty (30) days of receiving the Review Appraiser's appraisal, either Party may, upon at least 5 days prior written notice to the other Party, apply to presiding judge of the Maricopa County Arizona Superior Court, (or file suit in Maricopa County Arizona Superior Court) for a determination of the fair market value of the Premises. Each Party agrees to pay one-half (1/2) of the fees for the appraisals. The date of valuation for the appraisals shall be the date the appraisal is completed.

Eligibility for, and continued right to, the Economic Development Credits is subject to compliance with all the terms, conditions, and limitations set forth in the First Amendment to the Development Agreement and First Amendment to Lease, for Lease exhibit) Agreement

Exhibit D  
PROHIBITED USES

The uses listed below are expressly prohibited from the Premises:

1. Group Residential, as defined by Chapter 64 of the Zoning Ordinance
2. Non-chartered Financial Institution, as defined by Chapter 64 of the Zoning Ordinance
3. Pawn Shops, as defined by Chapter 64 of the Zoning Ordinance
4. Social Service Facilities, as defined by Chapter 64 of the Zoning Ordinance
5. Tattoo and Body Piercing Parlors, as defined by Chapter 64 of the Zoning Ordinance
6. Group Residential, as defined by Chapter 86 of the Zoning Ordinance
7. Off-Track Betting Establishment, as defined by Chapter 86 of the a Zoning Ordinance
8. All sales of marijuana, including Medical Marijuana Dispensary, as defined by Chapter 86 of the Zoning Ordinance
9. Package liquor stores, except as part of a restaurant or bar concept
10. Kennels, as defined by Chapter 64 of the Zoning Ordinance

Exhibit E  
INSURANCE REQUIREMENTS

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

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

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

<u>Type</u>	<u>Amount</u>	<u>Coverage Period</u>
General Liability (which shall include operations, products, completed operations, and contractual liability coverage)	With limits not less than \$25,000,000 combined single limit per occurrence and not less than \$25,000,000 general aggregate.	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Property (all risks of loss including risks covered by fire and extended coverage, terrorism, vandalism and malicious mischief)	In an amount not less than full replacement cost of structure and all fixtures.	Coverage shall be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.
Commercial Automobile Liability	With limits not less than \$1,000,000 each occurrence, Combined Single Limit for bodily injury and property damage covering owned, non-owned and hired auto coverage as applicable.	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Business Interruption Coverage (can be endorsed to the Property policy)	Minimum 12 months' rent and ongoing operating expenses	Coverage shall be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect

		or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.
Workers' Compensation Employers' Liability	Statutory Limits \$500,000 each accident, each employee	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
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
Builder's Risk	In an amount not less than the estimated total cost of construction.	Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Owner's and Contractor's Protective Liability	\$25,000,000	Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Professional Liability	\$2,000,000	Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Blanket Crime Policy	\$5,000,000	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.

Boiler and Machinery Coverage	\$25,000,000	Coverage shall be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.
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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 14 of this Lease.

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

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

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

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

G. TENANT'S DEDUCTIBLES AND SELF-INSURED RETENTIONS: Any deductibles or self-insured retention in excess of \$250,000 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 F  
FORM OF SPECIAL WARRANTY DEED

When Recorded, Mail to:

**SPECIAL WARRANTY DEED**

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

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS  
REFERENCE MADE A PART HEREOF;

and further together with all rights and obligations of Developer granted in Section 5.6 ("Encroachment into Right-of-Way") of that certain "Development Agreement" dated November \_\_, 2017, between the City of Mesa, Arizona, and The Grid at Mesa, LLC, an Delaware limited liability company, recorded in the Official Records of Maricopa County, Arizona, on or about \_\_\_\_\_, as Recording No. 2021-\_\_\_\_\_ (the "**Development Agreement**");

and further together with all rights and obligations of Licensee granted in that certain "License" dated \_\_\_\_\_, and which is described in Section 5.2(b) of the Development Agreement;

SUBJECT matters of record and to any and all conditions, easements, encroachments, rights-of-way, or restrictions which a physical inspection, or accurate ALTA survey, of the Property would reveal; and all applicable municipal, county, state or federal zoning and use regulations.

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

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed as of this \_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

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.

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

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

My Commission Expires:

\_\_\_\_\_



Exhibit G  
MEMORANDUM OF LEASE

WHEN RECORDED RETURN TO:

City of Mesa  
Attn: Real Estate Department  
20 East Main Street  
Mesa, Arizona 85211

=====

**MEMORANDUM OF LEASE**

=====

THIS MEMORANDUM OF LEASE shall evidence that there is in existence a Lease as hereinafter described. It is executed by the Landlord and Tenant for recording purposes only as to the Lease hereinafter described, and it is not intended and shall not modify, amend, supersede or otherwise effect the terms and provisions of the Lease.

1. Name of Document: Ground and Air Lease (the "Lease")
2. Name of Landlord: City of Mesa, Arizona ("Landlord")
3. Name of Tenant: The Grid at Mesa, LLC ("Tenant")
4. Address of Landlord: City of Mesa  
Attn: City Clerk  
20 East Main Street  
Mesa, Arizona 85211
5. Address of Tenant: The Grid at Mesa, LLC  
Attn: Tony Wall  
3344 E. Camelback Road, Suite 100  
Phoenix, Arizona 85018
6. Date of Lease: \_\_\_\_\_, 2020  
("Commencement Date")
7. Initial Lease Term: Commencing on the Commencement Date and expiring fifty (50) years thereafter.
8. Option to Extend: Tenant has the option to extend the Initial Lease Term for one (1) additional period of forty-nine (49) years.

9. Demised Premises: The real property more particularly described in Exhibit "A" and the Air Rights above the real property described in Exhibit "A-1" attached to this Memorandum of Lease.

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

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease to be effective as of \_\_\_\_\_, 2020.

Landlord:

City of Mesa, Arizona, an Arizona municipal corporation

By: \_\_\_\_\_  
Name: Christopher J. Brady  
Its: City Manager

STATE OF ARIZONA                    )  
  ) ss.  
County of Maricopa                 )

On this the \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned Notary Public, personally appeared Christopher J. Brady, who acknowledged himself to be the City Manager of the City of Mesa, Arizona, an Arizona municipal corporation; and that, being authorized so to do, he executed the foregoing instrument.

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

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

My Commission Expires:

\_\_\_\_\_

Tenant:

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

By: \_\_\_\_\_  
Name: Tony Wall  
Its: Managing Partner

STATE OF ARIZONA                    )  
  ) ss.  
County of Maricopa                    )

On this the \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who acknowledged \_\_\_\_self to be the \_\_\_\_\_ of \_\_\_\_\_, a(n) \_\_\_\_\_; and that, being authorized so to do, \_\_\_he executed the foregoing instrument.

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

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

My Commission Expires:

\_\_\_\_\_

**Exhibit B**  
**Amended and Restated License**



## AMENDED AND RESTATED LICENSE AGREEMENT

This Amended and Restated License Agreement (the "License Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2020 (the "Effective Date" of this License), by and between the City of Mesa, an Arizona municipal corporation ("Licensor") and The Grid at Mesa, LLC, a Delaware limited liability company ("Licensee"). Each of Licensor and Licensee may be referred to in this License Agreement as a "Party," or collectively as the "Parties."

### RECITALS

A. Licensor is the owner of that certain real property located in Maricopa County, Arizona, a portion of which has been leased to Licensee (as "Tenant" named therein) by Licensor (as "Landlord" named therein) pursuant to the terms of the Amended and Restated Lease (the "Lease"). The portion of Licensor's real property that has been leased to Licensee pursuant to the Lease is referred to in this License Agreement as the "Premises."

B. Licensor additionally is the owner of a public parking garage ("Garage") on real property that is adjacent to a portion of the Premises. A portion of the Premises consists of the "air rights" which is above the Garage. Whereas Licensor will remain the owner and operator of the Garage, Licensee now assumes certain maintenance, repair, and other obligations as set forth in this License Agreement.

C. On July 25<sup>th</sup>, 2018, Licensor and Palladium Grid, LLC, the predecessor in interest to Licensee, entered into that certain License Agreement, amended by the First Amendment dated July 25, 2018 and the Second Amendment dated February 25, 2019 (the "Prior License Agreement").

D. On October 28<sup>th</sup>, 2019, The Grid at Mesa, LLC, a Delaware limited liability company was formed; and contemporaneously with the execution of this Amended and Restated License Agreement, Palladium Grid, LLC has assigned the rights and obligations of the Prior License Agreement to The Grid at Mesa, LLC ("Licensee") and The Grid at Mesa, LLC has assumed all of its rights and obligations under the Prior License Agreement.

E. The Prior License Agreement terminated due to Licensee, acting as Developer in the Development Agreement and Tenant in the Prior Lease, failure to meet the compliance dates in the Development Agreement and the Prior Lease. Therefore, the Prior License Agreement is null and void and no longer in force or effect and no longer binding on the Parties.

F. Despite the termination of the Prior Lease and the Prior License Agreement, the Parties desire to continue the development of the Premises and to integrate the provisions of the Development Agreement, as amended, and the Amended and Restated Lease into this Amended and Restated License Agreement. Any provisions of the Prior License Agreement that are not included in this Amended and Restated License Agreement is not enforceable.

G. Licensor (as "City" named therein) and Licensee (as "Developer" named therein) are also parties to a development agreement dated December 7, 2017, and recorded in the Maricopa County Recorder's Office ("Official Records") as Recording No. 20170915520, that certain First

Amendment to Development Agreement dated February 27, 2018, and recorded in the Maricopa County Recorder's Office as Recording No. 20180149429, that certain Second Amendment to the Development Agreement dated July 25, 2018, and recorded in the Maricopa County Recorder's Office as Recording No. 20180565588, and that certain Third Amendment to Development Agreement dated December 11, 2018, and recorded in the Maricopa County Recorder's Office as Recording No. 20180565588, and that Fourth Amendment to the Development Agreement dated February 25, 2019, and recorded in the Maricopa County Recorder's Office as Recording No. 20190149140, and that certain Fifth Amendment to the Development entered into by the Parties prior to the date of this License Agreement (collectively the "Development Agreement") in which Licensor and Licensee have undertaken certain obligations with respect to the development of the Premises by Licensee (as Developer), which includes certain improvements required to be made by Licensee (as Developer) to the Garage at Licensee's sole cost and expense.

H. Licensee requires access to the Garage during the term of the Lease in order to accomplish its construction obligations under the Development Agreement, and to provide parking in connection with its operation and subleasing of the Premises pursuant to the Lease.

I. Licensor has agreed to grant to Licensee, and Licensee desires to receive from Licensor, an irrevocable, nonexclusive (subject, however, to the terms of this License), non-delegable license on, over and across the Licensed Area (as defined below) for the purpose of using the Licensed Area for (i) certain construction work required by the Development Agreement, (ii) parking only of non-commercial automobiles and motorcycles (no boats, jet skis, trailers, etc.), and (iii) maintenance and other reasonably related purposes (including but not limited to required repairs and replacements) in connection with Licensee's permitted use of the Premises pursuant to the Lease (collectively, the "Licensed Activities"), subject to the terms, conditions and limitations set forth in this License.

J. The Parties now agree to enter into this License Agreement on the terms and conditions set forth below.

### **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grant of License. Licensor hereby grants to Licensee an irrevocable, non-exclusive (subject, however to the terms of this License Agreement), non-delegable license upon, over and across those portions of the Garage depicted on Exhibit A (the "Licensed Area") to the extent reasonably necessary or appropriate for the Licensed Activities to be conducted or performed on or at the respective Licensed Area (collectively, the "License").

2. Term of Agreement. The License granted by this License Agreement is effective from and after the date of this Agreement, and the term of this License Agreement is concurrent with the Lease. In the event that Licensee (as Tenant named in the Lease) exercises its option granted in the Lease to purchase the Premises, then the License granted by this License Agreement will be deemed to run with the land in perpetuity, and the obligations of Licensee as set forth and

described in this License Agreement will thereupon be fully and automatically assumed by the fee owner upon the transfer of title.

3. Not a Lease; Encumbrances Prohibited. This License Agreement constitutes a license with respect to the Licensed Activities in the Licensed Area, and not a lease or other 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. Relationship to Development Agreement and Lease. Pursuant to the Development Agreement, Licensee has certain construction obligations with respect to the Licensed Area, and those obligations are governed in all respects by the Development Agreement. Licensee's obligations with respect to its use and maintenance of the Licensed Area are governed solely by this License Agreement.

5. Licensed Activities. Licensee is permitted to conduct and perform only the Licensed Activities described in Exhibit B, and only with respect to the applicable Licensed Areas depicted on Exhibit A. Although Licensee is not required to cause its subtenants and sublicensees to use all of the Spaces (as defined in this License Agreement), Licensee is obligated to make all payments required by Section 10 of this License Agreement; and all other Licensed Activities described in this License Agreement are mandatory, and not permissive.

6. Parking. Parking in the Garage is permitted only in designated "striped" stalls or spaces (each, a "Space"; or collectively, "Spaces"). Subject to the payment by Licensee of the License Fee and Licensee's compliance with all other terms and conditions of this License Agreement, parking by Licensee and its sublicensees is permitted pursuant to this License Agreement in those Spaces described on Exhibit C to this License Agreement (each, a "Licensed Space"; or, if more than one, the "Licensed Spaces"). Parking in the Licensed Spaces is permitted only for non-commercial automobiles and motorcycles; the parking of trailers, commercial vehicles, boats, jet-skis and similar motorized forms of transportation are expressly prohibited in the Garage. No vehicle may be parked or maintained in the Garage pursuant to this License Agreement as a form of advertising for any subtenant or sublicensee of Licensee.

(a) Licensors retains the right to all Spaces except the Licensed Spaces described on Exhibit C ("City Spaces"). Licensee may sublicense the Licensed Spaces only to Licensee's permitted residential and commercial subtenants existing under the Lease. Nothing in this License Agreement is intended to restrict the use of Licensed Spaces by commercial invitees of Licensee and its subtenants at the Premises.

(b) Licensee, at its sole cost and expense, may construct, and thereafter operate and maintain, an entry "gate" or similar control device (the "Gate"), to restrict entry to the Licensed Spaces to Licensee's sublicensees. The Gate will be placed within the Garage at a location agreed by Licensors and Licensee that does not restrict or impede Licensors' access to the City Spaces. Any Spaces within the Garage that are used (in whole or in part) for the placement and maintenance of the Gate, turn-around areas, and other purposes related to the design and placement of the Gate, will be included within the number of Licensed Spaces allocated to Licensee and subject to the License Fee described in Section 10.

(c) Not more than five (5) months nor less than three (3) months before each anniversary date of this License Agreement, Licensee may submit a request to Licensor for reallocation of the Licensed Spaces, which reallocation may reduce the number of Licensed Spaces subject to this License Agreement, but may not increase the number of Licensed Spaces subject to this License Agreement. The reallocation may be approved by the City Manager (or designee) on behalf of the Licensor. Following Licensor's approval of the requested reallocation, which approval will not be unreasonably withheld, Licensee will be responsible, at its sole cost and expense, for relocating the Gate to a location approved by Licensor that reflects the reduced number of Licensed Spaces allocated to Licensee. The cost of such relocation must include all required repairs to the Garage caused by the removal of the existing Gate, including (but not limited to) restriping of the affected Spaces. The reallocation will be deemed effective on the applicable anniversary date of this License Agreement. In the event that Licensee does not submit a timely request for reallocation of the Licensed Spaces, the number of Licensed Spaces allocated to Licensee will remain the same as the allocation for the previous year. Once the reallocation reduces the number of Licensed Spaces, the reallocation becomes the permanent allocation of Licensed Spaces. Licensee may request a reallocation increasing the number of Licensed Spaces. Licensor will consider the request but is not required to approve the request.

(d) Notwithstanding the foregoing, Licensee is not permitted to reduce its number of allocated Licensed Spaces below one hundred and fifty (150) Spaces.

(e) Licensee may charge its sublicensees a sublicense fee for each Licensed Space.

(f) The City Spaces are not intended to, and shall not be, used by Licensee/Developer, and/or its subtenants, sublicensees, employees, and/or invitees (collectively "Project Users"). Licensor may enforce and restrict the use of the City Spaces in any manner permitted by the Mesa City Code or state law, including, without limitation, time limitations on spaces, permitting spaces, and enforcement by fines and towing. Licensee/Developer shall provide reasonable notifications to its subtenants, sublicensees, and employees not to park in the City Spaces.

(g) Licensor may require Licensee, at its sole cost and expense, to install the Gate, as described and set forth in the Subsection 6(b) above, in order to facilitate compliance of Project Users in not using the City Spaces.

(h) Licensee shall reimburse Licensor for all Licensor's costs and fees related to enforcement to prevent Project Users from parking in the City Spaces and shall make such reimbursement within thirty days of invoice to Licensee. Licensor may contract with a third party for such enforcement; Licensee shall reimburse such third party directly within thirty days of invoice or to Licensor as directed by Licensor. Licensee acknowledges that Licensor currently contracts with the Downtown Mesa Association ("DMA") for such enforcement; and Licensee agrees to enforcement of any and all parking restrictions by DMA (on behalf of Licensor) and to reimburse DMA for such costs within thirty days of invoice.

(i) If enforcement of the restrictions contained in Subsection 6(f) and (h) above do not reasonably prevent (as determined by Licensor in its City Manager's or his delegee's

reasonable discretion) the use of the City Spaces by the Project Users (all such uses are misuses of the City Spaces), within ninety (90) days of written notice from Licensor to Licensee of such misuse of the City Spaces to Licensee, Licensee shall, at its sole cost and expense, lease or license parking spaces for Project Users (e.g., Project User employees or subtenants) at another location and in a sufficient number so as to eliminate the improper use of the City Spaces by Project Users; and Licensee shall requires such Project Users to park in the leased/licensed parking spaces at the other location.

(j) If Licensor, through its City Manager's or his delegee's sole discretion, determines that there is a need to increase the number of Shared Use Spaces (as that term is described and defined in Exhibit C, hereto) to allow for additional public parking in the Garage (e.g., for users of the Mesa Municipal Court), Licensor may send written notice to Licensee to increase the number of Shared Use Spaces by up to an additional 75 Licensed Spaces so that the Shared Use Spaces are increased from 92 to up to 167. Within thirty days of such written notice, Licensee shall increase the number of Shared Use Spaces by the number identified in the written notice (not to exceed a total of 167 Shared Use Spaces). Licensor shall identify in its written notice the number of increased Shared Use Spaces and may incrementally increase the number of Shared Use Spaces in separate, subsequent notices up to the cap of 75 additional Licensed Spaces (167 total). If a gate (as described in Subsection 6(b) above) has been installed, Licensee, at its sole cost and expense, shall relocate the gate in order to allow public use of the additional Shared Use Spaces.

(k) Licensee's compliance with the terms, conditions, and requirements of this Section 6 and all its subsections (including, but not limited to, Licensee having to lease/license parking spaces at another location under Section 6(i) and increasing the number of Shared Use Space under Section 6(j), if and when applicable) shall not result in a reduction, modification, or any other change to the License Fee.

7. Construction and Maintenance within Licensed Area. Licensee accepts the Licensed Area in its current "as-is", "where-is" condition, with all faults, whether latent or patent. Licensee will cause all required construction within the Licensed Area to be completed at Licensee's sole cost and expense, and in accordance with the Development Agreement. Thereafter, Licensee will maintain the Licensed Area during the term of this License Agreement at Licensee's sole cost and expense, in good condition and repair (including all repairs and replacements) and in accordance with all requirements of the Approved Plans (as defined in the Development Agreement) and all applicable laws, including Hazardous Materials Laws (as defined in the Lease). Further, Licensee will be solely responsible for: (i) all structural repairs, replacements, and structurally related maintenance costs for the Garage and Licensed Areas, which will include, but is not limited to, all pillars, walls, and ramps for exiting Garage on all levels; (ii) all repair and replacement costs for the stairwells and elevators. Licensor will only be obligated to repair and maintain the non-structural improvements in the basement of the Garage and to make routine repairs (i.e., normal wear and tear) in areas of the Garage that are not licensed to Licensee under this License Agreement.

8. Security. Licensee acknowledges and understands that the Licensor provides no security at or for the Garage and agrees that the Licensor will have no obligation to provide security at the Garage. In the event that Licensor elects, in its sole discretion, to provide security for the

basement or any other portion of the Garage, it will do so solely for the benefit of Licensor, and Licensor's employees and invitees, and Licensee and Licensee's employees, agents, contractors, subtenants, sublicensees and invitees 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's, and Licensee's subtenants' and sublicensees', employees, agents, clients, and invitees at the Garage; (ii) the security for the personal property (including all vehicles) of Licensee, and of Licensee's subtenants and sublicensees, and their employees, agents, clients, 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 or are related to Licensee's, or Licensee's subtenants' or sublicensees' (including their employees, agents, clients, and invitees) use of the Garage. Licensee will ensure that it, and its tenants and subtenants (including their employees, agents, clients, and invitees) use the Property in a safe and secure manner and in compliance with all applicable laws. Licensor agrees Licensee, at its sole cost and expense, may implement security measures at the Garage provided that Licensee gives reasonable prior notice to Licensor 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 Licensor and the public to use those portions of the Garage that are not subject to the exclusive use granted to Licensee by this License Agreement. In addition to, and without limiting any other indemnity in this License Agreement, Licensee will indemnify, defend, pay and hold Licensor and its City Council members, officers and employees harmless for, from and against any and all claims or damages (including, but not limited to, injury and death to persons and loss of or damage to property) arising from or related to Licensee's, or its subtenants' or sublicensees', employees', agents', clients', and invitees' use of the Garage or the security at the Garage (including, but not limited to, adequacy of security, lack of security, and types of security installed).

9. Reserve Fund. Licensee will pay into and fund an account for the payment of anticipated capital repair and replacement costs for Licensee's required maintenance of the Licensed Area (the "Reserve Fund"). The Reserve Fund will not be used by Licensee to pay routine and regular maintenance costs or costs of repairs or replacements under \$5,000.00 per event or item, as applicable.

(a) Promptly following completion of Licensee's required construction within the Licensed Area, but before the use of the Licensed Area by Licensee's sublicensees, Licensee will deposit the sum of \$25,000.00 (the "Initial Deposit") into the Account (as defined below), which amount must be maintained in the Account until the fifth (5<sup>th</sup>) anniversary of the Effective Date.

(b) Thereafter, on the fifth (5<sup>th</sup>) anniversary of the Effective Date, and for each of the next four (4) years, Licensee will deposit \$5,000.00 into the Account (the "Annual Deposit"). Thereafter, on the tenth (10<sup>th</sup>) anniversary of the Effective Date, and each fifth anniversary thereafter, Licensor and Licensee will review the repair and replacement history of the Licensed Area for the previous five (5) years and reasonably determine whether the amount of the Annual Deposit should be increased; and if the Parties so determine, the Annual Deposit will be as determined by the Parties until the next fifth anniversary. Any change in the amount of the Annual Deposit may be approved by the City Manager (or designee) on behalf of the Licensor.

(c) At no time will the Account be funded in an amount less than the Initial Deposit.

(d) The Account will be maintained by Licensee in a federally chartered bank or a bank licensed by the State of Arizona or an agreed upon escrow account, as reasonably approved by Licensor, and all withdrawals will require the signatures of authorized representative of both Licensor and Licensee. Licensee will cause statements of the Account to be delivered to Licensor not less frequently than annually.

(e) Licensor will reasonably approve all withdrawals from the Account for approved capital repairs and replacements upon delivery to Licensor of a statement from Licensee describing the capital repair and replacement and including bids or estimates from the entity proposed to make the capital repair or replacement. Upon completion of the capital repair or replacement in accordance with the request and Licensor's approval, and the delivery of a statement or certification that the work has been completed, Licensor will co-sign a check from the Account (or otherwise approve a withdrawal or debit from the Account) to the vendor in the authorized amount. In no event will Licensor be required to deposit any monies into the Account, and any shortfall will be paid solely by Licensee. In the event that Licensor reasonably determines that any capital repair or replacement is governed by any applicable public bidding or similar requirements, Licensee will comply with all such requirements at Licensee's sole cost and expense.

10. License Fee. In consideration of Licensee's construction of the Licensed Area Improvements in and on the Licensed Areas as required by the Development Agreement, and Licensee's maintenance of the License Area at Licensee's sole cost and expense during the term of this License Agreement, Licensee will pay a monthly fee to Licensor for the License (the "License Fee") as set forth in Exhibit D.

10.1 The Parties agree that Licensee may be eligible for Economic Development Credits and Permit Reimbursement Credits, as stated in the Development Agreement, to reduce the License Fees under this License Agreement, as shown in the Schedule of License Fees, attached hereto as Exhibit D, if Licensee complies with the requirements, both in the Development Agreement and the Lease, for the Targeted Subtenant. If Licensee is not in compliance with the requirements, as it pertains to the Targeted Subtenant, as stated in Section 4.17.1 of the Development Agreement and Section 16.3 of the Lease, Licensee agrees and acknowledges that the failure by Licensee (as Tenant in and under the Lease) to cause certain requirements to be met by the Targeted Subtenant (as defined in the Lease) will require Licensee to repay the Economic Development Credits and Permit Reimbursements that have been provided to Licensee as reductions in the License Fee which otherwise would be required to be paid by Licensee in the absence of such requirements to have been met. Accordingly, with respect to any uncured Event of Default relating to the failure of required performance by the Targeted Subtenant pursuant to Section 16.3 of the Lease, Licensee will pay to Licensor that amount of money equal to the Economic Development Credits and Permit Reimbursements received by Developer for the benefit of Licensee, which payments by Licensee (i) will be paid as an additional License Fee under this License Agreement; (ii) will be paid in equal installments over the same period of time in which such Economic Development Credits and Permit Reimbursements were received by Developer for the benefit of Licensee and reduced the License Fee that otherwise would have been paid during

such period of time; and (iii) will commence with the first payment of the License Fee owing after the uncured Event of Default, as follows:

	<b>Economic Development Incentive (due back to City)</b>	<b>New Job Creation Permit Reimbursement (due back to City)</b>	
<b>Vacate Years 1-5</b>	100%	100%	
<b>Vacate Year 6</b>	50%	If 500/300 <sup>1</sup> New Jobs Created: 50%	If less than 500/300 <sup>1</sup> New Jobs Created: 100%
<b>Vacate Year 7</b>	40%	If 500/300 <sup>1</sup> New Jobs Created: 40%	If less than 500/300 <sup>1</sup> New Jobs Created: 80%
<b>Vacate Year 8</b>	30%	If 500/300 <sup>1</sup> New Jobs Created: 30%	If less than 500/300 <sup>1</sup> New Jobs Created: 60%
<b>Vacate Year 9</b>	20%	If 500/300 <sup>1</sup> New Jobs Created: 20%	If less than 500/300 <sup>1</sup> New Jobs Created: 40%
<b>Vacate Year 10</b>	10%	If 500/300 <sup>1</sup> New Jobs Created: 10%	If less than 500/300 <sup>1</sup> New Jobs Created: 20%

<sup>1</sup>500 total New Jobs, of which 300 are filled by Mesa residents

11. Open to the Public; Non-Exclusive Use by Licensee. Subject to reasonable periods of closure for maintenance and repair (such as re-striping or re-surfacing of the parking and drive areas), and Licensee’s exclusive right to use and sublicense the designated Licensed Spaces (except the Shared Use Spaces), the Licensed Area will at all times be open to the public, and Licensee’s use of the Licensed Areas is non-exclusive. Licensee acknowledges that the basement floor of the Garage is restricted, and Licensee’s access to the basement floor of the Garage is limited solely to construction required by the Development Agreement, and structural repairs required by this License Agreement.

12. Utility Fees and Services. Licensee, at Licensee’s sole cost and expense, and during the term of this License Agreement, will provide all utility services required for the Licensed Areas (excluding the basement of the Garage) and will pay, before delinquency, all charges (including but not limited to any deposits) for utilities so provided. To the extent practicable, all utilities provided to the Licensed Areas will be metered separately from utilities provided to the basement of the Garage; but electric service for existing (that is, in place and in operation as of the Effective Date) components (e.g., lighting) in the Garage, will be paid by Licensor. Electrical service for new components (e.g., completed by Licensee pursuant to the terms of the Development Agreement), and particularly including (and not limited to) all elevators in the Garage, will be paid solely by Licensee. Licensor will not be liable in damages or otherwise for any failure or interruption of any utility services to the Licensed Area.

13. Taxes and Assessments. It is the intention of the Parties that this License Agreement creates a License and is not a “government property improvement” as defined in A.R.S. §42-6201, however if it is determined during the term of this License Agreement that A.R.S. §42-6201 applies, Licensee shall pay and be responsible for any applicable government lease excise taxes



14. Insurance; Indemnity.

(a) Throughout the term of this License 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 of the Licensed Area and Garage, and the obligations set forth in this License Agreement including, but not limited to, the maintenance and repair obligations and indemnity obligations of this License Agreement. The terms and coverages for the insurance will be as set forth in Exhibit E to this License Agreement.

(b) In addition, Licensee will pay, defend, indemnify and hold harmless Licensor and its City Council members, officers and employees 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 Licensor, its agents, representatives, officers, directors, elected or appointed officials, and employees, by reason of any of the following: (i) any act or omission by Licensee, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Licensee's obligations under this License Agreement ; (ii) any use or nonuse of, or any condition created by Licensee on or at the Garage or any part thereof; (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 in whole or in part by Licensee or its employees, contractors, subcontractors, agents, representatives, sublicensees or subtenants under the Lease (and invitees of any of the foregoing); (iv) performance of any labor or services or the furnishing of any materials or other property with respect to the Garage or any part thereof relating to an obligation of Licensee under this License Agreement; (v) any failure on the part of Licensee to comply with Hazardous Materials Laws; and (vi) all Claims relating to or arising from design, construction and structural engineering acts or omissions related in any way to, of or in connection with, the existing Garage, and all subsequent design, construction, engineering and other work and improvements by or on behalf of Licensee (collectively, "Indemnity"). Licensee's obligations of Indemnity will survive the expiration or earlier termination of this License Agreement; but the obligations of Indemnity expressly exclude criminal acts by third parties that occur in the Garage other than theft of or damage to property in the Mail Room and in any portion of the Licensed Area provided for bicycle parking and storage. For the purposes of the foregoing sentence, "criminal acts by third parties" do not include criminal acts committed by, upon or involving Licensor's (as Tenant named in the Lease) subtenants at the Premises or Licensee's sublicensees, or any invitees or such subtenants or sublicensees.

15. Storage and Nuisances Prohibited. The Licensed Area will not be used for the storage of vehicles, equipment or materials; provided, however, that nothing in this License Agreement will be deemed to prohibit secure bicycle parking for Licensee's subtenants and sublicensees. All vehicles parked in the Garage must be fully operational. 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.

16. Permits. Licensee will, at its sole cost and expense, obtain all permits, licenses and authorizations which may be required by Licensor 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 or governmental regulation, or which violates the terms of this License Agreement.

17. Default. If Licensee fails to pay any sum due under this License Agreement promptly when due and such failure continues for ten (10) days after notice thereof in writing to Licensee, or if Licensee fails to perform or comply with any of the other agreements, conditions or undertakings of this License Agreement and such default continues for thirty (30) days after notice thereof in writing to Licensee (each, a “Default”), Licensor will have the right, at its election, to seek any remedy available to Licensor under the Development Agreement or the Lease. Notwithstanding the foregoing, a Default of this License Agreement by Licensee will be a breach or default both of the Lease and of the Development Agreement, and a breach or default of either the Lease by Tenant or the Development Agreement by Developer will be a breach of this License Agreement; and notice of such breach or default under either the Lease or the Development Agreement, sent either to the Tenant named in the Lease or the Developer named in the Development Agreement, as applicable, and in accordance with the “Notice” provisions of the Lease or the Development Agreement, as applicable, will, without further act or notice required, constitute Notice to Licensee of a Default of this License Agreement.

18. 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 Licensor or Licensee (or their respective successors or permitted assigns) be liable for any special, consequential, incidental, punitive or exemplary damages.

19. No Partnership; Assignment. It is not intended by this License Agreement to, and nothing contained in this License Agreement will, create any partnership, joint venture, landlord-tenant or similar arrangement between the Parties, other than that of Licensor and Licensee. No term or provision of this License 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 Lease of Licensee’s entire leasehold interest in the Premises, and an express assumption by an assignee of all of Licensee’s obligations under this License Agreement, Licensee may not assign its rights under this License Agreement or grant to any other person the right to utilize the Licensed Area (other than Licensee’s permitted residential sublicensees) without the prior written consent of Licensor, which consent Licensor may grant or withhold in its sole discretion.

20. Preservation of State Shared Revenue. Notwithstanding any other provision of, or limitation in, this License Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this License Agreement violates any provision of state law or the Constitution of Arizona, Licensor and Licensee shall amend this License Agreement in such a manner that resolves the violation to the satisfaction of the Attorney General. If the Licensor and Licensee, after a good faith effort, are not able to modify this License Agreement so as to resolve the violation with the Attorney General 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), this License Agreement 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 License Agreement. Additionally, if the Attorney General determines that this License 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), Licensors shall be entitled to terminate this License Agreement, except if Licensee posts such bond; and provided further, that if the Arizona Supreme Court determines that this License Agreement violates any provision of state law or the Constitution of Arizona, Licensors may terminate this License Agreement and the Parties shall have no further obligations hereunder.

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

22. Applicable Law. This License 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.

23. Incorporation of Recitals and Exhibits. Each of the recitals set forth above and each of the exhibits attached hereto are hereby incorporated into this License Agreement and made a part hereof. Subject in all events to Licensee's obligations under the Development Agreement and the Lease, this License Agreement constitutes the entire License Agreement between Licensors 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 License Agreement may not be modified, amended, supplemented or otherwise changed except by a writing executed by both Licensors and Licensee. Licensee agrees, acknowledges and understands that certain amendments to this License Agreement may require the approval of the City Council acting in its sole discretion.

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

25. Severability. If any term, provision or covenant contained in this License Agreement will, to any extent, be invalid or unenforceable, the remainder of this License 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.

26. Notices. All notices, demands, requests, consents, approvals and other communications required or permitted in this License Agreement (each, a "Notice"), will 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), or within three (3) days after the same has been mailed by registered or certified mail, postage prepaid and return receipt requested, at the address shown below:

To Licensee:                      Tony Wall

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

With a copy to: The Grid at Mesa, LLC  
Attn: Tony Wall  
7349 N. Via Paseo del Sur, Suite 515  
Scottsdale, Arizona 85258

With a copy to: AZ Strategies LLC  
Attn: Karrin Taylor Robson  
3344 East Camelback Road, Suite 100  
Phoenix, Arizona 85018

With a copy to: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

and

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

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

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

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

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

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

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

27. 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 License Agreement will not engage in, a boycott of Israel.

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

**LICENSOR:**

**THE CITY OF MESA**, an Arizona municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

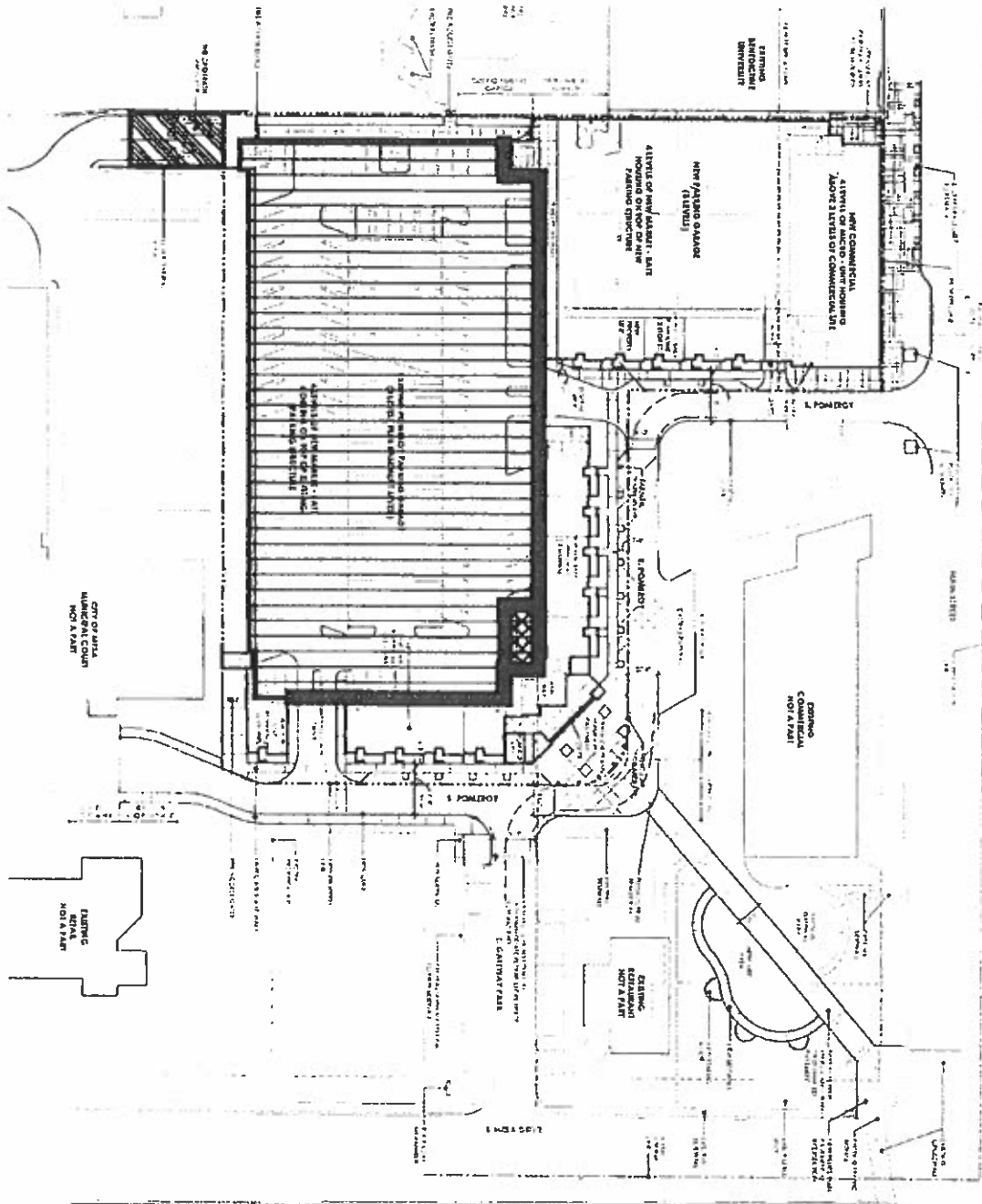
**LICENSEE:**




The Grid at Mesa LLC, a Delaware Arizona limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**Depiction of Licensed Area**

# EXHIBIT A - DEPICTION OF LICENSED AREA



-  Pomeroiy Parking Garage Structure, Access, Dedicated Parking & Bike Parking
-  Direct Access to Parking Garage, Row Homes & Adjacent Entry Points
-  Mail Room /1st Floor Only

 Trash Compactor / Sanitation Yard (Joint Use with Courts)

**EXHIBIT B**  
**Description of Licensed Activities**

<u>Licensed Area</u> (portion of Garage)	<u>Licensed Activity Permitted</u>
Basement floor	Structural, mechanical and plumbing improvements required by the Development Agreement to support and service the addition of four stories of residential development and landscaping above the Garage; thereafter, all required repairs and replacements (including but not limited to structural repairs and replacements) as reasonably determined by Licensor. Access for routine maintenance and parking is prohibited.
First floor; ramp to second floor; second floor; ramp to third floor; third floor	Structural, mechanical and plumbing improvements required by the Development Agreement to support and service the addition of four stories of residential development and landscaping above the Garage; restriping of parking stalls; thereafter, all required maintenance, repairs and replacements (including but not limited to structural repairs and replacements) as reasonably determined by Licensor. Construction, operation and maintenance of an entry gate on an upper level to restrict access to higher floors to permitted sublicensees. Parking by Licensee's subtenants is permitted in accordance with Exhibit C.
Roof	Structural, mechanical and plumbing improvements required by the Development Agreement to support and service the addition of four stories of residential development and landscaping above the Garage; thereafter, all required maintenance, repairs and replacements (including but not limited to structural repairs and replacements) as elected by Licensee or reasonably determined by Licensor.
Mail Room	Ownership and maintenance of United States Postal Service approved mailboxes for Licensee's subtenants in the Premises;



	ownership and maintenance of private delivery service lockers or similar systems (e.g., Amazon® Hub®) which may be in an enclosed, secured room built within the ground level of the Garage; all improvements owned and maintained solely by Licensee.
Trash Compactor and Sanitation Yard	Ownership, maintenance and continuous operation (including collection) of a trash compactor, recycling dumpster, grease trap interceptor (or similar devices as may be reasonably approved by Licensor as technologies develop) in the area of the Garage depicted in Exhibit A-2, including all repair and replacement of the compactor (or similar device); all clean-up costs beyond normal trash collection. This Licensed Activity is subject to all City of Mesa Ordinances, rules, terms and conditions applicable to solid waste maintenance, collection and pick up, as the same may be amended from time-to-time. The use of these facilities may be shared with the City Courts of the City of Mesa, as Licensor may elect.
Row Home Entry Points	Licensee will have the right to modify exterior enclosing walls to allow direct access (for vehicles and pedestrians) from the existing Garage to the new garage, from the Garage to the mail room, from the mail room to the new building, and from the Garage to the row homes (individually or in common). Licensee will have the right to physical access to the Garage at all of these locations (and similar locations as reasonably determined by Licensor).
Secure Bicycle Parking and Storage	Throughout the Garage, Licensee may install secure bicycle parking and storage. This may take the form of lockers, elevated locking racks, enclosed areas or as reasonably determined by Licensor.
Stairwells	Licensee will have the right to: (i) remove and replace the existing stair wells at the southwest and southeast corners of the garage (the new stair wells may also

	<p>include mechanical and sanitation facilities); (ii) remove all staircases from the basement level and replace them with staircases in common, but secured from the upper levels at the southwest and southeast corners; (iii) remove the staircases at the northeast and northwest corners and not replace them; (iv) add a new staircase (owned by Licensee) with City/public access to levels 1-3 north of the existing staircase in the northwest corner (outside of but proximate to the Licensed Area); (v) add a staircase (owned by Licensee) (outside of but proximate to the Licensed Area) with City/public access to levels basement-3 at the mid-point north of the garage (this staircase must be secured at the basement level); and (vi) remove the staircase at the midpoint of the west end of the garage and replace it with vehicular or bicycle parking. All of the staircases may also be used by the Licensee to provide access to the residential and landscape areas above the garage (such access may be secured by the Licensee). All City/public access to staircases owned by Licensee will be solely for the benefit of the public properly using the parking garage facility. See Exhibit E-2 to the Development Agreement (“Stairwell Access and Elevator Improvements”) for approximate locations.</p>
Elevators	<p>Licensee will provide an elevator, outside of but proximate to the Licensed Area, with City/public access to levels basement-3 at the mid-point north of the garage. This access will be solely for the benefit of the public properly using the parking garage facility. This elevator will be owned by the Licensee and must be secured at the basement level. The elevator may also be used by the Licensee to provide access to the residential and landscape areas above the Garage. Such access may be secured by the Licensee.</p>

Southern boundary (exterior of Garage)	Licensee may use the area south of the garage for support columns for Sky Apartments (as defined in the Development Agreement). Licensee may also use the same area (above the existing Garage) for shade devices and architectural embellishments as reasonably determined and approved by Licensor. These areas will not be included in the leasable area of the Premises.
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**EXHIBIT C**  
**Description of Spaces**

The number and location of the Licensed Spaces are as described in this Exhibit; however, after the completion of the improvements to the Pomeroy Parking Garage (the "Garage") and the construction by Licensee of a new parking garage on the leased Premises (the "New Garage"), the Parties will create a detailed depiction of the parking spaces to show where the Licensed Spaces, City Spaces (and other improvements) are located.

Upon Completion of Construction, the Garage will have 604 spaces on levels 1 through 3 (the basement spaces are exclusively for Licensor's use and are not being licensed). Licensee is licensed 339 spaces subject to the following reduction in spaces: Licensee will be making certain improvements to the Garage (such as adding support columns for improvements above the Garage), and these improvements will reduce the current number of spaces in the Garage. For every space lost (below 604) in the Garage (levels 1-3) due to construction, improvements, and re-stripping, the number of Licensed Spaces will be reduced on a one-for-one basis. By way of example, if after the construction, improvements, and re-stripping to the Garage there are 532 spaces on levels 1-3 (a loss of 72 spaces), then the Licensed Spaces would be 267 ( $339 - 72 = 267$ ). After the construction, improvements, and re-stripping, the Parties shall agree upon the number of Licensed Spaces. As to parking in the Garage and the New Garage and the location of certain spaces, the Parties further agree:

Garage

1. Ten (10) of the Licensed Spaces will be located on the east end of the ground level of the Garage and will be for exclusive use by the Grid Rowhomes.
2. Ten (10) of the Licensed Spaces will be located on the north end of the ground level of the Garage and will be for exclusive use by the Grid Rowhomes.
3. One (1) of the Licensed Spaces will be located in the northeast corner of the ground level of the Garage for use by tenants using the Grid Mail Room.
4. Ninety-two (92) of the Licensed Spaces will be located on the ground level of the Garage and will be at all times shared, non-exclusive, free, and available for all public and commercial uses (the "Shared Use Spaces"). Pursuant to Section 6(j) of the License, Licensor may increase the number of Shared Use Spaces by up to an additional 75 Licensed Spaces and in such event 167 of the Licensed Spaces would be Shared Use Spaces.
5. Other than the Licensed Spaces described in numbered paragraphs 1 through 4 above (which consists of 113 Licensed Spaces, not including the additional Shared Use Spaces as may be required under Section 6(j)), all the remaining Licensed Spaces will be on Garage levels 2 and 3 and the ramps, and these Licensed Spaces may be gated (provided the Shared Use Spaces and any additional Shared Use Spaces required under Section 6(j) shall not be gated).
6. Thirteen (13) spaces in the Garage will continue to be handicapped stalls for use by all handicap users of the Garage.

**EXHIBIT D**  
**Schedule of License Fees**

	Base Monthly Rate (300 spaces) <sup>1,2</sup>	Base Yearly Rate (300 spaces) <sup>1,2</sup>	PI Cap Credit (Monthly)	PI Cap Credit (Yearly)	Monthly Rate w/PI Cap Credit	Yearly Rate w/PI Cap Credit	Economic Dev Credit (Monthly) <sup>5</sup>	Economic Dev Credit (Yearly) <sup>5</sup>	Monthly Rate w/All Credits	Yearly Rate w/All Credits
<b>During Construction</b>	Developer shall provide replacement parking for current permitted parking spaces and Mesa Courts employees displaced during construction, at its sole costs.									
<b>Years 3-5 (\$20/space)<sup>3</sup></b>	\$6,000	\$72,000	\$3,000	\$36,000	\$3,000	\$36,000	\$3,000	\$36,000	\$0.00	\$0.00
<b>Years 6-7 (\$25/space)<sup>3</sup></b>	Base Monthly Rate (250 spaces) <sup>1,2</sup> \$6,250	Base Yearly Rate (250 spaces) <sup>1,2</sup> \$75,000	PI Cap Credit (Monthly) \$3,125	PI Cap Credit (Yearly) \$37,500	Monthly Rate w/PI Cap Credit \$3,125	Yearly Rate w/PI Cap Credit \$37,500	Economic Dev Credit (Monthly) <sup>5</sup> \$3,125	Economic Dev Credit (Yearly) <sup>5</sup> \$37,500	Monthly Rate w/All Credits \$0.00	Yearly Rate w/All Credits \$0.00
<b>Years 8-10 (\$25/space)<sup>4</sup></b>	\$6,250	\$75,000	\$4,687.50	\$56,250	\$1,562.50	\$18,750	N/A	N/A	\$1,562.50	\$18,750
<b>Year 11 (\$30/space)</b>	\$7,500	\$90,000	\$5,625	\$67,500	\$1,875	\$22,500	N/A	N/A	\$1,875	\$22,500
<b>Year 12 (\$35/space)<sup>4</sup></b>	\$8,750	\$105,000	\$6,562.50	\$78,750	\$2,187.50	\$26,250	N/A	N/A	\$2,187.50	\$26,250
<b>Years 13-99<sup>4</sup></b>	Based on then Council approved parking rate/space/month, or if such fee ceases to exist in the future, the Parties shall negotiate in good faith and agree upon a commercially reasonable rate (which shall in no event be less than the previously applicable rate)									

<sup>1</sup> Developer shall have the right to reduce the number of parking spaces licensed on a yearly basis, but at no time will the developer license less than 150 parking spaces. After monthly/annual payments for the minimum 150 licensed parking spaces, the additional parking license fee will be assessed per/space licensed, up to the maximum 340 spaces.

<sup>2</sup> PI Cap Credit available only to reimburse for those Minimum Public Improvements and Additional Public Improvements that have been completed and accepted by the City Engineer, up to the \$3,000,000 Cap. License Fee Credits are only available beginning in Year 3 of the Lease. Calculations shown in this table represent assumed number of parking spaces licensed. Actual monthly and yearly License Rates will be based on actual number of parking spaces licensed. Additionally, if Licensee is entitled to License Fee Credits (i.e., PI Cap Credits) under the terms of the Development Agreement, the PI Cap Credits will be used as described in this Exhibit and Lease Exhibit C to reduce the License Fee (and the Rent under the Lease) until the Credits are used (up to the Cap) between the License Fees and Rent or are extinguished under the terms of the Development Agreement, Lease, or License at which point the License Fee shall be as described in the "Base Monthly Rate" and "Base Yearly Rate" columns. Because the use of the Credits will be based on future variables (such as the number of licensed parking spaces and the use of the Credits under the Lease) this Exhibit does not show or establish when the Credits will be used up, which the Parties shall agree to when all such future variable are determined.

<sup>3</sup> For Years 3-7, the maximum Public Infrastructure License Fee Credit that can be used to offset the License Fees shall not exceed 50% of the Rent and the maximum Economic Development Rent Credit that can be used to offset the License Fees shall not exceed 50% of the Rent.

<sup>4</sup> For Years 8-15, the maximum PI Cap Credit shall not exceed 75% of the License Rate. After Year 7, no Economic Development Rent Credits are available to offset License Fees. After Year 15, the maximum PI Cap Credit shall not exceed 50% of the License Rate.

<sup>5</sup> Eligibility for, and continued right to, the Economic Development Credits is subject to compliance with all the terms, conditions, and limitations set forth in the First Amendment to the Development Agreement and First Amendment to License (First Amendment to Lease, for Lease exhibit) Agreement.

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

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

<u>Type</u>	<u>Amount</u>	<u>Coverage Period</u>
General Liability (which will include operations, products, completed operations, and contractual liability coverage)	With limits not less than \$25,000,000 combined single limit per occurrence and not less than \$25,000,000 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 when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage will thereafter remain in effect for the remainder of 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,	Coverage will be in effect upon or prior to and remain in effect for the Term of the License.

	non-owned and hired auto coverage as applicable.	
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 when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage will thereafter remain in effect for the remainder of 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 and a temporary or final certificate of occupancy is obtained.
Owner's and Contractor's Protective Liability	\$25,000,000	Coverage will be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Professional Liability	\$2,000,000	Coverage will be in effect upon or prior to any construction activities and maintained until the



		substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Blanket Crime Policy	\$5,000,000	Coverage will be in effect upon or prior to and remain in effect for the Term of the License.
Boiler and Machinery Coverage	\$25,000,000	Coverage will be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage will thereafter remain in effect for the remainder of the Term of the License.

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

1. Licensor, 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 Licensor is to be named as an additional insured, the Licensor 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 Licensor insurance sources.

4. All policies will include a waiver of subrogation rights in favor of the Licensor, 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 Licensor 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. Licensor will be named as Loss Payee on all property insurance policies. Proceeds of any property damage insurance will be applied as required by Section 14 of this License.

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 Licensor. 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. Licensor 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 Licensor 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 Licensor 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. Licensor 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 Licensor. 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 Licensor 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 Licensor, its agents,

officials, volunteers, officers, elected officials, and employees, (ii) a waiver of liability in favor of the Licensor, 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) Licensor, 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. LICENSOR'S RIGHT TO ADJUST. With written notice to Licensee of not less than 60 days, Licensor may reasonably adjust the amount and type of insurance Licensee is required to obtain and maintain under this License as reasonably required by Licensor from time-to-time.

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