WHEN RECORDED RETURN TO:

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

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**DEVELOPMENT AGREEMENT**

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

**AND**

**STONE APPLICATIONS LLC**
**a Delaware limited liability company**

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**_____, 2019**

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# DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made as of the ____ day of _____, 2019, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("**City**"); and Stone Applications LLC, a Delaware limited liability company ("**Company**"). City and Company are sometimes referred to herein collectively as the "**Parties**," or individually as a "**Party**."

## RECITALS

A. Company owns approximately 186 acres of unimproved real property located in the City of Mesa, Maricopa County (the "**County**"), Arizona, as more particularly described on Exhibit A (the "**Property**").

B. Company intends to develop the Property as a data and information processing center in accordance with the approved Zoning (the "**Project**").

C. The Property is zoned as an Employment Opportunity District. The Project complies with the purpose, intent and requirements of the City of Mesa General Plan, the City of Mesa Zoning Ordinance, and the Employment Opportunity District.

D. City believes that the development of the Property will generate substantial monetary and non-monetary benefits for City, including by, among other things: (i) providing for planned and orderly development of the Property consistent with the General Plan and Zoning; (ii) increasing tax revenues to City arising from or relating to the Project to be constructed on the Property; (iii) creating new jobs and otherwise enhancing the economic welfare of the residents of City; and (iv) otherwise advancing the goals of the General Plan.

E. As a condition of, and concurrent with, development of the Property, and subject to and in accordance with the other provisions and requirements of this Agreement, Company intends and has the ability to finance, construct and complete the Public and Private Improvements, and to otherwise accomplish all of the Company Undertakings.

F. City also acknowledges its intention and ability to provide the City Undertakings described in, and subject to the other provisions and requirements of, this Agreement.

G. The Parties understand and acknowledge that this Agreement is a "Development Agreement" within the meaning of, and entered into pursuant to the terms of, A.R.S. § 9-500.05, and that the terms of this Agreement will constitute covenants running with the Property as more fully described in this Agreement.

H. The Parties also understand and acknowledge that this Agreement is authorized by and entered into in accordance with the terms of A.R.S. §9-500.11. The actions taken by City pursuant to this Agreement are for economic development activities as that term is used in A.R.S. §9-500.11, will assist in the creation and retention of jobs, and will in numerous other ways improve and enhance the economic welfare of the residents of City. Further, this Agreement is made by City consistent with, and as permitted by, A.R.S. § 9-463.06.

I. City is entering into this Agreement to implement and to facilitate development of the Property consistent with the policies of City reflected in the General Plan and the Zoning.

## AGREEMENT

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

1. **DEFINITIONS**.

In this Agreement (including the Recitals), unless a different meaning clearly appears from the context:

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

(b) "**AFY**" means acre-feet per calendar year.

(c) "**Agreement**" means this Agreement, as amended and restated or supplemented in writing by the Parties from time to time and includes all exhibits and schedules hereto. References to Sections or Exhibits are to this Agreement unless otherwise qualified. The Recitals set forth in Paragraphs A through I, inclusive, are incorporated into this Agreement by reference, and form a part of this Agreement.

(d) "**Applicable Laws**" means the federal, state, County and City statutes, codes (including the City Charter), ordinances, rules, regulations, permit requirements, judgments, orders, decrees, and other official written requirements and policies, any requirements or rules of common law and any judicial or administrative interpretations thereof, which affect the subject matter of this Agreement or apply to the development of the Property, all as they may be amended from time to time.

(e) "**Approved Plans**" means as defined in Section 3.1(a).

(f) "**A.R.S.**" means the Arizona Revised Statutes as amended from time to time.

(g) **"Building"** means as defined in Section 4.1(a).

(h) "**Building Gross Area**" means the total of all the horizontal floor areas (as viewed on a floor plan) of all floors of a Building contained within the Building exterior walls (or exterior and fire walls), measured in square feet.

(i) **"Capital Investment"** or "**Capital Investments**" means the actual funds expended by Company for the Property acquisition, Project-specific design costs paid to third-parties; construction costs for the Project; building and industrial plant improvements (including material and construction costs); personal property including fixtures, furniture and equipment; and other property and plant fixed and physical assets at the Property; and specifically includes the costs of the Private Improvements and Public Improvements.

(j) "**City**" means the Party designated as City on the first page of this Agreement.

(k) "**City Code**" means the Code of the City of Mesa, Arizona, as amended from time to time.

(l) "**City Council**" means the City Council of City.

(m) "**City Indemnified Person**" or "**City Indemnified Persons**" means as defined in Section 11.1.

(n) "**City Representative**" means as defined in Section 10.1.

(o) **"City Undertakings"** means as defined in Section 5.

(p) **"Claim"** or **"Claims"** means as defined in Section 11.1.

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

(r) "**Company**" means Stone Applications LLC, and its successors and assigns that conform with the requirements of this Agreement.

(s) "**Company Representative**" means as defined in Section 10.1.

(t) **"Company Undertakings"** means as defined in Section 4.

(u) "**Completion of Construction**" or "**Completes Construction**" means the first date on which a temporary or final certificate of occupancy have been issued by City for a Building (or Buildings) included in the Private Improvements; and for Public Improvements, after any applicable portion, segment or phase thereof has been transferred to and accepted by City in accordance with the policies, standards and specifications contained in applicable City ordinances (subject to any applicable warranty period), such acceptance not in an unreasonable manner to be withheld, conditioned or delayed.

(v) **"County"** means Maricopa County, Arizona, a political subdivision of the State of Arizona.

(w) **"Dedicated Property"** means as defined in Section 4.9.

(x) "**Default**" or "**Event of Default**" means one or more of the events described in Section 9.1 or Section 9.2; provided, however, that such events will not give rise to any remedy until effect has been given to all grace periods, cure periods and/or periods of Force Majeure provided for in this Agreement and that in any event the available remedies will be limited to those expressly set forth in Section 9.

(y) "**Designated Lenders**" means as set forth in Section 11.26.

(z) "**Effective Date**" means the date on which all the following events have occurred: this Agreement has been adopted and approved by the City Council, executed by duly authorized representatives of City and Company, and recorded in the office of the Recorder of the County.

(aa) **"Financing"** means the incurrence of any indebtedness for borrowed money by Company in an arm's length, bona fide lending transaction that is secured by a lien on or security interest in Company's right, title, and interest in all or any portion of the Property and Private Improvements (and this Agreement), whether by mortgage, deed of trust, collateral assignment, security agreement, or otherwise, including any Transfer by judicial or non-judicial foreclosure or conveyance or assignment in-lieu-of-foreclosure of all or any portion of the Property (and this Agreement). If any portion of the Property and Private Improvements are subject to the GPLET Lease, the Financing will not encumber the fee title estate in such portion of the Property and Private Improvements.

(bb) "**Force Majeure**" means as defined in Section 9.9.

(cc) "**Full Time Equivalent Employee Requirement**" means as defined in Section 4.12.

(dd) "**GPLET Lease**" means as defined in Section 5.4.

(ee) "**General Plan**" means *This is My Mesa: Mesa 2040 General Plan*, as adopted by the City of Mesa, Arizona.

(ff) **"Gross Income"** means as defined in Section 200 of the Model City Tax Code in effect as of the Effective Date.

(gg) "**Groundwater Code**" means Title 45, Chapter 2 of the Arizona Revised Statutes.

(hh) "**Indemnify**" means as defined in Section 11.1.

(ii) **"KGal"** means one thousand (1,000) gallons.

(jj) "**Lender**" or "**Lenders**" means as defined in Section 11.26.

(kk) "**Maximum Water Allowance**" means the Water Allowance after the Reconciliation as set forth in Section 5.1(c), expressed in AFY, which shall not exceed 4,480 AFY.

(ll) **"Milestone Date"** means as set forth in Section 4.3(a).

(mm) **"Milestone Requirements"** means as set forth in Section 4.3.

(nn) **"Parent"** means the publicly-traded corporation (or similar entity) that directly or indirectly owns and Controls the entire legal and beneficial interest in Company.

(oo) "**Party**" or "**Parties**" means as designated on the first page of this Agreement.

(pp) **"Permitted Transfer"** means as defined in Section 11.7(a).

(qq) **"Permitted Transferee"** means a Person acquiring rights in or under this Agreement pursuant to a Permitted Transfer.

(rr) "**Private Improvements**" means one or more Buildings which may be constructed at the Property that satisfy the Building Gross Areas and Construction Costs as specified for the Milestone Requirements set forth in Section 4.1.

(ss) "**Project**" means as defined in Recital B.

(tt) "**Projected Water Needs**" means as set forth in Section 5.1(c)(i).

(uu) "**Property**" means as defined in Recital A.

(vv) "**Public Improvements**" means the Required Public Improvements and any other improvements constructed by Company and dedicated to, and accepted by, the City or County for maintenance.

(ww) "**Reconciliation**" means the process for determining the Maximum Water Allowance for the Project and Property as set forth in Section 5.1(c), which shall in no event exceed 4,480 AFY.

(xx) "**Reconciliation Confidential Information**" means as set forth in Section 5.1(c)(iv).

(yy) **"Required Public Improvements"** means the Public Improvements described on Exhibit B.

(zz) **"Successor"** means (i) a Person into which Stone Applications LLC; the publicly-traded corporation that directly or indirectly owns and Controls the entire legal and beneficial interest in Stone Applications LLC; or an Affiliate that is (A) either the

sole owner of the Property, sole premises tenant under a space lease or the sole ground lessee under a ground lease, and (B) the sole user with respect to the Project; may be merged or consolidated, or (ii) any Person resulting from any merger or consolidation to which Stone Applications LLC; the publicly-traded corporation that directly or indirectly owns and Controls the entire legal and beneficial interest in Stone Applications LLC; or an Affiliate that is (A) either the sole owner of the Property, sole premises tenant under a space lease or the sole ground lessee under a ground lease, and (B) the sole user with respect to the Project; may be a party.

(aaa) **"Taxable Construction Costs"** means that portion of taxable costs, as set forth in the Model City Tax Code, for Public Improvements and Private Improvements in the City of Mesa, Arizona, determined based on the Gross Income from the business activity of construction contracting on which Company or its contractors paid construction contracting privilege taxes to the City of Mesa, and does not include, *inter alia*, architectural and engineering service costs or any other non-taxable costs, deductions or exemptions associated with the construction of the Public Improvements or the Private Improvements; provided, however, solely for the purposes of determining Taxable Construction Costs under this Agreement, and not for the determination of the amount of tax owed to the City of Mesa, the calculation of taxable costs will include the thirty-five percent (35%) amount that is normally permitted as a standard deduction on construction contracting privilege taxes.

(bbb) "**Term**" means as defined in Section 2.3.

(ccc) "**Terms and Conditions**" means the City's Terms and Conditions for the Sale of Utilities, as amended from time to time.

(ddd) "**Third Party**" means any person (as defined in Section 1(a) above) other than a Party.

(eee) **"Transfer"** means as defined in Section 11.7(a).

(fff) **"Water Allowance"** means the City water resources committed for purposes of and as permitted by A.R.S. § 9-463.06 pursuant to this Agreement and available for the development of the Property and the Project, expressed in AFY, calculated pursuant to Section 5.1(a), subject to the Reconciliation set forth in Section 5.1(c) to the Maximum Water Allowance.

(ggg) "**Water Shortage Management Plan**" means the City plan, as adopted and amended from time to time by City, which authorizes water restrictions, reductions, prohibitions, conservation and other measures based on limitations in the availability of water resources due to conditions such as, but not limited to, reductions in the supply of Central Arizona Project water, Salt/Verde system water, limitations on the availability of suitable groundwater, and loss or closure of transmission capacity by either the Salt River Project or Central Arizona Water Conservation District, to be implemented and imposed broadly or on similarly situated customer classes.

(hhh) "**Zoning**" means Red Hawk Employment Opportunity District (RHEOD) zoning as adopted by the Mesa City Council as Ordinance No. 5502, adopted April 15, 2019.

## 2. PARTIES, PURPOSE AND TERM OF THIS AGREEMENT.

2.1 Parties to the Agreement. The Parties to this Agreement are City and the Company.

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

(b) The Company. The Company is a limited liability company duly organized and validly existing under the laws of the State of Delaware and registered to do business in the State of Arizona.

2.2 Purpose. The purpose of this Agreement is to provide for the development of the Property in accordance with the General Plan and the Zoning; to provide for the Company Undertakings, including the Private Improvements and Capital Investments and associated Milestone Requirements as well as the Public Improvements to be designed and constructed by Company or at Company's direction; to provide for the corresponding City Undertakings, including the commitment of the Water Allowance under A.R.S. § 9-463.06; to address the provision of utility services to the Property and the Project; and to address other matters related to the development of the Property and the Project.

2.3 Term. Notwithstanding anything in this Agreement to the contrary, the term of this Agreement ("**Term**") will begin on the Effective Date and shall terminate on the earlier of (a) thirty (30) years from the Effective Date, or (b) if Lessor and Lessee enter into a GPLET Lease, twenty-five (25) years from the "Effective Date" of the GPLET Lease; unless this Agreement is terminated sooner pursuant to any earlier termination provision of this Agreement.

2.4 Survival of Certain Provisions. Notwithstanding the termination of this Agreement as set forth in Section 2.3:

(a) The indemnity, duty to defend, and hold harmless obligations in Section 11.1 and elsewhere in this Agreement will survive the expiration of this Agreement.

(b) Section 4.10(b), Section 6.4, Section 6.6, and Section 6.7 will survive the expiration of this Agreement as to Stone Applications LLC, its Parent, Affiliate or a Successor, where Stone Applications LLC, its Parent, Affiliate, or Successor is (i) either the sole owner of the Property, sole premises tenant under a space lease or the sole ground lessee under a ground lease, and (ii) the sole user with respect to the Project; and will not survive the expiration of this Agreement as to any other Person.

(c) The surviving obligations of City under Section 4.10(b), Section 6.4, Section 6.6 and Section 6.7 will be subject to both equitable apportionment and reduction

(other than for Section 6.7) based on historic use and practice during the Term, with consideration regarding Section 6.4 of a revised analysis of Company's Projected Water Needs.

(d) The provisions of Section 11.26 will survive the expiration of this Agreement.

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

3.1 Development Plans.

(a) Site Plan and Design Review Approvals. Pursuant to the Zoning, site plans, elevations, and landscape plans are subject to approval by the Planning Director prior to issuance of a building permit, pursuant to the procedures outlined in Sections 11-14-7 and 11-14-10 of the City of Mesa Zoning Ordinance. When possible, the Planning Director will consider site plans and building design concurrently. Company acknowledges that such approvals additionally may be subject to review by the Design Review Board. After complying with pre-submittal requirements and receipt of a complete submittal package by Company, City will review Company's site plans, elevations, landscape plans, and design plans promptly and within a commercially reasonable period of time.

(b) Approved Plans. Development of the Property will be in accordance with one or more sets of plans and specifications prepared and submitted by Company (as the same may be amended from time-to-time) and approved by the City, which will comply with the General Plan and the Zoning, and will set forth the basic land uses, phasing of Public Improvements and Private Improvements, and all other matters relevant to the development of the Property in accordance with this Agreement (the "**Approved Plans**"), subject to the following:

(i) Customized Review Schedule. Review and approval of all construction plans, applications and other submissions by or on behalf of Company will be in accordance with a customized review and fee schedule set forth in Exhibit C. The customized review schedule will not result in or require the payment of an additional fee by Company for expediting the processing and approval of Company's submittals. Standard permit fees will be charged to the Project consistent with City's adopted fee schedule. Additional fees will not be charged for the customized review schedule.

(ii) Approval Process. City will cooperate reasonably in processing the approval or issuance of the development permits, plans, specifications, plats or other development approvals requested by Company in connection with development of the Project.

(iii) Cooperation in the Implementation of the Approved Plan. Company and City will work together throughout the pre-development and development stages to resolve any City comments regarding implementation of the Approved Plans.

3.2 Development Regulation.

(a) Applicable Laws. Company will comply with all Applicable Laws in developing the Property.

(b) Permit and Other Fees. Building permit, inspection, impact, development and other similar fees for the development of the Property will be those in effect at the time of any application or submission.

4. **COMPANY UNDERTAKINGS**. Company hereby agrees to the Company Undertakings as follows:

4.1 Private Improvement and Capital Investment Milestone Dates and Requirements.

(a) If Company, at Company's sole cost and expense, constructs the following Private Improvements in one or more buildings (each a "**Building**" and collectively, "**Buildings**") and expends the corresponding Capital Investments on or before the dates set forth below for the applicable act (each a "**Milestone Date**" and collectively the "**Milestone Dates**"), the corresponding City obligations under Section 5.1 will become effective:

(i) On or before July 1, 2025 (the "**First Milestone Date**"), Company: (i) Completes Construction of a minimum cumulative total of 250,000 square feet of Building Gross Area; (ii) incurs minimum cumulative total Taxable Construction Costs of not less than $180,000,000; and (iii) incurs minimum cumulative total Capital Investment of not less than $600,000,000 (collectively, the "**First Milestone Requirements**").

(ii) On or before July 1, 2027 (the "**Second Milestone Date**"), Company: (i) Completes Construction of a minimum cumulative total of 500,000 square feet, of Building Gross Area; (ii) incurs minimum cumulative total Taxable Construction Costs of not less than $240,000,000; and (iii) incurs minimum cumulative total Capital Investment of not less than $800,000,000 (collectively, the "**Second Milestone Requirements**").

(iii) On or before July 1, 2029 (the "**Third Milestone Date"**), Company: (i) Completes Construction of a minimum cumulative total of 750,000 square feet of Building Gross Area; (ii) incurs minimum cumulative total Taxable Construction Costs of not less than $300,000,000; and (iii) incurs minimum cumulative total Capital Investment of not less than $1,000,000,000 (collectively, the "**Third Milestone Requirements**").

(b) The First Milestone Requirements, Second Milestone Requirements, and Third Milestone Requirements may be referred to individually as a "**Milestone Requirement**" or collectively as the "**Milestone Requirements**."

(c) If Company Commences Construction of a Building prior to the applicable Milestone Date and thereafter diligently prosecutes construction of the Building until Completion of Construction, the applicable Milestone Date will be extended for a period of up to twelve (12) months (or on the written approval of the City Manager in his or her sole discretion, twenty-four (24) months) until Company Completes Construction of the applicable Building. Any extension of a Milestone Date will not extend any subsequent Milestone Dates or the timing of the Reconciliation process.

(d) The City Manager, in his or her sole discretion, may extend any of the foregoing Milestone Dates for a period of time not to exceed forty-five (45) days per extension, with a maximum of three (3) extensions per Milestone Date. In the event of any extension by the City Manager, each subsequent Milestone Date will automatically be adjusted in conformity.

(e) The Milestone Requirements can be satisfied cumulatively, such that Building Gross Area, Taxable Construction Costs, and Capital Investments which exceed the threshold for a Milestone but do not satisfy the next Milestone Requirements are cumulative and will apply towards the next Milestone Requirement, and multiple Milestone Requirements can be satisfied simultaneously if the applicable Milestone Requirements are satisfied. By way of examples: (1) if Company constructs initial Private Improvements that consist of 300,000 square feet of Building Gross Area, with $200,000,000 of Taxable Construction Costs and $700,000,000 in Capital Investment, the First Milestone Requirements would be satisfied and there would be 50,000 square feet of Building Gross Area, $20,000,000 of Taxable Construction Costs, and $100,000,000 in Capital Investment that apply towards completing the Second Milestone Requirements; and (2) if Company constructs a single phase of its Private Improvements that consists of 500,000 square feet of Building Gross Area, with $240,000,000 of Taxable Construction Costs and $800,000,000 in Capital Investment, the First Milestone Requirements and Second Milestone Requirements would be satisfied at the same time.

4.2 Verification. The Capital Investment and Private Improvement expenditures shall be subject to verification as a condition precedent to the completion of each Milestone through submittal to the City of commercially reasonable evidence of the expenditures, which may include, but is not limited to, invoices, paid receipts, lien waivers, bills of sale and tax reporting forms, but will not include any confidential or proprietary information; and provided, further, that the expenditure for the acquisition of the Property shall be equitably distributed as to each of the Milestones.

4.3 Public Improvements. Company agrees that prior to the issuance of a certificate of occupancy for any Building, it will construct the applicable Required Public Improvements as described in Exhibit B. Company shall coordinate with the City of Mesa Engineering department for the final sizing of the Required Public Improvements; provided, however, the Public Improvements may be eligible for phasing based on the phasing of the Project. To be eligible for consideration for phasing the Public Improvements, Company shall submit a phasing plan and schedule with the first pre-submittal of construction plans or site plan for review and consideration by City. If City and Company agree to a phasing plan and schedule, the Parties will enter into an amendment to this Agreement (or such other agreement or documentation for the phasing plan and schedule as agreed to between the Parties) that sets forth the agreed upon phasing plan and schedule.

4.4 Right of Way Dedication. Company must dedicate portions of the Property for all rights-of-way, public utility easements, and other easements reasonably required by the City of Mesa, which will include but not be limited to easements necessary to accommodate Required Public Improvements and/or metering, backflow, and/or other lines and equipment for the provision of utility service; provided, however, that such public utility and other easements must, and Company's security fence or walls must be constructed to, allow free

and unrestricted access to City metering, backflow and other equipment outside of such fences or walls.

4.5 Signage and Other Property Amenities. Company must prominently display clearly visible signage on each arterial street bounding the Property that identifies the principal behind the Project; provided, however, that such signage will not be required until the Company constructs a site entrance on such arterial street (excluding an entrance used primarily for construction access, fire and emergency access, or similar limited purposes).

4.6 Quality. Company, at Company's sole cost and expense, will design and construct the Buildings and other Private Improvements to have the quality, features, and finishes of a class A industrial project.

4.7 Dedication of Public Improvements. Upon not fewer than ninety (90) days' advance request by City after Completion of any portion, segment or phase of the Public Improvements, or upon Completion of any portion, segment or phase of the Public Improvements to be offered for dedication by Company and accepted by City, Company will dedicate and grant to City the Public Improvements and any real property or real property interests owned or retained by Company which (i) constitute a part of the Property; (ii) are reasonably necessary for right-of-way purposes or otherwise required for the construction, maintenance, or operation of the Public Improvements on or within the Property; and (iii) do not materially interfere with the development of the Private Improvements (the "**Dedicated Property**"). Company will make such dedications without the payment of any additional consideration by City. Company and City acknowledge that the Property is, in certain areas, adjacent to County property and rights-of-way; and accordingly the Parties agree that certain Public Improvements, with the agreement of the City, may be made in the County with dedication of the applicable property to the County.

4.8 Risk of Loss. Company assumes the risk of any and all loss, damage or claims to (i) all Private Improvements, (ii) all Public Improvements unless and until title to such Public Improvements is transferred to City (or to the County, if and as applicable) at which point such risk of loss, damage or claims is transferred to City (or to the County, if and as applicable). At the time title to each Public Improvement is transferred to City by dedication deed, plat recordation, or otherwise, Company will, to the extent allowed by law, assign to City any unexpired warranties relating to the design, construction and/or composition of such Public Improvements. Notwithstanding the preceding, acceptance of the Public Improvements will be conditioned on City's receipt of a one (1) year warranty of workmanship, materials and equipment, in form and content reasonably acceptable to City, provided however that such warranty or warranties may be provided by Company's contractor or contractors directly to City and are not required from Company, and that any such warranties will commence on the date of Completion of Construction of any Public Improvement, any component thereof, or the work of any specific trade or contractor, as applicable.

4.9 Insurance. During the period of any construction involving the Public Improvements, and with respect to any construction activities relating to the Public Improvements, Company will obtain and provide City with certificates of insurance showing that Company is carrying, or causing its contractor(s) to carry, builder's risk insurance, commercial

general liability and worker's compensation insurance policies in amounts and coverages set forth on Exhibit D. Such policies of insurance will be placed with financially sound and reputable insurers, require the insurer to give at least thirty (30) days' advance written notice of cancellation to City, and will name City as an additional insured on any such liability policies.

4.10 Water Storage, Wells, Conservation and Efficiency.

(a) Company will design, engineer, and construct and maintain improvements that provide for a commercially reasonable level of water storage on the Property, as determined by Company in its sole discretion, which accommodates the demands of the Project and mitigates possible damage in the event the water supply is temporarily interrupted.

(b) City consents to Company's installation and use of wells on the Property, or use of the off-site wells Arizona Department of Water Resources #55-613062 or #55-613068 (or a replacement for such wells under A.R.S. §§ 45-597 and 45-598), only for purposes of providing: (i) water for development of the Project prior to commencement of City water service; (ii) a secondary water supply for the Project in the event of any fluctuation, interruption, or other reductions or limitations of any kind in water service from the City, including, without limitation, reductions or limitations in water service due to scheduled maintenance, emergency outages, or implementation of measures under the Water Shortage Management Plan; or (iii) a secondary water supply for the Project in the amount of the difference between the water supply reasonably anticipated to be made available by City in any given year and 4,480 AFY. The legal rights to withdraw and use water from such wells (e.g., Type 2 non-irrigation grandfathered groundwater rights, permits authorizing recovery of long-term storage credits, etc.) must be provided or acquired by Company at its sole cost and expense and must otherwise be in compliance with all Applicable Laws, including but not limited to the Groundwater Code. City, at no cost to City, will reasonably cooperate with Company to help facilitate Company's drilling, permitting, and use of such a well as provided herein, including signing any consent form required under Arizona Department of Water Resources well spacing rules (Arizona Administrative Code, Title 12, Chapter 15, Article 13), provided Company will also cooperate with well permitting by City and sign such consent forms for City's wells. Nothing in this Agreement shall limit Company from withdrawing and using water from wells on the Property or off-site wells #55-613062 or #55-613068 pursuant to the irrigation grandfathered groundwater rights appurtenant to the Property.

(c) Company acknowledges that water usage at the Property is subject to the Groundwater Code. Company agrees to comply with any other conservation requirements adopted by City as required by the Groundwater Code.

(d) Company will design and install water-efficient landscaping and irrigation systems on the Property so as to reasonably minimize the turf water usage at the Property. Company will xeriscape substantially all landscaped areas on the Property unless otherwise approved by the City.

4.11 Wastewater. Company must design and install wastewater discharge metering equipment (approved in advance by City, such approval not in an unreasonable manner to be withheld, conditioned or delayed) on the Property in a location within an easement (or right

of way) accessible to the City that accurately measures the level and rate of wastewater discharged by the Project. Company acknowledges and agrees that Company's private wastewater system must include improvements to maintain a controlled rate of wastewater discharge with peak flow rates consistent with the City's design standards and the wastewater collection system capacity (generally not to exceed three times the average hourly flow rate). Company shall be solely responsible for compliance with all wastewater permitting and discharge requirements under the Applicable Laws, including but not limited to Title 8 Chapter 4 of the Mesa City Code and all pretreatment requirements adopted thereunder, all as applicable at the time of discharge; provided, however, City shall not adopt any pretreatment requirements that do not apply equally to similarly situated wastewater user classes of City, nor enforce pretreatment requirements against Company in a manner different from similarly situated wastewater user classes of City.

4.12 Employee Requirement. As of each Milestone Date, Company or any Affiliate of Company will employ full-time employees at any constructed Private Improvements for the Project (*i.e.*, working at least thirty-five (35) hours per week), receiving an average annual compensation of at least $65,000, including the value of health insurance and other benefits paid by Company or such Affiliate of Company (the "**Full Time Equivalent Employee Requirement**"), as certified by Company. If the City elects to audit Company's compliance with the Full Time Equivalent Employee Requirement, the Company's (and Affiliate's) most recent Quarterly Unemployment Tax & Wage Report received from the Arizona Department of Economic Security as of the applicable Milestone Date will be prima facie evidence of compliance or non-compliance. The Full Time Equivalent Employee Requirement shall not apply to construction workers, materialmen, ancillary service personnel (security personnel, janitors, food preparers, etc.), or part-time employees for the Project.

5. **CITY UNDERTAKINGS**. If Company timely performs the applicable Company Undertakings, then City will perform the corresponding City Undertakings as follows:

5.1 Water Allowance. City agrees that the Water Allowance (or Maximum Water Allowance) is a commitment to the development of the Property and the Project of water resources as permitted by and set forth in A.R.S. § 9-463.06(B)(1). The Water Allowance (or Maximum Water Allowance) is determined as follows:

(a) Milestone Water Allowance Calculation. Upon execution of this Agreement, the Water Allowance will be 1,120 AFY. If the Company completes the First Milestone Requirements in accordance with the First Milestone Date set forth in Section 4.3(a)(i), the Water Allowance will be 2,240 AFY. If the Company completes each or either of the Second and Third Milestone Requirements in accordance with the applicable Milestone Dates, the Water Allowance will increase by 1,120 AFY for each such timely completed Milestone up to a maximum of 4,480 AFY. Company may satisfy Milestone Requirements before the applicable Milestone Date, and the Water Allowance will increase upon such earlier completion of the Milestone. For the avoidance of doubt, if the Company misses a Milestone Requirement, it is no longer eligible for that associated increase in the Water Allowance; however, if the Company meets a following Milestone Requirement, it will be eligible for the associated increase in the Water Allowance.

(b) Potential Additional Milestones. If following the Reconciliation in Section 5.1(c), the Maximum Water Allowance is less than 4,480 AFY, Company may provide notice to City that it desires an amendment to this Agreement to add additional milestones to be eligible for increases in the Maximum Water Allowance (in no event to exceed 4,480 AFY). In such event, the Parties will meet to discuss in good faith the possibility of amending this Agreement to include additional milestones; such an amendment would be subject to the approval of each Party in its sole and absolute discretion, and would require City Council approval in its sole and absolute discretion.

(c) Water Allowance Reconciliation and Maximum Water Allowance. The Parties will determine the Maximum Water Allowance pursuant to the following process ("**Reconciliation**"):

(i) Promptly following the Third Milestone Date, the Maximum Water Allowance shall be equal to the Company's assessment of the reasonably projected water needs of the then existing (and under construction) Building Gross Area when operating at full capacity and considering peak annual demand conditions ("**Projected Water Needs**"), not to exceed 4,480 AFY, subject to the review and approval of the City Engineer (or City's consulting engineers), such approval not in an unreasonable manner to be withheld, conditioned or delayed. The Projected Water Needs will be calculated by the Company based on a reasonable engineering analysis of factors including, but not limited to, a buildout that is no more intense than the current Building Gross Area (and the Gross Area of any Buildings where Company has Commenced Construction and will achieve Completion of Construction within twenty-four months). Company shall provide a reasonable basis with appropriate documentation for determining the Projected Water Needs.

(ii) Promptly following the fifth anniversary of the Third Milestone Date, the Parties shall reassess and adjust the Maximum Water Allowance, as necessary, based on the Company's then existing water uses and a revised analysis of Company's Projected Water Needs. The Maximum Water Allowance will be adjusted to be the Company's updated Projected Water Needs (in accordance with Section 5.1(c)(i) above); provided, however, the Maximum Water Allowance will not exceed the Company's then existing water use by more than 1,120 AFY; provided, further, the Maximum Water Allowance shall in no event exceed 4,480 AFY. The Company's then existing water use shall be based on the previous twelve (12) months of water consumption volume, but adjusted, as reasonable and appropriate, to account for any reasonable and bona-fide "ramp up" (or temporary decrease) in water consumption that occurred during such period.

(iii) Upon each Reconciliation step described above in this Section 5.1(c), the Parties shall agree in writing to the then current Maximum Water Allowance, at which point the Water Allowance shall be adjusted to be the Maximum Water Allowance amount. Disputes regarding the Reconciliation shall be subject to mediation in accordance with Section 9.11.

(iv) Company considers some or all of the Maximum Water Allowance, information regarding Company's proprietary designs and operations, water consumption, wastewater discharge, and other utility information that is provided to City in

connection with the Reconciliation process as trade secrets, proprietary, and/or confidential information (collectively, "**Reconciliation Confidential Information**"). Company will clearly mark the Reconciliation Confidential Information provided to City in connection with the Reconciliation process as "confidential" or with a similar designation; and City will not be obligated to treat as confidential any information provided by Company that lacks such designation. City agrees to maintain the confidentiality of the Reconciliation Confidential Information and reasonably limit its dissemination to City staff on a "need-to-know" basis. Company acknowledges that City is required to disclose (x) its major water customers as part of its bond disclosures as may be reasonably required by City's bond counsel or in a manner consistent with City's historical practice in connection with such disclosures, and (y) the Maximum Water Allowance to the Arizona Department of Water Resources and any other governmental entity authorized to request such information consistent with Applicable Laws. If City receives a public records request, subpoena or other judicial process for information that is Reconciliation Confidential Information under this Agreement, City will promptly provide Company written notice of such request, subpoena or other judicial process so that Company may seek (at Company's sole cost and expense) a protective order from a court having jurisdiction over the matter. The notice from City will include a reasonable time period (recognizing the prompt requirements under the public records law) for Company to seek court-ordered protection. If Company does not file for such court-ordered protection by the expiration of the time period in the notice or before a court order otherwise requires (or ultimately does not obtain such court-ordered protection), City may release the Reconciliation Confidential Information without further notice to Company.

5.2 Moratorium. The Water Allowance (or Maximum Water Allowance) shall be considered and deemed to be water resources committed to development of the Property and the Project under A.R.S. § 9-463.06. For any adopted moratorium pursuant to A.R.S. § 9-463.06, Company is entitled to a waiver under 9-463.06(D) for the committed water resources pursuant to this Agreement to develop and use the Property consistent with this Agreement and the Water Allowance.

5.3 Acceptance and Maintenance of Public Improvements. When the Public Improvements (or a discrete portion of such Public Improvements as agreed by City in its sole discretion) are completed, then upon written request of City or Company, Company will dedicate and City will accept such Public Improvements in accordance with Applicable Laws and upon such reasonable and customary conditions as City may impose, including without limitation a one (1) year contractor's warranty of workmanship and materials. Company will dedicate the corresponding Public Improvements (and related real property and real property interests) to City before the City is obligated to issue a certificate of occupancy for any Building. Upon acceptance by City, the Public Improvements will become public facilities and property of City, and City thereafter will be solely responsible, at City's sole cost and expense, for all subsequent maintenance, replacement or repairs. However, the Parties agree that certain Public Improvements located in the County may be dedicated to the County as agreed to between the Parties at the time of dedication. With respect to any Claims arising prior to acceptance of the Public Improvements by City, Company will bear all risk of, and will indemnify City and the City Indemnified Persons against any Claim arising prior to City's acceptance of the Public Improvements from any bodily injury or property damage to any person, party or utility, arising from the condition, loss, damage to or failure of any of the Public Improvements, except to the

extent caused by the negligence or willful acts or omissions of City and its officials, employees and City Council members, agents or representatives. Company's indemnification obligations under this Section 5.3 shall survive the expiration of this Agreement.

5.4 Government Property Lease Excise Tax. Upon request by Company at any time following Completion of Construction of and issuance of a certificate of occupancy for a Building, the City and Company will enter into a "Land and Improvements Lease" in the form attached as Exhibit E ("**GPLET Lease**"), whereby Company will convey all or part of the Property to the City by special warranty deed free and clear of all financial liens and encumbrances, the property so conveyed will constitute government property improvements pursuant to A.R.S. § 42-6201(2), the City shall constitute a "government lessor" under A.R.S. § 42-6201(1), and Company will constitute a "prime lessee" under A.R.S. § 42-6201(4). Company shall pay, or reimburse City, for a policy of standard coverage title insurance with coverage in the amount of $2,500,000 and shall pay, or reimburse City, for all escrow and closing costs for such transfer.

5.5 Federal Foreign Trade Subzone. Upon the request of Company, the City, at the cost and expense of Company and subject to Council approval, will enter into the required Operation Agreement and provide support and assistance with other necessary steps in obtaining and activating Federal Foreign Trade designation for the Property or Buildings within Foreign Trade Zone #221.

6. **UTILITY SERVICE**. All utility service to the Property shall be subject to the following:

6.1 Municipal Utility Services Generally. All utility service to the Property will be provided in the manner provided to other similarly situated customers of City and is subject to all Applicable Laws; provided, however, any Applicable Laws adopted by the City regarding utility services must be implemented with reasonable uniformity as to similarly situated customer classes and in a manner that is not unduly discriminatory to Company. Utility service will be provided subject to payment of the then applicable rates, fees and charges and the Terms and Conditions. The City shall not create any special classification, rate, fee or charge that is unduly discriminatory against Company.

6.2 Water Utility Service. The City shall not have any obligation to provide water quality beyond the requirements of the Safe Drinking Water Act, and nothing in this Agreement shall constitute a transfer or conveyance of ownership of any water rights by City to Company. City will use reasonable efforts to provide satisfactory water service to Company; provided, however, water service is not warranted or guaranteed and shall also be subject to the Water Shortage Management Plan and Force Majeure and measures taken thereunder.

6.3 Wastewater Utility Service. Wastewater service shall be provided subject to Company's compliance with all wastewater pretreatment requirements as amended from time to time and applicable at the time of discharge, and further subject to Section 4.11 of this Agreement.

6.4 Water and Wastewater Improvements. The City has and will have as part of its regular water treatment and distribution system, capacity capable of delivering a peak hour demand of up to 333.3 KGal for water service to the Project (including all uses at the Property). Water metering and associated backflow and other equipment installed for the Property (at Company's sole cost and expense) will also be consistent with, but not in excess of 333.3 KGal of peak hour demand (with reasonable redundancy to avoid a single point of failure). The City has and will have as part of its regular wastewater collection and treatment system, capacity capable of receiving peak hour wastewater flows up to 208 KGal from the Project (including all uses at the Property) subject to Company's compliance with Section 4.11. The existence of system capacity shall not be construed to require City to deliver water or receive wastewater in any particular volume.

6.5 Additional Water Supplies. If Company identifies additional water resources that are available for procurement by Company or the City at reasonable cost, City agrees to work with Company for the acquisition of such water resources. If the City acquires such additional water resources, the Parties will meet to discuss in good faith an amendment of this Agreement (which may include additional milestones and increases in the Water Allowance); such an amendment would be subject to the approval of the City Council in its sole and absolute discretion. If Company acquires additional water resources, City agrees to meet to discuss in good faith an amendment of this Agreement to provide for the treatment and transportation of such resources by City to Company (and the possible transfer of such additional water resources to the City), subject to available system capacity, which will be determined by the City in its sole and absolute discretion. The City's delivery of additional supplies acquired by the Company and transferred to the City may be subject to City bond requirements and restrictions and will be subject to applicable water service rates and the City's Terms and Conditions.

6.6 Company Supplemental Water Supplies. If for any reason Company desires to supplement water supplies available from the City, City agrees to: (a) accept, treat and deliver to the Property and the Project raw water obtained by Company and delivered by Company to a City water treatment facility designated by the City; or (b) accept the transfer of long-term storage credits from the Company, recover those credits from City wells, and treat and deliver the recovered water to the Property and the Project; provided, however, that total deliveries of water to the Property and the Project, including any supplemental supplies under this Section, shall be limited to 4,480 AFY (unless the City Manager, in his or her sole and absolute discretion, has agreed to an increase of not more than five percent [5%] of such amount), and that supplemental deliveries under this Section are further subject to the physical availability of water and the ability and availability of system and pumping capacity, which shall be determined by the City in its sole and absolute discretion. The transfer, treatment, transport and delivery of such supplemental water by City is subject to and contingent on compliance with all Applicable Laws and any and all City bond requirements and restrictions, as determined by the City's bond counsel. Company may transfer long-term storage credits in advance in the amount of up to 1,344 acre-feet to the City at any time, and the City agrees to hold those credits for future delivery to the Property and the Project. Company will be responsible for all costs to acquire and transfer any such supplemental water to the City. All such deliveries will remain subject to the applicable water service rates.

6.7 Water Shortage Management. Notwithstanding anything to the contrary in this Agreement, City shall not enforce against Company any reduction in water availability to the Project and Property pursuant to a declared Stage 4 Shortage under the Water Shortage Management Plan (or any reduction of twenty percent (20%) or more regardless of how characterized) that materially, adversely and actually impacts the commercial operations of the Project and Property unless and until City adopts a moratorium pursuant to A.R.S. § 9-463.06, provided however, this enforcement limitation shall not apply to the extent of any exceedance at the Project or Property of the Water Allowance or Maximum Water Allowance, as applicable. Measures taken by City under the Water Shortage Management Plan or to address a Force Majeure must be implemented with reasonable uniformity as to similarly situated customer classes and in a manner that is not unduly discriminatory to Company. City agrees to provide six (6) months' notice to Company prior to the adoption under the Water Shortage Management Plan of a Stage 3 Shortage, and one (1) year's notice to Company prior to adoption of a Stage 4 Shortage, unless made by emergency declaration of the Mayor, in which case as much notice as practicable under the circumstances will be provided.

7. **CITY REPRESENTATIONS**. City represents and warrants to Company that:

7.1 City has the full right, power and authority to enter into this Agreement and perform this Agreement and each of the obligations and undertakings of City under this Agreement, and City's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the City Code.

7.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement by City have been obtained, and no further action needs to be taken in connection with City's execution, delivery and performance of this Agreement.

7.3 As of the date of this Agreement, City knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of City or its officials with respect to this Agreement that has not been disclosed in writing to Company.

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

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

8. **COMPANY REPRESENTATIONS**. Company represents and warrants to City that:

8.1 Company has the full right, power and authority to enter into and perform this Agreement and each of the obligations and undertakings of Company under this Agreement, and the execution, delivery and performance of this Agreement by Company has been duly authorized and agreed to in compliance with the Company's organizational documents.

8.2 All consents and approvals necessary to Company's execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with Company's execution, delivery and performance of this Agreement.

8.3 As of the date of this Agreement, Company knows of no litigation, proceeding or investigation pending or threatened against or affecting Company contesting the validity or enforceability of this Agreement or Company's performance under this Agreement.

8.4 The execution, delivery and performance of this Agreement by Company is not prohibited by, and does not conflict with, Company's organizational documents or any other agreements, instruments, judgments or decrees to which Company is a party or to which Company is otherwise subject.

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

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

## 9. **EVENTS OF DEFAULT; REMEDIES**.

9.1 Events of Default by Company. "**Default**" or an "**Event of Default**" by Company under this Agreement will mean one or more of the following:

(a) Any representation or warranty made in this Agreement by Company was both material and materially inaccurate when made;

(b) Company fails to Commence Construction of the Public Improvements and the First Milestone Requirements by the Third Milestone Date;

(c) Excluding any water resources provided by Company under Section 4.10(b), Section 6.5 or Section 6.6, Company uses water at the Property in excess of 105% of the Water Allowance applicable at the time of such use or the Maximum Water Allowance after the Third Milestone Date, as further provided in Section 9.5;

(d) Intentionally Omitted;

(e) Company transfers or attempts to transfer or assign this Agreement in violation of Section 11.7; or

(f) Company fails to observe or perform any other covenant, obligation or agreement required of it under this Agreement.

9.2 Events of Default by City. Default or an Event of Default by City under this Agreement will mean one or more of the following:

(a) Any representation or warranty made in this Agreement by City was both material and materially inaccurate when made;

(b) City fails to observe or perform any obligation under Section 5.1 (including any of its subsections), Section 6.2, or Section 6.4;

(c) City fails to observe or perform any obligation under Section 6.7; or

(d) City fails to observe or perform any covenant, obligation or agreement required of it under this Agreement not listed in Sections 9.2(a), (b), or (c).

9.3 Grace Periods; Notice and Cure. Upon the occurrence of an Event of Default by any Party, such Party will, upon written notice from the other Party, proceed promptly to cure or remedy such Default and, in any event, such Default must be cured within thirty (30) days after receipt of such notice; or, if such Default is of a nature that is not capable of being cured within thirty (30) days, the cure must be commenced within such period and diligently pursued to completion, but not to exceed ninety (90) days in total.

9.4 Remedies for Default. Whenever any Event of Default occurs and is not cured (or cure undertaken) by the defaulting Party in accordance with Section 9.3 of this Agreement, the other Party may take the following actions:

(a) Remedies of City. City's exclusive remedies for an Event of Default by Company will consist of, and will be limited to the following:

(i) For any Event of Default under Sections 9.1(a) or Section 9.1(f), City exclusive remedies are to seek actual damages or special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring Company to undertake and to fully perform its obligations under this Agreement, and to timely address any public safety concern or to enjoin any construction or activity undertaken by Company which is not in accordance with the terms of this Agreement.

(ii) For any Event of Default under Section 9.1(b), City's exclusive remedy is to terminate this Agreement.

(iii) For any Event of Default under Section 9.1(c), City's exclusive remedies are set forth in Section 9.5.

(iv) For any Event of Default under Section 9.1(e), City's exclusive remedy is to terminate this Agreement as to the portion of the Property that Company transferred or assigned in violation of Section 11.7.

(v) The above limitations on City's remedies will not extend to actions against Company with respect to Company's obligations of indemnification (including but not limited to actions for damages).

(b) Remedies of Company. Company's exclusive remedy for Event of Default by City, will consist of, and be limited to the following:

(i) As to any Event of Default under Section 9.2(a), termination of this Agreement.

(ii) As to any Event of Default under Section 9.2(b), injunction, injunctive relief, specific performance, declaratory action, special action or other similar relief (whether characterized as mandamus, injunctive relief, specific performance, or otherwise) declaring and requiring City: to recognize that the Water Allowance or Maximum Water Allowance (as applicable) or water or wastewater peak capacity (as applicable) is committed to the Project and the Property under A.R.S. §9-463.06; and to require City to provide service consistent with the service standards set forth in Mesa City Code 8-10-6, as amended from time to time (and any similar or replacement Mesa City Code provision or ordinance).

(iii) As to any Event of Default under Section 9.2(c) or Section 9.2(d), injunction, injunctive relief, specific performance, declaratory action, special action or other similar relief (whether characterized as mandamus, injunctive relief, specific performance, or otherwise) requiring City to undertake and fully perform or observe and comply with such obligations, as applicable.

(iv) Notwithstanding any of the foregoing language in Sections 9.4(b)(ii) through Section 9.4(b)(iii), in no event shall City be liable for any damages whatsoever as a result of a default under this Agreement by City, whether such damages are actual, direct, indirect, consequential, punitive or of any other nature; and further, injunction, injunctive relief, specific performance, declaratory action, special action or other similar relief (whether characterized as mandamus, injunctive relief, specific performance, or otherwise) will not be available in a manner which requires the City to: provide a specific level of water or wastewater service at any given time (for additional clarity, the immediately prior limiting phrase shall not apply to a special action to enforce the reduction limitation or moratorium requirement of Section 6.7 under Section 9.4(b)(iii)); acquire water supplies; drill any well; construct, expand, or modify a water or wastewater treatment plant; or construct, expand, or modify any other part of the water or wastewater utility system, including but not limited to, any transmission or distribution lines, pipes, valves, lift stations, pumps or other equipment.

9.5 Remedies of City for Breach of Water Allowance or Maximum Water Allowance by Company. If Company's annual water use for the Project and the Property (excluding any water resources provided by Company under Section 4.10(b), Section 6.5 or Section 6.6) exceeds the Water Allowance (or the Maximum Water Allowance after the Third Milestone Date) by five percent (5%) or more for any calendar year (as determined on December 31 of such year), then, as the City's sole and exclusive remedies:

(a) Upon the first occurrence, the City may issue a notice to Company to reduce its annual usage amount for the following calendar year to be equal to or less than the Water Allowance (or Maximum Water Allowance as applicable). Within 60 days of receipt of such notice, Company will provide City with a plan to reduce water consumption at the Project

to the annual volume under the Water Allowance (or the Maximum Water Allowance, as applicable).

(b) Upon a second annual occurrence within five years of an exceedance, the City will provide written notice to Company and will meet and confer with Company to determine if an alternative plan will result in compliance with the Water Allowance (or Maximum Water Allowance, as applicable). If a plan cannot be agreed upon, or associated corrective measures are not commenced within one hundred twenty (120) days, the City may take measures at the Property to limit or reduce Company's demand for water service, including, but not limited to, elimination of redundant metering, reduction in meter size and/or count, and implementation of valves or other measures which limit flow, provided, however, any such measures will not restrict flow to levels which would be insufficient to meet the Maximum Water Allowance limitation (or Water Allowance, as applicable).

(c) Upon a third occurrence within five years of an exceedance, the City may initiate litigation (notwithstanding the provisions of Section 9.4(a)) and shall be entitled to damages and an injunction against Company mandating that Company's annual water use for the Project (including all on the Property) will not exceed 105% of the Water Allowance (or Maximum Water Allowance, as applicable). Damages may include, but are not limited to, the then current cost of securing an acre-foot by acre-foot replacement supply of Phoenix Active Management Area Long Term Storage Credits equaling the exceedance.

9.6 Consequential Damages. In no event shall either Party be liable to the other Party for exemplary, consequential, indirect, incidental, punitive, special, or any other similar damages. Notwithstanding the preceding, any limitations of liability will not apply to the indemnification obligations under this Agreement.

9.7 Unrelated Remedies of City and Company. Nothing in this Agreement shall alter the penalties for violation of any other City regulations, nor shall it otherwise alter applicable penalties for nonpayment of the then applicable utility rates, fees and charges. Nothing in this Agreement waives the City's obligations as a municipality with respect to its municipal services and municipal utilities to the Property in accordance with Applicable Laws, including but not limited to the Terms and Conditions.

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

9.9 Force Majeure in Performance for Causes Beyond Control of Party. Neither City nor Company, as the case may be, will be considered not to have performed its obligations under this Agreement in the event of force majeure ("**Force Majeure**") due to causes

beyond its control and without its fault, negligence, or failure to comply with Applicable Laws (except to the extent that a change in federal or state statute, code, rule, regulation or other requirement substantially and materially impacts the ability of a Party to perform, which will also be considered a Force Majeure event), including, but not restricted to, acts of God, acts of public enemy, any temporary or permanent injunction or restraining order issued by a court of competent jurisdiction arising out of a Third Party lawsuit challenging the validity and enforceability of this Agreement due to violations of Applicable Law (including the effect of petitions for initiative or referendum), fires, floods, epidemics, pandemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, delays in obtaining consents or approvals from the other party as required under this Agreement, delays in obtaining governmental permits, licenses, and approvals, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of national emergency or national alert, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting the Property (whether permanent or temporary) by any public, quasi-public or private entity. Force Majeure includes drought that qualifies both as an exceptional short term and exceptional long term drought that substantially impairs City's ability to provide water service to its customers beyond the water shortages and potential limitations on water service contemplated under the Water Shortage Management Plan or this Agreement, but will only be considered Force Majeure with respect to City's obligation to provide water service under this Agreement. In no event will Force Majeure include any delay resulting from general economic or market conditions, nor the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Company in connection with the acquisition of the Property or the design and construction of the Project (as opposed to the unavailability of contractors, subcontractors, vendors, investors or lenders generally due to events of Force Majeure). In the event of the occurrence of any such Force Majeure, the time or times for performance of the obligations of the Party claiming delay will be extended for a period of the Force Majeure; provided that, within thirty (30) days after such event, the Party seeking the benefit of the provisions of this Section 9.9 must notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Force Majeure (if the Party alleging Force Majeure fails to timely notify the other Party, the commencement of any tolling period will be thirty (30) days prior to delivery of such written notice, notwithstanding the actual date of the event).

9.10 Rights and Remedies Cumulative. Except where exclusive and/or sole remedies are expressly provided herein, the rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights will not preclude the exercise by it, at the same or different times, of any other right or remedy for any other Default by the other Party.

9.11 Informal Resolution and Mediation.

(a) If there is a dispute under this Agreement, the Parties agree that the City Representative and Company Representative shall promptly meet (not more than five (5) City of Mesa business days after notice) to resolve the dispute. If these representatives are

unable to resolve the dispute, Company shall designate a person that has final authority to resolve the dispute and this person shall meet with the City's City Manager to seek resolution of the dispute.

(b) If there is a dispute that the Parties cannot resolve in the manner described in Section 9.11(a) above, the Parties agree that there shall be a ninety (90) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by non-binding mediation before commencement of litigation. Company may send a notice of claim to the City and/or file a lawsuit or take other action against the City that Company deems necessary in order to preserve its rights during the pendency of the ninety (90) day moratorium on litigation. The mediation shall not be subject to the Commercial Mediation Rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Company and City. If the Parties cannot agree upon the selection of a mediator within ten (10) days, then within five (5) days thereafter, City and Company shall request that the Presiding Judge of the Superior Court in and for the County of Maricopa, State of Arizona, appoint the mediator. The mediator selected shall have at least ten (10) years' experience in mediating or arbitrating disputes relating to commercial property. The cost of any such mediation shall be divided equally between City and Company. The results of the mediation shall be nonbinding, with any Party free to initiate litigation upon the earlier of the conclusion of the mediation or of the ninety (90) day moratorium on litigation. The mediation shall be completed in one day (or less) and shall be confidential, private, and otherwise governed by the provisions of A.R.S. §12-2238.

(c) Nothing in this Section 9.11 alters the obligation of Company to observe the requirements (including, but not limited to, times for filing) regarding notices of claims against City; and further nothing in this Section 9.11 suspends or tolls any applicable statute of limitations.

## 10. **DESIGNATED REPRESENTATIVES AND COOPERATION**.

10.1 Representatives. To further the cooperation of the Parties in implementing this Agreement, City and Company each will designate and appoint a representative to act as a liaison between City and its various departments and Company. The initial representative for City will be City's Economic Development Director (the "**City Representative**"), and the initial representative for Company will be its Project Manager, as identified by Company from time to time (the "**Company Representative**"). The City Representative and the Company Representative will be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Property.

10.2 Continued Cooperation. City and Company agree they will maintain an ongoing relationship and use good faith and reasonable efforts to coordinate development of the Property and the Project and methods to mitigate any potential impacts on each other's operations. Such coordination will include but not be limited to: Representatives of City and Company will meet not less than annually to discuss development progress, operational build-out and utility service issues such as planned service interruptions. Additionally, the City will endeavor to provide reasonable prior notice to Company of any planned water service interruptions, including the expected time period of the planned water service interruptions.

11. **MISCELLANEOUS PROVISIONS**.

11.1 Indemnity of City by Company. Company will pay, defend, indemnify and hold harmless (collectively, "**Indemnify**") City and its City Council members, officers, officials, agents, volunteers and employees (each, a "**City Indemnified Person**," and, collectively, "**City Indemnified Persons**") 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) which may be imposed upon, incurred by or asserted against the City Indemnified Persons by Third Parties ("**Claims**," or, individually, a "**Claim**") which arise from or relate in any way, in whole or in part, to any act or omission by Company, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Company's obligations under this Agreement. Subject to the following paragraph, such obligation to Indemnify shall extend to and encompass all costs incurred by the City Indemnified Person in defending against the Claims, including but not limited to attorney, witness and expert fees, and any other litigation-related expenses. The provisions of this Section 11.1, however, will not apply to Claims to the extent such claims are attributable to acts or omissions of the City Indemnified Persons. The obligations of Company under this Section 11.1 shall survive the expiration of this Agreement.

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

11.2 Defense of Agreement. In the event of any Third Party challenge to the validity and enforceability of this Agreement or any proceeding or litigation arising from its terms that names City or Company as a party or which challenges the authority of the Parties to enter into or perform any of its obligations hereunder, the Parties may jointly cooperate to defend such challenge. In the event either Party does not desire to participate in such defense, such party shall cooperate in a commercially reasonable manner in the event the other Party desires to mount such a defense at its sole cost and expense. So long as one Party is actively defending, the remaining Party will not terminate this Agreement (except for a termination pursuant to Section 11.3).

11.3 Preserve 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 and City and Company are not able (after good faith attempts) 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 Company 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.

11.4 Non-Appropriations. Pursuant to A.R.S. § 42-17106 and Applicable Laws, the City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. The City intends to perform its obligations set forth in this Agreement to the extent funds required to perform such obligations are legally appropriated in accordance with Applicable Laws. The City staff will actively request funding for future fiscal periods in order to satisfy its obligations set forth in this Agreement; however, if the Mesa City Council does not appropriate sufficient money to meet the City's obligations under this Agreement, the City and Company will negotiate in good faith to modify this Agreement so City is in compliance with its obligations based on the appropriated funding; and provided further that if City and Company are not able (after good faith attempt) to so modify this Agreement, City will have the right on the last day of the fiscal period for which funds were legally available to terminate its obligations under this Agreement to the extent reasonably necessary based on the non-appropriation.

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

11.6 Governing Law; Choice of Forum. This Agreement will be deemed to be made under, will be construed in accordance with, and will be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement must be commenced and maintained in the United States District Court for the District of Arizona (or, as may be appropriate, in the Justice Courts of the County, or in the Superior Court of the State of Arizona in and for the County of Maricopa, if, but only if, the District Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 11.6.

11.7 Restrictions on Assignment and Transfer.

(a) Restriction on Transfers. Company acknowledges and agrees that City has entered into this Agreement, and has offered the benefits of this Agreement to Company on the assumption, and with the expectation, that Company will continue to operate the Project during the Term. Accordingly, Company agrees that no assignment or similar transfer of Company's interest in the Property or this Agreement, or in the current ownership or control of Company (each, a "**Transfer**") shall occur without the prior written consent of City,

which consent may be given or withheld in City's sole and unfettered discretion; provided, however, that the foregoing restriction will not apply to the following Transfers of all or any portion of the Property (each, a "**Permitted Transfer**"): (1) any Transfer to its Parent, a Successor, or an Affiliate of Company following which Transfer the Parent, Successor, or Affiliate is (i) either the sole owner of the Property, sole premises tenant under a space lease or the sole ground lessee under a ground lease, and (ii) the sole user with respect to the Project; (2) any Transfer in connection with an assignment-leaseback transaction in which Company, the Parent, Successor, and/or any Affiliate of the Company is the sole premises tenant under a space lease or the sole ground lessee under a ground lease and the sole user with respect to the Project; (3) any Transfer from and to the Company, the Parent, Successor, and/or any Affiliate of the Company and the City permitted pursuant to the GPLET Lease; (4) any Transfer in connection with, or arising from, a Financing by Company, Parent, Successor, and/or Affiliate while Company, its Parent, Successor, and/or Affiliate is the sole user with respect to the Project; (5) any other Transfer so long as this Agreement and the GPLET Lease is terminated concurrently with respect to the portion of the Property that is the subject of such Transfer (no partial termination of this Agreement with respect to a portion of the Property shall release or discharge Company from any of its obligations of Indemnity set forth in Section 11.1 with respect to such non-terminated portion of the Property); and (6) any Transfer of publicly traded equity securities of Company, Parent, Successor, and/or any Affiliate of the Company. Each of the Transfers described in subparts (1) through (6) above, inclusive, and any Transfer to which City has given its prior written consent in City's sole and unfettered discretion, may be referred to in this Agreement as a "**Permitted Transfer**." Notwithstanding the foregoing, (a) there may not be more than two (2) Permitted Transferees of this Agreement at any one time (excluding Transfers pursuant to clause (5)); (b) no Permitted Transfer shall release or discharge Company from any of its obligations arising in or under this Agreement, including but not limited to the obligations of Indemnity set forth in Section 11.1; (c) each Permitted Transfer shall include, to the extent applicable, an enforceable, equitable allocation of the Water Allowance reasonably approved by City; and (d) upon any Permitted Transfer (excluding Transfers pursuant to clause (5)), the transferee shall have fully and unconditionally assumed in writing all obligations of Company arising in or under this Agreement from and after the effective date of such assignment (with respect to the separate legal parcel on which the Building is located), including but not limited to all obligations of Indemnity set forth in Section 11.1. No voluntary or involuntary successor in interest to Company shall acquire any rights or powers under this Agreement, except as expressly set forth herein, and any Transfer in violation of this Agreement shall be void, and not voidable.

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

11.8 Limited Severability. City and Company each believes that the execution, delivery and performance of this Agreement comply with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any Applicable Laws), such provision will be deemed severed from this Agreement and this Agreement will otherwise remain in full force and effect; provided that this Agreement will retroactively be deemed reformed to the

extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

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

11.10 Notices.

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

If to City:

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

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

and

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

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

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

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

If to Company:

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

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

(b) Effective Date of Notices. Any notice sent by United States Postal Service certified or registered mail will be deemed to be effective on the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service will be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service will be deemed effective upon its receipt (or refusal to accept receipt) by the addressee. Any Party may designate a different person or entity or change the place to which any notice will be given as herein provided. Any notices permitted hereunder may be given by a Party's legal counsel.

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

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

11.13 Attorneys' Fees and Costs. In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, each Party shall bear its

own cost for any such dispute and will not be entitled, and hereby waives any right, to reimbursement of any attorney's fees or any costs or fees.

11.14 Waiver. Without limiting the provisions of Section 9.8 of this Agreement, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement will operate as a waiver of such right, remedy, power or privilege, nor will any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor will any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver will be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

11.15 Third Party Beneficiaries. No person or entity will be a third party beneficiary to this Agreement, except for permitted transferees, successors, assignees, or lenders under Section 11.7 to the extent that they assume or succeed to the rights and/or obligations of Company under this Agreement, and except that the indemnified Parties referred to in the indemnification provisions of Section 11.1 (or elsewhere in this Agreement) will be third party beneficiaries of such indemnification provisions.

11.16 Exhibits. Without limiting the provisions of Section 1 of this Agreement, the Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.

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

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

11.19 Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement falls on a Friday, Saturday, Sunday, a legal holiday, or a day on which national banking associations are not open for general banking business, then the duration of such time period or the date of performance, as applicable, will be extended so that it will end on the next succeeding day which is not a Friday, Saturday, Sunday, a legal holiday, or a day on which national banking associations are not open for general banking business.

11.20 Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval will be given or denied by such Party in its reasonable discretion, not in an unreasonable manner to be conditioned or delayed, unless this Agreement expressly provides otherwise. Any consent or approval required by this Agreement may be provided by the City Manager (or designee), unless otherwise specified or required by Applicable Laws. In addition, the City Manager (or designee) is expressly authorized to execute and deliver all amendments to this Agreement and other transaction documents required by, contemplated under or authorized in this Agreement.

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

11.22 Recordation. Within ten (10) days after this Agreement has been executed by the Parties (together with the execution of the Landowners' Consents hereto, if applicable), City will cause this Agreement to be recorded in the Official Records of the County.

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

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

11.25 Rights of Lenders.

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

(b) Company shall have the right at any time, and as often as it desires, to finance or refinance the acquisition, development and/or construction of the real property and Private Improvements (and appurtenant Public Improvements) to be constructed on the Property, in whole or in part, and to secure such financing with a lien or liens against the Property; provided, however, that all such liens must be released in their entirety (or amended to encumber only the Company's leasehold interest) prior to any transfer or conveyance of the Property and the Private Improvements to City in connection with the GPLET Lease.

(c) Notwithstanding any other provision of this Agreement, Company may collaterally assign all or part of its rights and duties under this Agreement as security to any Lender without such Lender assuming the obligations of Company under this Agreement, but without releasing Company from its obligations under this Agreement.

(d) In the event of an Event of Default by Company, City will provide notice of such Event of Default, at the same time notice is provided to Company, to not more than two (2) of such Lenders as previously designated by Company to receive such notice (the "**Designated Lenders**") whose names and addresses were provided by written notice to City in accordance with Section 11.10. City will give Company copies of any such notice provided to such Designated Lenders and, unless Company notifies City that the Designated Lenders names or addresses are incorrect (and provides City with the correct information) within three (3) City of Mesa business days after Company receives its copies of such notice from City, City will be deemed to have given such notice to the Designated Lenders even if their names or addresses are incorrect. Company may provide notices to other Lenders. If a Lender is permitted, under the terms of its non-disturbance agreement with City to cure the Event of Default and/or to assume Company's position with respect to this Agreement, City agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Company under this Agreement. City will, at any time upon reasonable request by Company, provide to any Lender an estoppel certificate or other document evidencing that (i) this Agreement is in full force and effect, (ii) no Event of Default by Company exists hereunder (or, if appropriate, specifying the nature and duration of any existing Event of Default), and (iii) such other matters as institution lenders typically require in financings similar to the Financing. Upon request by a Lender, City will enter into a separate non-disturbance agreement with such Lender, in the form attached to this Agreement as Exhibit F, or in such other form requested by Lender that is acceptable to City in its sole discretion and that does not provide for the subordination by City of its rights and interest in this Agreement or for any changes to any of the terms and conditions of this Agreement.

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

any of its constituent equity owners; (ii) the shareholders, members or managers or constituent equity owners of Company; or (iii) officers of Company.

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

11.28 Proposition 207 Waiver. By executing this Agreement, Company, on behalf of itself and all successors-in-interest to all or any portion of the Property hereby fully, completely and unconditionally waives any right to claim diminution in value or claim for just compensation for diminution in value under A.R.S. §12-1134, et seq. arising out of any City action permitted to be taken by City pursuant to this Agreement. This waiver constitutes a complete release of any and all claims and causes of action that may arise or may be asserted under A.R.S. §12-1134, *et seq*. as it exists or may be enacted in the future or that may be amended from time to time with regard to the Property respecting any City actions permitted to be taken by City pursuant to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

**CITY:**

CITY OF MESA, ARIZONA, an Arizona municipal corporation

By: _____
Its: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

STATE OF ARIZONA )
) ss.
COUNTY OF MARICOPA )

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____ the _____ of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of City.

_____
Notary Public

My commission expires:

_____

**COMPANY:**

STONE APPLICATIONS LLC, a Delaware limited liability company

By: _____

Its: _____

STATE OF ARIZONA )
) ss.
COUNTY OF MARICOPA )

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____, the _____ of _____, an _____, the Company named in the foregoing Development Agreement, who acknowledged that he signed the foregoing Development Agreement on behalf of Company.

_____
Notary Public

My commission expires:

_____

## EXHIBIT A TO DEVELOPMENT AGREEMENT

## LEGAL DESCRIPTION

Parcel No. 1: (304-05-019F; 304-05-019G; 304-05-019K)

The Southeast quarter of Section 7, Township 1 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT that portion lying within Tract "GG", of Desert Place at Morrison Ranch - Phase II, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 1201 of Maps, Page 16;

EXCEPT the North 17 feet of the South 50 feet of the East 1054.33 feet of said Southeast quarter, as
measured along the South line thereof; except the East 33 feet; and
EXCEPT the North 5 feet of the South 55 feet of the East 886.33 feet of said Southeast quarter, as
measured along the South line thereof; except the East 33 feet; and
EXCEPT the North 5 feet of the South 60 feet of the East 566.33 feet of said Southeast quarter, as
measured along the South line thereof; except the East 33 feet; and
EXCEPT the West 22 feet of the East 55 feet of the South 1854.33 feet of said Southeast quarter, as
measured along the East line thereof; except the South 60 feet; and
EXCEPT the West 10 feet of the East 65 feet of the South 1464.33 feet of said Southeast quarter, as
measured along the East line thereof; except the South 60 feet; and
EXCEPT the West 5 feet of the East 70 feet of the South 989.33 feet of said Southeast quarter, as measured along the East line thereof; except the South 60 feet; and
EXCEPT the West 15 feet of the East 85 feet of the South 764.33 feet of said Southeast quarter, as
measured along the East line thereof; except the South 60 feet; and
EXCEPT the West 10 feet of the East 95 feet of the South 544.33 feet of said Southeast quarter, as
measured along the East line thereof; except the South 60 feet; and
EXCEPT the East 33 feet of the South 1854.33 feet thereof; and
EXCEPT the South 33 feet of the East 1054.33 feet thereof.

Parcel No. 2: (304-05-022G)

The West 22 feet of the East 55 feet of that portion of the Northeast quarter of Section 7, Township 1 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, lying South of the Southerly boundary line of Desert Place at Morrison Ranch - Phase I, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 1131 of Maps, Page 34.

Parcel No. 3: (304-05-022K)

That portion of the Northeast quarter of Section 7, Township 1 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, lying South of the Southerly boundary line of Desert Place at Morrison Ranch - Phase II, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 1201 of Maps, Page 16, and South of the Southerly boundary line of Desert Place at Morrison Ranch - Phase I, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 1131 of Maps, Page 34;

EXCEPT the East 55 feet thereof.

Parcel No. 4: (304-05-018K; 304-05-018L; 304-05-020X)

A portion of the West half of Section 7, Township 1 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at a brass cap in a hand hole at the Southwest corner of said Section 7, from which a flush aluminum cap at the South quarter corner of said Section 7 bears South 89 degrees 34 minutes 15 seconds East (an assumed bearing) at a distance of 2516.26 feet;

thence South 89 degrees 34 minutes 15 seconds East along the South line of the Southwest quarter of said Section 7, a distance of 1955.13 feet to a point on the East line of the Flood Control District of Maricopa County property, as described in Docket 16131, Page 763, Official Records, and the POINT OF BEGINNING;

thence North 00 degrees 19 minutes 45 seconds East along said East line, a distance of 33.00 feet to a point on the North line of the South 33 feet of the Southwest quarter of said Section 7;

thence South 89 degrees 34 minutes 15 seconds East along said South line, a distance of 197.16 feet;

thence North 00 degrees 25 minutes 45 seconds East, a distance of 17.00 feet to a point on the North line of the South 50 feet of the Southwest quarter of said Section 7;

thence North 89 degrees 34 minutes 15 seconds West along the North line of the South 50 feet of the Southwest quarter of said Section 7, a distance of 85.00 feet;

thence North 00 degrees 25 minutes 45 seconds East a distance of 15.00 feet to a point on the North line of the South 65 feet of the Southwest quarter of said Section 7;

thence North 89 degrees 34 minutes 15 seconds West along said North line, a distance of 112.21 feet to a point on the East line of said Flood Control District of Maricopa County property;

thence North 00 degrees 19 minutes 45 seconds East along said East line, a distance of 62.41 feet to the beginning of a curve, concave to the West, the center of which bears North 89 degrees 40 minutes 15 seconds West at a distance of 1765.83 feet;

thence Northerly along the arc of said curve, through a central angle of 13 degrees 15 minutes 21 seconds, a distance of 408.54 feet;

thence North 12 degrees 55 minutes 36 seconds West, tangent to said curve, a distance of 2209.62 feet;

thence South 89 degrees 43 minutes 15 seconds East a distance of 51.36 feet to the Northwest corner of the property described in Document No. 2007-1140157, Official Records;

thence South 12 degrees 55 minutes 36 seconds East along the West line if said property, a distance of 687.32 feet to a point on the South line of said property;

thence South 89 degrees 34 minutes 15 seconds East along said South line, a distance of 231.80 feet to a point on a non-tangent curve, concave to the South, the center of which bears North 89 degrees 42 minutes 47 seconds East at a distance of 80.00 feet;

thence Easterly along said South line and the arc of said curve, through a central angle of 161 degrees 14 minutes 42 seconds, a distance of 225.14 feet to the beginning of a reverse curve, concave to the Northeast, the center of which bears North 70 degrees 57 minutes 29 seconds East at a distance of 22.00 feet;

thence Southeasterly along said South line and the arc of said curve, through a central angle of 70 degrees 31 minutes 44 seconds, a distance of 27.08 feet;

thence South 89 degrees 34 minutes 15 seconds East along said South line, a distance of 351.70 feet to a point on the East line of said property;

thence North 00 degrees 25 minutes 45 seconds East along said East line, a distance of 455.15 feet to a point on the North line of said property;

thence South 85 degrees 47 minutes 48 seconds West along said North line, a distance of 762.08 feet to an angle point on said North line;

thence North 00 degrees 20 minutes 52 seconds East along said North line, a distance of 212.41 feet to a point on the North line of the Southwest quarter of said Section 7;

thence South 89 degrees 43 minutes 13 seconds East along said North line, a distance of 20.00 feet;

thence South 00 degrees 20 minutes 52 seconds West a distance of 180.75 feet;

thence North 85 degrees 47 minutes 48 seconds East a distance of 843.34 feet to a point on the East line of the Southwest quarter of said Section 7;

thence South 00 degrees 40 minutes 48 seconds East along said East line, a distance of 2520.39 feet to the South quarter corner of said Section 7;

thence North 89 degrees 34 minutes 15 seconds West along the South line of the Southwest quarter of said Section 7, a distance of 561.13 feet to the POINT OF BEGINNING.

Parcel No. 5:

The following portions of the Southeast quarter of Section 7, Township 1 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

The North 17 feet of the South 50 feet of the East 1054.33 feet of said Southeast quarter, as measured along the South line thereof; except the East 33 feet; and
The North 5 feet of the South 55 feet of the East 886.33 feet of said Southeast quarter, as measured along the South line thereof; except the East 33 feet; and
The North 5 feet of the South 60 feet of the East 566.33 feet of said Southeast quarter, as measured along the South line thereof; except the East 33 feet; and
The West 22 feet of the East 55 feet of the South 1854.33 feet of said Southeast quarter, as measured along the East line thereof; except the South 60 feet; and
The West 10 feet of the East 65 feet of the South 1464.33 feet of said Southeast quarter, as measured along the East line thereof; except the South 60 feet; and
The West 5 feet of the East 70 feet of the South 989.33 feet of said Southeast quarter, as measured along the East line thereof; except the South 60 feet; and
The West 15 feet of the East 85 feet of the South 764.33 feet of said Southeast quarter, as measured along the East line thereof; except the South 60 feet; and
The West 10 feet of the East 95 feet of the South 544.33 feet of said Southeast quarter, as measured along the East line thereof;

EXCEPT the South 60 feet; and
EXCEPT the East 33 feet of the South 1854.33 feet thereof; and
EXCEPT the South 33 feet of the East 1054.33 feet thereof.

## EXHIBIT B TO DEVELOPMENT AGREEMENT

## REQUIRED PUBLIC IMPROVEMENTS

1. **REQUIRED PUBLIC IMPROVEMENTS - WATER**. Subject to Section 4.3 of the Agreement, the Required Public Improvements that must be constructed by Company at its sole cost and expense include, but are not limited to, the following:

Municipal water infrastructure consisting of 12-inch (or an alternative appropriate size as determined by City in consultation with Company based on Company's peak and average water demand and subject to the provisions of this Agreement) distribution water lines ("**Water Improvements**") must be installed to create at least two points of interconnection with the City's existing water infrastructure by extending 12 inch waterlines along the Property's frontage on Elliot and Sossaman Roads to interconnections with the City's existing water infrastructure. The Company may install additional water distribution lines as necessary to avoid a single point of failure at the Property.

2. **REQUIRED PUBLIC IMPROVEMENTS - WASTEWATER**. The following Required Public Improvements must be constructed by Company at its sole cost and expense in the event wastewater flows exceed 300,000 gallons per day from the Property:

Facilities as necessary to connect and convey wastewater from the Property, along with any impacted off-site flows, to the City's 48" East Mesa Interceptor ("**EMI**") located on Elliott Road.

The Company shall have the following options, to be determined in consultation with and upon written approval of, the City:

i.) Increase the capacity of the City's existing Desert Place Lift and Odor Control Sulfide Station at Elliot Road and the East Maricopa Floodway ("**EMF**") and existing upstream gravity sewers to lift the projected flow into the existing 48-inch sewer line along the EMF, all to City standards. The expanded Lift Station must be engineered and constructed to handle the anticipated flow of the Project plus existing and planned off-site flows, in such volumes as are determined based on a stamped engineering analysis provided by Company and approved in writing by City, but in no event shall the peak hour flows exceed 208 KGal; or

ii.) Design, construct, operate and maintain a private lift station on the Property (which shall then constitute a Private Improvement, the costs of which shall be borne solely and exclusively by Company), and install a private force main to pump wastewater from the Property directly to the EMI.

Notwithstanding the foregoing, Company must design, construct and maintain a wastewater metering station pursuant to City Wastewater Rate SM 3.1.

3. **REQUIRED PUBLIC IMPROVEMENTS - SOSSAMAN AND ELLIOT ROAD**. Subject to Section 4.3 of the Agreement, the following Required Public Improvements

must be constructed by Company at its sole cost and expense prior to Company obtaining a certificate of occupancy for any Building on the Property:

3.1 Sossaman Street Improvements as follows:

3.1.1 Water Improvements. If not already completed in accordance with Section 1 above, Water Improvements must be installed along the Property's frontage on Sossaman Road.

3.1.2 Street Improvements.

(a) Sossaman Road half street improvements must be constructed to a 4-lane configuration with median striping per City of Mesa Detail M-46.02.

(b) A raised median on Sossaman at the intersection with Elliot Road per City of Mesa Detail M-46.02, minus one thru lane in each direction, but with the right turn deceleration lane. Additional pavement may be required on the east side of Sossaman Road to accommodate the median.

(c) 6-foot wide linear sidewalks along the site's frontage of Sossaman Road.

(d) Replacement of existing traffic signal at Sossaman and Elliot to accommodate the roadway improvements.

(e) The required half street improvements shall include landscape and landscape irrigation along the Sossaman Road frontage.

(f) Points of connection to adjacent arterial streets must be approved by City of Mesa Transportation Department and will be reviewed after a site plan has been submitted.

3.1.3 Duct Banks. Four (4) two-inch quad duct banks along the frontage of Sossaman Road.

3.1.4 Street Lights. Street lights per City standards along the Sossaman Road frontage.

3.1.5 Stormwater Infrastructure. Storm drain infrastructure and retention basins to retain runoff from the Sossaman Road half street, designed to the 100-year, 2-hour storm event. In addition, a piped, gravity (or pump station force main if gravity is not feasible) bleed-off system to empty the basins after the storm event is over.

3.2 Elliot Road Improvements as follows:

3.2.1 Water Improvements. If not already completed in accordance with Section 1.1 above, Water Improvements must be installed along the Property's frontage on Elliot Road.

3.2.2 Street Improvements.

(a) Elliot Road half street improvements constructed to a 6-lane with raised median cross-section per City of Mesa Detail M46.03.2, including the bus bay for future transit route.

(b) 6-foot wide linear sidewalks along the site's frontage of Elliot Road.

(c) Replacement of existing traffic signal at Sossaman and Elliot to accommodate the roadway improvements.

(d) The required half street improvements shall include landscape and landscape irrigation along the Elliot Road frontages.

(e) Points of connection to adjacent arterial streets approved by the City Transportation Department to be reviewed after a site plan has been submitted.

3.2.3 Duct Banks. Four (4) two-inch quad duct banks along the frontage of Elliot Road.

3.2.4 Street Lights. Street lights per City standards along the Elliot Road frontage.

3.2.5 Stormwater Infrastructure. Storm drain infrastructure and retention basins to retain runoff from the Elliot Road half street, designed to the 100-year, 2-hour storm event. In addition, a piped, gravity (or pump station force main if gravity is not feasible) bleed-off system to empty the basins after the storm event is over.

# EXHIBIT C TO DEVELOPMENT AGREEMENT

## Customized Review Schedule

The City and the Company have agreed to this Customized Review Schedule. The implementation of the Customized Review Schedule will follow periodic Project Review discussions between the City's review staff and the Development/Project Team during the preparation of the Project Plans and Documents. The City shall provide all plan review and permitting services at standard rates. Plan review fees will be required by the City prior to issuance of construction permits. City and Company will both provide a single point of contact during the entire plan review process.

**Preliminary Project Review Meetings:**

1. Initial Code assumption discussion
2. 50% Construction Document Meeting
3. Plan Review Comment Review Session

**100% Construction Drawing Submittal Process:**

Submittal of plans for the Project will be through the DIMES system (except as otherwise agreed by City and Company). As requested, City staff will assist Company in plan submittal.

**Custom Plan Review Schedule**

A Custom Plan Review Schedule that is agreeable to the City and Development/Project Team will be created during the Preliminary Project Review phase. The Custom Plan Review Schedule review periods are guaranteed to be 10 City business days or less. Following the completion of any review, should there be only minor unresolved plan review comments that need to be addressed prior to the issuance of a building permit, the City has the option to extend the review period to allow the Development/Project Team time to address such minor comments without an additional review.

**FEES:**

Standard Permit Fees will be charged to the Project consistent with the adopted City Fee Schedule. Additional fees will not be charged for the Customized Review Schedule.

**EXHIBIT D TO DEVELOPMENT AGREEMENT**

**CITY OF MESA INSURANCE REQUIREMENTS**

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

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

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

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

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

(2) Commercial general liability insurance on a $1,000,000.00 per occurrence basis providing coverage for (and endorsing the City as an additional insured for):

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

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

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

E. Engineer. In connection with any construction involving the Public Improvements, the Company's soils engineer or environmental contractor will be required to

provide engineer's professional liability insurance with a limit of $1,000,000.00 per claim. This policy, or other policies, will cover claims for a period of not less than three (3) years after the Completion of Construction involving the Property and the Public Improvements.

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

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

H. Indemnities. Coverage provided by the Company and any Contractor will not be limited to the liability assumed under the indemnification provisions of the Agreement.

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

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

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

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

(1) All certificates are to be received and approved by City before the Commencement of Construction. Each insurance policy must be in effect at or prior to the Commencement of Construction and must remain in effect for the duration of the Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal will be considered a material breach of the Agreement.

(2) All certificates required by this Agreement will be sent directly to City of Mesa, Attn: Lisa Lorts, Risk Manager, 20 E. Main Street, P.O. Box 1466, Mesa, Arizona 85211-1466. City reserves the right to require complete, certified copies of all endorsements required by this Exhibit D at any time.

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

N. Self-Insurance Provisions: Any deductibles or self-insured retention in excess of $250,000 shall be subject to approval by City in its sole discretion; provided, however, that during such time as the net worth of the Company or its parent company, as determined in accordance with generally accepted accounting principles consistently applied, is at least One Hundred Million Dollars ($100,000,000), the Company or its parent company, as applicable, may self-insure (without City's prior approval) the coverages required herein (including contractor, architect, and engineer insurance coverage) provided that all such self-insurance, and self-insured amounts, shall provide the same or better coverage and benefits to City as would commercially available insurance (that City is endorsed as an additional insured) for all claims or damages covered by the insurance required in this Exhibit D, and City shall be endorsed (or be deemed endorsed) as an additional insured under the self-insurance program. Company (or its parent company, as applicable) shall provide notice of its intent to self-insure and provide an endorsement to the self-insurance and excess coverages, as applicable, to comply with the insurance coverage requirements in this Exhibit D. Any self-insurance shall be primary and non-contributory with respect to all other City insurance sources. Further, Company (or its parent company, as applicable) shall be solely responsible for the payment of any deductible or self-insured amounts and waives any rights it may have to seek recovery (waives subrogation) of such amounts from City and its agents, officials, volunteers, officers, elected officials, and employees.

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

**EXHIBIT E TO DEVELOPMENT AGREEMENT**

**GPLET LEASE**

When recorded, return to:

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

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**GOVERNMENT PROPERTY IMPROVEMENTS LEASE**

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

2. **Parties**. The parties to this lease are as follows:

A. City of Mesa, Arizona, an Arizona municipal corporation ("Landlord")

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

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

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

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

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

3. **Recitals**. As background to this Lease, the Parties agree, acknowledge and recite as follows, each of which shall be deemed a material term and provision of this Lease:

A. Landlord, as "City," and Tenant, as "Company" executed and delivered a "Development Agreement" dated _____, 2019, and which was recorded on _____ as Recording no. 2019-_____ in the Official Records of Maricopa County, Arizona ("Development Agreement"), relating to certain real property described in the Development Agreement, consisting of approximately 187 acres (the "Project Property").

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

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

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

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

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

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

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

4. **Lease of the Premises**.

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

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

(2) Present and future building restrictions and regulations, zoning laws at the time the permit is applied for, ordinances, resolutions and regulations of the municipality in which the land lies and all present and future ordinances, laws, regulations and orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction.

(3) The condition and state of repair of the Premises as the same may be on the Commencement Date.

(4) Any public easements granted to the City.

(5) The Development Agreement.

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

C. Addition of Land and Improvements. Additional portions of the Project Property appurtenant to the Land, together with improvements located and constructed on such real property (collectively, the "Annexed Property"), may be conveyed to Landlord by Tenant from time-to-time and added to and made subject to this Lease by an addendum in writing executed by Landlord and Tenant (each, an "Addendum"), in which Tenant confirms, agrees and acknowledges that the Annexed Property is in all respects subject to this Lease and made a part of the Premises from and after the date of conveyance, and all other terms and conditions of the Lease remain in full force and effect, except as may otherwise be amended in the Addendum. The form of conveyance will be by special warranty deed in substantially the form attached hereto as Exhibit F. Additionally, the Annexed Property must be conveyed to Landlord free and clear of all monetary liens, except current taxes and assessments; provided, either Landlord must approve any other claims or encumbrances against the Annexed Property, such approval not to be unreasonably withheld, or Tenant must obtain title insurance insuring over, or indemnify Landlord from any Claims arising from, any other claims or encumbrances against the Annexed Property.

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

5. **Definitions**.

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

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

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

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

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

(e) "Building" means as defined in Section 4.1(a) of the Development Agreement.

(f) "Claims" means as defined in Section 16(A).

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

(h) "Default Rate" means a rate of interest equal to five percent (5%) per annum in excess of the so-called "prime interest rate" then in effect as published in the Wall Street Journal (or comparable publication reasonably selected by Landlord, if the Wall Street Journal is not then being published, or does not regularly publish "prime rate" information) compounded monthly from the date of the act, event, omission or default giving rise to Landlord's right to receive such interest payment.

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

(j) "Development Parcel" means as defined in Section 20(B).

(k) "Environmental Laws" means as defined in Section 33(A)(1).

(l) "Event of Default" means as defined in Section 21(A).

(m) "Force Majeure" means as defined in Section 9.7 of the Development Agreement.

(n) "General Plan" means *This is My Mesa: Mesa 2040 General Plan*, as adopted by the City of Mesa, Arizona.

(o) "GPLET" means as defined in Section 7(G).

(p) "Imposition" or "Impositions" means as defined in Section 7(A).

(q) "Improvements" means all Buildings and above-ground and underground structures constructed or installed on the Land, including, without limitation, electrical, mechanical, and telecommunications equipment; conduits; stormwater detention/retention; pipes; parking areas; private roadways; sidewalks; and landscaping. Improvements specifically exclude any public infrastructure that is dedicated to, and accepted by, the City or any public utility provider, for maintenance and public use.

(r) "Indemnify" means as defined in Section 16(A).

(s) "Institutional Lender" means any savings bank; bank or trust company; savings and loan association; insurance company; mortgage banker; mortgage broker; finance company; college or university; governmental pension or retirement funds or systems; any pension retirement funds or systems of which any of the foregoing shall be trustee, holder, servicer, or special servicer of any commercial mortgage-backed securities; private equity company; or a Real Estate Investment Trust as defined in Section 856 of the Internal Revenue Code of 1986 as amended; provided, however, that any Institutional Lender must be organized under the laws of the United States or any state.

(t) "Land" means as defined in Recital A, and as legally described in Exhibit A, as it may be amended from time to time pursuant to Section 4(C).

(u) "Landlord" means the City of Mesa, Arizona, a municipal corporation.

(v) "Landlord Indemnified Parties" means as defined in Section 16(A).

(w) "Lease" means this Government Property Improvements Lease.

(x) "Net Rent" means as defined in Section 6(A).

(y) "New Lease" means as defined in Section 20(B).

(z) "Permitted Mortgage" means any mortgage or deed of trust that constitutes a lien upon this Lease, the leasehold estate hereby created, or all (or any portion of) Tenant's interest in the Premises, and which complies with the requirements of Section 20.

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

(bb) "Premises" means as defined in Section 4(A) and described in Exhibit A and Exhibit B, as it may be amended from time to time pursuant to Section 4(C).

(cc) "Private Improvements" means as defined in the Development Agreement.

(dd) "Purchase Price" means as defined in Section 34(B).

(ee) "Regulated Substances" means as defined in Section 33(A)(2).

(ff) "Release" means as defined in Section 33(A)(3).

(gg) "Rental Period" means the period beginning on the Commencement Date and ending twenty-five (25) years after the date the certificate of occupancy is issued for the first Building constructed on the Land.

(hh) "Successor Owner" means any subsequent holder of all or any portion of Tenant's leasehold interest in Premises with right of fee ownership upon termination of this Lease.

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

(jj) "Tenant's Premises Users" means as defined in Section 16(A).

(kk) "Term" means as defined in Section 4(D).

(ll) "Termination Event" means as defined in Section 21(F).

(mm) "Third Party" means any person other than Landlord or Tenant.

(nn) "Transfer" means as defined in Section 11.4(a) of the Development Agreement.

(oo) "Work" means as defined in Section 17(A).

(pp) "Zoning" means the Red Hawk Employment Opportunity District (RHEOD) as described in the Development Plan of the RHEOD as adopted by the Mesa City Council as Ordinance No. 5502.

6. **Rent**.

A. Net Rent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. **Insurance**.

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

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

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

9. **Intentionally Omitted**.

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

11. **Uses and Maintenance**.

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

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

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

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

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

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

12. **Compliance with Applicable Laws**.

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

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

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

A. Ownership of Improvements.

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

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

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

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

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

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

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

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

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

15. **[Reserved]**

16. **Indemnification of Landlord**.

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

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

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

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

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

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

17. **Damage or Destruction**.

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

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

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

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

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

18. **Condemnation**.

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

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

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

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

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

19. **[Reserved]**

20. **Encumbrances and Assignments**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21. **Default by Tenant**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

| | |
|---|---|
| If to Landlord: | City of Mesa<br>Attn: City Manager<br>20 East Main Street<br>Mesa, Arizona 85211<br><br>*If sent by United States Postal Service*:<br>Post Office Box 1466<br>Mesa, Arizona 85211-1466<br><br>and<br><br>City of Mesa<br>Attn: Office of Economic Development<br>20 East Main Street<br>Mesa, Arizona 85211<br><br>*If sent by United States Postal Service*:<br>Post Office Box 1466<br>Mesa, Arizona 85211-1466 |
| With a required copy to: | City of Mesa<br>Attn: City Attorney<br>20 East Main Street, Suite 850<br>Mesa, Arizona 85201<br><br>*If sent by United States Postal Service*:<br>Post Office Box 1466<br>Mesa, Arizona 85211-1466 |
| If to Tenant: | Stone Applications LLC<br>2801 Centerville Road, 1st Floor<br>PMB 811<br>Wilmington DE, 19808<br>Attention: Legal Department |
| With a required copy to: | Fennemore Craig, P.C.<br>Attention: Jay S. Kramer<br>2394 East Camelback Road, Suite 600<br>Phoenix, Arizona 85016-3429 |

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

25. **[Reserved]**

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

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

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

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

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

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

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

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

29. **Consents**.

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

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

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

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

31. **Miscellaneous**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33. **Compliance with Environmental Laws**.

A. Definitions.

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

(2) "Regulated Substances" means:

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

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

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

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

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

C. Indemnification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LANDLORD:

CITY OF MESA, ARIZONA,
a municipal corporation

By:_____
Its:_____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

TENANT:

STONE APPLICATIONS LLC,
a Delaware limited liability company

By:_____
Its: _____

STATE OF ARIZONA )
) ss.
COUNTY OF MARICOPA )

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

_____
Notary Public

My commission expires:

_____

Exhibit A to Government Property Improvements Lease

Legal Description of the Land

Exhibit B to Government Property Improvements Lease

Depiction of the Property

Exhibit C to Government Property Improvements Lease

Insurance Requirements

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

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

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

| Type | Amount | Coverage Period |
|---|---|---|
| General Liability (which shall include operations, products, completed operations, and contractual liability coverage) | With limits not less than $25,000,000 combined single limit per occurrence and not less than $25,000,000 general aggregate. | Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease. |
| Property (all risks of loss including risks covered by fire and extended coverage, terrorism, vandalism and malicious mischief) | In an amount not less than full replacement cost of structure and all fixtures. | Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease. |
| Business Interruption Coverage (can be endorsed to the Property policy) | Minimum 12 months' rent and ongoing operating expenses | Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease. |
| Workers' Compensation Employers' Liability | Statutory Limits<br>$500,000 each accident, each employee | Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease. |
| Builder's Risk | In an amount not less than the estimated total cost of construction. | Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained. |
| Owner's and Contractor's Protective Liability | $25,000,000 | Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained. |

| | | |
|---|---|---|
| Professional Liability | $2,000,000 | Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained. |
| Blanket Crime Policy | $5,000,000 | Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease. |
| Equipment Breakdown Coverage | $10,000,000 (or such other amount as agreed to in writing between the Parties that is sufficient to cover all such risks) | Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease. |

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

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

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

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

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

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

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

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

E. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an "A.M. Best" rating of not less than A- VII.

Landlord in no way warrants that the above-required minimum insurer rating is sufficient to protect the Tenant from potential insurer insolvency.

F. ENDORSEMENTS AND VERIFICATION OF COVERAGE: Tenant shall provide Landlord with Certificates of Insurance signed by the Issuer with applicable endorsements for all policies as required herein. All Certificates of Insurance and any required endorsements are to be received and approved by the Landlord before the applicable Coverage Period. Each applicable insurance policy required by the Lease must be in effect at or prior to and remain in effect for the Coverage Period. All Certificates of Insurance and endorsements shall be sent directly to the City Attorney, City Attorney's Office, City of Mesa, 20 E. Main Street, P.O. Box 1466, MS-1077, Mesa, Arizona 85211-1466.

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

H. TENANT'S CONTRACTORS AND DESIGN PROFESSIONALS: Tenant shall require and verify that the general contractor and all subcontractors maintain reasonable and adequate insurance with respect to any work on or at the Premises, all such policies shall include: (i) a waiver of subrogation rights in favor of the Landlord, its agents, officials, volunteers, officers, elected officials, and employees, (ii) a waiver of liability in favor of the Landlord, its agents, officials, volunteers, officers, elected officials, and employees releasing and holding harmless the same from any and all liability for any and all bodily injury, including death, and loss of or damage to property, and (iii) Landlord, and its agents, officials, volunteers, officers, elected officials, and employees, shall be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies. Tenant shall require all design professionals (e.g., architects, engineers) to obtain reasonable and adequate Professional Liability Insurance with respect to any work done with respect to the Premises.

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

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

Exhibit D to Government Property Improvements Lease

Prohibited Uses

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

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

Exhibit E to Government Property Improvements Lease

Recognition and Non-Disturbance Agreement

When recorded, return to:
_____
_____
_____

==========

**NON-DISTURBANCE AND RECOGNITION AGREEMENT**

==========

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

1. Recitals.

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

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

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

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

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

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

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

3. Notice of Tenant Default.

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

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

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

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

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

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

4. Nondisturbance and Recognition.

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

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

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

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

5. Estoppel

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

(a) Neither City nor Tenant has acted or failed to act in a manner giving rise to an Event of Default under the Agreement;

(b) The Agreement has not been assigned, modified or amended in any way except as set forth in Recital 1.1;

(c) The Agreement is in full force and effect; and

(d) [If applicable] "Completion of Construction," as defined in the Agreement, occurred on _____.

6. Miscellaneous.

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

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

| | |
|---|---|
| If to City: | City of Mesa<br>Attn: City Manager<br>20 East Main Street<br>Mesa, Arizona 85211<br><br>*If by United States Postal Service*:<br>Post Office Box 1466<br>Mesa, Arizona 85211-1466 |
| With required copy to: | City of Mesa<br>Attn: City Attorney<br>20 East Main Street<br>Mesa, Arizona 85211<br><br>*If by United States Postal Service*:<br>Post Office Box 1466<br>Mesa, Arizona 85211-1466 |
| If to Tenant: | _____<br>_____<br>_____ |
| With required copy to: | _____<br>_____<br>_____ |
| If to Lender: | _____<br>_____<br>_____ |
| With required copy to: | _____<br>_____<br>_____ |

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

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

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

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

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

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

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

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

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

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

By: _____
Its:_____

**"TENANT"** _____

By: _____
Name:_____
Its:_____

**"LENDER"** _____, a(n) _____

By: _____
Name:_____
Its: _____

**Acknowledgment by City**

==========

STATE OF ARIZONA )
) ss.
County of Maricopa )

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

_____
Notary Public

My Commission Expires:
_____

**Acknowledgment by Tenant**

==========

STATE OF ARIZONA )
) ss.
County of _____ )

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

_____
Notary Public

My Commission Expires:
_____

**Acknowledgment by Lender**

==========

STATE OF ARIZONA )
) ss.
County of _____ )

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

_____
Notary Public

My Commission Expires:
_____

==========

Exhibit F to Government Property Improvements Lease

Special Warranty Deed

When Recorded, Mail to:

**SPECIAL WARRANTY DEED**

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

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

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

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

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

GRANTOR:

City of Mesa, Arizona, an Arizona municipal corporation

By: _____
Its: City Manager

STATE OF ARIZONA )
) ss.
County of Maricopa )

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

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

_____
Notary Public

My Commission Expires:

_____

**<u>EXHIBIT F</u> TO DEVELOPMENT AGREEMENT**

**NON-DISTURBANCE AGREEMENT**

When recorded, return to:
_____
_____
_____

==========

**NON-DISTURBANCE AND RECOGNITION AGREEMENT**

==========

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

1. Recitals.

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

1.2 Developer's obligations arising under the Agreement include but are not limited to the leasing and development of the Property, and the construction of improvements upon the Property (collectively, the "**Obligations**").

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

1.4 Lender has certain rights under the Loan Documents in the event of a Default by Developer of its obligations either under the Loan Documents or the Agreement, including but not limited to the right of Lender to be substituted for Developer under the Agreement and to assume Developer's position with respect to the Agreement; and the Agreement states in Section 11.21 thereof that a Lender may be allowed to assume Developer's rights and obligations with respect to the Agreement (collectively, "**Developer's Position**").

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

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

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

3. Notice of Developer Default.

3.1 If Lender is a "Designated Lender" as defined in Section 11.21 of the Agreement, City will give Lender written notice of any claimed Event of Default by Developer (the "**Notice**") under the Agreement and 30 days following the expiration of Developer's cure period under the Agreement to cure such claimed Event of Default (as the Agreement exists as of the date of this NDRA), prior to terminating the Agreement or invoking such other remedies as may be available to City under the Agreement.

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

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

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

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

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

4. Nondisturbance and Recognition.

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

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

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

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

5. Estoppel

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

(a) Neither City nor Developer has acted or failed to act in a manner giving rise to an Event of Default under the Agreement;

(b) The Agreement has not been assigned, modified or amended in any way except as set forth in Recital 1.1;

(c) The Agreement is in full force and effect; and

(d) [If applicable] "Completion of Construction," as defined in the Agreement, occurred on _____.

6. Miscellaneous.

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

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

| | |
|---|---|
| If to City: | City of Mesa<br>Attn: City Manager<br>20 East Main Street<br>Mesa, Arizona 85211<br><br>*If by United States Postal Service*:<br>Post Office Box 1466<br>Mesa, Arizona 85211-1466 |
| With required copy to: | City of Mesa<br>Attn: City Attorney<br>20 East Main Street<br>Mesa, Arizona 85211<br><br>*If by United States Postal Service*:<br>Post Office Box 1466<br>Mesa, Arizona 85211-1466 |
| If to Developer: | _____<br>_____<br>_____ |
| With required copy to: | _____<br>_____<br>_____ |
| If to Lender: | _____<br>_____<br>_____ |
| With required copy to: | _____<br>_____<br>_____ |

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

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

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

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

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

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

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

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

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

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

By: _____
Its:_____

**"DEVELOPER"** _____

By: _____
Name:_____
Its:_____

**"LENDER"** _____, a(n) Arizona _____

By: _____
Name:_____
Its: _____

**Acknowledgment by City**

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STATE OF ARIZONA )
) ss.
County of Maricopa )

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

_____
Notary Public

My Commission Expires:
_____

**Acknowledgment by Developer**

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STATE OF ARIZONA )
) ss.
County of _____)

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

_____
Notary Public

My Commission Expires:
_____

**Acknowledgment by Lender**

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STATE OF ARIZONA )
) ss.
County of _____)

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

_____
Notary Public

My Commission Expires:
_____

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