

## AMENDED AND RESTATED LICENSE AGREEMENT

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

### RECITALS

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

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

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

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

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 Therefore, the Prior License Agreement is null and void and no longer in force or effect and no longer binding on the Parties.

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

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

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

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

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

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

## AGREEMENT

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

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

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

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

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

4. Relationship to Development Agreement and Lease. Pursuant to the Development Agreement, Licensee has certain construction obligations with respect to the Licensed Area, and those obligations are governed in all respects by the Development Agreement. Licensee's obligations with respect to its use and maintenance of the Licensed Area are governed solely by this License Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



14. Insurance; Indemnity.

(a) Throughout the term of this License Agreement, Licensee will procure and maintain, at its sole cost and expense, insurance against claims for injuries to person or damages to property which may arise from or in connection with the use by Licensee of the Licensed Area and Garage, and the obligations set forth in this License Agreement including, but not limited to, the maintenance and repair obligations and indemnity obligations of this License Agreement. The terms and coverages for the insurance will be as set forth in Exhibit E to this License Agreement.

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

15. Storage and Nuisances Prohibited. The Licensed Area will not be used for the storage of vehicles, equipment or materials; provided, however, that nothing in this License Agreement will be deemed to prohibit secure bicycle parking for Licensee's subtenants and sublicensees. All vehicles parked in the Garage must be fully operational. Licensee will not use the Licensed Area, nor permit the Licensed Area to be used in a manner that creates or causes to be created nuisances or hazards to the public health or safety.

16. Permits. Licensee will, at its sole cost and expense, obtain all permits, licenses and authorizations which may be required by Licensor or any other governmental authorities with respect to the Licensed Activities. Licensee will not engage in or permit any conduct in the

Licensed Area which violates any law, ordinance, permit or governmental regulation, or which violates the terms of this License Agreement.

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

18. Attorneys’ Fees. In the event of any litigation or other legal proceedings between the Parties, the prevailing Party as determined by the court, will be entitled to the payment by the non-prevailing Party of its reasonable attorneys’ fees, court costs and litigation expenses, as determined by the court. In no event will Licensor or Licensee (or their respective successors or permitted assigns) be liable for any special, consequential, incidental, punitive or exemplary damages.

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

20. Preservation of State Shared Revenue. Notwithstanding any other provision of, or limitation in, this License Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this License Agreement violates any provision of state law or the Constitution of Arizona, Licensor and Licensee shall amend this License Agreement in such a manner that resolves the violation to the satisfaction of the Attorney General. If the Licensor and Licensee, after a good faith effort, are not able to modify this License Agreement so as to resolve the violation with the Attorney General within thirty (30) days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1), this License Agreement shall

automatically terminate at midnight on the thirtieth day after receiving such notice from the Attorney General, and upon such termination the Parties shall have no further obligations under this License Agreement. Additionally, if the Attorney General determines that this License Agreement may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and the Arizona Supreme Court requires the posting of a bond under A.R.S. § 41-194.01(B)(2), Licensor shall be entitled to terminate this License Agreement, except if Licensee posts such bond; and provided further, that if the Arizona Supreme Court determines that this License Agreement violates any provision of state law or the Constitution of Arizona, Licensor may terminate this License Agreement and the Parties shall have no further obligations hereunder.

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

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

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

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

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

26. Notices. All notices, demands, requests, consents, approvals and other communications required or permitted in this License Agreement (each, a "Notice"), will be in writing and will be deemed to have been given upon personal delivery to the respective Party, after delivery by personal service or a nationally recognized overnight courier service (e.g., UPS, Federal Express), or within three (3) days after the same has been mailed by registered or certified mail, postage prepaid and return receipt requested, at the address shown below:

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

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

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

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

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

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

and

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

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

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

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

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

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

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

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

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

**LICENSOR:**

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

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

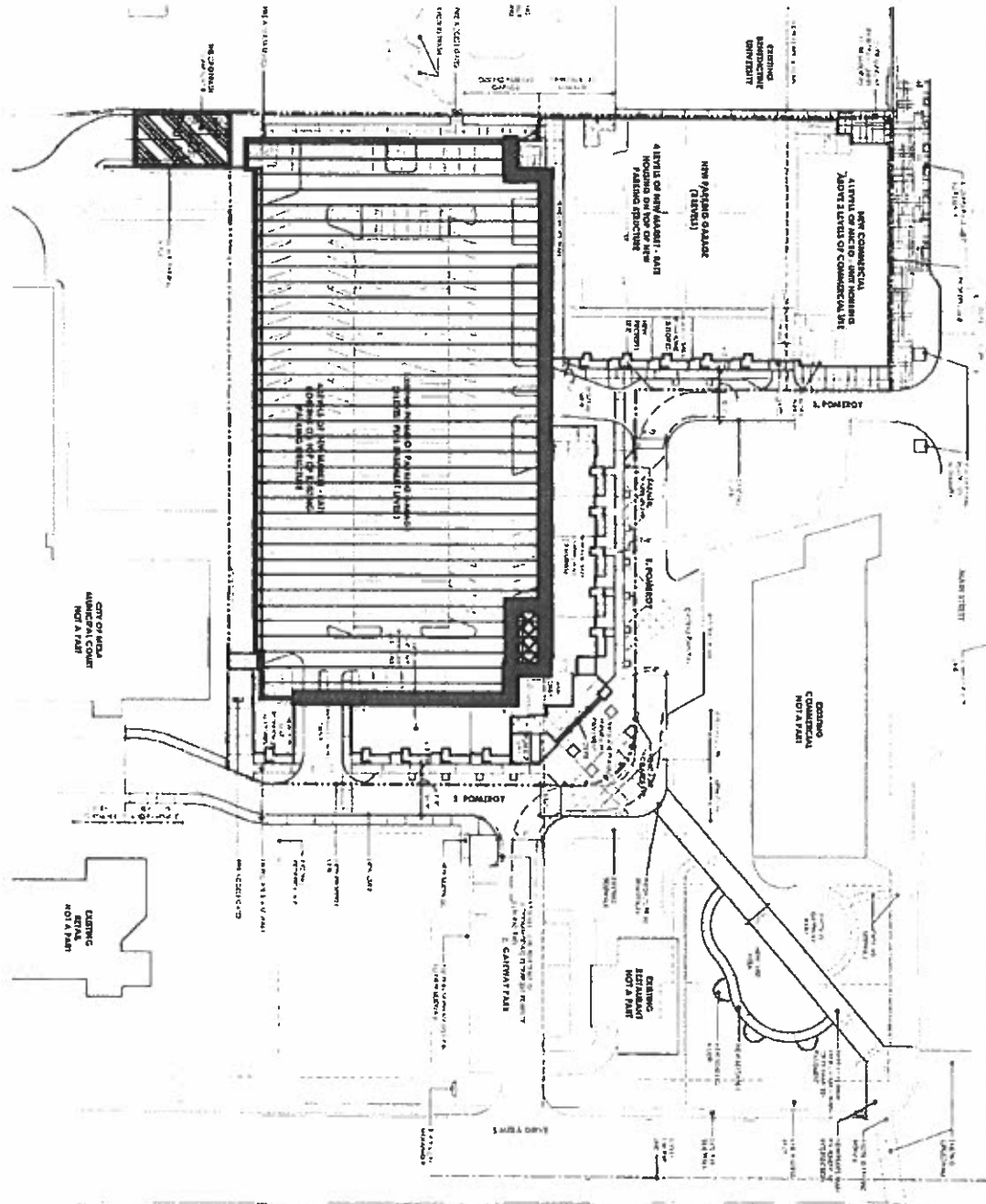
**LICENSEE:**




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

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

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

# EXHIBIT A - DEPICTION OF LICENSED AREA



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

 Trash Compactor / Sanitation Yard (Joint Use with Courts)

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

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



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

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

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

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

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

Garage

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

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

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

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

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

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

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

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

**EXHIBIT E**  
**Insurance Requirements**

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

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

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

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

	non-owned and hired auto coverage as applicable.	
Business Interruption Coverage (can be endorsed to the Property policy)	Minimum 12 months' rent and ongoing operating expenses	Coverage will be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage will thereafter remain in effect for the remainder of the Term of the License.
Workers' Compensation Employers' Liability	Statutory Limits \$500,000 each accident, each employee	Coverage will be in effect upon or prior to and remain in effect for the Term of the License.
Liquor Liability	\$5,000,000	Coverage will be in effect upon or prior to and remain in effect for the Term of the License, provided Licensee sells and/or serves alcohol
Builder's Risk	In an amount not less than the estimated total cost of construction.	Coverage will be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Owner's and Contractor's Protective Liability	\$25,000,000	Coverage will be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Professional Liability	\$2,000,000	Coverage will be in effect upon or prior to any construction activities and maintained until the



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

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

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

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

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

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

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

6. Licensor will be named as Loss Payee on all property insurance policies. Proceeds of any property damage insurance will be applied as required by Section 14 of this License.

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

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

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

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

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

H. **LICENSEE'S CONTRACTORS AND DESIGN PROFESSIONALS:** Licensee will require and verify that the general contractor and all subcontractors maintain reasonable and adequate insurance with respect to any work on or at the Garage, all such policies will include: (i) a waiver of subrogation rights in favor of the Licensor, its agents,

officials, volunteers, officers, elected officials, and employees, (ii) a waiver of liability in favor of the Licensor, its agents, officials, volunteers, officers, elected officials, and employees releasing and holding harmless the same from any and all liability for any and all bodily injury, including death, and loss of or damage to property, and (iii) Licensor, and its agents, officials, volunteers, officers, elected officials, and employees, will be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies. Licensee will require all design professionals (e.g., architects, engineers) to obtain Professional Liability Insurance with limits of liability not less than those stated in the above chart.

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

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