

When recorded, return to:

City of Mesa  
Real Estate Services  
20 East Main Street  
P. O. Box 1466  
Mesa, Arizona 85211-1466

=====

**GOVERNMENT PROPERTY IMPROVEMENTS LEASE**

=====

1. **Date.** The date of this Government Property Improvements Lease (the “Lease”) is \_\_\_\_\_, 202\_\_ (the “Execution Date”).

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

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

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

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

B. MHA III, LLC, an Arizona limited liability company (“Tenant”)

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

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. This Lease is part of a larger multi-phased, multi-document commercial transaction entered into by and between City and Tenant, with respect to the development of an important parcel of real property located in a redevelopment area within the single central business district

of the City of Mesa and represents only a portion of the consideration exchanged by and between the Parties in connection with the overall transaction.

B. Pursuant to a separate “Agreement to Purchase Real Property and Escrow Instructions,” Tenant (as the named “Buyer” in that document) purchased the Land from City at fair market value, as part of a transaction in which Tenant has agreed separately to construct, operate and maintain a redevelopment project on the Land in accordance with the terms of a development agreement dated \_\_\_\_\_ (the “Development Agreement”), which was recorded on \_\_\_\_\_, as Recording no. \_\_\_\_\_ in the Official Records of Maricopa County, Arizona.

C. The Land is located in City’s Central Main Plan, which was unanimously adopted by the Mesa City Council in January 2012. The Land is also located in the Town Center redevelopment area within City’s Central Business District which was adopted by the Mesa City Council in 1999, and which designation of slum and blight was renewed by resolution adopted April 6, 2020. City has determined that (i) the development of this real property located in downtown Mesa near the Center and Country Club light rail stations; (ii) the development of the Project in conformity with the Development Agreement; and (iii) the transaction represented by this Lease, synergistically will reduce blight in the Central Business District, and promote the Central Main Plan’s vision for downtown and City’s vision for the redevelopment and revitalization of its Central Business District.

D. Pursuant to the Development Agreement, Tenant (as the named Developer) agreed to construct certain improvements and to conduct redevelopment activities on the Land, which obligations of Developer were referred to collectively in the Development Agreement as the “Developer Undertakings.”

E. Further pursuant to the Development Agreement, Tenant (as the named Developer) agreed to construct, dedicate, and maintain, at no cost or expense to Landlord, certain Streetscape Improvements (as that term is defined in the Development Agreement) as part of Tenant’s redevelopment construction activities on the Land.

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

G. Tenant has completed the Developer Undertakings, and the completed improvements are now referred to in this Lease collectively as the “Project.”

H. In consideration of Tenant’s completion of the Developer Undertakings required by the Development Agreement, and in further recognition of the direct, tangible benefits to be received by the Landlord as a result of Tenant’s performance under the Development Agreement (including, but not limited to, the construction of the Project), upon the conveyance of the Land and the Improvements to Landlord by Tenant, Landlord has agreed to lease the Land and

Improvements to Tenant, and Tenant has agreed to lease the Land and Improvements from Landlord, on the terms and conditions set forth in this Lease.

I. Tenant, as Developer under the Development Agreement, and in compliance with the terms and conditions of the Development Agreement, has conveyed the Land and Improvements to Landlord, so that legal title to the Land and the Improvements has now vested in Landlord.

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

4. **Lease of the Premises.**

A. Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon and in consideration of the terms and conditions contained in this Lease, (i) all surface and subsurface rights on and above the real property more particularly described in Exhibit A attached to and incorporated into this Lease (the “Land”); and (ii) all Buildings and improvements presently situated on the Land, or which may be constructed on the Land hereafter by Tenant (the “Improvements”; the Land and the Improvements collectively, “Premises”); subject, however, to:

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

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

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

(4) Any public easements (including but not limited to existing public utilities, public and facility easements) granted to the City of Mesa; and

(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 designed and constructed

the Improvements, and 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. Term. Notwithstanding the actual date of conveyance of the Land and Improvements by Tenant to Landlord, the term of this Lease (“Term”) shall commence on the date of the first certificate of occupancy issued for any Improvements constructed on the Land (“Commencement Date”), and shall expire at 12:00 midnight on the last day of the Rental Period, unless this Lease is sooner terminated as hereinafter provided. Concurrently with their execution of this Lease, Landlord and Tenant shall execute a Certificate of Commencement Date in form attached hereto as Exhibit E. Notwithstanding the foregoing, Tenant may terminate this Lease at any time during the Term by written notice to Landlord, subject to Tenant’s obligations to Indemnify that survive the termination of this Lease, in which event the Land and Improvements will be conveyed to Tenant by Landlord pursuant to the terms of Section 32. Upon termination or expiration of this Lease or for any other reason whatsoever, and notwithstanding the conveyance of fee title to the Land and Improvements to Tenant, all public easements, and use of, in favor of the City of Mesa shall survive pursuant to the terms of Section 32.

5. **Definitions.**

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

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

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

(c) “Applicable Laws” means as defined in Section 12(A).

(d) “Commencement Date” means as defined in Section 4(C).

(e) “Default Rate” means a rate of interest equal to two percent (4%) per annum in excess of the so-called “prime interest rate” then in effect as published in the Wall Street Journal (or comparable publication reasonably selected by Landlord, if the Wall Street Journal is not then being published, or does not regularly publish “prime rate” information) compounded monthly from the date of the act, event, omission or default giving rise to Landlord's right to receive such interest payment.

(f) “Development Agreement” means as defined in Section 3(B).

(g) “Environmental Laws” means as defined in Section 31(A)(1).

(h) “Event of Default” means as defined in Section 19(A).

(i) “Force Majeure” means as defined in Section 30.

(j) “Impositions” means as defined in Section 7(A).

(k) “Improvements” means as defined in Section 4(A).

(l) “Indemnify” means as defined in Section 15(A).

(m) “Institutional Lender” means any savings bank, bank or trust company, savings and loan association, insurance company, mortgage banker, mortgage broker, finance company, college or university, governmental pension or retirement funds or systems, any pension retirement funds or systems of which any of the foregoing shall be trustee, provided the same be organized under the laws of the United States or of any State thereof, or a Real Estate Investment Trust as defined in Section 856 of the Internal Revenue Code of 1986 as amended.

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

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

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

(q) “Landlord Indemnified Parties” means as defined in Section 15(A).

(r) “Lease” means this Government Property Improvements Lease.

(s) “Mechanics Lien” means as defined in Section 14(A).

(t) “Monetary Default” means as defined in Section 19(A)(1).

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

(v) “Net Rent” means as defined in Section 6(A)(1).

(w) “Permitted Mortgage” means any mortgage or deed of trust that constitutes a lien upon this Lease, the leasehold estate hereby created, or all (or any portion of) Tenant's interest in the Project, and which complies with the requirements of Section 18.

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

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

(z) “Project” means the Land, the Improvements, the Development Undertakings (as defined in the Development Agreement) and other redevelopment activities on the Land and conducted by Tenant.

(aa) “Public Health Event” means any one or more of the following but only if and as declared by an applicable governmental authority (or its designee): epidemics; pandemics; plagues; viral, bacterial or infectious disease outbreaks; public health crises; national health or medical emergencies; governmental restrictions on the provision of goods or services or on citizen liberties, including travel, movement, gathering or other activities, in each case arising in connection with any of the foregoing, and including governmentally-mandated closure, quarantine, "stay-at-home," "shelter-in-place" or similar orders or restrictions; or workforce shortages or disruptions of material or supply chains resulting from any of the foregoing.

(bb) “Purchase Option” means as defined in Section 32.

(cc) “Purchase Price” means as defined in Section 32(C).

(dd) “Regulated Substances” means as defined in Section 31(A)(2).

(ee) “Release” means as defined in Section 31(A)(3).

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

(gg) “Tenant” means the Tenant named herein and its permitted successors and assigns.

(hh) “Term” means as defined in Section 4(C).

(ii) “Transfer” means as defined in Section 18(B).

(jj) “Work” means as defined in Section 16(A).

## 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 22, during the Term of this Lease net rental (“Net Rent”) in the amount of \$10,000.00 per year. The amount of Net Rent reflects the fact that Tenant owned the Land and Improvements prior to the conveyance of the Land and Improvements to Landlord at no cost to Landlord and is intended to compensate Landlord for Landlord’s

administrative and other expenses in maintaining this Lease, rather than to reflect fair market rental value.

(2) Annual Installments. All payments of Net Rent will be made in annual installments, in advance, without notice, commencing on the Commencement Date, and on each anniversary of the Commencement Date, during the Term. Notwithstanding the foregoing, Tenant may from time to time prepay the Net Rent for some or all of the Term. If the Lease is terminated at any time prior to the expiration of the Rental Period, Tenant will not be entitled to reimbursement of any Net Rent (or portion thereof) prepaid to Landlord.

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

B. Rent Absolutely Net. It is the purpose and intent of the Landlord and Tenant that Net Rent payable hereunder will be absolutely net to Landlord so that this Lease will yield to Landlord the Net Rent herein specified, free of any charges, assessments, Impositions, or deductions of any kind charged, assessed, or imposed on or against the Premises and without abatement, deduction or set-off by the Tenant, and Landlord will not be expected or required to pay any such charge, assessment or Imposition or be under any obligation or liability hereunder except as herein expressly set forth, and that all costs expenses, and obligations of any kind relating to the maintenance and operation of the Premises, including all construction, alterations, repairs, reconstruction, and replacements as hereinafter provided, which may arise or become due during the Term hereof (collectively, "Maintenance Costs") will be paid by Tenant, and Tenant will Indemnify Landlord for, from and against any and all such costs, expenses, and obligations in accordance with Section 15.

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

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

7. Additional Payments. Tenant shall pay ("Additional Payments") during the Term hereof, without notice and without abatement, deduction or setoff, before any fine, penalty, interest, or

cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, the following:

A. Impositions. Tenant shall pay to Landlord, with and in addition to its payment of Net Rent, all sums, impositions, costs, expenses and other payments and all taxes (including personal property taxes and taxes on rents, leases or occupancy, if any, and government property improvement lease excise tax), assessments, special assessments, enhanced municipal services district assessments, water and sewer rents, rates and charges, charges for public utilities, excises, levies, licenses, and permit fees, any expenses incurred by Landlord on behalf of Tenant pursuant to this Lease, and other governmental or quasi-governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which, at any time during the Term hereof may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or with respect to, or become a lien on, the Premises or any part thereof, or any appurtenances thereto, any use or occupation of the Premises, or such franchises as may be appurtenant to the use of the Premises (all of which are sometimes herein referred to collectively as "Impositions" and individually as an "Imposition") provided, however, that:

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

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

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

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



Maricopa Community College District	\$4,000.00
Mesa Public School District	\$23,049.00
East Valley Institute of Technology District	\$163.00
<i>Total</i>	\$27,212.00

The in-lieu payment must be paid within fourteen days of Tenant's execution of this Lease, shall be non-refundable, and shall not be off-set against any Payments due under this Lease. Tenant, concurrently with its in-lieu payment must provide evidence of the payment to Landlord. The termination of this Lease at any time prior to the expiration of the Rental Period will not entitle Tenant to a refund of any portion of the in-lieu payment.

D. Contest. Tenant, if it shall so desire, and at its sole cost and expense, may contest the validity or amount of any Imposition, in which event, Tenant may defer the payment thereof during the pendency of such contest; provided, that upon request by Landlord at any time after the same shall have become due, Tenant shall deposit with the Landlord any amount sufficient to pay such contested item together with the interest and penalties thereon (as reasonably estimated by Landlord), which amount shall be applied to the payment of such item when the amount thereof shall be finally fixed and determined. Nothing herein contained, however, shall be so construed as to allow such item to remain unpaid for a length of time that permits the Premises or any part thereof, or the lien thereon created by such Imposition, to be sold for the nonpayment of the same. If the amount so deposited shall exceed the amount of such payment, the excess shall be paid to Tenant or, in case there shall be any deficiency, the amount of such deficiency shall be promptly paid by Tenant to Landlord together with all interest, penalties or other charges accruing thereon. At any time that the Tenant hereunder is an Institutional Lender, the requirements for deposits set forth in this Section shall be waived by Landlord.

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

F. Hold Harmless. Landlord shall not be required to join in any action or proceeding referred to in Section 7(D) (unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event any such action or proceeding may be taken by Tenant in the name of the Landlord only with Landlord's prior written consent). Tenant hereby agrees to Indemnify Landlord for, from and against any and all costs, expenses, claims, loss or

damage by reason of, in connection with, on account of, growing out of or resulting from, any such action or proceeding referred to in Section 7(D).

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

(1) Failure of Tenant to pay the tax if and when due and after an opportunity to cure is an Event of Default that could result in the termination of Tenant’s interest in this Lease and of its right to occupy the Premises.

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

(3) Notwithstanding the foregoing, or any other term of this Lease (including, but not limited to, the Recitals to this Lease), Landlord does not represent, warrant or guarantee that the benefits provided by GPLET, including but not limited to any abatement of GPLET during any portion of the Term, will be available or in effect at any time during the Term. The benefits provided by GPLET are not a condition to the effectiveness of this Lease or Tenant’s obligations under this Lease; and the nonexistence or failure of GPLET to be maintained, or any changes in or amendments to GPLET, will not be a default by Landlord. In the event that GPLET is no longer available, or the provisions of GPLET are modified to the extent that Tenant believes that this Lease no longer provides the benefits intended by Tenant, then either Landlord or Tenant may terminate this Lease by delivering not less than thirty (30) days written notice to the other, subject to Tenant’s obligations to Indemnify that survive the termination of this Lease, in which event the Land and Improvements will be conveyed to Tenant by Landlord as though Tenant had exercised the Purchase Option granted in Section 32. In the event of a termination hereunder, Landlord shall execute and record a Special Warranty Deed to Tenant in form attached hereto as Exhibit D.

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

## 8. Insurance.

A. Tenant Obligation to Insure. Tenant shall procure and maintain for the duration of this Lease, at Tenant’s own cost and expense, insurance (including but not limited to fire and extended risk insurance) against casualty to or loss of the Premises and against claims for injuries to persons or damages to property which may arise from or in connection with this Lease by the

Tenant, its agents, subtenants, employees, contractors, licensees or invitees in accordance with the insurance requirements set forth in Exhibit B attached hereto.

B. Failure to Maintain Insurance. If Tenant fails or refuses to provide a copy of the renewal insurance certificates, together with evidence of payment of premiums therefor, or otherwise fails or refuses to procure or maintain insurance as required by this Lease, Landlord shall have the right, at Landlord's election, and without prior notice, to procure and maintain such insurance. The premiums paid by Landlord shall be due and payable from Tenant to Landlord on the first day of the month following the date on which the premiums were paid. Landlord shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer(s) and insured(s). The lapse or cancellation of any policy of insurance required herein, in whole or in part for the benefit of Landlord, is an Event of Default. No cure of such default can be accomplished unless a new or renewed policy is issued which specifically provides the required coverage to the Landlord for any liability arising during the lapsed or previously uncovered period.

C. Relationship to Obligations to Indemnify Landlord. Tenant's obligation to maintain insurance is in addition to, and not in lieu of, Tenant's obligation to Indemnify set forth in Section 11(C), Section 15, Section 31, Section 32, and elsewhere in this Lease.

9. Waste. Tenant shall not commit or suffer to be committed any waste on or impairment of the Premises.

10. Landlord's Performance for Tenant. If Tenant shall fail to pay any Imposition or make any other payment required to be made under this Lease or shall default in the performance of any other covenant, agreement, term, provision, limitation, or condition herein contained, following any applicable Notice required by and Tenant's failure to cure under Section 19, Landlord, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default for the account and at the expense of Tenant, without additional notice and without unreasonable interference with any tenants on the Premises. Tenant will promptly pay (but no later than thirty (30) days from Landlord's Notice to Tenant and evidence of such payment by Landlord) all bills for any expense required by Landlord in connection therewith, and bills for all such expenses and disbursements of every kind and nature whatsoever, including reasonable attorney's or administrative fees involved in collection or endeavoring to collect Net Rent, Additional Payments or any part thereof, or enforcing or endeavoring to enforce any right against Tenant, under or in connection with this Lease, or pursuant to law, including (without being limited to) any such cost, expense, and disbursements involved in instituting and prosecuting summary proceedings, as well as bills for any property, material, labor or services provided, furnished, or rendered, or caused to be provided, furnished or rendered, by Landlord to Tenant, with respect to the Premises and other equipment and construction work done for the account of the Tenant within; and if not paid within thirty (30) days, the amount thereof shall immediately become due and payable (together with interest at the Default Rate) with no further Notice required, as Additional Payments.

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

B. Permitted Uses. Tenant agrees that it shall use the Premises only for those purposes and uses described in the Development Agreement. In no event shall the Premises (or any part) be used for any purpose (i) prohibited by any Applicable Laws or (ii) prohibited by this Lease 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 C 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 take good care of the Premises, make all repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Premises and the sidewalks, curbs, and landscaping in commercially acceptable order, repair, and condition. Tenant, at its sole cost and expense, shall maintain and keep the Premises in commercially acceptable order, repair, and condition in accordance with City of Mesa standards and this Lease, whichever is more stringent.. As stated in Section 6(B), it is the intent of Landlord and Tenant that this Lease be an “absolute net lease” to Landlord, with Landlord having no obligation during the Term for the maintenance, repair or replacement of the Buildings and Improvements (or any part thereof). Tenant shall Indemnify Landlord Indemnified Parties for, from and against any and all claims or demands, upon or arising out of any accident, injury, or damage to any person or property occurring in or upon the Premises or any part thereof, however caused, or any act (whether intentional or negligent) of any employee, agent, director, officer, contractor or invitee of Tenant, and shall keep the Premises free and clear of any and all Mechanics’ Liens or other similar liens or charges incidental to work done or material supplied in or about the Premises. The provisions to Indemnify in this Section 11(C), however, will not apply to claims attributable to the sole exclusive gross negligence or willful misconduct of the Landlord Indemnified Parties.

D. Alterations. After the Commencement Date, Tenant shall not, absent compliance with all Applicable Laws, erect any structures, make any improvements, or do any other construction work on the Premises or alter, modify, or make additions, improvements, or repairs to or replacements of any structure, now existing or built at any time during the Term hereof, or install any fixtures (other than trade fixtures removable without injury to the Premises) except in compliance with all Applicable Laws. No Landlord consent shall be required in connection with the foregoing work, except for normal municipal approvals required for plans, permits, approvals, and the like. In the event of any failure on the part of Tenant to comply with this requirement and with the notice and cure provisions of Section 19, Landlord may terminate this Lease in accordance with Section 19(F).

12. **Compliance With Applicable Laws.**

A. Tenant Obligations. Tenant shall timely assume and perform any and all obligations of Landlord under any covenants, easements, and agreements affecting the title to the Premises and shall diligently comply with, at its own expense during the Term hereof, all present and future laws, acts, rules, requirements, orders, directions, ordinances, and/or regulations, ordinary or extraordinary, foreseen or unforeseen, concerning the Premises or any part thereof, or the use thereof, or the streets adjacent thereto, of any federal, state, municipal, or other public department, bureau, officer, or authority, or other body having similar functions (“Applicable Laws”), or of any liability, fire, or other insurance company having policies outstanding with respect to the Premises, whether or not such laws, acts, rules, requirements, orders, directions, ordinances and/or regulations require the making of structural alterations or the use or application of portions of the Premises for compliance therewith or interfere with the use and enjoyment of the Premises, the intention of the Parties being with respect thereto that Tenant, during the Term hereby granted, shall discharge and perform all the obligations of Landlord, as well as all obligations of Tenant, arising as aforesaid, and indemnify, defend, pay and hold Landlord harmless for, from and against all such matters, so that at all times the rental of the Premises shall absolutely be net to the Landlord without deduction or expenses on account of any such law, act, rule, requirement, order direction, ordinance and/or regulation whatever it may be; provided, however, that Tenant may, in good faith (and wherever necessary, in the name of, but without expense to and with the prior written permission of, Landlord), contest the validity of any such law, act, rule, requirement, order, direction, ordinance and/or regulation that does not require the payment of money and, pending the determination of such contest, may postpone compliance therewith, except that Tenant shall not so postpone compliance therewith, as to subject Landlord to the risk of any fine or penalty or to prosecute for a crime, or to cause the Premises or any part thereof to be condemned, vacated, untenable or uninsured.

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

13. **Ownership and Operation of Premises.**

A. Ownership of Improvements. During the Term, title to the Premises is vested in Landlord free and clear of all liens, claims, encumbrances, and conditions other than those set forth in the deed conveying title from Tenant to Landlord (the "Landlord Deed") and in the title insurance policy issued to Landlord as owner (collectively, the "Exceptions"). During the Term, and subject to lawful acts undertaken by Landlord in its capacity as a municipality, Landlord will not impair title to the Premises.

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

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

A. No Liens. Tenant shall not create, or suffer to be created or to remain, and shall promptly discharge any mechanic's, laborer's, or materialman's lien which might be or become a lien, encumbrance, or charge upon the Premises or any part thereof or the income therefrom (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 Tenant's receipt of a notice of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise. Tenant shall notify Landlord in writing of its action to either satisfy or contest the Mechanics' Lien and, if contested, of the matter's status on a monthly basis until concluded. If Tenant fails to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by Landlord and costs and expenses incurred by Landlord in connection therewith, shall constitute an Additional Payment payable by Tenant and shall be paid by Tenant to Landlord within thirty (30) days from demand therefor, together with proof of payment and detailed invoices.

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

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

15. **Indemnification of Landlord.**

A. **Indemnification.** Tenant shall indemnify, defend, pay and hold harmless Landlord, its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys (collectively, "**Landlord Indemnified Parties**") for, from and against (collectively, "**Indemnify**") any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, lawsuits, losses, demands, actions, charges and expenses of any nature, including but not limited to property damage, personal injury and wrongful death and further including, without limitation, architects' and attorneys' fees and disbursements, which may be imposed upon, incurred by, or asserted against Landlord Indemnified Parties and that arise (or are alleged to arise) in whole or in part by reason of any of the following occurring during the Term unless caused solely by the gross negligence or willful misconduct of the Landlord Indemnified Parties:

- (1) Tenant's construction of any Improvements constituting the Project, or any other work done therein, on or about the Premises or any part thereof by Tenant or its agents;
- (2) any use, nonuse, possession, occupancy, alteration, repair, condition, operation, maintenance or management of the Premises or Improvements;
- (3) any nuisance made or suffered on the Premises or Improvements;
- (4) any failure by Tenant to keep the Premises or Improvements, or any part thereof, in a safe condition;
- (5) any acts or omissions of the Tenant or any subtenant or any of its or their respective agents, contractors, employees, licensees or invitees;
- (6) any fire, accident, injury (including death) or damage to any person or property occurring in, on or about the Premises or any part thereof;
- (7) any failure on the part of Tenant to pay rent or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with and the exercise by Landlord of any remedy provided in this Lease with respect thereto;
- (8) any lien or claim which may be alleged to have arisen against or on the Premises or improvements or any part thereof or any of the assets of, or funds appropriated to, Landlord or any liability which may be asserted against Landlord with respect thereto to the extent arising, in each such case, out of the acts of Tenant, its contractors, agents, subtenants;
- (9) any failure on the part of Tenant to keep, observe, comply with and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the subleases or other contracts and agreements affecting the Premises or improvements or any part thereof, on Tenant's part to be kept, observed or performed;

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

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

(12) any loss of or reduction in state shared monies arising in connection with a claim brought or maintained under A.R.S. § 41-194.01 to the extent that Tenant prevents or delays any termination of this Lease pursuant to Section 28(O) of this Lease.

B. Tenant will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises and improvements at the sole risk of Tenant and indemnify, defend, pay and hold Landlord harmless for, from and against any and all loss or damage thereto by any cause whatsoever.

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

D. If any claim, action or proceeding is made or brought against Landlord by reason of any event to which reference is made in this Section 15, then, upon demand by Landlord, Tenant, at its sole cost and expense, shall resist or defend such claim, action or proceeding in Landlord's name, if necessary, by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys as Landlord shall approve, which approval shall not be unreasonably withheld or delayed.

E. The provisions of this Section 15 shall survive the expiration or earlier termination of this Lease for a period of two (2) years.

#### 16. Damage or Destruction.

A. Tenant Repair and Restoration. If, at any time during the Term, any Building or Improvement 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 must 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, shall rebuild or repair the Building or Buildings or any Improvement so damaged or destroyed (subject in all events to Landlord's right to terminate this Lease as set forth in Section 17(B)); or (ii) to terminate this Lease and exercise Tenant's option to repurchase the Premises pursuant to Section 34. Such repair, alteration, restoration, replacement, or rebuilding, including such changes and alterations as aforementioned and including temporary repairs for the protection of other property pending the completion of any thereof, are sometimes referred to in this Section as the "Work." Anything herein to the contrary



notwithstanding, Tenant shall immediately secure the Premises and undertake temporary repairs and work necessary to protect the public and to protect the Premises from further damage. Under no circumstances shall Landlord be obligated to make any payment, reimbursement, or contribution towards the cost of the Work.

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 or is not completed within twenty four (24) months after commencement of the Work, Landlord, following any applicable Notice and cure period required by Section 22, may terminate this Lease in accordance with Section 21 and quitclaim the Land and all Improvements to Tenant.

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

## 17. Condemnation.

A. Total Taking. If at any time during the term of this Lease, title to the whole or substantially all of the Premises 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. In the event of any taking of less than the whole or substantially all of the Premises that permits the Premises to continue to be operated and maintained as the Project, neither the Net Rent nor the Rental Period of this Lease will be reduced or affected in any way, and the Lease will continue in full force and effect with respect to the balance of the Premises.

C. Rights of Participation. Tenant shall have the sole right, at its own expense, to appear in and defend any condemnation proceeding and participate in any and all hearings, trials, and appeals therein. Landlord, at the request of Tenant, shall execute a Disclaimer of Interest in

the condemnation action evidencing the fact that Landlord has no interest in the proceeds of the condemnation.

D. Notice of Proceeding. In the event Landlord or Tenant shall receive notice of any proposed or pending condemnation proceedings affecting the Premises, the Party receiving such notice shall notify the other Party of the receipt and contents thereof within five (5) days from receipt of the notice.

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

18. **Encumbrances and Assignments.**

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

(1) Tenant may encumber its interest in this Lease and Premises only if Tenant is not then in default of any of its obligations under this Lease beyond any applicable cure period. There may be only two (2) Permitted Mortgages in existence with respect to this Lease at any time, and junior liens or encumbrances of any kind are prohibited. The holder of a Permitted Mortgage shall be a "Permitted Mortgagee."

(2) With respect to such leasehold financing, Landlord will agree to a non-disturbance and recognition agreement in substantially the form attached hereto as Exhibit G 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 a recognized institutional lender. In no event will Landlord subordinate its interest in the Premises to such leasehold financing.

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

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

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

(6) For the purpose of this Section 18, the making of a Permitted Mortgage shall not be deemed to constitute an assignment or transfer of this Lease, nor shall any holder of a Permitted Mortgage, as such, be deemed an assignee or transferee of this Lease or of the leasehold

estate hereby created so as to require such holder of a Permitted Mortgage, as such, to assume the performance of any of the terms, covenants, or conditions on the part of Tenant to be performed hereunder; but the purchaser at any sale of this Lease in any proceedings for the foreclosure of any Permitted Mortgage, or the assignee or transferee of this Lease under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Mortgage, shall be deemed to be an assignee or transferee within the meaning of this Section 18 and shall be deemed to have assumed the performance of all the terms, covenants, and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment.

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

C. A Transfer is not deemed to include the rental of individual apartment units within the Project to subtenants. All such subleases shall be on terms that are commercially reasonable, and no sublease shall have a term that extends beyond the Term of this Lease.

19. **Default By Tenant.**

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

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

(2) Non-Monetary Default. If default shall be made by Tenant in the performance of or compliance with any of the covenants, agreements, terms, limitations, or conditions of this Lease other than a Monetary Default, and such default shall continue for a period of thirty (30) days after written Notice thereof from Landlord to Tenant; provided, that if Tenant proceeds with due diligence during such thirty (30) day period to substantially cure such default and is unable by reason of the nature of the work involved, to cure the same within the required thirty (30) days, its time to do so shall be extended by the time reasonably necessary to cure the same, but in no event more than one hundred twenty (120) days; 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 and not dismiss such actions within sixty (60) days; or

(4) Bankruptcy -- Involuntary. If a petition shall be filed against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation, and shall remain undismissed or unstayed for ninety (90) days, or if any trustee, receiver or liquidator of Tenant, or of all or substantial part of its properties, shall be appointed without the consent or acquiescence of Tenant and such appointment shall remain unvacated and unstayed for ninety (90) days; or

(5) Insurance. The lapse, termination 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 absent being cured within twenty (20) days of such lapse. No cure of such default can be accomplished unless a new or renewed policy is issued which specifically provides the required coverage to the Landlord for any liability arising during the lapsed or previously uncovered period; or

(6) Development Agreement. Any Event of Default of Developer under the Development Agreement, subject to all grace periods, cure periods and periods of Force Majeure provided in the Development Agreement.

B. Tenant Liability Continues. No such expiration or termination of this Lease shall relieve Tenant of its obligations to Indemnify under this Lease, and such obligations to Indemnify arose prior to the Lease expiration or termination shall survive any such expiration or termination of this Lease for a period of two (2) years.

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

D. Remedies Cumulative. In the event of any breach by Tenant of any of the covenants, agreements, terms or conditions hereof, Landlord, in addition to any and all other rights,

shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity, by statute or by this Lease for such breach. In the event of Tenant's failure to pay Net Rent or Additional Payments on the date when due, Tenant shall pay Landlord interest on any such overdue payments and associated late charges at the Default Rate, but in no event an amount greater than permitted by 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 to Indemnify required in this Lease

E. Late Charge. In the event that any payment required to be made by Tenant to Landlord under the terms of this Lease is not received within thirty (30) days after the due date thereof, a late charge may, at Landlord's option, be charged, following Notice to Tenant, and shall become an Additional Payment in an amount equal two and one-half percent (2.5%) of the late payment.

F. Termination of Lease. If a default is not cured within any applicable time period after service of Notice of the default, Landlord, may, at its option and with no further Notice to Tenant required, terminate this Lease and quitclaim the Land and all Improvements to Tenant; provided, however, that the termination of this Lease and the conveyance of the Land and Improvements to Tenant will not terminate or otherwise restrict Tenant's obligations to Indemnify Landlord as required in this Lease, including (but not limited to) Section 11(C), Section 15, Section 31, and Section 32; and upon any such termination, the Land and Improvements shall be transferred pursuant to Section 32.

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

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

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

If to Landlord: City of Mesa  
Attn: City Manager  
20 East Main Street  
Mesa, Arizona 85211  
Telephone: 480-644-2066  
Email: chris.brady@mesaaz.gov  
and

City of Mesa  
Attn: Real Estate Administrator  
20 East Main Street  
Mesa, Arizona 85211  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

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

If to Tenant: MHA III, LLC  
233 East Southern  
Number 24641  
Tempe, Arizona 85282  
Attn: Todd Marshall  
Telephone: 480-966-3008  
Email: tmarshall@marshallcompany.com

With a required copy to: Stoel Rives LLP  
600 University Street, Suite 3600  
Seattle, Washington 98101  
Attn: Joseph P. McCarthy  
Telephone: 206-386-7534  
Email: joseph.mccarthy@stoel.com

Each Party may by notice in writing change its address for the purpose of this Lease, which address shall thereafter be used in place of the former address. Each Notice to any Party shall be deemed sufficiently given, served, or sent for all purposes hereunder (i) upon personal delivery, or (ii) one business day after deposit with any recognized courier or express service for next business day delivery. Telephone numbers and Email addresses are provided for informational purposes only and shall not constitute "Notice."

23. **Condition of Premises.** Tenant represents that the Premises, the title to the Premises, parking, drive and walk areas adjoining the Premises, the environmental condition of the Premises

and any subsurface conditions thereof, and the present uses and non-uses thereof, have been examined by Tenant and that Tenant accepts the same in the condition or state in which they or any of them may be on the date of the execution of this Lease, without representation or warranty, express or implied in fact or by law, by Landlord and without recourse to Landlord, as to the nature, condition, or usability thereof or the use or uses to which the Premises or any part thereof may be put, except as such uses are permitted under the Development Agreement.

24. **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.

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

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

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

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

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

26. **Consents.**

A. **Parties and Notice.** Whenever the consent or approval of a Party to this Lease is required or reasonably requested under this Lease, if the Party whose consent or approval is required fails to notify the other Party in writing within thirty (30) days (except where a different period is otherwise specified herein for the giving of such consent or approval) after the giving of a written request therefor in the manner specified herein for the giving of notice, it shall be concluded that such consent or approval has been given. Except as otherwise provided in Applicable Laws, Landlord's City Manager may execute and deliver any consent required by this Lease.

B. **No Unreasonable Withholding.** Wherever in this Lease the consent or approval of either Party is required, such consent or approval shall not be unreasonably withheld, conditioned or delayed, except and unless where otherwise specifically provided. The remedy of the Party requesting such consent or approval, in the event such Party should claim or establish that the other

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

27. **Limitation of Landlord's Liability.** Landlord shall not be responsible or liable for any damage or injury to any property, fixtures, merchandise, or decorations or to any person or persons at any time on the Premises from steam, gas, electricity, water, rain, or any other source whether the same may leak into, issue or flow from any part of the Improvements or from pipes or plumbing work of the same, or from any other place or quarter; nor shall Landlord be in any way responsible or liable in case of any accident or injury including death to any of Tenant's employees, agents, subtenants, or to any person or persons in or about the Premises or the streets, sidewalks or vaults adjacent thereto; and Tenant agrees that it will not hold Landlord in any way responsible or liable therefor and will Indemnify the Landlord Indemnified Parties pursuant to Section 15. Landlord shall not be liable for interference with light or incorporeal hereditaments caused by anybody or the operation of or for any governmental authority in the construction of any public or quasi-public work, and Landlord shall not be liable for any latent or any other defects in the Premises.

28. **Miscellaneous.**

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

B. **Choice of Law.** This Lease shall be construed and enforced in accordance with the substantive laws of the State of Arizona, without regard to principles of conflicts of laws.

C. **Memorandum.** Landlord and Tenant agree that at the request of either, each will execute a "Memorandum of Lease" in form attached hereto as Exhibit F for recording in the Office of the County Recorder, Maricopa County, Arizona.

D. **Entire Agreement.** This Lease with its schedules and annexes, contains the entire agreement between Landlord and Tenant and any executory agreement hereafter made between Landlord and Tenant shall be ineffective to change, modify, waive, release, discharge, terminate, or effect an abandonment of this Lease, in whole or in part, unless such executory agreement is in writing and signed by the Party against whom enforcement of the change, modification, waiver, release, discharge, termination, or the effect of the abandonment is sought.

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

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



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

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

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

G. Captions. The captions of Sections in this Lease and 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," and "him" 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 theretofor have executed and acknowledged in recordable form and given a notice (which has not theretofore been revoked by notice given by all of them) designating not more than three individuals, partnerships, firms, corporations, or other entities as the agent or agents for all of them. If such a notice of designation has theretofor been given, then, until it is revoked by notice given by all of them, the act of, or notice, demand, request or other communication from or to, or payment or refund from or to, or signature of, the agent or agents so designated with respect to such Party's estate or interest in the Premises or this Lease shall bind all of the individuals, partnerships, firms, corporations, or other entities then constituting such Party as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed.

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

Exhibit A	Legal Description
Exhibit B	Required Insurance
Exhibit C	Prohibited Uses
Exhibit D	Special Warranty Deed
Exhibit E	Certificate of Commencement Date
Exhibit F	Memorandum of Lease
Exhibit G	Non-Disturbance and Recognition Agreement

M. Immigration Reform and Control Act of 1986 (IRCA). Tenant understands and acknowledges the applicability of the IRCA to it and agrees to comply with the IRCA for all activities undertaken under this Lease and agrees to permit Landlord to inspect its personnel records to verify such compliance.

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

O. Preserve State Shared Revenue. Notwithstanding any other provision of, or limitation in, this Lease to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Lease violates any provision of state law or the Constitution of Arizona, Landlord and Tenant are not able (after good faith attempts) to modify the Lease so as to resolve the violation with the Attorney General within thirty days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1), this Lease shall automatically terminate at midnight on the thirtieth day after receiving such notice from the Attorney General, and upon such termination, the Parties shall have no further obligations under this Lease.

Additionally, if the Attorney General determines that this Lease may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), City shall be entitled to terminate this Lease, except if Tenant timely posts such bond, if required; and provided further, that if the Arizona Supreme Court determines that this Lease violates any provision of state law or the Constitution of Arizona, City may terminate this Lease and convey or quitclaim the Land and Improvements to Tenant; and the Parties shall have no further obligations hereunder.

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

30. **Force Majeure; Extension of Time of Performance.** In addition to specific provisions of this Lease, performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes, lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; a Public Health Event; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability (when either Party is faultless) of any contractor, subcontractor or supplier; acts of the other Party (each, an event of “Force Majeure”). A lack of funds or inability to obtain funds shall not be included in this definition of Force Majeure. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. If, however, notice by the Party claiming such extension is sent to the other Parties more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Lease may also be extended in writing by the Parties hereto.

31. **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 Agreement.

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

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

C. Indemnification.

(1) Tenant shall Indemnify, upon written demand, the Landlord Indemnified Parties (as defined in Section 15(A)), for, from and against any and all liabilities, obligations,

damages, charges and expenses, penalties, suits, fines, claims, legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons, property, the environment or the Premises and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, human health, property or the environment pursuant to any Environmental Law, the common law, or other statute, ordinance, rule, regulation, judgment or order of any governmental agency or judicial entity, which are incurred or assessed as a result, whether in part or in whole, of any use of the Premises during the Term of this Lease or any previous lease or uses of the Premises by Tenant or its owners or affiliated entities, agents, employees, invitees, contractors, visitors or licensees. Regardless of the date of termination of this Lease, Tenant's obligations and liabilities under this Section 31 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 because of Regulated Substances located on the Premises or present in the soil or ground water on, or under the Premises. The Parties agree that Landlord's right to enforce this covenant to Indemnify is not an adequate remedy at law for Tenant's violation of any provision of this Section and that Landlord shall also have the rights set forth in this Section in addition to all other rights and remedies provide by law or otherwise provided for in this Lease.

(2) Without limiting the foregoing, if the presence of any Regulated Substance on, or under the Premises results in any contamination of the demised Premises or any adjacent real property during the Term of this Lease, Tenant shall promptly take all actions at its sole cost and expense as are necessary to mitigate any immediate threat to human health or the environment. Tenant shall then undertake any further action necessary to return the Premises or other property to the condition existing prior to the introduction of any Regulated Substance to the Premises; provided that Landlord's written approval of such actions shall first be obtained, such consent not to be unreasonably withheld, conditioned or delayed. Tenant shall undertake such actions without regard to the potential legal liability of any other person, however, any remedial activities by Tenant shall not be construed as to impair Tenant's rights, if any, to seek contribution or indemnity from another person.

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

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

(4) Tenant shall immediately notify Landlord, and Landlord shall immediately notify Tenant, as applicable, of any of the following: (a) any correspondence or communication from any governmental agency regarding the application of Environmental Laws to the Premises or Tenant's use of the Premises, (b) any change in Tenant's or Landlord's use of the Premises that will change or has the potential to change Tenant's or Landlord's obligations or liabilities under Environmental Laws, and (c) any assertion of a claim or other occurrence for which Tenant or Landlord may incur an obligation under this Section 31.

(5) Tenant shall insert the provisions of this Section 31 in any sublease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

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

(7) Tenant shall obtain and maintain compliance with any applicable financial responsibility requirements of federal and/or state law regarding the ownership or operation of any underground storage tank(s) or any device used for the treatment or storage of a Regulated Substance and present evidence thereof to Landlord, as may be applicable.

(8) The obligations to Indemnify in this Section 31 shall survive the expiration or earlier termination of this Lease.

D. Noncompliance.

(1) Tenant's failure or the failure of its agents, employees, contractors, invitees or of a third party to comply with any of the requirements and obligations of this Section 31 or applicable Environmental Law shall constitute a material default of this Lease. Notwithstanding any other provision in this Lease to the contrary, after applicable notice and right to cure, Landlord shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Law on, or under the Premises, without waiving any of its rights under this Lease. The exercise by Landlord of any of its rights under this Section 31 shall not release Tenant from any obligation it would otherwise have hereunder.

(2) The covenants in this Section 31 shall survive the expiration or earlier termination of this Lease for a period of two (2) years.

32. **Purchase and Re-acquisition of Premises.** The Parties acknowledge the requirement of A.R.S. § 42-6209(G) that the Term of this Lease cannot extend beyond eight (8) years from the issuance of a certificate of occupancy for the Project. In recognition of this limitation and requirement, Tenant agrees to re-acquire its fee interest in the Premises at the end of the Term (or earlier termination of this Lease). Landlord and Tenant hereby establish Tenant's obligation to purchase the Premises according to the terms and conditions hereinafter set forth.

A. **Requirement of Exercise.** Notwithstanding anything in this Lease to the contrary, Tenant is obligated to purchase the Premises at the expiration of the Term (or earlier termination of this Lease). In the event that Tenant fails to complete the purchase of the Premises within six (6) months following the expiration of the Term (or earlier termination of this Lease), Landlord will quitclaim its interest in the Premises to Tenant, but will retain all rights of indemnification granted in this Lease, including (but not limited to) Section 11(C), Section 15 and Section 31.

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

C. **Purchase Price.** The Purchase Price for the Premises ("Purchase Price") is Five Thousand and no/100 Dollars (\$5,000.00). The Purchase Price reflects that fact that Tenant initially owned the Land and constructed all of the Improvements at Tenant's sole cost and expense and is intended to cover Landlord's administrative, legal and related expenses in connection with the transfer of the Premises to Tenant.

D. **Conveyance of Title and Delivery of Possession.** Landlord and Tenant agree to perform all acts necessary to complete the conveyance of the Premises to Tenant within ninety (90) days after delivery to Landlord of Tenant's Reacquisition Notice, or on the last day of the Rental Period, whichever first occurs. Landlord shall convey title to the Premises to Tenant (by Special Warranty Deed in the form attached to this Lease as Exhibit D) in the same condition as title was transferred to Landlord in the Landlord Deed, and subject to the Exceptions and all other matters of record, and further subject to all easements and similar rights in favor of the City of Mesa, with Tenant accepting all matters, claims, liens, instruments and exceptions (and Landlord having no liability or responsibility therefor) recorded against (or otherwise affecting) the Premises from and after the date of the Landlord Deed. Landlord has no responsibility to eliminate, cure or "endorse over" any of the exceptions to title described in the preceding sentence except for matters directly and solely attributable to the acts of Landlord; and provided further, the Parties agree that all public easements in favor of the City of Mesa are approved title exceptions on the Land.

Landlord's then acting City Manager (or such City Manager's designee) is authorized to execute and deliver the Deed on behalf of Landlord. All expenses in connection with conveyance of the Premises to Tenant including, but not limited to, title insurance (if requested by Tenant), recordation and notary fees and all other closing costs (including escrow fees if use of an escrow is requested by Tenant), shall be paid by Tenant. Tenant is not required to deliver a Reacquisition Notice to Landlord at the expiration of the Rental Period if there has been no earlier termination of this Lease. Although Tenant will have been in actual possession of the Premises throughout the Term, (i) legal possession of the Premises will be deemed to have been delivered to Tenant concurrently with the conveyance of title pursuant to the Deed, and (ii) Landlord will retain all rights of indemnification granted in this Lease, including (but not limited to) Section 11(C), Section 15 and Section 31. The terms of this Section 32 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 Execution Date.

LANDLORD:

CITY OF MESA, ARIZONA,  
a municipal corporation

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

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

TENANT:

MHA III, LLC,  
An Arizona 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 MHA III, LLC, an Arizona limited liability company, on behalf of the company.

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

My commission expires:

\_\_\_\_\_

Exhibit A to Government Property Improvements Lease

Legal Description of the Property

## Exhibit B to Government Property Improvements Lease

### Insurance Requirements

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

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

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

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

		policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.
Workers' Compensation Employers' Liability	Statutory Limits \$500,000 each accident, each employee	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Liquor Liability	\$5,000,000	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease, provided Tenant sells and/or serves alcohol
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	\$5,000,000 (or such other amount as agreed to in writing between the Parties that is sufficient to cover all such risks)	Coverage shall be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.

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

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

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

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

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

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

6. Landlord shall be named as Loss Payee on all property insurance policies. Proceeds of any property damage insurance shall be applied as required by Section 14 of this Lease.

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

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

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

F. **ENDORSEMENTS AND VERIFICATION OF COVERAGE:** Tenant shall provide Landlord with Certificates of Insurance signed by the Issuer with applicable endorsements for all policies as required herein. All Certificates of Insurance and any required endorsements are to be received and approved by the Landlord before the applicable Coverage Period. Each applicable insurance policy required by the Lease must be in effect at or prior to and remain in effect for the Coverage Period. All Certificates of Insurance and endorsements shall be sent directly to the City

Attorney, City Attorney's Office, City of Mesa, 20 E. Main Street, P.O. Box 1466, MS-1077, Mesa, Arizona 85211-1466. Landlord reserves the right to require complete copies of all insurance policies required by the Lease at any time, but not more than once each twelve consecutive months during the Term of the Lease.

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

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

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

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

## Exhibit C to Government Property Improvements Lease

### Prohibited Uses

Project will develop with land uses consistent with Chapter 64 of the Mesa Zoning Ordinance. In addition, the below uses are specifically prohibited from the Project.

- 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 Housing, Boarding House, Correctional Transitional Housing Facility, Community Residence (Family Community Residence and Transitional Community Residence), Assisted Living Facility, Assisted Living Home, Assisted Living Center, Skilled Nursing Facility, Residential Care Institution, Nursing and Convalescent Homes as each term is defined by Chapter 86 of the Mesa Zoning Ordinance
- Off-Track Betting Establishment, as defined by Chapter 86 of the Mesa Zoning Ordinance
- All Marijuana Facilities, including but not limited to Dual Licensee Facility, Medical Marijuana Dispensary, Marijuana Cultivation Facility, Marijuana Establishment, and Marijuana Infusion Facility as defined by Chapter 86 of the Mesa Zoning Ordinance
- Package liquor stores, except for stores selling beer and/or wine
- Kennels



Exhibit D to Government Property Improvements Lease

When Recorded, Mail to:

=====

**SPECIAL WARRANTY DEED**

=====

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

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

BUT EXCLUDING all rights granted (by plat or separate instrument) to or for the benefit of, or existing use by, the City of Mesa, an Arizona municipal corporation, or any department or agency of the City of Mesa, for rights-of-way, existing public utilities, public utility and facility easements, drainage and storm water easements, and such other easements for the benefit of the public (collectively, "**Public Rights**"), which Public Rights shall not merge with this Special Warranty Deed and shall remain as granted to or held by the City of Mesa, and its departments and agencies [Note: Only add this paragraph when City conveying the Property to Developer.]; and

SUBJECT ONLY TO matters of record and to any and all conditions, easements, encroachments, rights-of-way, public utilities, or restrictions which a physical inspection, or accurate ALTA survey, of the Property would reveal, and to 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:\_\_\_\_\_

Name: \_\_\_\_\_

Its:\_\_\_\_\_

STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa            )

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who acknowledged \_\_\_\_self to be the \_\_\_\_\_ of the City of Mesa, Arizona, an Arizona municipal corporation, and that, being authorized so to do, \_\_he executed the foregoing instrument for the purposes herein contained on behalf of the Grantor.

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

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

My Commission Expires:

\_\_\_\_\_

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

GRANTEE:

\_\_\_\_\_ a \_\_\_\_\_

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

Name: \_\_\_\_\_

Its:\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who acknowledged \_\_\_\_self to be the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, and that, being authorized so to do, \_\_he executed the foregoing instrument for the purposes herein contained on behalf of the Grantee.

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

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

My Commission Expires:

\_\_\_\_\_

Exhibit E to Government Property Improvements Lease

=====

**CERTIFICATE OF COMMENCEMENT DATE**

=====

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

DATED: \_\_\_\_\_, 202\_\_.

**TENANT:**

MHA III, LLC, an Arizona limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**LANDLORD:**

City of Mesa, Arizona, an Arizona municipal corporation

By: \_\_\_\_\_  
Printed \_\_\_\_\_ Name:  
\_\_\_\_\_  
Its:  
\_\_\_\_\_

Exhibit F to Government Property Improvements Lease

Form of Memorandum of Lease

WHEN RECORDED RETURN TO:

---

---

---

---

---

=====

**MEMORANDUM OF LEASE**

=====

THIS MEMORANDUM OF LEASE ("Memorandum") provides constructive notice to all persons that there is in existence a Lease as generally described in this Memorandum. This Memorandum is executed by the Landlord and the Tenant for recording purposes only as to the Lease hereinafter described, and it is not intended and shall not modify, amend, supersede or otherwise effect the terms and provisions of the Lease. In the event of a conflict or ambiguity between anything contained in the Lease, and anything contained in this Memorandum, the Lease will control and prevail.

1. Name of Document: Government Property Improvements Lease  
(the "Lease")
2. Name of Landlord: City of Mesa, Arizona, an Arizona municipal corporation  
( "Landlord ")
3. Name of Tenant: MHA III, an Arizona limited liability company  
( "Tenant ")
4. Address of Landlord: 20 East Main Street, Suite 200  
Mesa, Arizona 85211-1466
5. Address of Tenant: 

---

---

---
6. Date of Lease: 

---
7. Lease Term: Commencing on the Commencement Date  
and expiring eight (8) years thereafter.
8. Commencement Date: 

---

9. Title Transfer: Landlord will convey title to the Premises at the end of the Lease Term, on the conditions set forth in the Lease.
10. Demised Premises: The real property more particularly described in Exhibit "A" attached hereto.

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

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease on \_\_\_\_\_, 202\_\_.

Signatures and acknowledgments are on the following two pages.

LANDLORD'S SIGNATURE PAGE

Landlord:

City of Mesa, Arizona, an Arizona municipal  
corporation

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_)  
County of \_\_\_\_\_) ss.

On \_\_\_\_\_, 202\_\_, before me, a notary public in and for said state,  
personally appeared \_\_\_\_\_ and  
\_\_\_\_\_, personally known to me (or proved to me on the  
basis of satisfactory evidence) to be the person(s) whose name(s) (is)(are) subscribed to the  
within instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or  
the entity upon behalf of which the person(s) acted, executed the instrument.

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

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

TENANT'S SIGNATURE PAGE

Tenant:

MHA III, LLC, an Arizona limited liability  
company

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 202\_\_, before me, a notary public in and for said state,  
personally appeared \_\_\_\_\_ and  
\_\_\_\_\_, personally known to me (or proved to me on the  
basis of satisfactory evidence) to be the person(s) whose name(s) (is)(are) subscribed to the  
within instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or  
the entity upon behalf of which the person(s) acted, executed the instrument.

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

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_



Exhibit A to Form of Memorandum of Lease

Legal Description of the Property

Exhibit G to Government Property Improvements Lease

Non-Disturbance and Recognition 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 development of the Property, and the construction of Buildings (as that term is defined in the Agreement) and improvements upon the Property and the construction of Streetscape Improvements and Public Improvements (as these two terms are defined in the Agreement) (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 11.22 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.

{00424080.2}

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 11.22 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. Non-disturbance 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  
Attn: City Manager

{00424080.2}

20 East Main Street  
Mesa, Arizona 85201

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

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

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

If to Developer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With required copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Lender: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With required copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

{00424080.2}

be modified or amended except by a written agreement signed by the parties or their respective successors in interest.

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

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

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

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

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

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

**“CITY”**

CITY OF MESA, an Arizona municipal  
corporation

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

Its: \_\_\_\_\_

**“DEVELOPER”**

\_\_\_\_\_

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**“LENDER”**

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

Arizona \_\_\_\_\_

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 Developer**

=====

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 A to Non-Disturbance and Recognition Agreement

Legal Description of the Property