

LICENSE AGREEMENT

This License Agreement (the "Agreement") is entered into as of this ____ day of _____, 2018 (the "Effective Date" of this Agreement), by and between the City of Mesa, an Arizona municipal corporation ("Licensor") and _____ LLC, an Arizona limited liability company ("Licensee"). Each of Licensor and Licensee may be referred to in this Agreement as a "Party," or collectively as the "Parties."

RECITALS

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

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

C. Licensor (as "City" named therein) and Licensee (as "Developer" named therein) are also parties to a development agreement dated November __, 2018 (the "Development Agreement") in which Licensor and Licensee have undertaken certain obligations with respect to the development of the Premises by Licensee (as Developer), which includes certain improvements required to be made by Licensee (as Developer) to the Garage at Licensee's sole cost and expense.

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

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

AGREEMENT

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

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

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

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

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

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

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

may be parked or maintained in the Garage pursuant to this Agreement as a form of advertising for any subtenant or sublicensee of Licensee.

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

(b) Licensee, at its sole cost and expense, may construct, and thereafter operate and maintain, an entry “gate” or similar control device (the “Gate”), to restrict entry to the Licensed Spaces to Licensee’s sublicensees. The Gate will be placed within the Garage at a location agreed by Licensors and Licensee that does not restrict or impede Licensors’s access to the City Spaces. Any Spaces within the Garage that are used (in whole or in part) for the placement and maintenance of the Gate, turn-around areas, and other purposes related to the design and placement of the Gate, will be included within the number of Licensed Spaces allocated to Licensee and subject to the Licensee Fee described in Section 8.

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

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

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

7. Construction and Maintenance within Licensed Area. Licensee accepts the Licensed Area in its current “as-is”, “where-is” condition, with all faults, whether latent or patent. Licensee will cause all required construction within the Licensed Area to be completed at Licensee’s sole cost and expense, and in accordance with the Development Agreement. Thereafter, Licensee will maintain the Licensed Area during the term of this Agreement at Licensee’s sole cost and expense, in good condition and repair (including all repairs and replacements) and in accordance with all requirements of the Approved Plans (as defined in the Development Agreement) and all applicable laws, including Hazardous Materials Laws (as

defined in the Lease). Further, Licensee will be solely responsible for: (i) all structural repairs, replacements, and structurally related maintenance costs for the Garage and Licensed Areas, which will include, but is not limited to, all pillars, walls, and ramps for exiting Garage on all levels; (ii) all repair and replacement costs for the stairwells and elevators. Licensors will only be obligated to repair and maintain the non-structural improvements in the basement of the Garage and to make routine repairs (i.e., normal wear and tear) in areas of the Garage that are not licensed to Licensee under this Agreement.

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

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

(a) Promptly following completion of Licensee's required construction within the Licensed Area, but before the use of the Licensed Area by Licensee's sublicensees, Licensee will deposit the sum of \$25,000.00 (the "Initial Deposit") into the Account (as defined below),

which amount must be maintained in the Account until the fifth (5th) anniversary of the Effective Date.

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

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

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

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

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

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

construction required by the Development Agreement, and structural repairs required by this Agreement.

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

13. Insurance; Indemnity.

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

(b) In addition, Licensee will pay, defend, indemnify and hold harmless Licensors and its City Council members, officers and employees from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and court costs associated with such matters; all of the foregoing, collectively, "Claims") imposed upon or asserted against Licensors, its agents, representatives, officers, directors, elected or appointed officials, and employees, by reason of any of the following: (i) any act or omission by Licensee, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Licensee's obligations under this Agreement ; (ii) any use or nonuse of, or any condition created by Licensee on or at the Garage or any part thereof; (iii) any accident, injury to or death of persons (including workmen) or loss of or damage to property occurring on or about the Garage or any part thereof caused or created in whole or in part by Licensee or its employees, contractors, subcontractors, agents, representatives, sublicensees or subtenants under the Lease (and invitees of any of the foregoing); (iv) performance of any labor or services or the furnishing of any materials or other property with respect to the Garage or any part thereof relating to an obligation of Licensee under this Agreement; (v) any failure on the part of Licensee to comply with Hazardous Materials Laws; and (vi) all Claims relating to or arising from design, construction and structural engineering acts or omissions related in any way to, of or in connection with, the existing Garage, and all subsequent design, construction, engineering and other work and improvements by or on behalf of Licensee (collectively, "Indemnity"). Licensee's obligations of Indemnity will survive the expiration or earlier termination of this Agreement; but the obligations of Indemnity expressly exclude criminal acts by third parties that occur in the Garage other than theft of or damage to property in the Mail Room and in any portion of the Licensed Area

provided for bicycle parking and storage. For the purposes of the foregoing sentence, “criminal acts by third parties” do not include criminal acts committed by, upon or involving Licensors (as Tenant named in the Lease) subtenants at the Premises or Licensee’s sublicensees, or any invitees or such subtenants or sublicensees.

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

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

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

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

18. No Partnership; Assignment. It is not intended by this Agreement to, and nothing contained in this Agreement will, create any partnership, joint venture, landlord-tenant or similar arrangement between the Parties, other than that of Licensors and Licensee. No term or provision of this Agreement is intended to, or will, be for the benefit of any person, firm, organization or corporation not a party to, and no such other person, firm, organization or corporation will have any right or cause of action hereunder. Other than in connection with a permitted transfer under the Lease of Licensee’s entire leasehold interest in the Premises, and an express assumption by

an assignee of all of Licensee's obligations under this Agreement, Licensee may not assign its rights under this Agreement or grant to any other person the right to utilize the Licensed Area (other than Licensee's permitted residential sublicensees) without the prior written consent of Licenser, which consent Licenser may grant or withhold in its sole discretion.

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

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

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

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

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

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

To Licensee:

With a copy to:

3W Management, LLC
Attn: Tony Wall
7349 N. Via Paseo del Sur, Suite 515
Scottsdale, Arizona 85258

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

With a copy to: Gallagher & Kennedy, P.A.
Attn: Dana Stagg Belknap
2575 East Camelback Road
Phoenix, Arizona 85016

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

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

and

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

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

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

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

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

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

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

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

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

LICENSOR:

THE CITY OF MESA, an Arizona municipal corporation

By: _____

Name: _____

Title: _____

LICENSEE:

_____ LLC, an Arizona limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A
TO LICENSE AGREEMENT
DEPICTION OF LICENSED AREA

Site plan for the proposed development at the intersection of S. Pomeroy and S. Mesa Drive. The plan shows a large rectangular building footprint with a central courtyard. Key features include:

- New Commercial Building:** 4 levels of micro-unit housing above 2 levels of commercial use.
- New Parking Garage:** 3 levels.
- Existing Pomeroy Parking Garage:** 3 levels plus basement level.
- New Market Rate Parking Structure:** 4 levels.
- Streets:** S. Pomeroy, S. Mesa Drive, Main Street, and E. Gateway Park.
- Other features:** Existing Bredemeyer University, City of Area Municipal Court, Existing Commercial, Existing Restaurant, Existing Gateway Park, and various access gates and parking areas.

The plan also shows existing and proposed sidewalks, curbs, and landscaping.

- 15 Nov 17

EXHIBIT B
TO LICENSE AGREEMENT

DESCRIPTION OF LICENSED ACTIVITIES

EXHIBIT B
Description of Licensed Activities

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

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

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

	Agreement). Licensee may also use the same area (above the existing Garage) for shade devices and architectural embellishments as reasonably determined and approved by Licensor. These areas will not be included in the leasable area of the Premises.
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EXHIBIT C
TO LICENSE AGREEMENT
DESCRIPTION OF SPACES

EXHIBIT C

Description of Spaces

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

The Garage has 596 spaces on levels 1 through 3 (the basement spaces are exclusively for Licensor’s use and are not being licensed). Licensee is licensed 339 spaces subject to the following reduction in spaces: Licensee will be making certain improvements to the Garage (such as adding support columns for improvements above the Garage), and these improvements will reduce the current number of spaces in the Garage. For every space lost (below 596) in the Garage (levels 1-3) due to construction, improvements, and re-stripping, the number of Licensed Spaces will be reduced on a one-for-one basis. By way of example, if after the construction, improvements, and re-stripping to the Garage there are 556 spaces on levels 1-3 (a loss of 40 spaces), then the Licensed Spaces would be 299 ($339 - 40 = 299$). After the construction, improvements, and re-stripping, the Parties shall agree upon the number of Licensed Spaces. As to parking in the Garage and the New Garage and the location of certain spaces, the Parties further agree:

Garage

1. Ten (10) of the Licensed Spaces will be located on the east end of the ground level of the Garage and will be for exclusive use by the Grid Rowhomes.
2. Ten (10) of the Licensed Spaces will be located on the north end of the ground level of the Garage and will be for exclusive use by the Grid Rowhomes.
3. Five (5) of the Licensed Spaces will be located in the northeast corner of the ground level of the Garage for use by tenants using the Grid Mail Room.
4. Sixty-one (61) of the Licensed Spaces will be located on the ground level of the Garage and will be at all times shared, non-exclusive, and available for all public and commercial uses.
5. Other than the Licensed Spaces describe in numbered paragraphs 1 through 4 above (which consists of 86 Licensed Spaces), all the remaining Licensed Spaces will be on Garage levels 2 and 3 and the ramps, and these Licensed Spaces may be gated.
6. Thirteen (13) spaces in the Garage will continue to be handicapped stalls for use by all handicap users of the Garage.

New Garage

- a. At least thirty-three (33) ground-level spaces in the New Garage will be at all times shared, non-exclusive, and available for all public and commercial uses. All other spaces in the New Garage will be only for the use of the Grid tenants.

EXHIBIT D
TO LICENSE AGREEMENT
SCHEDULE OF LICENSE FEES

Exhibit D

Schedule of License Fees

	Monthly Rate (300 spaces)	Yearly Rate (300 spaces) ^{1,2}	PI Cap Credit (Monthly) ^{3, 4}	PI Cap Credit (Yearly) ^{3,4}	Monthly Rate w/PI Cap Credit	Yearly Rate w/PI Cap Credit
During Construction	Developer shall provide replacement parking for current permitted parking spaces and Mesa Courts employees displaced during construction, at its sole costs.					
Years 3 -5 (\$20/space)	\$6,000	\$72,000	\$4,500	\$54,000	\$1,500	\$18,000
	Monthly Rate (250 spaces)	Yearly Rate (250 spaces) ^{1,2}	PI Cap Credit (Monthly) ^{3, 4}	PI Cap Credit (Yearly) ^{3, 4}	Monthly Rate w/PI Cap Credit	Yearly Rate w/PI Cap Credit
Years 6-10 (\$25/space)	\$6,250	\$75,000	\$4,687.50	\$56,250	\$1,562.50	\$18,750
Year 11 (\$30/space)	\$7,500	\$90,000	\$5,625	\$67,500	\$1,875	\$22,500
Year 12 (\$35/space)	\$8,750	\$105,000	\$6,562.50	\$78,750	\$2,187.50	\$26,250
Years 13-99	Based on then Council approved parking rate/space/month, or if such fee ceases to exist in the future, the Parties shall negotiate in good faith and agree upon a commercially reasonable rate (which shall in no event be less than the previously applicable rate)					

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

²Calculations shown in this table represent assumed number of parking spaces licensed. Actual monthly and yearly License Rates will be based on actual number of parking spaces licensed. Additionally, if Licensee is entitled to Rent Credits (i.e., PI Cap Credits) under the terms of the Development Agreement, the PI Cap Credits will be used as described in this Exhibit and Lease Exhibit C to reduce the License Fee (and the Rent under the Lease) until the Credits are used (up to the Cap) between the License Fees and Rent or are extinguished under the terms of the Development Agreement, Lease, or License at which point the License Fee shall be as described in the "Monthly Rate" and "Yearly Rate" columns. Because the use of the Credits will be based on future variables (such as the number of licensed parking spaces and the use of the Credits under the Lease) this Exhibit does not show or establish when the Credits will be used up, which the Parties shall agree to when all such future variable are determined.

³For Years 3-15, the maximum PI Cap Credit shall not exceed 75% of the License Rate. After Year 15, the maximum PI Cap Credit shall not exceed 50% of the License Rate.

⁴ License Fee Credit available only to reimburse for those Minimum Public Improvements and Additional Public Improvements that have been completed and accepted by the City Engineer, up to the \$3,000,000 Cap. License Fee Credits are only available after Year 3 of the License Agreement.

EXHIBIT E
TO LICENSE AGREEMENT
INSURANCE REQUIREMENTS

EXHIBIT E
Insurance Requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

H. LICENSEE’S CONTRACTORS AND DESIGN PROFESSIONALS: Licensee will require and verify that the general contractor and all subcontractors maintain reasonable and adequate insurance with respect to any work on or at the Garage, all such policies will include: (i) a waiver of subrogation rights in favor of the Licensors, its agents, officials, volunteers, officers, elected officials, and employees, (ii) a waiver of liability in favor of the Licensors, its agents, officials, volunteers, officers, elected officials, and employees releasing and holding harmless the same from any and all

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

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

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