

## **FIRST AMENDMENT TO LICENSE AGREEMENT**

This First Amendment to License Agreement (this “Amendment”) is made and entered into as of \_\_\_\_\_, 2018, by and between City of Mesa, a municipal corporation (“Licensor”), and \_\_\_\_\_, a(n) \_\_\_\_\_ (“Licensee”). Licensor and Licensee are sometimes referred to in this Amendment collectively as the “Parties,” or individually as a “Party.”

### **RECITALS**

A. Licensor (“City”) and 3W Management, LLC, an Arizona limited liability company (“Developer”) have executed and delivered into that certain Development Agreement dated December 7, 2017, and recorded in the Maricopa County Recorder’s Office (“Official Records”) as Recording No. 20170915520 (the “Development Agreement”). The Development Agreement is for a mixed-use commercial and residential development that includes a minimum of 18,000 rentable square feet of commercial, retail/restaurant or office space; 180,000 square feet of apartment space; 24,000 square feet of row homes; parking garage improvements; and public improvements; all of which are described and defined as the “Project” in the Development Agreement.

B. As more fully described in the Development Agreement, and upon the completion of certain conditions precedent, City (as the Landlord named in the Lease and as Licensor named in the License) and Developer (or its permitted assignee) are to enter into a Ground and Air Lease (the “Lease”), which is Exhibit P to the Development Agreement, and License Agreement (the “License”), which is Exhibit B to the Lease.

C. On or about February \_\_, 2018, City and Developer executed and delivered that certain First Amendment to Development Agreement dated February \_\_, 2018, and recorded in the Official Records as Recording No. \_\_\_\_\_ (the “Development Agreement Amendment”). The Development Agreement Amendment provides for certain credits to be provided to Developer (“Credits”) upon Tenant’s causing certain conditions to be satisfied by its Targeted Subtenant (as more fully defined in the Development Agreement Amendment), as well as providing for the repayment of such Credits by Tenant to Landlord in the event of a failure of Tenant either to cause its Targeted Subtenant to achieve such conditions, or to cause the Targeted Subtenant to maintain those conditions for the periods of time required by the Development Agreement Amendment. The Credits are to be provided to Developer in the form of reduced Rent under the Lease and as a reduced License Fee under the License.

D. Licensee is Tenant in and under the Lease. Concurrently with its execution of this Amendment, Licensee (as Tenant) has executed and delivered to Licensor (as Landlord) a First Amendment to Lease (“Lease Amendment”), which integrates the provisions of the Development Agreement Amendment into the Lease, and acknowledges both (i) Tenant’s obligations to cause certain conditions to be met, and (ii) Tenant’s obligations to make certain payments or reimbursements in the event of a failure of such conditions to be satisfied (including, but not limited to, a default of the Targeted Subtenant as named in the Lease Amendment).

E. In order to integrate the provisions of the Development Agreement Amendment and the Lease Amendment into this Amendment, with respect to the required performance by Tenant, the Parties have entered into this Amendment concurrently with their execution and delivery of the Lease, the Lease Amendment and the License.

## AGREEMENTS

1. Amendment to License. The Parties now amend the License by deleting Section 10 in its entirety, and by adding a new Section 10, as follows:

10. License Fee. In consideration of Licensee's construction of the Licensed Area Improvements in and on the Licensed Areas as required by the Development Agreement, and Licensee's maintenance of the License Area at Licensee's sole cost and expense during the term of this Agreement, Licensee will pay a monthly fee to Licensors for the License (the "License Fee") as set forth in Exhibit D. Notwithstanding the foregoing, Licensee agrees and acknowledges that the failure by Licensors (as Tenant in and under the Lease) to cause certain requirements to be met by the Targeted Subtenant (as defined in the Lease) will require Licensee to repay the Credits that have been provided to Licensee as reductions in the License Fee which otherwise would be required to be paid by Licensee in the absence of such requirements to have been met. Accordingly, with respect to any uncured Event of Default relating to the failure of required performance by the Targeted Subtenant pursuant to Section 16.3 of the Lease, Licensee will pay to Licensors that amount of money equal to the Credits received by Developer for the benefit of Licensee, which payments by Licensee (i) will be paid as an additional License Fee under the License; (ii) will be paid in equal installments over the same period of time in which such Credits were received by Developer for the benefit of Licensee and reduced the License Fee that otherwise would have been paid during such period of time; and (iii) will commence with the first payment of the License Fee owing after the uncured Event of Default, as follows:

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

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

2. Replacement of Exhibit. The Parties replace Exhibit D (Schedule of License Fees) to the License with Exhibit 1 attached to this Amendment, which is entitled “Exhibit D, Schedule of License Fees.”

3. Defined Terms; No Other Amendments. All capitalized words and phrases used in this Amendment will have the same meanings as set forth in the License (and in the exhibits to the License, as applicable), unless a different definition is set forth in this Amendment; provided, however, that defined terms used in Section 10 of the License, as amended, will have the meanings given to them in the Development Agreement Amendment and the Lease, as amended. This Amendment is the entire agreement of the Parties with respect to the matters set forth in this Amendment. Except as expressly set forth in this Amendment, the License is unmodified and remains in full force and effect.

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

[The signatures of the Parties are on the following two (2) pages.]

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

**LICENSOR**

CITY OF MESA, ARIZONA,  
an Arizona municipal corporation

By: \_\_\_\_\_  
Christopher J. Brady, City Manager

ATTEST:

By: \_\_\_\_\_  
DeeAnn Mickelsen, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
James N. Smith, City Attorney

**LICENSEE**

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

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

STATE OF ARIZONA       )  
  ) ss.  
COUNTY OF MARICOPA   )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a(n) \_\_\_\_\_, on behalf of Licensee.

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

My commission expires:

\_\_\_\_\_

Exhibit 1 to First Amendment to License

“Exhibit D | Schedule of License Fees”

## Schedule of License Fees

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

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

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

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

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

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