

**WHEN RECORDED RETURN TO:**

City of Mesa  
Real Estate Services  
Mail Stop 9909, PO Box 1466  
Mesa, Arizona 85211-1466

SPACE ABOVE THIS LINE  
FOR RECORDER'S USE

**PERPETUAL PARKING AND ACCESS EASEMENT GRANT AND AGREEMENT**

This Perpetual Parking and Access Easement Grant and Agreement ("**Easement Grant**") is made on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between EV Development, LLC, a Delaware limited liability company ("**Grantor**" or "**Developer**") and the City of Mesa, a municipal corporation ("**Grantee**" or "**City**") and Grantor and Grantee may be herein referred to collectively as "**Parties**" and each individually as a "**Party**."

**RECITALS**

- A. City was the owner of that certain real property generally located near the corner of Pepper Place and Robson within the city limits of the City of Mesa, totaling approximately 38,944 square feet as legally described in Exhibit A attached to this Easement Grant ("**Parcel**") and this Easement Grant shall be recorded on the Parcel and burden the Parcel for the benefit of Grantee.
- B. The Parcel is also located within the City's Town Center redevelopment area within the City's single Central Business District of the City of Mesa.
- C. The Parcel has been historically used by City for public and City permit parking including parking for certain downtown businesses ("**Downtown Businesses**"), and such parking spaces provide vital parking for these users.
- D. To further the redevelopment of the City's downtown, City agreed to sell the Parcel to Grantor (as the named Buyer in the Purchase Agreement), for Grantor to develop a mixed-use commercial and residential project with a parking garage ("**Parking Garage**" and with the foregoing collectively the "**Project**"), conditioned upon Buyer agreeing to provide City with seventy-six (76) replacement parking spaces within the Parking Garage.
- E. On \_\_\_\_\_ City and Grantor (as the named "Buyer" in the Purchase Agreement) entered into that certain Agreement to Purchase Real Property and Escrow Instructions ("**Purchase Agreement**") wherein City agreed to sell, and Buyer agreed to purchase, the Parcel subject to certain terms and conditions including, inter alia, (i) an agreement by Buyer to construct and operate the Project

on the Parcel in accordance with the terms and conditions of the development agreement dated \_\_\_\_\_ (“**Development Agreement**”), which was recorded on the Parcel simultaneously with this Easement Grant; (ii) Buyer constructing seventy-six (76) replacement parking spaces within the Parking Garage the Buyer intends to construct on the Parcel (“**City Garage Spaces**”) for the sole use by City and its authorized users; and (iv) Buyer granting to City a perpetual, exclusive easement for City and its authorized users to solely use the City Garage Spaces and for vehicular and pedestrian access to the City Garage Spaces.

F. To further ensure City did not lose valuable parking in the City’s downtown area, the obligation of Grantor (as the named Developer in the Development Agreement) to provide City with an easement to park in the new Parking Garage Developer intends to construct on the Parcel was included in the Development Agreement.

G. Further pursuant to the Development Agreement, prior to Commencement of Construction (as that term is defined in the Development Agreement) of the Project and until Completion of Construction (as that term is defined in Development Agreement) of the Parking Garage, Developer is obligated to relocate the seventy-six (76) existing surface parking spaces on the Parcel (“**Surface Parking**”) that will be displaced as a result of the construction of the Project in accordance with the Mitigation Plan attached to the Development Agreement.

H. The City’s ability to continue to use the Parcel for City and permit parking was valuable consideration in City’s decision to sell the Parcel and to allow the development of the Project and City would not have sold the Parcel to Grantor (as the Buyer) or enter into the Development Agreement with Grantor (as the Developer) but for Buyer’s guarantee to execute and record this Easement Grant on or before the Closing (as defined in the Purchase Agreement) of the purchase of the Parcel.

I. Grantor desires to grant to Grantee an easement to allow City and City authorized users continued use of, and access to, the Surface Parking on the Parcel until Commencement of Construction of the Project, a perpetual, exclusive easement to park in the City Garage Spaces that will be located in the new Parking Garage, and an access easement for pedestrian and vehicular access to the Surface Parking and City Garage Spaces as set forth herein; and the Parties desire to set forth their respective rights and obligations with respect to such easements.

**NOW, THEREFORE**, in consideration of the foregoing, the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.
2. Grant and Declaration of Easements.

2.1 Parking Easement. Grantor hereby grants to Grantee, for the benefit of Grantee a perpetual, exclusive easement for the use of seventy-six (76) parking spaces located on the first and second floor of the Parking Garage that is to be constructed by Grantor as part of the Project, and those parking spaces are generally depicted on Exhibit B attached hereto (referred to herein as “**Parking Easement Area**”), which is subject to modification as set forth in Subsection 2.3. Grantor also grants to Grantee and Grantee Authorized Users the rights of pedestrian and vehicular access to and from the Parking Garage, Parking Easement Area and the Parcel. Grantee shall have the exclusive right to the use and operation of the City Garage Spaces and the exclusive right to authorize who may utilize these spaces. Upon Completion of Construction of the Project, Grantee and Grantee Authorized Users shall have free, open and continuous use of the City Garage Spaces and pedestrian and vehicular access to and

from the Parking Easement Area, the Parking Garage, and the entrances and exits thereto and the sidewalks, and streets using the Access Improvements.

2.2 Access Easement. Grantor hereby grants to Grantee for the benefit of Grantee and Grantee Authorized Users, a perpetual non-exclusive access easement in, on, over, upon, across, and through the Parcel for vehicular and pedestrian access to and from the Surface Parking (until Commencement of Construction of the Project) for the purpose of providing ingress and egress to the Surface Parking. The vehicular and pedestrian access shall also include the use of the existing driveways and pedestrian walkways on the Parcel (until Commencement of Construction of the Project). Upon Completion of Construction of the Project, Grantor hereby grants to Grantee for the benefit of the Grantee and the Grantee Authorized Users, a perpetual access easement in, on, over, upon, across, and through that the portion of the Grantor's Parcel as generally depicted on Exhibit C attached hereto ("**Access Easement Area**") for vehicular and pedestrian access in common with Grantor and Grantor's employees, agents, contractors, subcontractors, lessees, tenants, and invitees ("**Grantor Permittees**") to and from the Parcel, the Parking Garage, and the City Garage Spaces for the purposes of providing ingress and egress to the City Garage Spaces as well as access to the Project. The vehicular and pedestrian access shall also include the use of the new driveways, drive lanes, drive aisles, and stairs Grantor will construct on the Easement Areas (as hereinafter defined) as part of the Project ("**Access Improvements**").

2.3 Modification of Easement Areas. The Parties agree the Parking Easement Area must be sufficient in size to accommodate the City Garage Spaces and the Access Easement Area must provide Grantee and Grantee Authorized Users adequate vehicle and pedestrian access to the Parking Garage, Easement Areas and City Garage Spaces. While the Parking Easement Area is depicted in Exhibit B and the Access Easement Area is depicted in Exhibit C, the locations of these areas are based on preliminary construction plans and may need to be amended to satisfy the requirements of this Easement Grant including, but not limited to, the Loading Zone Area. If, prior to Completion of Construction of the Project, the Parking Easement Area or Access Easement Area, or both, needs to be expanded or modified to satisfy the requirements of this Easement Grant, the Parties shall execute an amendment to this Easement Grant to reflect the actual location and legal description of the applicable easement area ("**Amendment**"). Provided further, the Parties will act in good faith to agree upon the revised legal description of the easement area and upon the recordation of the Amendment, such revised legal description shall have the same force and effect, and create the same priority interest, as if recorded concurrently with this instrument.

2.4 The Parking Easement Area and Access Easement Area are sometimes herein referred to collectively as the "**Easement Areas.**" Furthermore, the easement for parking is individually referred to as the "**Parking Easement**" and the easement for access is individually referred to as the "**Access Easement**" and the Parking Easement and Access Easement are sometimes herein referred to collectively as the "**Easement.**"

3 First Floor of the Parking Garage. Grantor may design a portion of the first floor of the Parking Garage to accommodate a loading zone and prospective tenant parking, provided however, the size of such area may not be larger than five (5) standard parking spaces ("**Loading Zone Area**") unless Grantor receives prior written approval from Grantee, which approval will be given in Grantee's sole discretion. The Parties agree to work in good faith to determine the exact location of the Loading Zone Area.

4. Conditions of City Garage Spaces. The Parties agree the City Garage Spaces are subject to the following conditions:

4.1 Location. The location of the City Garage Spaces shall be on the first floor of the Parking Garage, excluding the Loading Zone Area, and any additional contiguous parking spaces on the second

floor necessary to provide the seventy-six (76) City Garage Spaces. Grantor shall submit the design, layout and exact location (“**City Garage Spaces Layout**”) of the City Garage Spaces to Grantee which is subject to approval by Grantee to determine if the City Garage Spaces Layout complies with this Easement Grant.

4.2 Size of the City Garage Spaces. The City Garage Spaces shall be standard size parking spaces that meet the minimum stall width and depth for standard parking spaces as required by the Mesa City Code and otherwise complies with the City of Mesa parking standards and requirements; provided further, the size of the Charging Spaces within the City Garage Spaces shall also comply with Subsection 5.1. No City Garage Spaces shall be compact parking spaces unless Grantee, prior to or during Grantor’s submission of the City Garage Spaces Layout, elects, in its sole discretion, to designate any of the City Garage Spaces as compact parking spaces. Provided further, Grantor shall incorporate Grantee’s request for compact parking spaces into the City Garage Spaces Layout.

4.3 Use of the City Garage Spaces and Charging Spaces. The City Garage Spaces shall be exclusively controlled by Grantee and Grantee has the sole right to authorize the use of the City Garage Spaces for the benefit of Grantee and Grantee’s officers, employees, agents, permittees, licensees, lessees and invitees, and for Downtown Businesses and members of the public (referred to herein, collectively, as “**Grantee Authorized Users**”). Grantor shall not use the City Garage Spaces or the Charging Spaces, and shall use commercially reasonable efforts to prevent Grantor Permittees from using the City Garage Spaces or Charging Spaces for any purpose including, but not limited to, vehicle parking, loading or unloading, overnight parking, storage, and/or repair of any vehicles and to ensure such spaces and stations are available for the general public; except, customers to the commercial and retail portion of the Project (“**Grantor Customers**”) may park in the City Garage Spaces that are not restricted by permit (i.e. permit parking), subject to compliance with duration or other use limitations. If any vehicle owned or operated by Grantor or Grantor Permittees use the City Garage Spaces or Charging Spaces contrary to the provisions in this Easement Grant, Grantee shall have the right, in addition to all other rights and remedies of Grantee under this Easement Grant, to fine, remove or tow away any vehicle in accordance with Subsection 10.1.

5. Revenue from the Parking Spaces within the Parking Garage. Grantee shall have the right to charge for the use of the City Garage Spaces and any revenue derived therefrom shall be Grantee’s. With the exception of the City Garage Spaces, Grantor shall have the right to charge for the use of the other parking spaces located within the Parking Garage and any revenue derived therefrom shall be Grantor’s.

6. Signs Located in the Parking Easement Area and for the City Garage Spaces.

6.1 Replacement Signage. At the time Grantor purchased the Parcel, there were signs posted on the Parcel for the Surface Parking such as signage prohibiting unauthorized users from parking in the spaces and signage necessary for public health and safety. Grantor acknowledges these signs must be removed to construct the Project. To ensure the City Garage Spaces have signage similar to what existed for the Surface Parking, and to properly identify the City Garage Spaces, Grantor agrees to replace the existing signs on the Parcel with similar signage for the new City Garage Spaces (“**Replacement Signs**”). Grantee will design, construct and install the Replacement Signs within the Parking Easement Area using Grantee’s in-house sign production facility; and Grantor shall reimburse Grantee for all of Grantee’s cost to design, produce and install such Replacement Signs. In addition to the Replacement Signs, Grantee has the right, but not the obligation, to install additional signs (e.g. signage for permit parking, durational parking, Charging Spaces, public safety) within the Parking Easement Area (“**Additional Signs**”). If Grantee elects to install Additional Signs Grantee shall do so at its sole cost and expense.

6.2 Maintenance of Signs. Grantee, at its sole cost and expense, shall maintain, repair, replace and otherwise care for the Replacement Signs and Additional Signs.

7. Electric Charging Stations within the City Garage Spaces. Currently the Parcel has three (3) parking spaces that are enabled for the use of electric vehicle charging stations and these spaces will need to be removed to construct the Project. Grantor has agreed to design and construct the City Garage Spaces with three (3) contiguous parking spaces that can accommodate electric vehicle charging stations to replace the existing charging spaces on the Parcel and with six (6) additional contiguous spaces that can accommodate electric vehicle charging stations for a total of nine (9) contiguous parking spaces (each a “**Charging Space**” and collectively “**Charging Spaces**”), as further set forth in this Section 7.

7.1 Location and Size of the Charging Spaces. The physical dimension of each Charging Space must, at a minimum, accommodate (i) the EV Equipment (as that term is defined in Subsection 7.3), which may be wall mounted or ground mounted, with the equipment conduit feeders located approximately in the middle of each parking space; and (ii) cabling that extends, if necessary, to each Charging Space. Prior to Commencement of Construction of the Project, the Parties shall confer in good faith to agree upon the exact size and location of the Charging Spaces within the City Garage Spaces.

7.2 Infrastructure Improvements for the Charging Spaces. Grantor, at its sole cost and expense, shall design and install all the infrastructure improvements (“**EV Infrastructure**”) required for the EV Equipment for each Charging Space. EV Infrastructure means (i) installing the dedicated panel boxes and service entrance section (SES) cabinets in a SES room to allow for dedicated metering for the Charging Spaces; (ii) utility improvements necessary from the Charging Spaces to the SES room—including trenching and laying conduit to supply level 2 EV Equipment (or as otherwise requested by Grantee); and (iii) any other improvements up to the SES room that are necessary to stub out and prepare each Charging Space for EV Equipment. During construction of the Parking Garage, Grantor shall install the EV Infrastructure including but not limited to installing the conduit from the metering location on the Parcel to the location of each individual Charging Space. Provided further, the conduit must be compatible with industry or prevailing standards as adopted by third-party vehicle charging station service providers; and prior to the installation of such conduit, Grantor shall consult with the City of Mesa regarding the proposed design to ensure the EV Infrastructure complies with this Easement Grant and the conduit can be installed with limited extension, alteration or relocation of the existing conduit.

7.3 Charging Equipment. If Grantee desires to have fully operational Charging Spaces, Grantee has the right, but not the obligation, at Grantee’s sole cost and expense, to install the electric vehicle supply equipment required for the operation of each Charging Space including the charger or station and any other equipment that connects the vehicle to the charger and electrically charges it (“**EV Equipment**”). Provided further, Grantee, in its sole discretion, will determine the category, type, and manufacturer of the EV Equipment and any other EV Equipment requirements or specifications; and all such EV Equipment for the Charging Spaces shall at all times remain the personal property of Grantee or Grantee’s third-party contractor, notwithstanding the fact that the EV Equipment may be annexed or fixed to the Parcel, and may at any time, and from time to time, be removed in whole or in part by Grantee. Additionally, Grantor grants to Grantee the right to access the portions of the Parcel necessary for Grantee to install, maintain and repair the EV Equipment for the Charging Spaces.

7.4 Utility Service for EV Equipment. Grantee is responsible for the payment of applicable rates, fees and charges associated with electric service to the EV Equipment for the Charging Spaces.

7.5 Maintenance Obligations of the Charging Spaces. Grantee, at its sole cost and expense shall maintain, repair and replace the EV Equipment for the Charging Spaces located within the City Garage Spaces, and Grantor, is solely responsible for all costs and expenses for the maintenance, repair, and

replacement of the EV Infrastructure improvements associated with the EV Equipment for the Charging Spaces.

8. Interferences with and Obstructions to Grantee's Use of the Easement Areas.

8.1 General. Grantor shall not interfere with Grantee's and Grantee Authorized Users' right to the use of, and access to, the Easement Areas, the City Garage Spaces and the Access Improvements as provided in this Easement Grant.

8.2 Structures and other Obstructions in the Easement Areas. Within the Easement Areas Grantor shall not, whether directly or indirectly by granting permission, (i) construct, install, or place any building, structure, fence, parking garage entry gate, access control, or other parking or access barrier; (ii) store materials of any kind; or (iii) permit any activity that impairs or restricts the Easement Areas other than as set forth in Section 9.

8.3 Grantee Right to Remove Obstructions. Without limiting the grant of the Easement herein, Grantee shall have the right (but not the obligation) to stop any activity or remove anything constructed, installed or placed within the Easement Areas or City Garage Spaces that interferes with Grantee's and Grantee Authorized Users' use of, or access to, the Easement Areas or City Garage Spaces, including but not limited to activities other than as set forth in Section 9, structures, improvements, fences, gates, barriers, materials, vehicles, and stored items.

9. Temporary Closure and Restrictions.

9.1 Closure or Restrictions that Affect Grantee Use of or Access to City Garage Spaces. The City Garage Spaces, Easement Areas and Access Improvements shall remain open at all times to ensure Grantee and Grantee Authorized Users can access and use the City Garage Spaces. Grantor shall not close, restrict or otherwise limit Grantee's and Grantee Authorized Users' use of the City Garage Spaces or Parking Easement Area or any portion thereof, or close, restrict or otherwise limit Grantee's and Grantee Authorized Users' access to the Access Easement Area and Access Improvements or any portions thereof; except Grantor may temporarily close, restrict or limit ("**Temporary Closure**") Grantee's and Grantee Authorized Users' use of and access to the City Garage Spaces, Easement Areas and Access Improvements (i) if required in order to perform maintenance and repairs as required by this Easement Grant, (ii) if required by law enforcement, or (iii) for a public health or safety emergency.

9.2 Notice of Closure. If a Temporary Closure is for routine or preventative maintenance or repairs (as defined in Subsection 11.2), Grantor shall obtain Grantee's consent at least thirty (30) days prior to the closure (such consent will not be unreasonably withheld), and if a Temporary Closure for structural and capital maintenance or repairs (as defined in Subsection 11.1), Grantor shall obtain Grantee's consent at least sixty (60) days prior to such closure or restriction, which consent shall not be unreasonably withheld or delayed. Notwithstanding the requirements of this Subsection 9.2, if a Temporary Closure is for an emergency repair, public health or safety emergency, or for law enforcement purposes, Grantor shall immediately notify Grantee of the closure or restriction and shall use reasonable efforts to resume use of and access to the City Garage Spaces, Easement Areas, and/or Access Improvements to limit the disruption to Grantee and Grantee Authorized Users.

9.3 Closure or Restrictions that do not Affect Use of or Access to City Garage Spaces. If Grantor must close, restrict or limit access to the Parking Garage, Access Improvements, Access Easement Area or any portion thereof and such Temporary Closure does not affect Grantee's or Grantee Authorized Users' use of the City Garage Spaces or access to the Access Improvements, then Grantor shall provide Grantee with not less than thirty (30) days prior notice of such Temporary Closure.

Notwithstanding the requirements of this Subsection 9.3, notice is not required if the closure, restriction or limitation is for emergency repairs necessary to avoid damage to the Parking Garage, required by law enforcement, or for any other public health or safety emergency.

10. Notification and Enforcement.

10.1 Grantee Rights. To ensure Grantor and Grantor Permittees, except for Grantor Customers, do not park in the City Garage Spaces, the Charging Spaces, or both, Grantee may enforce and restrict the use of the City Garage Spaces and Charging Spaces in any manner permitted by the Mesa City Code or state law, including, without limitation, time and durational limitations, permitting spaces, collecting a fee for parking in the City Garage Spaces or Charging Spaces, installing signage, enforcement by fines or towing, and any other use restrictions (“**Parking Enforcement**”). Additionally, Grantee may contract with a third-party for such Parking Enforcement. Currently the Downtown Mesa Association (“**DMA**”) provides Parking Enforcement for the Surface Parking and Grantee may contract with DMA for Parking Enforcement of the City Garage Spaces.

10.2 Grantor Rights & Duties.

10.2.1 Notification and Enforcement. Grantor acknowledges the City Garage Spaces and Charging Spaces are for the sole use of the Grantee and Grantee Authorized Users. In an effort to prevent Grantor Permittees from parking in the City Garage Spaces or Charging Spaces, Grantor agrees to the following notification and enforcement provisions:

(a) Grantor shall use commercially reasonable efforts to prevent Grantor Permittees from parking in the City Garage Spaces or Charging Spaces and shall provide reasonable notification to Grantor Permittees not to park in such spaces.

(b) Grantor shall cooperate with the Grantee’s Parking Enforcement efforts or the Parking Enforcement efforts of any third-party Grantee contracts with for enforcement of parking in the City Garage Spaces as set forth in Subsection 10.1.

11. Maintenance and Repairs. Except as set forth in Subsection 6.2 and Section 12 of this Easement Grant, this Section identifies the maintenance, repair, and replacement duties and responsibilities for the Easement Areas (including the City Garage Spaces), the Parking Garage improvements and Access Improvements. The Easement Areas, Parking Garage and improvements thereon and Access Improvements require routine and preventative maintenance referred to in this Section 11, and defined in Subsection 11.2 below, as Routine Maintenance. In addition, a significant portion of the Easement Area is located within the Parking Garage. Parking Garages, due to the inherent nature of their use and the amount of vehicular traffic, require not only routine and preventative maintenance of the improvements but more significant maintenance, repairs and replacements, and may require structural maintenance, repair or replacements of improvements to ensure the longevity, safety, and integrity of the improvements (referred to in this Section 11, and defined in Subsection 11.1 below, as Structural and Capital Repairs). The description of the two categories of maintenance and repairs and the duties and obligations of the Parties over such obligations are set forth below.

11.1 Structural and Capital Responsibilities. Structural and capital repairs are non-routine or major work associated with the Parking Garage, Easement Areas, Access Improvements and any and all improvements within the Parking Garage and Easement Areas. More specifically, “**Structural and Capital Repairs**” means all non-routine or major construction, maintenance, repair, replacement, or restorations including, but not limited to, the following types of work or work to the following types of problems: major concrete work (i.e., anything more than minor patching); wall or column deterioration;

broken tendons; cracks in beams, joists or post tensions; deck repairs; repair or replacement of joints, tendons, beams, joists; damage caused by fire or other casualty; re-asphalting that is more than minor patching; painting, stuccoing, finishing, refinishing, (other than patch work) or other similar work to the Parking Garage; work necessary to restore, strengthen or safeguard the integrity of any improvements; and any and all maintenance, restoration, repair and replacement not considered normal wear and tear or preventative maintenance as described in Subsection 11.2.

11.1.1 Structural and Capital Responsibilities of Grantor. Grantor, at its sole cost and expense and at all times, shall be responsible for all Structural and Capital Repairs of the Parking Garage (including the City Garage Spaces) and Easement Areas, and the improvements therein. All Capital and Structural Repairs shall be performed according to industry schedules (unless such repair or maintenance requires more immediate performance) and all work shall be completed in a sound, clean, safe, and attractive manner, in accordance with industry standards and in compliance with all applicable laws. Grantee has no Structural and Capital Repairs obligations under this Easement Grant.

11.1.2 Notice of Capital and Structural Repairs. Grantor shall provide written notice to Grantee at least forty-five (45) business days in advance of performing any Capital and Structural Repairs; except if any damage or repair involves, or may involve, an emergency repair Grantor may provide shorter notice as the nature of the emergency may dictate provided Grantor provides notice to Grantee as soon as reasonably possible.

11.1.3 Time to Complete Capital and Structural Repairs. Grantor shall perform all Capital and Structural Repairs during such times and hours as to reasonably minimize the impact on Grantee and Grantee Authorized Users use of the City Garage Spaces. Provided further, upon commencement of any work, Grantor shall continuously and expeditiously work so as to complete the work as soon as reasonably possible to minimize the disruption to Grantee and Grantee Authorized Users. If such work will or does take more than thirty (30) days to complete, Grantor at its sole cost and expense shall obtain replacement parking for each City Garage Space that's use is temporarily lost due to the work (space-for-space replacement); and such replacement parking shall be provided on the thirty-first (31<sup>st</sup>) day after the commencement of the work and shall be within one-half mile of the Parcel or as otherwise agreed to in writing by Grantee. Further, all such work shall be completed within ninety (90) days from commencement of the work or at such later date as agreed to in writing by Grantee, which approval will not be unreasonably withheld. Notwithstanding the foregoing, if any damage or repair involves, or may involve, an emergency repair, Grantor shall immediately begin repairing such damage and shall continuously and expeditiously work to repair such damage and use best efforts to expedite the completion of such repairs. Provided further, Grantor shall not be responsible for providing replacement parking for the City Garage Spaces if the Capital and Structural Repairs arise solely out of the action of the Grantee or the Grantee Authorized Users that are not a Grantor licensee.

11.2 Routine Maintenance Responsibilities. The Parking Garage and Easement Areas, including City Garage Spaces, require routine minor repairs and preventative maintenance. More specifically, "**Routine Maintenance**" means routine or preventative construction, maintenance, repair, or replacement including the following types of work or work to the following types of problems: general wear and tear; minor concrete maintenance or repairs (e.g., patching cracks in floor or ceiling); applying and maintaining seal coating or other protective coating; caulking or patching; power or pressure washing; marking parking areas; cleaning storm basin drainage; removal of oil, gas or other chemical spills or leaks from vehicles; maintaining the parking surface and markings; cleaning and sweeping; removal of trash or other debris; graffiti removal; cleaning substance build up; the maintenance and repair of the Lighting Improvements.



11.2.1 Grantor's Routine Maintenance Responsibilities. All Routine Maintenance responsibilities and obligations of Grantor shall be completed in a sound, clean, safe, and attractive manner, in compliance with all applicable laws and in accordance with industry standards and schedules.

11.2.1.1 First Eight Years. For eight (8) years commencing on the issuance of a certificate of occupancy for the Building as that term is defined in the Development Agreement (the intent of the eight (8) years is to correspond with the term of the lease between Grantor as "Tenant" and Grantee as Landlord ("**Lease**") which commences on the date the first certificate of occupancy is issued for the Building), or upon earlier termination of the Lease pursuant to Section 21 of the Lease other than default of Grantor thereunder, whichever occurs first ("**Lease Term**"), Grantor, at its sole cost and expense and at all times, is responsible for the Routine Maintenance responsibilities and obligations of the Parking Garage and the improvements therein, Access Improvements, and the Easement Areas including the Commonly Shared Drive Aisles (as that term is defined in the Development Agreement) and the City Garage Spaces.

11.2.1.2 After the Lease Term. After the Lease Term, Grantor, at its sole cost and expense and at all times, is responsible for the Routine Maintenance responsibilities and obligations of the Parking Garage and improvements therein, Access Easement Area, including the Commonly Shared Drive Aisles, and the Access Improvements; Grantor shall have no Routine Maintenance Responsibilities or obligations of the Parking Easement Area or City Garage Spaces; these responsibilities become the Grantee's obligation as set forth in Subsection 11.3.

11.2.2 Notice of Routine Maintenance. Grantor shall provide written notice to Grantee at least fifteen (15) business days in advance of performing Routine Maintenance; except, in emergencies (such as emergency repairs or a health or safety issue) Grantor may provide shorter notice as the nature of the emergency may dictate so long as Grantor provides notice to Grantee as soon as reasonably possible.

11.2.3 Time to Complete Routine Maintenance. Grantor shall perform all Routine Maintenance during such times and hours as to reasonably minimize the impact to the users of the City Garage Spaces and upon commencement of any work shall complete the work within thirty (30) calendar days or at such later date as agreed to in writing by Grantee; except, if any damage or repair involves, or may involve, an emergency repair or a health or safety issue, Grantor shall immediately begin repairing such damage and shall continuously and expeditiously work to repair such damage until it is repaired, and shall use best efforts to expedite the completion of repairs.

11.3 Grantee's Obligation for Routine Maintenance. After the Lease Term, Grantee, at its sole cost and expense and at all times, is responsible for the Routine Maintenance of the Parking Easement Area and the City Garage Spaces, except for negligence or willful misconduct of Grantor as set forth in Subsection 11.3.1. Grantee shall complete all Routine Maintenance responsibilities and obligations in a sound, clean, safe, attractive, and commercially reasonable manner. Prior to the expiration of the Lease Term, and before Grantee becomes responsible for Routine Maintenance, Grantee has the right to inspect the Parking Easement Area and City Garage Spaces to ensure Grantor maintained and repaired these areas consistent with the Grantor's obligations in this Easement Agreement provided Grantee provides Grantor written notice no later than ninety (90) days prior to the expiration of the Lease Term and notifies Grantor in writing of the nature and character of any necessary repairs or maintenance. If Grantor has failed to maintain or repair the Parking Easement Area or City Garage Spaces or the improvements therein, as set forth in this Easement Grant, Grantee may require Grantor to perform such maintenance or repairs and Grantee may defer its Routine Maintenance responsibilities and obligations until Grantor completes such maintenance or repairs.

11.3.1 Exception to Grantee's Routine Maintenance Obligation - Negligence or Willful Misconduct. If, during the time Grantee is responsible for Routine Maintenance of the Parking Easement Area and City Garage Spaces, Grantee incurs any Routine Maintenance expenses due to the negligence or willful misconduct of the Grantor or Grantor Permittees, then Grantor, having caused the need for such repair or restoration, shall be solely responsible for the expenses arising therefrom and shall reimburse Grantee the actual cost of the repair or restoration expenses due to the negligence or willful misconduct of the Grantor or Grantor Permittees.

11.4 Failure to Make Repairs or Perform Maintenance.

11.4.1 Grantor Failure to Perform Capital and Structural Repairs or Routine Maintenance. If Grantor fails to perform Capital and Structural Repairs within sixty (60) calendar days or perform Routine Maintenance within thirty (30) calendar days after becoming aware of the need to perform maintenance or repair damage to the Parking Garage, Easement Areas including Commonly Shared Drive Aisles, and the improvements therein (including the City Garage Spaces and Access Improvements) and such failure affects Grantee's and Grantee Authorized Users' use of, or access to, the City Garage Spaces, then Grantee shall promptly notify Grantor in writing of the nature and character of such necessary repairs or maintenance ("**Repair Notice**"). If Grantor fails to make the repairs or perform the maintenance as set forth in the Repair Notice within thirty (30) days after receipt of the same, or if the repairs or maintenance are of such character as to require more than thirty (30) days to cure and Grantor fails to commence to cure within thirty (30) days after receipt of the Repair Notice and thereafter to diligently proceed to make such repairs or perform such maintenance, then, in either such event, Grantee has the right, but not the obligation, to make any such repairs or maintenance and the cost of such maintenance or repairs incurred by Grantee shall be paid by Grantor. Grantor, promptly upon receipt of an invoice from Grantee, shall reimburse Grantee for all such maintenance and/or repair costs. Notwithstanding the requirements of this Subsection 11.4.1, a Repair Notice is not required for any emergency repairs necessary to avoid damage to the Parking Garage or improvements therein, Access Improvements or the Easement Areas or for the health and safety of the public.

11.4.2 Grantee Failure to Perform Routine Maintenance. If, after the Lease Term, Grantee fails to perform Routine Maintenance within thirty (30) calendar days after becoming aware of the need to perform Routine Maintenance to the Parking Easement Area or City Garage Spaces or the improvements therein, and such failure affects Grantor and Grantor Permittees use of, or access to, the Parking Garage or Easement Areas including the Commonly Shared Drive Aisles, then Grantor may require Grantee to perform such Routine Maintenance, to the City's standard parking maintenance practices, by promptly notifying Grantee in writing of the nature and character of such necessary repairs or maintenance ("**Repair Notice**"). If Grantee fails to make the repairs or perform the maintenance as set forth in the Repair Notice within thirty (30) days after receipt of the same, or if the repairs or maintenance are of such character as to require more than thirty (30) days to cure and Grantee fails to commence to cure within thirty (30) days after receipt of the Repair Notice and thereafter to diligently proceed to make such repairs, then, in either such event, Grantor has the right, but not the obligation, to make such maintenance and repairs and the cost of such maintenance and repairs incurred by the Grantor shall be paid by Grantee. Notwithstanding the requirements of this Subsection 11.4.2, a Repair Notice is not required for any emergency repairs necessary to avoid damage to the Parking Easement Area or City Garage Spaces or improvements therein or for the health and safety of the public

12. Lighting. Grantor, at its sole cost and expense, shall install sufficient lighting in the Parking Garage and City Garage Spaces consistent with industry standards for improvements of the same type

as the Project (“**Lighting Improvements**”). Grantee is not responsible for installing any lighting for the Parking Garage or City Garage Spaces. When Grantor submits an application to the City of Mesa for the first permit for the Parking Garage Grantor shall include a lighting plan for the Parking Garage that consists of the locations and specifications of the Lighting Improvements (“**Lighting Plan**”). The Lighting Plan is subject to review and approval by City of Mesa to ensure the lighting is sufficient and meets industry standards. Provided further, for the Lease Term, Grantor, at its sole cost and expense and at all times, is responsible for the maintenance, repair and utility service associated with such Lighting Improvements, except Grantee, for the Lease Term and after the expiration of the Lease Term, will maintain and repair the Lighting Improvements and pay the applicable rates, fees and charges associated with electric service for such Lighting Improvements that are located exclusively within the City Garage Spaces.

13. Security. This Easement Grant does not impose any security obligations on the Parties. Grantor may, at Grantor’s sole cost and expense, including but not limited to installation, fees, maintenance and repairs, provide security or install security improvements (“**Security Improvements**”) for the Parking Garage; provided, however, if any Security Improvements are located within the City Garage Spaces or may affect the City Garage Spaces, Grantor shall provide Grantee with thirty (30) days advance written notice and such Security Improvements shall not conflict with, restrict or impair the City Garage Spaces or the ability of the Grantee’s or the Grantee Authorized Users’ use of the City Garage Spaces. Additionally, Grantee may, at Grantee’s sole cost and expense, including but not limited to installation, fees, maintenance and repairs, provide security or install Security Improvements for the City Garage Spaces provided, however, such Security Improvements shall not conflict with, restrict or impair Grantor’s or Grantor Permittees’ use of the Parking Garage or the Access Easement Area including the Commonly Shared Drive Aisles.

14. Construction of Project & Relocation of Surface Parking.

14.1 Grantee’s Right to Continue Using Surface Parking. The Parcel is currently developed with Surface Parking consisting of seventy-six (76) surface parking spaces as depicted on Exhibit D and such parking spaces are currently utilized by Grantee for permit parking and for parking for the Downtown Businesses and the public. Grantor shall allow Grantee, Grantee’s permittees, the Downtown Businesses and the public the right to the continued use of, and access to, the City Surface Parking until Commencement of Construction of the Project.

14.2 Construction of the Project. Grantor acknowledges the Parcel is adjacent to several Downtown Businesses and the construction of the Project may impact these businesses. During construction of the Project, Grantor shall utilize good construction practices to minimize the impact the construction has on the Downtown Businesses and to protect the safety of the public and the Downtown Businesses, which may include but is not limited to the hours of construction, using barriers, posting temporary signage, or other appropriate measures.

15. Relocation of Surface Parking. At the time of, and as a part of, the demolition of the Surface Parking by Grantor (as the Developer of the Project) or Grantor’s third-party contractor, Grantor, at its sole cost and expense, shall provide replacement parking for the seventy-six (76) parking spaces currently located on the Parcel as set forth in the Mitigation Plan attached to the Development Agreement, and which was agreed to by Grantor and Grantee. Grantor shall provide such replacement parking until Completion of Construction of the Project. So long as Grantor is not in breach of the Development Agreement, then Grantor’s compliance with the Mitigation Relocation Plan shall satisfy the relocation obligations of this Easement Grant during construction of the Project.

16. Encumbrance. This Easement Grant and the easement rights and obligations created and granted herein shall run with the land as a burden upon the portion of the Parcel over which the easement is granted, for the benefit of Grantee and Grantee Authorized Users.

17. Grantor's Use of Easement Areas and Parking Garage. Grantor reserves the right to the use and enjoyment of the Parcel, so long as such use and enjoyment does not interfere with Grantee's rights in this Easement Grant, and is otherwise in compliance with the terms of the Development Agreement. Provided further, Grantor's use of the Easement Areas and Parking Garage shall comply with all applicable City of Mesa codes and ordinances, as may be amended from time to time.

18. No Public Dedication. Although the Easement is granted by Grantor to and in favor of a municipal corporation, nothing contained in this Easement Grant shall be deemed to be a gift or grant to, or dedication of any portion of the Easement Areas to, or to confer any rights in the Easement Areas to, any individual or entity, including but not limited to any specific individual or entity as a Grantee Authorized User or Downtown Businesses, or to any member of the general public.

19. Waiver of Claims. Grantor, as the fee owner of the Parcel, and on behalf of itself and its successors and assigns, hereby waives and releases any and all claims, demands, suits, or rights of action against City of Mesa, its officers, officials, employees or volunteers, resulting or arising, in whole or in part, from Grantee's or Grantee Authorized Users' use of the Parking Garage and Easement Areas including but not limited to claims for damages except for actual out-of-pocket damages for failure to perform Routine Maintenance in accordance with Subsection 11.4.2 and if not cured (or cure undertaken) and notice provided in accordance with Section 22.

20. Sublease Provisions. Grantor covenants and agrees that all leases to any portion of the Parcel shall contain notice that subleases and the rights of the tenant or sub-tenant thereunder are subject to this Easement Grant, and that the tenants, sub-tenants, invitees and Grantor Permittees do not have the right to park in the City Garage Spaces or Charging Spaces, except Grantor Customers, or store materials in the City Garage Spaces and are subject to the Parking Enforcement regulations contained therein.

21. Insurance. Grantor and any future owner or operator of the Parcel shall procure and maintain for the duration of this Easement Grant, at Grantor's own cost and expense, the following types of insurance:

(a) General liability insurance for personal injury, bodily injury (including wrongful death) and damage to property with a combined single limit of not less than Three Million and No/100 Dollars (\$3,000,000.00), per occurrence, in, on or at the Parking Garage, including but not limited to the Easement Areas insuring against any and all liability and claims for injury to persons or damage to property which may arise from or in connection to parking activities and/or criminal acts, and for injuries to persons or damages to property which may arise from or in connection with this Easement Grant by Grantor, its agents, subtenants, employees, contractors, licensees or invitees. At the time of this Easement Grant, the amount of general liability insurance described herein is reasonable; however, the Parties recognize that this Easement Grant creates a potentially perpetual obligation of, and relationship among, Grantor and Grantee; and that inflation and other economic pressures arising after the date of this Easement Grant may, over time, cause the amount stated above to be inadequate and may need to be adjusted to provide the protection reasonably required and expected by Grantee. Accordingly, Grantor agrees that, during the duration of the Easement declared, granted and established hereby, Grantor shall maintain general liability insurance in amounts which are standard and reasonable for the sorts of activities being conducted at or from the Parking Garage and Easement Areas, in amounts sufficient to provide adequate public liability as contemplated by this section. The Parties agree to review the general liability insurance coverage amount every five (5) years and work in good faith to adjust the coverage to provide the protection required and expected by Grantee but in no event less than Three Million and

No/100 Dollars (\$3,000,000.00) aggregate coverage with respect to any one (1) accident occurring in, on or at the Parking Garage, including but not limited to the Easement Areas.

(b) Property and casualty insurance for the Parking Garage and improvements thereon, including coverage against casualty to or loss of the Parking Garage and City Garage Spaces in an amount not less than one hundred percent (100%) of the full replacement cost of the Parking Garage without depreciation, excluding the foundation. Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed. Notwithstanding anything to the contrary in this Easement Grant, Grantee's insurance and self-insurance retention is not obligated to, and will not pay, any claims, including but not limited to, any claims for damage to the Parcel or the Parking Garage.

(c) All policies of insurance procured by Grantor shall be from insurance companies authorized to do business in the state of Arizona, and annually Grantor shall provide Grantee with a Certificate of Insurance with applicable endorsements naming the Grantee, its agents, officers, elected officials, volunteers and employees as additional insured up to the full coverage limit. Grantor's insurance policies shall be primary, and must contain a waiver of transfer rights of recovery (waiver of subrogation) in favor of the Grantee, its agents, officers, elected officials, employees, and volunteers.

22. Indemnification. Grantor shall indemnify, defend, pay, and hold harmless Grantee and its agents, representatives, officers, directors, elected and appointed officials and employees, (collectively "**Indemnified Parties**") for, from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations judgements, liabilities, and suits (including, but not limited to, injury and death to persons and loss of or damage to property, reasonable attorneys' fees, experts' fees and court costs associated with all such matters) (all of the foregoing, collectively "**Claims**") imposed upon or asserted against the Indemnified Parties, arising out of, related to, or in connection with, in whole or in part, from any of the following: (i) Grantor, or its employees', tenants', subtenants', licensees', sublicensees', contractors', subcontractors', independent contractors', agents', clients', or invitees' (collectively, "**Grantor's Agents**") use of the Parking Garage, which includes, but is not limited to, security or lack or adequacy of security in the Parking Garage; (ii) Grantor or Grantor's Agents use or nonuse of, or any condition created by Grantor or Grantor's Agents on, the Parcel or the Parking Garage or any part thereof and the improvements thereon; (iii) performance of any labor or services or the furnishing of any materials or other property with respect to Parcel, Parking Garage Easement Areas or any part thereof and any improvements thereon for Grantor or Grantor's Agents; (iv) the design or construction of the improvements on the Parcel and the Parking Garage (including but not limited to the structural engineering) and all subsequent design, construction, engineering, and other work and improvements by or on behalf of Grantor or Grantor's Agents associated with the Parcel and Parking Garage and the improvements thereon; (v) Grantor's obligation to repair, maintain, and operate the Parking Garage as required by this Easement Grant; (vi) any failure on the part of Grantor or Grantor's Agents to comply with any applicable laws in the use, development, maintenance or operation of the Parking Garage; (vii) any failure of Grantor or Grantor's Agents to comply with any Hazardous Materials Laws (as that term is defined in the Development Agreement); (viii) the storage, handling, treatment, release or disposal of Hazardous Materials on the Parcel or contamination of the Parcel by Hazardous Material if attributable to the actions or omission of Grantor or Grantor's Agents; provided, however, the foregoing duty to indemnify, defend, and hold the Indemnified Parties harmless shall not apply as to Claims that arise solely from the gross negligence or intentional actions of the Indemnified Parties. For purposes of clarification, and not to limit the foregoing definition of Grantor's Agents, Grantor's Agents shall include all individuals who have or intend to use or enjoy improvements on the Parcel (including, but not limited to, the commercial, retail, or residential improvements) at some time while their vehicle is parked in the Parking Garage regardless of whether the individual's vehicle is parked in the City Garage Spaces or other spaces in the Parking Garage.

23. Events of Default. A Party shall be in default under this Easement Grant if such Party breaches any of the terms, covenants, restrictions or conditions under this Easement Grant or fails to fully and timely perform any of such Party's obligations under this Easement Grant and such failure continues for thirty (30) days after such Party's receipt of written notice of such default from the other Party (each, a "**Default**" or an "**Event of Default**"); or, if such Default is of a nature is not capable of being cured within thirty (30) days must be commenced within such period and continuously and expeditiously pursued to completion, but not to exceed ninety (90) days in total.

24. Remedies for Default. Upon the occurrence of an Event of Default by the defaulting Party the other Party may take any of the following actions:

24.1 Remedies of Grantee. Upon the occurrence of an Event of Default by Grantor or Grantor Permittees, Grantee shall be entitled to the following remedies:

- (i) the right to enjoin any breach by Grantor;
- (ii) the right to seek or obtain any other equitable or legal remedies or monetary damages against Grantor;
- (iii) the right to seek or obtain specific performance; and
- (iv) In addition to the remedies above, if Grantor blocks, closes or otherwise prohibits Grantee or Grantee Authorized Users use of, or access to, any of the seventy-six (76) City Garage Spaces or any portion thereof; except as permitted under Section 9 of this Easement Grant, Grantor shall pay liquidated damages to Grantee in the amounts set forth in the table below. Provided further, to account for future increases to the rental costs for the City Garage Spaces, the liquidated damages set forth in the table below will increase by five percent (5%) every ten (10) years.

Time Period	Liquidated Damages
First thirty (30) days after Default	One hundred dollars (\$100.00) per day
Thirty-one (31) to sixty (60) days after Default	Two hundred dollars (\$200.00) per day
Sixty-one (61) days after Default and thereafter	Three hundred dollars (\$300.00) per day

The Parties agree and hereby stipulate that the exact amount of liquidated damages from the loss of Grantee's use of one or more of the City Garage Spaces within the Parking Easement is extremely difficult or impossible to ascertain and that liquidated damages set forth in this Subsection 19.1(v) constitutes a reasonable and fair approximation of such damages.

24.2 Remedies of Grantor. Grantor's exclusive remedies for an Event of Default by Grantee, shall consist of and is limited to the following actions:

- (i) special action or other similar relief (whether characterized as mandamus, injunction, specific performance or otherwise), requiring Grantee to undertake and to fully and timely perform its obligations under this Easement Grant.
- (ii) the right to seek or obtain only actual damages for failure to comply with Subsection 11.4.2. Grantor may not seek and hereby waives any and all right to

recover special, exemplary, consequential, special, and any other type of damages whatsoever.

24.3 Rights and Remedies Cumulative. The rights and remedies hereunder are cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other right or remedy available and the exercise or failure to exercise any right or remedy shall in no event be construed as a waiver or release thereof or any other right or remedy.

24.4 Effect of Default. No Event of Default shall terminate this Easement Grant or render the easements or provisions of this Easement Grant invalid or unenforceable, nor shall any such Default entitle any Party to cancel, rescind, or otherwise terminate this Easement Grant.

25. Perpetual Nature of Easement. The Easement, and Grantee's rights hereunder, shall be perpetual, and shall not terminate.

26. Notices.

(a) Addresses. Except as otherwise required by law, any notice required or permitted under this Easement Grant will be in writing and will be given by (i) personal delivery, or (ii) any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid:

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

and

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

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

If to Developer: EV Development, LLC  
844 N. 4<sup>th</sup> Avenue  
Phoenix, Arizona 85004  
Attn: Tim Sprague

With a required copy to: Burch & Cracchiolo  
1850 N. Central Ave. 17<sup>th</sup> Floor  
Phoenix, AZ 85004  
Attn: Sharon J. Oscar

(b) Effective Date of Notices. 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.

27. Ownership and Authority to Execute. The individuals executing this document represents and warrants: (i) that he or she is authorized to do so on behalf of the party for which they are signing; and (ii) that he or she has full legal power and authority to bind the party for which they are signing in accordance with the terms herein and, if necessary, has obtained all required consents or delegations of such power and authority.

28. Governing Law, Venue and Jurisdiction. This Easement Grant will be deemed to be made under, will be construed in accordance with, and will be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Easement Grant must be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 27.

29. Severability and Construction. If any provision of this Easement Agreement is or becomes illegal, is found to be null or void for any reason or is held unenforceable by a court of competent jurisdiction, then the remaining portions of the Easement Grant shall remain in full force and effect so long as removing the severed portion does not materially alter the overall intent of this Easement Grant. This Easement Grant shall be given a reasonable construction so that the intention of the Parties is implemented. Grantor and Grantee acknowledge and agree: (a) they were advised and had the opportunity to obtain independent legal counsel to review this Easement Grant; (b) this Easement Grant is the product of arm's length negotiations among the Parties and shall not be construed against any Party due to authorship; and (c) the Parties understand the terms and conditions contained herein.

30. Amendments. This Easement Grant may not be modified or amended in any respect, or canceled, terminated or rescinded, in whole or in part, except by a written instrument acknowledged and signed by both Parties hereto, or their successors and assigns and duly recorded in the office of the Recorder of Maricopa County, Arizona.

31. Running of Benefits and Burdens. The benefits and burdens, and the covenants and agreements in this Easement Grant shall run with and burden the land and shall extend and inure in favor and to the benefit of, and shall be binding on, Grantor and Grantee and their respective successors and assigns.

32. Exhibits. The exhibits attached to this Easement Grant are incorporated as if fully set forth herein.

33. Attorneys' Fees and Costs. In the event any suit is brought for the enforcement of any provision of this Easement Grant, or is a result of any alleged breach hereof or for a declaration of rights and duties hereunder, the prevailing Party in any such dispute will be entitled to reimbursement of its reasonable attorneys' fees and court costs, including, but not limited to, its reasonable costs of expert witnesses, transportation, lodging and meal costs of out-of-town parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

34. Business Days. If the last day of any time period stated in this Easement Grant or the date on



which any obligation to be performed under this Easement Grant falls on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, will be extended so that it will end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

35. Recordation. After this Easement Grant has been executed by the Parties, Grantee will cause this Easement Grant to be recorded in the Official Records of Maricopa County, Arizona.

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

37. Force Majeure in Performance for Causes Beyond Control of Party. Neither Grantee nor Grantor, as the case may be, will be considered not to have performed its obligations under this Easement Grant in the event of force majeure (“**Force Majeure**”) due to causes beyond its control and without its fault, negligence or failure to comply with applicable laws, including, but not restricted to, acts of God, acts of public enemy, litigation concerning the validity and enforceability of this Easement Grant or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum), a Public Health Event, strikes, embargoes, labor disputes, fires, floods, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, act of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of national emergency or national alert, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting the Parcel (whether permanent or temporary) by any public, quasi-public or private entity. In no event will Force Majeure include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants of portions of the Building, nor from the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Grantor in connection with the acquisition of the Parcel or the design and construction of the Building, it being agreed that Grantor will bear all risks of delay which are not Force Majeure. In the event of the occurrence of any such Force Majeure, the time or times for performance of the obligations of the Party claiming delay will be extended for a period of the Force Majeure; provided that the Party seeking the benefit of the provisions of this Section 37, within thirty (30) days after such event, must notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Force Majeure. Public Health Event as used in this section 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.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, \_\_\_\_\_ has caused its name to be  
executed by its duly authorized representative(s) this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

GRANTOR:

By \_\_\_\_\_

Its \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing Perpetual Parking and Access Easement Grant was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, acting as \_\_\_\_\_, for \_\_\_\_\_, who executed the foregoing instrument for the purposes therein contained.

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

\_\_\_\_\_  
(Notary Stamp/Seal)

**Note: This instrument is exempt from the real estate transfer fee and affidavit of legal value required under A.R.S. Sections 11-1132 and 11-1133 pursuant to the exemptions set forth in A.R.S. Sections 11-1134(A)(2) and/or (A)(3).**

IN WITNESS WHEREOF, \_\_\_\_\_ has caused its name to be executed by its duly authorized representative(s) this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

GRANTEE:

By \_\_\_\_\_

Its \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing Perpetual Parking and Access Easement Grant was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, acting as \_\_\_\_\_, for \_\_\_\_\_, who executed the foregoing instrument for the purposes therein contained.

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

\_\_\_\_\_  
(Notary Stamp/Seal)

**Note: This instrument is exempt from the real estate transfer fee and affidavit of legal value required under A.R.S. Sections 11-1132 and 11-1133 pursuant to the exemptions set forth in A.R.S. Sections 11-1134(A)(2) and/or (A)(3).**

**EXHIBIT A PERPETUAL PARKING AND ACCESS EASEMENT**  
**GRANT AND AGREEMENT**  
**LEGAL DESCRIPTION OF THE PARCEL**

**EXHIBIT A**  
**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MARICOPA, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (APN NO. 138-35-010A)

Lot 11, of PEPPER DRIVE TRACT, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 8 of Maps, page 22;

EXCEPT THE West 14.16 feet thereof.

(NOTE: A plat of Mesa, recorded in Book 23 of Maps, page 18, records of Maricopa County, Arizona, purports to show the within property as Lot 11, Tract A, MESA.)

PARCEL NO. 2: (APN NO. 138-35-011)

Lot 12, of PEPPER DRIVE TRACT, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 8 of Maps, page 22.

(NOTE: A plat of Mesa recorded in Book 23 of Maps, Page 18, records of Maricopa County, Arizona, purports to show the within property as Lot 12, Tract A, MESA.)

PARCEL NO. 3: (138-35-012)

Lots 13 and 14, of PEPPER DRIVE TRACT, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 8 of Maps, page 22.

PARCEL NO. 4: (138-35-053)

The West 53 feet of the East 321.25 feet of the South 135 feet of Lot 8, Block 5, of MESA CITY, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 3 of Maps, page 11.

(NOTE: A plat of Mesa recorded in Book 23 of Maps, Page 18 purports to show said premises as a portion of Lot 8, Blok 5, Tract B, Mesa.)

PARCEL NO. 5: (138-35-054)

The West 10.15 feet of the South 135 feet of Lot 8, of PEPPER DRIVE TRACT, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 8 of Maps, page 22.

(NOTE: A plat of Mesa recorded in Book 23 of Maps, Page 18 purports to show said premises as a portion of Lot 8. of Tract B. Block 5. Mesa.)

**EXHIBIT A**  
(Continued)

PARCEL NO. 6: (138-35-056)

That part of Lot 8, Block 5, of MESA CITY, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 3 of Maps, page 11, more particularly described as follows:

BEGINNING at a point in the East line of said Lot 8, Block 5, at the intersection of North McDonald Street and Pepper Drive being 135 feet Northerly from the Southeast corner of said Lot 8;

RUNNING THENCE Westerly along the South line of Pepper Drive 218 ¼ feet to the TRUE POINT OF BEGINNING;

THENCE running Southerly 135 feet parallel to the East line of said Lot 8 to an alley;

THENCE running Westerly along the North line of said alley 50 feet;

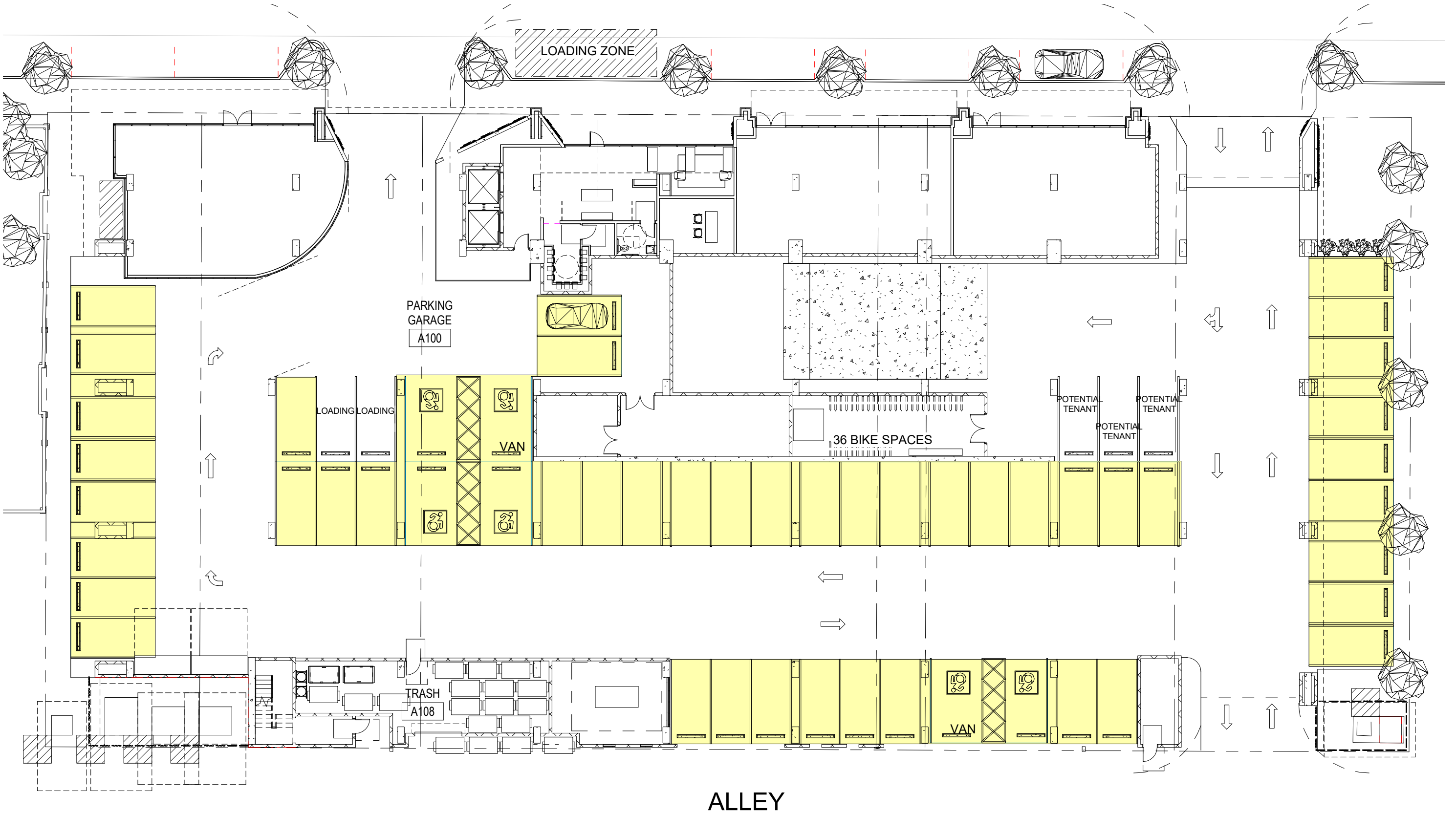
THENCE running Northerly 135 feet parallel to the West line of the said Lot 8 to the South line of Pepper Drive;

THENCE Easterly 50 feet along said South line of Pepper Drive to the TRUE POINT OF BEGINNING.

APN: 138-35-011, 13835-010A, 138-35-053, 138-35-054, 138-35-012, 138-35-056

**EXHIBIT B PERPETUAL PARKING AND**  
**ACCESS EASEMENT GRANT AND AGREEMENT**  
**PARKING EASEMENT AREA: DEPICTION**

PEPPER PLACE

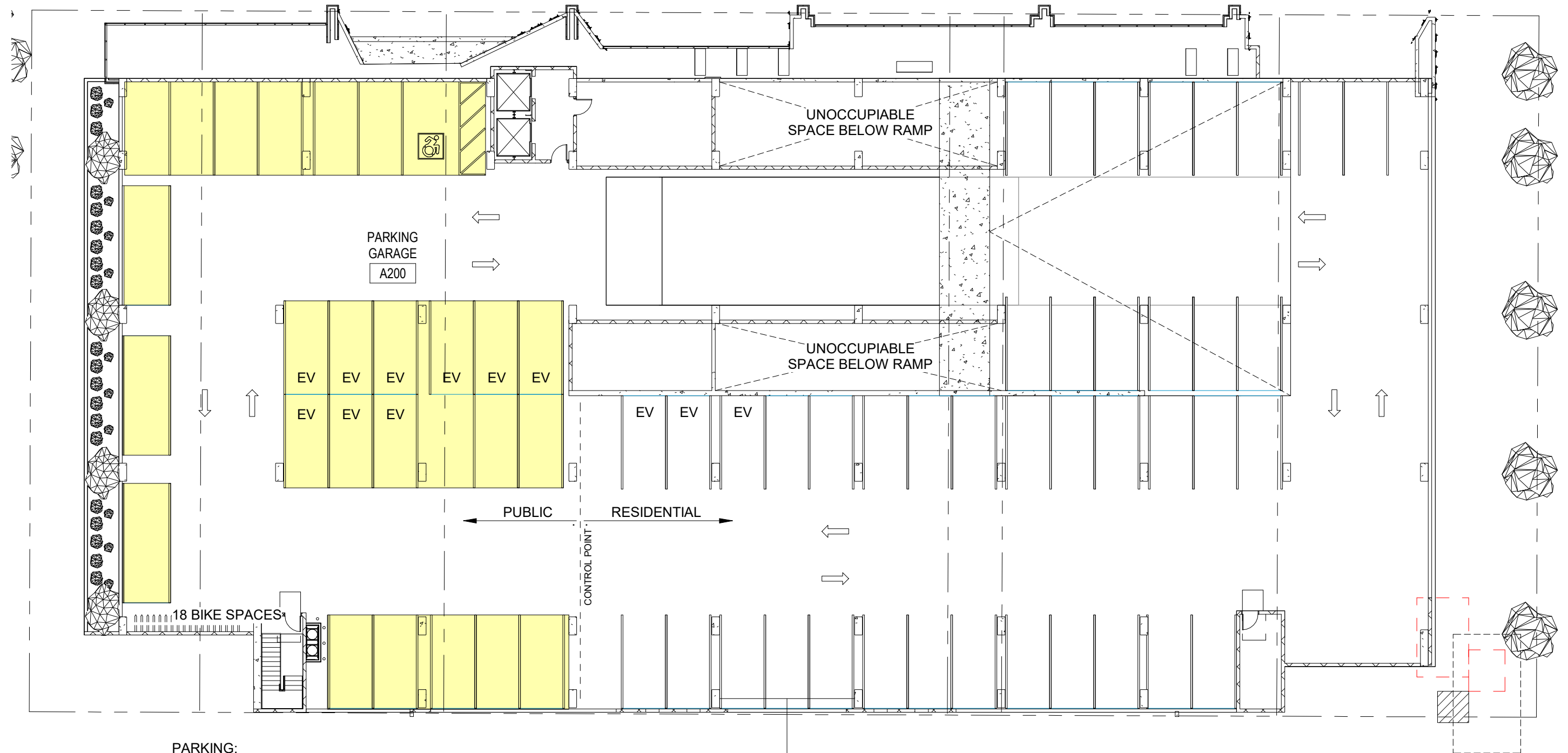


PARKING  
STANDARD - 50 SPACES  
ACCESSIBLE - 6  
TOTAL: 56

 PUBLIC PARKING STALLS

TOTAL PUBLIC: 51





**PARKING:**

PUBLIC  
 STANDARD - 21 SPACES (3 AS EV)  
 PARALLEL - 3  
 ACCESSIBLE - 1  
 TOTAL: 25

RESIDENTIAL  
 STANDARD - 41 SPACES (3 AS EV)

 PUBLIC PARKING STALLS

**EXHIBIT C PERPETUAL PARKING AND ACCESS**  
**EASEMENT GRANT AND AGREEMENT**  
**Access Easement Area: Depiction (To be attached)**

**EXHIBIT D PERPETUAL PARKING AND ACCESS**  
**EASEMENT GRANT AND AGREEMENT**  
**Surface Parking: Depiction**



PARKING  
71 STANDARD STALLS  
5 ADA STALLS

EXISTING SURFACE PARKING