WHEN RECORDED RETURN TO:

City of Mesa
Attn: City Clerk
20 East Main Street
Mesa, Arizona 85211

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DEVELOPMENT AGREEMENT

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CITY OF MESA, ARIZONA,
an Arizona municipal corporation

AND

_____,
a(n) _____

==========

_____, 2021

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made as of the ____ day of _____, 2021, by and between the CITY OF MESA, ARIZONA, an Arizona municipal corporation ("**City**"); and _____, a(n) _____ ("**Developer**"). City and Developer are sometimes referred to in this Agreement collectively as the "**Parties**," or individually as a "**Party**."

RECITALS

A. Developer has acquired fee ownership of certain real property located within the square mile south of East Main Street, north of East 1st Avenue, east of South Sirrine, and west of South Hibbert within the city limits of City, totaling approximately 9.67 acres (Assessor Parcel Numbers: 138-39-005, -002, -004, -003, -001, -006, -011B, -015, -012, -007, -022A, -020, -037, -010A, -008, -009A, -009B, -021, -035, -024, -034, -023, -031A, -018B, -028A, -029, and -030), as legally described in Exhibit A to this Agreement, referred to in this Agreement as the "**Property**".

B. Developer intends to develop the Property into a mixed-use development including commercial space, live-work, market rate residential apartments, and other public improvements consistent with the Approved Plans, including the Zoning and Zoning Clearance, (as each of those terms are defined in this Agreement), as generally described in this Agreement (the "**Project**"). City has reviewed the previous developments of Opus Development Company, L.L.C. (a member of Developer's limited liability company and an affiliated entity of Developer with primary control over development of the Project) and has determined that Developer could demonstrate proficiency in development projects, including those that integrate retail and residential experiences.

C. It is the desire and current intention of Developer to design and build the Improvements, to convey the Property and Improvements to City following Completion of Construction of the Improvements, to lease the Property and Private Improvements from City pursuant to A.R.S. §§ 42-6201 *et seq*., and thereafter to operate the Project in accordance with this Agreement and the Lease (as the foregoing terms are defined below).

D. The Property is located in City's Central Main Plan which was adopted by City Council in January 2012 ("**Central Main Plan**"). The Property is also located in the Town Center redevelopment area within City's single Central Business District which was initially adopted by City Council in 1999. City Council found that a substantial number of blight factors still existed within the Central Business District and on April 6, 2020, by resolution of the City Council, re-designated and renewed the Central Business District and Town Center redevelopment area. The Property has been unoccupied since 2014 when the automobile dealership occupying the Property closed. The abandoned buildings at the Property had to be demolished in 2017 to address problems with individuals squatting in the buildings, as well as issues with drug use and other crimes taking place on site. Following closure of the automobile dealership, the Property was purchased by a subsequent owner prior to the purchase by Developer; the subsequent owner tried to redevelop the Property multiple times without success. Despite these efforts, the Property has remained unused and has become an expansive, vacant, and deteriorating lot in downtown Mesa. In the reevaluation of the Central Business District, the blight assessment study conducted and presented to City Council found the Property to have at least two blight factors for each parcel: deterioration of site or other improvements and the existence of conditions that endanger life or property by fire and other causes. City acknowledges the redevelopment of this unique Property located near the center of downtown Mesa and two (2) light rail stations, and the development of the Project in conformity with this Agreement and the Approved Plans,

will reduce the blight in the Central Business District and further promote City's vision to redevelop and revitalize its downtown and the Town Center redevelopment area.

E. In addition to gains arising from the Project's promotion of the redevelopment and revitalization of downtown Mesa, the public will receive the benefit of the use of the Thoroughfare and Plaza constructed by Developer as set forth in Section 4.3(c) and Section 4.3(d) of this Agreement. As set forth more fully below, the Thoroughfare and Plaza will collectively consist of two (2) thoroughfares through the Project with motor vehicle access, restricted public parking, pedestrian pathways, a bicycle lane, art installations, raised landscape planners, lighting, and landscaping. Developer will give City an easement over the Thoroughfare and Plaza (see Section 4.7), at no cost to City, that will ensure the public benefits from the use of the space by providing in downtown Mesa pedestrian pathways and public gathering space.

F. As part of its development of the Project, Developer at its sole cost and expense will construct certain Public Improvements which it will dedicate to City, and Developer thereafter will Maintain the Developer Maintained ROW Public Improvements as set forth in this Agreement.

G. City believes the development of the Property will generate substantial monetary and non-monetary benefits for City, including, without limitation, by, among other things: (i) providing for planned and orderly development of the Property consistent with the General Plan, the Central Main Plan, the Zoning, and the Central Business District; (ii) increasing tax revenues to City arising from or relating to the improvements to be constructed on the Property; (iii) increasing utility revenues to City; (iv) creating new jobs and otherwise enhancing the economic welfare of the residents of City; (v) providing the new Thoroughfare, Plaza and Easement described in Recital E, Section 4.3(c), Section 4.3(d) and Section 4.7; (vi) providing a high-quality, new multi-residential area in City's downtown; (vii) providing a dynamic, new commercial development in City's downtown to benefit the City's residents; (viii) the collection of permit fees and transaction privilege tax in the construction of the Project; and (ix) otherwise advancing the goals of the Central Main Plan.

H. City also acknowledges its intention and ability to provide the City Undertakings described in this Agreement, subject to the terms and conditions of this Agreement.

I. As a condition of, and concurrent with, development of the Property, and subject to the other terms and conditions of this Agreement, Developer has agreed to advance or otherwise cause to be provided all funds required for, and otherwise to finance the construction and completion of, the Improvements, subject to and in accordance with the terms of this Agreement, and to complete all of the Developer Undertakings.

J. The Parties understand and acknowledge that this Agreement is a "Development Agreement" within the meaning of, and entered into pursuant to the terms of, A.R.S. § 9-500.05, and that the terms of this Agreement constitute covenants running with the Property as more fully described in this Agreement and subject to the conditions and limitations set forth in this Agreement.

K. The Parties also understand and acknowledge that this Agreement is authorized by and entered into in accordance with the terms of A.R.S. § 9-500.11. The actions taken by City pursuant to this Agreement are for economic development activities as that term is used in A.R.S. § 9-500.11, will assist in the creation and retention of jobs, and will in numerous other ways improve and enhance the economic welfare of the residents of City.

L. City is entering into this Agreement to implement and to facilitate development of the Property consistent with the policies of City reflected in the General Plan, its Central Main Plan and the Zoning.

M. Each Party acknowledges that the other Party is relying upon the rights and obligations created pursuant to this Agreement in connection with the development of the Property.

AGREEMENTS

Now, therefore, in consideration of the foregoing Recitals and representations and the mutual promises contained in this Agreement, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **DEFINITIONS**.

In this Agreement, unless a different meaning clearly appears from the context, the below words and phrases shall be construed as defined in this Section, including the use of such in the Recitals. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The use of the term "shall" in this Agreement means a mandatory act or obligation.

(a) "**Affiliate**", as applied to any Person, means any Person directly or indirectly controlling, controlled by, or under common control with, that Person or a blood relative or spouse of such Person, if such Person is a natural Person, or any member, manager, shareholder, officer, director, City Council member, official, or employee (in each case acting in an official capacity and not as a private party) of such Person. For the purposes of this definition, "**control**" (including with correlative meaning, the terms "controlling," "controlled by" and "under common control"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities, by contract or otherwise.

(b) "**Agreement**" means this Agreement, as amended and restated or supplemented in writing from time to time, and includes all recitals, exhibits and schedules hereto. References to Sections or Exhibits are to this Agreement unless otherwise qualified. The Recitals set forth in Paragraphs A through M, inclusive, are incorporated into this Agreement by reference and form a part of this Agreement.

(c) "**Annual Assessment**" means as defined in Section 4.15.

(d) "**Applicable Laws**" means the federal, state, county and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, and other official policies of City, as they may be amended from time to time.

(e) "**Approved Plans**" means as defined in Section 3.1(a).

(f) "**A.R.S.**" means Arizona Revised Statutes as now or hereafter enacted or amended.

(g) "**Building(s)**" means as defined in Section 4.3(a).

(h) "**Central Main Plan**" means as defined in Recital D.

(i) "**City**" means the City of Mesa, Arizona, as the Party designated as City on the first page of this Agreement.

(j) "**City Code**" means the Code of the City of Mesa, Arizona, as amended from time to time.

(k) **"City Council**" means the City Council of City.

(l) "**City Indemnified Parties**" means as defined in Section 6.1.

(m) "**City Manager**" means the Person designated by City as its City Manager or its designee.

(n) "**City Representative**" means as defined in Section 10.1.

(o) "**City Undertakings**" means as defined in Section 5.

(p) "**Claims**" means as defined in Section 6.1.

(q) "**Clubhouse**" means a centralized amenity building for residential tenants of the Project that will be constructed in accordance with the Approved Plans.

(r) "**Commencement of Construction**" or "**Commence Construction**" means both (i) the obtaining of permits by Developer that are required to begin the construction of vertical improvements on the Property, and (ii) the actual commencement of vertical construction operations or installation or relocation of utility infrastructure on the Property in a manner necessary to achieve Completion of Construction.

(s) "**Commercial Element**" means as defined in Section 4.3(a)(ii).

(t) "**Completion of Construction**" or "**Complete Construction**" means the date on which final certificates of occupancy have been issued by City for all of the Private Improvements (excluding the Phase II Development), excluding any commercial tenant improvement buildouts that will not be completed until tenant leases are signed, and means the date on which a letter of acceptance has been issued by City for all of the Public Improvements.

(u) "**Compliance Date**" means as defined in Section 4.8.

(v) "**Dedicated Property**" means as defined in Section 4.10.

(w) "**Default**" or "**Event of Default**" means one or more of the events described in Section 9.1 or Section 9.2; provided, however, that such events will not give rise to any remedy until effect has been given to all grace periods, cure periods and/or periods of Force Majeure provided for in this Agreement and that in any event the available remedies will be limited to those set forth in Section 9.

(x) "**Designated Lenders**" means as set forth in Section 11.22(d).

(y) "**Developer**" means the Party designated as Developer on the first page of this Agreement, and its successors and assigns that conform with the requirements of this Agreement.

(z) "**Developer Maintained ROW Public Improvements**" means as defined in Section 4.11(a).

(aa) "**Developer Representative**" means as defined in Section 10.1.

(bb) "**Developer Undertakings**" means as defined in Section 4.

(cc) "**District**" or "**Districts**" means as defined in Section 4.16.

(dd) "**Easement**" means the perpetual easement given by Developer to City over the Thoroughfare and Plaza, as described more fully in Section 4.7 and Exhibit J.

(ee) "**Effective Date**" means the date on which all of the following has occurred: this Agreement has been adopted and approved by the City Council, executed by duly authorized representatives of City and Developer, and recorded in the office of the Recorder of Maricopa County, Arizona.

(ff) "**Extended Compliance Date**" means as defined in Section 4.8.

(gg) "**Exterior Quality Standards**" means as defined in Section 4.3(e).

(hh) "**Fee**" means as defined in Section 3.2(b).

(ii) "**Force Majeure**" means as defined in Section 9.6.

(jj) "**General Plan**" means *This is My Mesa: Mesa 2040 General Plan*, as adopted by the City of Mesa, Arizona.

(kk) "**Hazardous Materials**" means any substance: (A) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, pollutant or contaminant under any governmental statute, code, ordinance, regulation, rule or order, and any amendment thereto, including (by way of illustration and not of limitation) the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq., as amended,; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as amended,; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., as amended,; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., as amended; the Clean Air Act, 42 U.S.C. § 7401 et seq., as amended; the Arizona Hazardous Waste Management Act, A.RS. § 49-921 et seq., as amended; the Arizona Environmental Quality Act, A.R.S. § 49-101 et seq., as amended, and any other laws, rules, regulations, acts and decisions that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water and land use, including sub-strata land (collectively, "**Hazardous Materials Laws**"); or (B) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including gasoline, diesel fuel, petroleum hydrocarbons, any other petroleum products or by-products, polychlorinated biphenyls, asbestos, lead, radon and urea formaldehyde form insulation; or (C) medical and biohazard wastes regulated by federal, state or local laws or authorities which includes any solid waste

which is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals.

(ll) "**Improvements**" means the Private Improvements and the Public Improvements, collectively.

(mm) "**Indemnify**" means as defined in Section 6.1.

(nn) "**Lease**" means the lease attached to this Agreement as Exhibit B.

(oo) "**Lender**" or "**Lenders**" means as defined in Section 11.22.

(pp) "**Maintenance**" or "**Maintain**" means (or refers to), collectively, maintenance (both routine and extraordinary), as well as repair and replacement, including all damage caused by normal wear and tear or intentional loss or damage from any source except to the extent of any damage caused directly by the other Party and its employees, agents, and contractors.

(qq) "**Maintenance Agreement**" means as defined in Section 4.11(a)(ii).

(rr) "**On-Site Amenities**" means as defined in Section 4.3(b)(i).

(ss) "**Party**" or "**Parties**" means as designated on the first page of this Agreement.

(tt) "**Permitted Mortgage**" means as defined in Section 5(x) of the Lease.

(uu) "**Person**" means any natural person, corporation, limited partnership, general partnership, joint stock company, joint venture, association, limited liability company, limited liability partnership, land trust, business trust, unincorporated organization, or government, or any agency or political subdivision thereof.

(vv) "**Phase II Development**" means as defined in Section 3.1(e). References to the Phase II Development are for descriptive purposes only and the Phase II Development does not derive any rights, benefits or obligations pursuant to this Agreement, except as it pertains specifically and exclusively to those set forth in Section 3.1(e)(ii).

(ww) "**Phasing Plan**" means as defined in Section 4.3(a)(iii).

(xx) "**Plaza**" means as defined in Section 4.3(d).

(yy) "**Private Improvements**" means as defined in Section 4.3 and does not include any improvements made pursuant to the Phase II Development.

(zz) "**Prohibited Uses**" means as defined in Section 4.12.

(aaa) "**Project**" means as defined in Recital B and, for the purposes of the rights and obligations conferred and created under this Agreement, does not include the Phase II Development except as it pertains specifically and exclusively to Section 3.1(e)(ii).

(bbb) "**Property**" means as defined in Recital A.

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

(ddd) "**Public Improvements**" means the improvements described in Exhibit I and defined in Section 4.6, and does not include any improvements made pursuant to the Phase II Development.

(eee) "**Residential Element**" means as defined in Section 4.3(a)(i).

(fff) "**SID 228**" means as defined in Section 4.15.

(ggg) "**Term**" means as defined in Section 2.3.

(hhh) "**Third Party**" means any Person other than a Party, an Affiliate of any Party, or any member, manager, shareholder, officer, director, City Council member, official, or employee (in each case acting in an official capacity and not as a private party) of a Party or of an Affiliate of any Party.

(iii) "**Thoroughfare**" means as defined in Section 4.3(c).

(jjj) "**Title Policy**" means as defined in Section 5.1.

(kkk) "**Transitional Residential Element**" means as defined in Section 4.3(a)(iii).

(lll) **"Transfer"** means as defined in Section 11.2.1.

(mmm) "**Unit Amenities**" means as defined in Section 4.3(b)(ii).

(nnn) **"Waiver"** means as defined in Section 11.26.

(ooo) "**Zoning**" or "**Zoning Ordinance**" means the Form-based Code within the Zoning Ordinance of City, as the same may be amended from time-to-time during the Term.

(ppp) "**Zoning Clearance**" means the review process, in Article 6 Form-Based Code of the Zoning Ordinance, that is used to determine if a project complies with the Form-Based Code and other requirements in the Zoning Ordinance, which includes the Zoning Clearance letter issued by City on November 5, 2020 in connection with Case No. ADM19-00975, as it may be amended, modified, or supplemented, and any additional Zoning related documents issued by City to Developer pursuant to the Zoning Clearance with respect to the Project.

2. **PARTIES AND PURPOSE OF THIS AGREEMENT.**

2.1 Parties to the Agreement. The Parties to this Agreement are City and Developer.

(a) City. City is the City of Mesa, Arizona, a municipal corporation and a political subdivision of the State of Arizona, duly organized and validly existing under the laws of the State of Arizona, exercising its governmental functions and powers.

(b) Developer. Developer is a Delaware limited liability company, duly authorized to transact business in the State of Arizona.

2.2 Purpose. Among the purposes of this Agreement are: provide for the development of the Property in accordance with the Approved Plans and this Agreement; provide for the Private and Public Improvements to be designed and constructed by Developer or at Developer's direction; and acknowledge the Developer Undertakings and City Undertakings.

2.3 Term Survival of Certain Obligations. The term of this Agreement ("**Term**") is that period of time, commencing on the Effective Date, and terminating on the date on which the Parties have performed all of their obligations under this Agreement, City has reconveyed the Property and Private Improvements to the tenant named in the Lease and the Lease has expired in accordance with its terms (unless terminated earlier pursuant to the terms of this Agreement or the Lease). Notwithstanding the foregoing, the following obligations will survive the termination of this Agreement: (a) all obligations of Developer to Indemnify the City Indemnified Parties in this Agreement will survive in accordance with the terms of this Agreement; (b) Developer's obligations of Maintenance set forth in Section 4.11 will survive until such time as the Parties enter into the Maintenance Agreement set forth in Section 4.11(a)(ii); and (c) the restrictions and prohibitions on use of the Property set forth in Section 4.12 will survive in accordance with the terms of this Agreement.

3. **SCOPE AND REGULATION OF DEVELOPMENT**.

3.1 Development Plans; Vested Zoning; Protected Development Rights.

(a) Approved Plans. Development of the Project will be in accordance with one or more plans (individually or, collectively, "**Approved Plans**," as the same may be amended from time-to-time in accordance with Applicable Laws) prepared and submitted by Developer to City for approval, and which must (i) comply with the General Plan, the Central Main Plan, Zoning, and Zoning Clearance requirements, and (ii) set forth the basic land uses and all other matters relevant to the development of the Project in accordance with this Agreement. The Approved Plans under this Agreement specifically exclude the Phase II Development. City's acceptance of the Public Improvements pursuant to Section 4.10(b) and City's issuance of final certificates of occupancy or other final approvals for the Private Improvements shall, solely for the purpose of satisfying Section 5.1(i) related to the conditions precedent for City entering into the Lease, be deemed City's confirmation that Developer has Completed Construction of the Improvements in accordance with the Approved Plans.

(b) Approval Process. The City agrees that approvals, inspections and permits will be processed in accordance with the customized review schedule for the Project attached to this Agreement as Exhibit P. The City shall designate a City staff member as the single point of contact for the facilitation of all development approvals requested in connection with the development of the Project. The

City agrees to process the submittal, review and approval of (i) the Approved Plans, and (ii) the Project's design elements, including without limitation building materials, colors, architectural plans, landscaping, enhanced paving plans, irrigation, lighting, pedestrian linkages, signage and the architectural and thematic character of the Project, in accordance with the customized review schedule described on Exhibit P attached, at City's standard plan review Fees. The City will grant to Developer (i) outdoor dining and patio encroachment permits if such encroachments are consistent with and in compliance with City's Downtown Outdoor Dining Policy in effect as of the Effective Date, and (ii) encroachment permits and public easements for overhangs and balconies, as more particularly depicted in the encroachment plan detail attached as Exhibit Q. The Parties will cooperate reasonably in processing the plans for the approval or issuance of any permits, specifications, temporary certificates of occupancy, final certificates of occupancy, plats, site plans, or other development approvals requested by Developer in connection with development of the Project.

(c) Cooperation in the Implementation of the Approved Plan. Developer and City will work together using commercially reasonable efforts throughout the pre-development and development stages to resolve any conflicts between City and Developer regarding implementation of the Approved Plans.

(d) Protected Development Rights. If within three (3) years of the Effective Date, (1) City approves Developer's construction plans, and (2) City approves Developer's affidavit of change to the final plat for the Project and records the affidavit in the Maricopa County Recorder's Office, then Developer shall have the right to undertake and complete the development of the Project (expressly excluding the Phase II Development) in compliance with the Approved Plans (and any terms and conditions associated with the Approved Plans), and in accordance with Applicable Laws, including A.R.S. § 9-1201 *et seq*. The protected development rights in this Section 3.1(d) apply only to the specific components of the Project identified on the Approved Plans (expressly excluding the Phase II Development) and are valid from the date of recording of the affidavit of change referenced in this Section 3.1(d) through the Completion of Construction. A protected development right does not extend the timeframe for utilization of City permits (*e.g.*, building permits) or other City approvals. If a City permit or approval expires, Developer will have to resubmit its application and such application will be reviewed by City in accordance with City's regular and customary procedures as set forth in the Applicable Laws. Notwithstanding the foregoing, nothing in this Section 3.1(d) extends or modifies any of the Compliance Dates set forth in Section 4.8.

(e) Phase II Development. City acknowledges that Developer has designed the Project to allow for the future development of additional building(s) that could potentially be located along South Hibbert Road north of the Thoroughfare and/or along South Sirrine Road north of the Thoroughfare, as generally shown on Exhibit R ("**Phase II Development**"). Developer acknowledges that City's Zoning Clearance approval was predicated upon the potential for a future Phase II Development, and Developer agrees to monitor market conditions to determine the feasibility of any potential Phase II Development. At such time as market conditions warrant, as determined in Developer's sole discretion, and if Developer elects to proceed with the design and construction of the Phase II Development, Developer will submit plans to City for Developer's proposed Phase II Development, pay all applicable Fees, and seek approval in accordance with City's then current standard practices and procedures.

(i) Election Not to Proceed with Phase II Development. City acknowledges that (i) Developer is not guaranteeing construction of the Phase II Development, and (ii) the determination to proceed forward with design and construction plans for the Phase II Development will be

made by Developer in its sole discretion. Developer's election not to proceed with the Phase II Development will not be a default under this Agreement and will not affect in any way the other rights and obligations of Developer and City under this Agreement.

(ii) Phase II Development Agreement and Lease. The Parties acknowledge that any references to the "Phase II Development" in this Agreement are for descriptive purposes only and no rights, benefits or obligations are conferred upon a Phase II Development (if any) under this Agreement or the Lease except as follows: in the event that Developer notifies City that it intends to Commence Construction of the Phase II Development within five (5) years after the Completion of Construction of the Improvements, City agrees that it will enter into good faith negotiations with Developer for a potential development agreement, including a customized review schedule similar to Exhibit P, and government property improvements lease, for the Phase II Development to be approved by City and Developer within such five (5) year period, separate and apart from this Agreement and the Lease, pursuant to and in compliance with Applicable Laws, including A.R.S. Title 42, Chapter 6, Article 5. The purpose of this Section 3.1(e)(ii) is solely and exclusively to memorialize the Parties' intention that if the foregoing requirement is met, and further subject to the approval in its sole discretion of the City Council then constituted, the Parties will enter into negotiations related to a potential development agreement and government property improvements lease for the Phase II Development. Nothing in this Section 3.1(e)(ii) is intended to (a) bind or guarantee that Developer will construct the Phase II Development, (b) bind or guarantee that Developer or City will enter into a development agreement or government property improvements lease for all or any portion of the Phase II Development, or (c) bind or guarantee any decisions or approvals of City, including approval by City Council, related to the Phase II Development.

3.2 Development Regulation.

(a) Applicable Laws. Developer shall comply with the Applicable Laws which apply to the development of the Project as of the date of any application or submission.

(b) Permit and Other Fees. All building permit, inspection, development and other similar fees for the development of the Project in effect at the time of application or submission (each, a "**Fee**") will be charged to Developer at the time of any application or submission.

4. **DEVELOPER UNDERTAKINGS**. In consideration of the timely performance by City of City Undertakings, Developer will perform the obligations contained in this Section 4 (the "**Developer Undertakings**") as follows:

4.1 Demolition of Existing Improvements. Developer, at Developer's sole cost and expense, and in compliance with all Applicable Laws, will demolish and remove all existing improvements and other materials on the Property that are required to be demolished and removed in compliance with the Approved Plans and the construction of the Project.

4.2 Environmental Remediation; Environmental Compliance. Developer, at Developer's sole cost and expense, and in compliance with all Applicable Laws, will undertake and complete the remediation of all Hazardous Materials from the Project if and to the extent required in accordance with applicable Hazardous Materials Laws (including removal of such Hazardous Materials if required under applicable Hazardous Materials Laws). Developer's remediation of Hazardous Materials and construction (and subsequent use and occupancy) of the Project will comply with all Hazardous Materials Laws.

4.3 Minimum Private Improvements. Developer intends for the Project to be a mixed-use development consisting of commercial space, live-work, market rate residential apartments, and other public improvements consistent with the Zoning and Zoning Clearance. As a part of the Project and an element of the consideration for City entering into this Agreement and performing the City Undertakings, in compliance with this Agreement and all Applicable Laws, Developer will construct at its sole cost and expense during the Term, the minimum improvements ("**Private Improvements**") set forth in this Section 4.3 on or above the Property in compliance with this Agreement and the final Approved Plans:

(a) Buildings. Developer will construct five (5) buildings (the "**Building(s)**") on the Project that will consist of one (1) Building of a minimum one (1) story that will serve as the Clubhouse, two (2) Buildings of a minimum height of four (4) stories each, and two (2) Buildings of a minimum height of two (2) stories each, collectively totaling approximately 411,700 square feet with the following residential and commercial elements:

(i) Residential Element. Approximately three hundred thirty-four (334) market-rate residential units with approximately one hundred five (105) two-bedroom residential units ("**Residential Element**"), including the Transitional Residential Element. The Parties acknowledge that the actual number of residential units may need to fluctuate in order to accommodate residential units with more bedrooms or residential units with greater square footage. Developer is permitted to fluctuate from the intended number of residential units, provided, however, that Developer shall build within the Project, a minimum of three hundred one (301) market-rate residential units (less the number of residential units reasonably attributable to any portion of the Transitional Residential Element built out for retail, restaurant, or other commercial uses), of which a minimum of ninety-four (94) units shall be two-bedroom residential units, and the square footage of the residential portion of the Project shall not be less than what is shown on the Approved Plans, excluding the Transitional Residential Element. The Residential Element will be leased at market rate rents.

(ii) Commercial Element. A minimum of approximately thirteen thousand (13,000) rentable square feet of commercial premises (the "**Commercial Element**"). The Commercial Element is anticipated to be occupied by restaurant/food uses, general retail, service retail, and/or other active commercial or public uses that are permitted by Zoning and are not a Prohibited Use.

(iii) Transitional Residential Element. A maximum of twelve thousand (12,000) rentable ground floor square feet within the Buildings with Main Street frontage that would be required for active commercial use, such as retail or restaurant, may be used for market-rate residential living space (the "**Transitional Residential Element**") as depicted on the Approved Plans. In order for Developer to utilize the Transitional Residential Element as market-rate residential living space, the Transitional Residential Element shall comply with Mesa City Code Title 11, Chapter 58, Section 11-58-10(G), Allowed Uses, in addition to the following requirements: (a) the Transitional Residential Element shall be designed and constructed to an Assembly Occupancy Class (as that term is defined in the Mesa Building Code); (b) the Project shall be designed to encourage active, commercial uses as evidenced by compliance with the Form-Based Code Building Form and Private Frontage Standards for commercial uses; (c) the Buildings' design, site design, and amenities of the Project shall be designed to comply with the Form-Based Code; (d) the Transitional Residential Element shall be actively marketed by Developer for retail, restaurant, and, as permitted by Zoning and that are not a Prohibited Use, other allowed commercial or public uses throughout construction of the Project in a manner to ensure commercially reasonable efforts to occupy those areas of the Building with non-residential uses; (e) except for restaurant or retail tenants, no portion of the Transitional Residential Element will be built out for market-rate residential living space

until the final phase of construction of the Residential Element, with each phase of the Project being built in accordance with Exhibit S ("**Phasing Plan**"); and (f) any portion of the Transitional Residential Element used for market-rate residential living space will be continually marketed by Developer for conversion to retail and restaurant uses as soon as market conditions support absorption of additional retail and restaurant uses, provided that nothing in this Agreement shall prohibit or limit Developer from concurrently marketing the Transitional Residential Element for residential uses. Any use of the Transitional Residential Element as market-rate residential living space shall be used to meet the minimum requirements for the Residential Element square footage and number of units set forth in Section 4.3(a)(i). The Phasing Plan may be modified or adjusted, *e.g.*, phase size, phase combinations, and phase order, from time-to-time by Developer in its sole discretion, except that the final phase described in the Phasing Plan shall not change in the phase order and the Transitional Residential Element shall be constructed in the final phase of construction in accordance with this Section 4.3(a)(iii).

(b) Amenities and Quality Standards. Developer will cause to be constructed the certain amenities set forth below in this Section 4.3(b).

(i) On-Site Amenities. Developer will construct the on-site amenities included in Exhibit D, and as shown on and in compliance with the Approved Plans ("**On-Site Amenities**") for use by residents of the Project. The Parties agree and acknowledge that the City Manager will have the authority, without need for City Council approval, to make minor adjustments to Exhibit D that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement. In the event of any conflict between Exhibit D and the Approved Plans, the Approved Plans will govern and control.

(ii) Unit Amenities. Developer will construct the unit amenities set forth and described on Exhibit E ("**Unit Amenities**"). The Parties agree and acknowledge that the City Manager will have the authority, without need for City Council approval, to make minor adjustments to Exhibit E that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement.

(c) Thoroughfare. Developer will construct on the area identified and depicted in Exhibit F a central thoroughfare area facilitating motor vehicle and pedestrian access through the Property, which will include two (2) thoroughfares through the Project with motor vehicle access and restricted public parking, sidewalks, bike lanes, lighting, and landscaping, as shown on, and in compliance with, the Approved Plans (collectively, the "**Thoroughfare**"). The total area of the Thoroughfare will be a minimum of approximately 74,000 square feet. The Parties agree and acknowledge that City Manager will have the authority, without need for City Council approval, to make minor adjustments to Exhibit F and the square footage of the Thoroughfare that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement. Developer must provide City with an Easement over the Thoroughfare for public access to the area as set forth in Section 4.7 below.

(d) Plaza. Developer will construct on the area identified and depicted in Exhibit F a central open space consisting of outdoor space available for use by the public, including a shade structure, raised planters, seating areas, mixed paving type, art sculpture(s), and landscaping, as shown on, and in compliance with, the Approved Plans ("**Plaza**"). The total area of the Plaza will be a minimum of approximately 3,300 square feet. The Parties agree and acknowledge that City Manager will have the authority, without need for City Council approval, to make minor adjustments to Exhibit F and the square footage of the Plaza that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement. Developer must provide City with an Easement over the Plaza for public access to the area as set forth in Section 4.7 below.

(e) Exterior Quality Standards. In the construction of the Private Improvements, Developer will comply in all material respects with those exterior quality standards described on Exhibit G ("**Exterior Quality Standards**"). The Parties agree and acknowledge that City Manager will have the authority, without need for City Council approval, to make minor adjustments to Exhibit G that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement.

4.4 Administrative Adjustments to Public Improvements and Private Improvements. Notwithstanding the foregoing in Section 4.3, the City Manager has the authority (without further act or approval required by the City Council) to make administrative adjustments in accordance with Applicable Law in the amounts and areas described in Section 4.3 in order to accommodate reasonable changes necessitated by design and construction matters discovered or determined subsequent to the Effective Date.

4.5 Program Compliance. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will comply in all material respects with those programs and policies set forth and described on Exhibit H. The Parties agree and acknowledge that City Manager will have the right and ability, without need for City Council approval, to make minor adjustments to Exhibit H that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement.

4.6 Public Improvements. Developer represents to City that it will be constructing the public improvements in Exhibit I ("**Public Improvements**"). Developer will construct that portion of the Public Improvements associated with each construction phase of the Phasing Plan, as it may be modified pursuant to Section 4.3(a)(iii). With respect to each phase, Developer shall (i) at Developer's sole cost and expense, (ii) in compliance with all Applicable Laws, and (iii) prior to the issuance of a certificate of occupancy for any improvement constructed on the Property for that phase of construction, construct all Public Improvements associated with such construction phase in accordance with the Approved Plans. All Public Improvements must be complete prior to issuance of the final certificate of occupancy for the Project. In the event of any conflict between Exhibit I and the Approved Plans, the Approved Plans will govern and control.

4.7 Easement. As a condition to the City and Developer entering into the Lease, Developer shall grant to City a perpetual easement over the Thoroughfare and Plaza ("**Easement**"), free and clear of all liens, claims and encumbrances for financing (or with a consent from any such financing lienholder subordinating its lien to the Easement, such consent to be in in the form attached to the Easement or other form reasonably approved by City), that will specifically, at a minimum, allow the public access to use the Thoroughfare and Plaza for motor vehicle and pedestrian access, including time restricted public parking and access to open space, at no cost to the public or City; the form of the Easement is attached as Exhibit J. When construction of the Thoroughfare and Plaza is completed, Developer will cause a licensed surveyor or engineer to prepare a legal description of the Thoroughfare and Plaza and depictions of the Thoroughfare and Plaza, to be attached as exhibits to the Easement. In the event of a conflict or ambiguity between this Section 4.7 and the Easement, the Easement will prevail.

4.8 Compliance Dates. Developer will perform or complete each of the following on or before the date set forth below for the applicable act (each, a "**Compliance Date**"):

(a) On or before January 1, 2022, Developer will have Commenced Construction of the Improvements, subject to extension for Force Majeure.

(b) On or before December 31, 2024, Developer will have Completed Construction of all of the Improvements, subject to extension for Force Majeure.

The City Manager, in the City Manager's sole and absolute discretion, may extend any of the foregoing dates in this Section 4.8 for a period of time not to exceed forty-five (45) days per extension, with a maximum of three (3) extensions per event (each, an "**Extended Compliance Date**"). In the event of any extension by the City Manager, each subsequent Compliance Date will automatically be adjusted in conformity.

4.9 City Services. During the Term, Developer will use, and City agrees to provide to the Project in accordance with City's standard terms and conditions for the provision of such City services, the following City of Mesa services as permitted by Applicable Law: City's water, sewer, electric, solid waste, and natural gas, if applicable. As a condition to City providing any such City services, Developer may be required to enter into a separate utility agreement with City. The Project's use and payment of City Services will result in additional revenues to City. Developer may participate in any applicable City renewable energy, solar incentive or rebate or reimbursement program to the extent then in effect and subject to availability. All utility services to the Property shall be subject to the City's Terms and Conditions for the Sale of Utilities, the City Code, and all other Applicable Laws. Utility service will also be provided subject to payment of the then applicable rates, fees and charges. Developer acknowledges and agrees that the increase in City utility usage at the Property is a benefit to City and an element of the consideration for City entering into this Agreement.

4.10 Dedication of Public Improvements. In accordance with this Agreement and City policy, upon completion of any portion or segment of the Public Improvements, Developer will dedicate and grant to City without the payment of any additional consideration by City, and City will accept for continuous Maintenance the City Maintained Public Improvements subject to the provisions in Section 4.11 below, the Public Improvements and any real property or real property interests owned or retained by Developer which (i) constitute a part of the Property; (ii) are reasonably necessary for right-of-way purposes or otherwise required for the construction, maintenance, or operation of the Public Improvements on or within the Property; and (iii) do not materially interfere with the development of the Buildings as planned (collectively, including the Public Improvements, the "**Dedicated Property**"). Developer will make such dedications (a) upon such additional terms and conditions reasonably required by City in connection with dedications of similar public improvements and real property interests, and stipulated at the time that City approves the Approved Plans, (b) using City's standard forms with such changes requested by Developer as may be approved by City at its sole discretion, (c) without the payment of any additional consideration by City, and (d) free and clear of all monetary liens, except current taxes and assessments and improvement district liens.

(a) With respect to such dedicated Public Improvements, Developer will demonstrate to City's reasonable satisfaction that all contractors and suppliers of materials have been paid for their work and will provide a two (2) year warranty (which may, in Developer's sole and absolute discretion, be by assignment of a contractor's warranty) of materials and workmanship.

(b) Developer will dedicate all Public Improvements and Dedicated Property to City before City is obligated to issue the last certificate of occupancy for the Project. Upon acceptance by City (which acceptance shall not be unreasonably conditioned, but may include, among other reasonable conditions, a warranty as set forth in Section 4.10(a), the Public Improvements will become public facilities and property of City, and City will be solely responsible for all subsequent Maintenance of the Public

Improvements, except as otherwise set forth in Section 4.11 below. Developer will bear all risk of, and will Indemnify the City Indemnified Parties for, from and against, any and all Claims arising prior to City's acceptance of the Public Improvements, arising from the condition, loss, damage to, or failure of any of the Public Improvements, except to the extent such Claims are caused solely and directly by the negligence or willful acts or omissions of the City Indemnified Parties.

Promptly after City receives a formal written notice of claim against City that may be subject to Developer's obligations to Indemnify the City Indemnified Parties under this Agreement, City will deliver written notice thereof to Developer, and City will tender sole control of the indemnified portion of the Claim to Developer, but City shall have the right to approve counsel, which approval shall not be unreasonably withheld or delayed. If and to the extent that City's failure to deliver written notice to Developer within a reasonable time after City receives notice of any such Claim is materially prejudicial to Developer's ability to defend such action, Developer shall be relieved of any liability to City or increased damages to the City under this indemnity to the extent caused by City's failure to timely deliver written notice of the Claim. Upon Developer's acceptance of a tender from City without a reservation of right, City may not settle, compromise, stipulate to a judgment, or otherwise take any action that would adversely affect Developer's right to defend the Claim.

4.11 Maintenance Obligations of Public Improvements.

(a) Developer Obligation.

(i) Developer Maintained ROW Public Improvements. Developer, at its sole cost and expense, will be responsible in perpetuity for the Maintenance of the following Public Improvements (including but not limited to any components of such Public Improvements) that are within any City right-of-way (ROW) or easements abutting the Property that are reasonably deemed by the City Engineer to be non-standard at the time that City approves the Approved Plans, as more fully described and depicted in Exhibit K ("**Developer Maintained ROW Public Improvements**"): landscaping, landscape irrigation, and landscape lighting. This obligation of Maintenance by Developer set forth in this Section 4.11(a)(i) survives the termination of this Agreement pursuant to Section 2.3.

(ii) Maintenance Agreement. The Parties may enter into a separate Maintenance agreement outlining the terms for the perpetual Maintenance of the Developer Maintained ROW Public Improvements ("**Maintenance Agreement**") that will be recorded in the office of the Recorder of Maricopa County, Arizona. Upon the execution of the Maintenance Agreement by the Parties, the terms and conditions of this Agreement related to the Maintenance of the Developer Maintained ROW Public Improvements will be deemed by the Parties as no longer of any force or effect and the terms of the Maintenance Agreement shall control the Maintenance requirements of the Developer Maintained ROW Public Improvements.

(b) City Obligation. City, at its sole cost and expense, will be responsible for the Maintenance of the following Public Improvements (including but not limited to any components of such Public Improvements) that are within any City right-of-way or easements abutting the Property ("**City Maintained Public Improvements**"): paving, striping, directional signage, traffic signals, sidewalks, curbs, underground utilities, and stormwater drains and pipes, and any other Public Improvements that are not Developer Maintained ROW Public Improvements as defined in Section 4.11(a) above.

(c) Maintenance Standard. All Maintenance of the Public Improvements

must, at a minimum: (1) comply with the requirements of Applicable Laws then in effect for work done in, on or about a right of way, including all applicable procedures regarding safety and minimizing any inconvenience to the public; (2) be performed in a first-class, sound, clean, safe and attractive manner that at all times maintains the safety of the public; and (3) be performed within a commercially reasonable period of time.

(d) Failure of Developer to Maintain. In the event that Developer fails to provide Maintenance for the Developer Maintained ROW Public Improvements (or any component of such Developer Maintained ROW Public Improvements), after written notice from City to Developer and a reasonable period of time to remedy such failure, City may (but is not obligated to) provide Maintenance for such Developer Maintained Public Improvements (or component of such Developer Maintained ROW Public Improvements) at Developer's expense, in which event Developer, promptly upon receipt of an invoice from City for City's costs and expenses, will pay and reimburse City for all such costs of Maintenance incurred by City.

(e) City Maintenance Authority. In addition to the authority of City to provide Maintenance of the Developer Maintained ROW Public Improvements set forth in Section 4.11(d) above, City reserves its existing authority as the local government owner of the right of way in which the Developer Maintained ROW Public Improvements are located, to undertake any Maintenance of the Public Improvements including, without limitation, that which: (1) are required, in the reasonable opinion of the City Manager or his/her designee, to address an emergency or threat to public safety; (2) are otherwise appropriate under applicable City standards; or (3) City has the right to maintain tree canopies that negatively impact street lighting.

(f) Non-Waiver; Runs with the Land. The performance of any Maintenance of the Developer Maintained ROW Public Improvements by City pursuant to Section 4.11 shall not be deemed a waiver of any of the obligations of Developer in this Agreement. Developer's obligations of Maintenance and reimbursement set forth in this Section 4.11 runs with the land and will survive the expiration or earlier termination of this Agreement until such time as the Parties enter into the Maintenance Agreement.

4.12 Prohibited Uses. Notwithstanding anything in Applicable Laws (including but not limited to the Zoning and Zoning Clearance), the uses described on Exhibit L will at all times be prohibited on the Property (the "**Prohibited Uses**"), except if this Agreement is terminated pursuant to Section 11.3 or Section 11.13.

4.13 Economic Analysis Costs. In order to ensure compliance with A.R.S. § 42-6201 *et seq.*, City obtained a professional analysis of the economic impact of the proposed development of the Project. Prior to the effective date of the Lease, Developer shall reimburse City $3,100.00, which was the cost to obtain that analysis.

4.14 Repairs, Operation and Maintenance of Private Improvements. Developer is solely responsible, at its sole cost and expense, for all operation and Maintenance, of the Private Improvements during the term of this Agreement, in accordance with Applicable Laws. Nothing contained in this Agreement shall require Developer to restore or repair the Private Improvements after Completion of Construction of the Private Improvements due to casualty, condemnation, or otherwise; provided, however, during the term of the Lease, Developer maintains all responsibilities for maintenance, operation, repair, and replacement of the Private Improvements required under the Lease.

4.15 Annual Assessment to Mesa Town Center Improvement District. Developer acknowledges the Property is located within the Mesa Town Center Improvement District, specifically within Special Improvement District 228 ("**SID 228**"). Property located within SID 228 are assessed an annual fee in order for City or its designee to provide a greater degree of management and public services and such annual fee may be amended from time to time ("**Annual Assessment**"); City currently contracts with the Downtown Mesa Association to provide such services to SID 228. As long as the Developer is the fee owner of the Property and the Annual Assessment is generally payable by the property owners within SID 228, Developer agrees to annually pay the Annual Assessment to City or City's designee within thirty (30) days of Developer's receipt of an invoice from City or City's designee; provided further, during the term of the Lease, Developer agrees to make an annual, lump-sum in-lieu payment in the amount that would have been assessed by SID 228 for such year and paid by Developer if Developer were the fee owner of the Property and Private Improvements during such year as further set forth in the Lease. In the years in which the Lease begins and ends, the Annual Assessment and the in-lieu payment will be prorated as needed so that Developer is not duplicating payment.

4.16 Payments In-Lieu to Districts. As set forth more fully in the Lease, and as permitted by this Agreement and Applicable Law, the Parties intend to abate the government property lease excise taxes for the Property under A.R.S. Title 42, Chapter 6, Article 5. In order to help mitigate any reduced tax revenue for the Mesa Public School District, Maricopa Community College District, and the East Valley Institute of Technology District (individually, a "**District**" or collectively, the "**Districts**"), Developer agrees that it shall make a one-time, lump sum payment directly to each District in an amount based on the taxes assessed against the Property as of the Effective Date of this Agreement, which the Districts would have otherwise received had the tax not been abated. The parties acknowledge and agree that the amount payable to the Mesa Public School District shall be $170,806.00; the amount payable to the Maricopa Community College District shall be $29,854.00; and the amount payable to the East Valley Institute of Technology District shall be $1,159.00. The in-lieu payments must be paid prior to, or concurrently with, Developer's and City's execution of the Lease, shall be non-refundable, and shall not be off-set against any payments owed to City or that Developer may otherwise owe to the Districts. Upon the written request of City, Developer will provide evidence of the payment to City. As set forth more fully in the Lease, the failure to make the in-lieu payment to any of the Districts as required under this Section 4.16 shall be grounds for City to terminate the Lease (after any applicable notice and the expiration of any cure period). The termination of the Lease at any time prior to the expiration of the Rental Period (as defined in the Lease) will not entitle Developer to a refund of any portion of any in-lieu payment to a District.

4.17 Further Assurances. Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

5. **CITY UNDERTAKINGS**. In consideration of the timely performance by Developer of the Developer Undertakings, City will perform the obligations contained in this Section 5 ("**City Undertakings**") as follows:

5.1 Lease and Conditions Precedent to Entering into Lease. If (i) Developer Completes Construction of all Improvements by the required Compliance Date in Section 4.8 and no act or omission by Developer has occurred and is continuing that with the giving of notice and/or passage of time would constitute a Default by Developer, (ii) Developer is not in Default under Section 9.1, (iii) the fee title interest in the Property and Improvements are (or will be as of the effective date of the Lease) free and clear of all

financial liens, except current taxes and assessments, (iv) Developer obtains an ALTA standard coverage title insurance policy ("**Title Policy**") for the benefit of City in the amount of $1,000,000.00 (the premium for which will have been paid by Developer), insuring fee title to the Property and Private Improvements is vested in the City, free and clear of all financial liens on the fee estate and, as to other conditions of title, the City will maintain commercially reasonable discretion to accept title, except current, non-delinquent taxes and assessments, (v) Developer has made the required in-lieu payments to the Districts pursuant to Section 4.16, and (vi) Developer has signed and delivered to the City in the agreed-upon form the Easement as set forth in Section 4.7 above, then upon the written request of Developer at any time when all of the conditions set forth above have been satisfied, City will accept conveyance of the Property to City by form of special warranty deed in the form attached as Exhibit M, with Developer paying all escrow and closing costs for such transfer of the Property, and City will lease the Property to Developer by means of the Lease attached as Exhibit B. Notwithstanding the foregoing, City will not enter into the Lease, and shall have no obligation to accept the conveyance of the Property from Developer, if (a) Developer has not Completed Construction of the Improvements in compliance with Section 4.8; (b) Developer is in Default under Section 9.1 following the applicable notice and cure periods under Section 9.3; (c) ad valorem taxes and similar assessments with respect to the Property and Private Improvements are delinquent; or (d) the fee interest in the Property and Private Improvements are burdened by any financial liens or encumbrances (including mechanics' or materialmen's liens), except current taxes and assessments; provided, however, that this Section 5.1 does not restrict the right of Developer to encumber its leasehold interest in accordance with the terms of the Lease, and provided further that if Developer, as tenant, diligently seeks to challenge any mechanics' or materialmen's liens, Developer may discharge such liens of record by bond, deposit or order of a court of competent jurisdiction or alternately cause them to be insured over by title insurance endorsement reasonably satisfactory to City as the landlord. City understands and acknowledges that Developer may obtain a loan from a Lender for the acquisition, development, and construction of the Property and Private Improvements that will be secured by a financial lien on Developer's fee interest in the Property and Private Improvements, and concurrently with the conveyance of the Property and Private Improvements to the City the financial lien will automatically (or by deed of release and reconveyance) be released as a lien and encumbrance against the Developer's fee interest in the Property and Private Improvements.

5.2 Development Impact Fee Credit. City, in accordance with Mesa City Code Section 5-17-5(C)(5), will, at Developer's written request, calculate the value of existing development impact fee credits for the previously developed parcel with a valid certificate of occupancy, as applicable. City, in accordance with Mesa City Code Section 5-17-5(C)(5), will at Developer's written request apply available impact fee credit to the parcel's assessed impact fees prior to issuance of construction permits.

5.3 Acceptance of Public Improvements. City will accept title to the Public Improvements in accordance with Section 4.10.

5.4 Municipal Services. City, in accordance with its standard terms and conditions for the provision of utilities, will provide the Project the following municipal services: water, sewer, solid waste, electric, and natural gas, if applicable. Developer may be required to enter into a normal and customary utility agreement with City. Developer may participate in any applicable City renewable energy, solar incentive or rebate or reimbursement program to the extent then in effect and subject to availability. All utility services to the Property shall be subject to the City's Terms and Conditions for the Sale of Utilities, the City Code, and all other Applicable Laws. Utility service will also be provided subject to payment by Developer of the then applicable rates, fees and charges.

5.5 Customized Review Standards. The City agrees to process the submittal, review and approval of (i) the Developer's construction plans, and (ii) the Project's design elements, including without limitation building materials, colors, architectural plans, landscaping, enhanced paving plans, irrigation, lighting, pedestrian linkages, signage and the architectural and thematic character of the Project, in accordance with its customized review standards described on Exhibit P attached hereto, at City's standard plan review Fees. The Parties will cooperate reasonably in processing the approval or issuance of any permits, plans, specifications, temporary certificates of occupancy, plats or other development approvals requested by Developer in connection with development of the Project.

5.6 Further Assurances. City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

6. INDEMNITY; RISK OF LOSS.

6.1 Indemnity of City Indemnified Parties by Developer. Developer will pay, defend, indemnify and hold harmless (collectively, "**Indemnify**") City and its City Council members, officers, officials, agents, and employees (collectively, including City, "**City Indemnified Parties**") for, from and against any and all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and court costs associated with all such matters) which may be imposed upon, incurred by or asserted against City Indemnified Parties by Third Parties ("**Claims**") which arise from or relate in any way, whether in whole or in part, to: (i) any act or omission by Developer, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Developer's obligations under this Agreement, including the development and construction of the Project or Maintenance of the Private Improvements or Public Improvements; or (ii) the use of the Easement property by the public as described and depicted in the Easement (Exhibit J). The obligation of Developer to Indemnify shall extend to and encompass all costs incurred by City Indemnified Parties in defending against the Claims including, but not limited to, attorney, witness and expert fees, and any other litigation-related expenses. The provisions of this Section 6.1, however, will not apply to Claims to the extent such Claims are caused by the acts or omissions of City Indemnified Parties. The obligations of Developer under this Section 6.1 shall survive the expiration of this Agreement.

Promptly after City receives a formal written notice of claim against City that may be subject to Developer's obligations to Indemnify the City Indemnified Parties under this Agreement, City will deliver written notice thereof to Developer, and City will tender sole control of the indemnified portion of the Claim to Developer, but City shall have the right to approve counsel, which approval shall not be unreasonably withheld or delayed. If and to the extent that City's failure to deliver written notice to Developer within a reasonable time after City receives notice of any such Claim is materially prejudicial to Developer's ability to defend such action, Developer shall be relieved of any liability to the City under this indemnity to the extent caused by City's failure to timely deliver written notice of the Claim. Upon Developer's acceptance of a tender from City without a reservation of right, City may not settle, compromise, stipulate to a judgment, or otherwise take any action that would adversely affect Developer's right to defend the Claim.

6.2 Risk of Loss. Developer assumes the risk of any and all loss, damage or Claims to the Private Improvements and to any portion of the Public Improvements unless and until title to the Public Improvements is transferred to City, at which time the City is deemed to have assumed the risk of loss of any and all loss, damage, or Claims to any portion of the Public Improvements, subject to Developer's

obligations to Indemnify the City Indemnified Parties as provided in Section 6.1 of this Agreement. At the time title to the Public Improvements is transferred to City by dedication deed, plat recordation, or otherwise, Developer will, to the extent allowed by law, assign, on a non-exclusive basis, to City any unexpired warranties relating to the design, construction and/or composition of such Public Improvements. Acceptance of the Public Improvements will be conditioned on City's receipt of a two (2) year warranty of workmanship, materials and equipment, in form and content reasonably acceptable to City; provided, however that such warranty or warranties may be provided by Developer's contractor or contractors directly to City and are not required from Developer, and that any such warranties will commence from the date of completion of any Public Improvement, any component thereof, or the work of any specific trade or contractor, as applicable.

6.3 Insurance. During the period of any construction involving the Public Improvements, and with respect to any construction activities relating to the Public Improvements, Developer will obtain and provide City with certificates of insurance showing that Developer is carrying, or causing its contractor(s) to carry, builder's risk insurance, commercial general liability and worker's compensation insurance policies in amounts and coverages set forth on Exhibit N. Such policies of insurance will be placed with financially sound and reputable insurers, require the insurer to give at least thirty (30) days advance written notice of cancellation to City, and will name City as an additional insured on such liability policies except for the worker's compensation policy and any professional liability insurance.

7. **CITY REPRESENTATIONS**. City represents and warrants to Developer that:

7.1 City has the full right, power and authority to enter into and perform this Agreement and of the obligations and undertakings of City under this Agreement, subject to Section 11.3 and Section 11.13 below. City's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the City Code.

7.2 All City consents and approvals necessary to the execution, delivery and performance of this Agreement by City have been obtained, and no further action needs to be taken by City in connection with such execution, delivery, and performance by City of this Agreement.

7.3 As of the Effective Date, City has no actual knowledge of any litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of City or its officials with respect to this Agreement. The term "actual knowledge" means the actual knowledge of the Downtown Transformation Manager, who is the City staff member in the City Manager's Office responsible for the negotiation of the Agreement on behalf of City, as of the Effective Date, without any independent inquiry or investigation. Notwithstanding anything in this Agreement to the contrary, the Downtown Transformation Manager is not a Party to this Agreement, and neither shall he have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or City's representations and/or warranties in this Agreement being or becoming untrue, inaccurate or incomplete in any respect.

7.4 The execution, delivery and performance of this Agreement by City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which City is a party or is otherwise subject.

7.5 City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

8. **DEVELOPER REPRESENTATIONS**. Developer represents and warrants to City that:

8.1 Developer has the full right, power and authority to enter into and perform this Agreement and of the obligations and undertakings of Developer under this Agreement. Developer's execution, delivery and performance of this Agreement has been duly authorized and agreed to in compliance with the organizational documents of Developer.

8.2 All Developer consents and approvals necessary to the execution, delivery and performance by Developer of this Agreement have been obtained, and no further action by Developer needs to be taken in connection with such execution, delivery and performance by Developer of this Agreement.

8.3 As of the Effective Date, Developer has no actual knowledge of any litigation, proceeding or investigation pending or threatened against or affecting Developer, which could have a material adverse effect on Developer's performance under this Agreement. The term "actual knowledge" means the actual knowledge of Brett Hopper, Vice President of Opus Development Company, L.L.C., a member of Developer, as of the Effective Date, without any independent inquiry or investigation. Notwithstanding anything in this Agreement to the contrary, Mr. Hopper is not a Party to this Agreement, and neither shall he have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or Developer's representations and/or warranties in this Agreement being or becoming untrue, inaccurate or incomplete in any respect.

8.4 The execution, delivery and performance of this Agreement by Developer is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Developer is a party or to which Developer is otherwise subject.

8.5 Developer has not paid or given, and will not pay or give, any Third Party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers, construction managers, and attorneys.

8.6 Developer has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

9. **EVENTS OF DEFAULT; REMEDIES**.

9.1 Events of Default by Developer. "**Default**" or an "**Event of Default**" by Developer under this Agreement will mean one or more of the following (subject to Section 9.3):

(a) Any representation or warranty made in this Agreement by Developer was materially inaccurate when made or, except with respect to Section 8.3 which is given as of the Effective Date, is proven to be materially inaccurate during the Term, and has a material adverse impact on City's or Developer's ability to perform under this Agreement;

(b) Developer fails to comply with the dates established in this Agreement for the Commencement of Construction or the Completion of Construction, for any reason other than Force Majeure;

(c) Foreclosure (or deed in lieu of foreclosure) upon any mechanic's, materialmen's or other lien on the Property prior to Completion of Construction or upon any improvements on such Property;

(d) Developer fails to make any of the in-lieu payments to the Districts required under Section 4.16;

(e) Developer Transfers or attempts to Transfer or assign this Agreement in violation of Section 11.2;

(f) Developer fails to observe or perform any other material covenant, obligation or agreement required of it under this Agreement; or

(g) Any event of default of Developer (as "Tenant") (or the party responsible for the obligations of Developer, as Tenant) under the Lease subject to all grace periods and cure periods provided in the Lease.

9.2 Events of Default by City. Default or an Event of Default by City under this Agreement will mean one or more of the following (subject to Section 9.3):

(a) Any representation or warranty made in this Agreement by City was materially inaccurate when made or, except with respect to Section 7.3 which is given as of the Effective Date, is proven to be materially inaccurate during the Term, and has a material adverse impact on City's or Developer's ability to perform under this Agreement; or

(b) City fails to observe or perform any material covenant, obligation or agreement required of it under this Agreement.

9.3 Grace Periods; Notice and Cure. Upon the occurrence of a Default by any Party, such Party will, upon written notice from the other Party, proceed promptly to cure or remedy such Default and, in any event, such Default must be cured within thirty (30) days after receipt of such notice; or, if such Default is of a nature that it is not capable of being cured within thirty (30) days, then the Defaulting Party must commence to cure such Default within such thirty (30) day period and diligently pursue such cure to completion, but not to one hundred twenty (120) days in total. Provided further, if Developer is working diligently and in good faith to cure a non-monetary Default, the City Manager, in the City Manager's sole and absolute discretion, may extend the period of time the Developer has to cure the non-monetary Default for another sixty (60) days; however, in no event shall the overall period of time for completion exceed one hundred eighty (180) days.

9.4 Remedies for Default. Whenever any Event of Default occurs and is not cured (or cure undertaken) by the defaulting Party in accordance with Section 9.3 of this Agreement, the other Party may take any of one or more of the following actions:

9.4.1 Remedies of City. City's sole and exclusive remedies for an uncured Event of Default by Developer under this Agreement will consist of, and will be limited to the following:

(i) City may suspend any of its obligations under this Agreement and may terminate this Agreement by written notice thereof to Developer, and may terminate the Lease in accordance with the terms of the Lease.

(ii) Notwithstanding the foregoing, at any time, City may seek special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring Developer to undertake and to fully and timely address a public safety concern, and/or to enjoin any construction or activity undertaken by Developer or Transfer by Developer, in each case which is not in accordance with the terms of this Agreement.

(iii) Notwithstanding the foregoing, the limitations on City's remedies will not limit City's remedies for actions against Developer with respect to Developer's obligations to Indemnify the City Indemnified Parties including, but not limited to, City's ability to seek or recover all damages assessed against City in connection with Developer's obligation to Indemnify.

(iv) Notwithstanding the foregoing, City has and retains its specific rights: (a) set forth in this Agreement; (b) under Applicable Laws as the municipal government authority in which the Project is located related to the enforcement of Zoning, construction, and development, including the issuance of permits; (c) under the Lease and/or Easement; and (d) for recovery of any enforcement costs pursuant to Section 11.8; provided, however, that nothing in this Section 9.4.1 shall require Developer's Completion of Construction of the Improvements.

(v) Notwithstanding anything to the contrary in this Section 9.4.1, except as it pertains to Developer's obligation to Indemnify the City Indemnified Parties from Claims, City hereby waives any and all right to recover special, consequential, incidental, indirect, punitive, exemplary, or similar types of damages whatsoever or to seek any other remedies against Developer for an Event of Default, including, without limitation, any equitable remedies (except as provided in Section 9.4.1(ii) above).

(vi) Notwithstanding the foregoing, City has and retains its specific rights under the Lease and Easement.

9.4.2 Remedies of Developer. Developer's sole and exclusive remedies for an Event of Default by City under this Agreement will consist of and will be limited to a special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring specific performance by City to undertake and to fully and timely perform its obligations under this Agreement, and Developer hereby waives any and all right to recover actual, special, incidental, direct, exemplary, consequential, punitive, and any other similar types of damages whatsoever or to seek any other remedies against City for an Event of Default, except for recovery of any enforcement costs for such action pursuant to Section 11.8. Notwithstanding the foregoing, Developer has and retains its specific rights under the Lease and/or Easement.

9.5 Delays; Waivers. Except as otherwise expressly provided in this Agreement (including, but not limited to, Force Majeure), any delay by any Party in asserting any right or remedy under this Agreement will not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Default by the other Party will not be considered as a waiver of rights with respect to any other Default by the performing Party or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision

will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the Default involved.

9.6 Force Majeure in Performance for Causes Beyond Control of Party. Neither City nor Developer, as the case may be, will be considered not to have performed its obligations under this Agreement 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 Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum); fires, floods, strikes, embargoes, material shortages, labor disputes, 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; a Public Health Event; declaration of national emergency or national alert; blockade, insurrection, riot, labor strike or interruption; extortion, sabotage, or similar occurrence; 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; declaration of moratorium or similar hiatus directly affecting the Property (whether permanent or temporary) by any public, quasi-public or private entity; or delays in issuance of governmental licenses, permits, and approvals not caused by Developer's failure to provide timely or complete applications, plans, and other documents or to pay Fees required or to perform other required actions in connection with the issuance of such licenses, permits and approvals. 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 Buildings, nor from the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Developer in connection with the acquisition of the Property or the design and construction of the Buildings, it being agreed that Developer 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, within thirty (30) days after such event, the Party seeking the benefit of the provisions of this Section 9.6 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 (if the Party alleging Force Majeure fails to timely notify the other Party, the commencement of any tolling period will be thirty (30) days prior to delivery of such written notice, notwithstanding the actual date of the event).

9.7 Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights will not preclude the exercise by it, at the same or different times, of any other right or remedy for any other Default by the other Party.

10. **DESIGNATED REPRESENTATIVES**.

10.1 Representatives. To further the cooperation of the Parties in implementing this Agreement, City and Developer each will designate and appoint a representative to act as a liaison between City and its various departments and Developer. The initial representative for City will be the City's Downtown Transformation Manager (the "**City Representative**"), and the initial representative for Developer will be its project manager, as identified by Developer from time to time (the "**Developer Representative**"). The City Representative and the Developer Representative will be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Property.

11. **MISCELLANEOUS PROVISIONS**.

11.1 Governing Law; Choice of Forum. This Agreement 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 Agreement 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 11.1.

11.2 Restrictions on Assignment and Transfer.

11.2.1 Restriction on Transfers. Prior to Completion of Construction, no bona fide assignment or similar transfer of Developer's fee title interest in all or any portion of the Property or all or any portion of this Agreement or in the current management entity, or ownership or control of Developer (each, a "**Transfer**"), shall occur without the prior written consent of City, which consent shall be at the City's sole discretion but City's consent shall not be unreasonably withheld, and in accordance with Applicable Laws, including any future amendments of A.R.S. Title 42, Chapter 6, Article 5, as applicable. Notwithstanding the foregoing, the restrictions on Transfer will not apply to a one-time Transfer prior to the Completion of Construction that meets any of the following requirements (each, a "**Permitted Transfer**"): (a) a Transfer to a Person in which Developer owns an equity interest upon City's reasonable determination that the management and control of the transferee is materially the same as the management and control of Developer as of the Effective Date; (b) a Transfer to a Person that is an equity holder of Developer or to any Person controlled by, controlling, or under common control with, the equity holder; (c) a Transfer due to a merger, consolidation, or sale of all or substantially all of the assets of Developer or any equity holder of Developer; (d) a Transfer for security and any foreclosure sale or conveyance in lieu of foreclosure, and a one-time Transfer by the Person acquiring the Property or this Agreement at such foreclosure sale or conveyance in lieu of foreclosure; (e) a Transfer to a Person that is wholly-owned by Developer or any Affiliate of Developer; (f) a Transfer to and from City pursuant to the Lease; and (g) a Transfer of publicly traded equity securities that creates a change of control in Developer or any direct or indirect owner of Developer. The restrictions on Transfer set forth in this Section 11.2.1 shall terminate automatically, without further notice or action, upon the earlier of Completion of Construction or termination of this Agreement and thereafter Developer may freely Transfer all of its rights and obligations under this Agreement so long as there is a concurrent Transfer to the same transferee of all of Developer's rights and obligations arising under the Lease (if applicable) and the Easement. Upon any Transfer of the Property Developer will be released and discharged from any of its obligations arising in or under this Agreement, the Easement, and the Lease from and after the effective date of such Transfer, including, but not limited to, the obligations of Developer from and after the effective date of such Transfer to Indemnify set forth in Section 4.10(b), Section 6.1, and Section 9.4.1, or elsewhere in this Agreement; provided, however, no Transfer, including a Permitted Transfer, shall release or discharge Developer from any of its obligations arising in or under this Agreement, including, but not limited to, the obligations of Developer to Indemnify set forth in Section 4.10(b), Section 6.1, and Section 9.4.1, or elsewhere in this Agreement, prior to the effective date of such Transfer; and further provided that, upon a Transfer, the transferee (without further act or writing required) is deemed fully, automatically and unconditionally to have assumed all obligations of Developer arising in or under this Agreement, the Easement, and/or the Lease after the effective date of such Transfer, including but not limited to all obligations to Indemnify set forth in this

Agreement in Section 4.10(b), Section 6.1, and Section 9.4.1, or elsewhere in this Agreement. No voluntary or involuntary successor in interest to Developer shall acquire any rights or powers under this Agreement, except as expressly set forth in this Agreement. No Transfer of this Agreement (in whole or in part) may be made apart from a concurrent Transfer to the same transferee of all of Developer's rights and obligations arising under the Lease and the Easement. Any Transfer made in violation of this Agreement shall be void, and not voidable.

11.2.2 Transfers by City. City's rights and obligations under this Agreement will be non-assignable and non-transferable, without the prior express written consent of Developer, which consent may be given or withheld in Developer's sole and unfettered discretion.

11.3 Limited Severability. City and Developer each believes that the execution, delivery and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, City code or City charter), such provision will be deemed severed from this Agreement and this Agreement will otherwise remain in full force and effect; provided that this Agreement will retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed. If either Party determines in its reasonable judgment that the reformed agreement does not provide essentially the same rights and benefits (economic and otherwise) to the Party as if such severance and reformation were not required, such Party may terminate this Agreement by written notice to the other Party, subject to Section 11.21.

11.4 Construction. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement will be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement will be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

11.5 Notices.

(a) Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement will be in writing and will be given by (i) personal delivery, (ii) deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section 11.5(a), (iii) any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid, or (iv) electronic delivery provided that such notice is concurrently given by one of the other methods of delivery provided above:

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

Mesa, Arizona 85211
Telephone: 480-644-2066
Email: chris.brady@mesaaz.gov

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
Telephone: 480-644-5379
Email: jeff.mcvay@mesaaz.gov

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

With a required copy to:

City of Mesa
Attn: City Attorney
20 East Main Street, Suite 850
Mesa, Arizona 85201
Telephone: 480-644-3497
Email: jim.smith@mesaaz.gov

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

If to Developer:

_____
c/o Opus Development Company, L.L.C.
Attn: Lawrence A. Pobuda and Brett L. Hopper
2555 East Camelback Road, Suite 100
Phoenix, Arizona 85016
Telephone: 602.648.5070
Telephone: 602.648.5074
Email: larry.pobuda@opus-group.com
Email: Brett.Hopper@opus-group.com

and

Griffin Capital Company, LLC
Attn: Eric J. Kaplan
1520 East Grand Avenue
El Segundo, CA 90245

Telephone: 949.270.9300
Email: ekaplan@griffincapital.com

With required copies to:

Opus Holdings, L.L.C.
Atten: Tom Hoben, Esq.
10430 Bren Road West
Minnetonka, Minnesota 55343
Telephone: 952.656.4734
Email: tom.hoben@opus-group.com

and

Jay S. Kramer
Fennemore Craig, P.C.
2394 East Camelback Road, Suite 600
Phoenix, Arizona 85016-3429
Telephone: 602-916-5341
Email: jkramer@fennemorelaw.com

(b) Effective Date of Notices. Any notice sent by United States Postal Service certified or registered mail will be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service will be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service will be deemed effective upon its receipt (or refusal to accept receipt) by the addressee. Any notice given by electronic delivery will be deemed effective upon transmission if such transmission is made prior to 5:00 p.m., Arizona time, on a business day (otherwise such notice will be deemed effective on the next succeeding business day). Any notice to be given by any Party hereto may be given by legal counsel for such Party. Any Party may designate a different Person or change the place to which any notice will be given as in this Agreement provided. Telephone numbers and email addresses are provided for informational purposes only and shall not be deemed notice.

11.6 Time of Essence. Time is of the essence of this Agreement and each provision hereof.

11.7 Section Headings. The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

11.8 Attorneys' Fees Provisions.

(a) Between the Parties. In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, 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. which challenges the authority of Owner and/or Lessee to enter into or

perform any of its obligations in this Agreement and will cooperate with City in connection with any other action by a Third Party

(b) Third-Party Claim Naming Developer. Developer at its sole cost and expense, and by counsel of its own choosing, and subject to its reasonable business judgment, will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names Developer as a party or which challenges the authority of Developer to enter into or perform any of its obligations hereunder and will reasonably cooperate with City in connection with any other action by a Third Party in which City is a party and the benefits of this Agreement to City are challenged. City will cooperate with Developer in connection with any other action by a Third Party in which Developer (but not City) is a party in such action and the benefits of this Agreement to City are challenged

(c) Third-Party Claim Naming City. City at its sole cost and expense, and by counsel of its own choosing, will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names City as a party to such proceeding or litigation and which challenges (i) the authority of City to enter into this Agreement or perform any of its obligations under this Agreement, (ii) the enforceability of any term or condition of this Agreement , or (iii) subject to Section 11.13 of this Agreement, the compliance of this Agreement with any Applicable Laws (including, but not limited to a claim or determination arising under A.R.S. § 41-194.01); provided, however, that Developer (within thirty days of written demand from City) must reimburse City for one-half of City's actual out-of-pocket attorneys' fees and costs incurred under this Section 11.8(c); and further provided that City has no obligation to maintain such defense if City has incurred actual out-of-pocket attorneys' fees in excess of $50,000 after reimbursement by Developer; and further provided that City may settle any such proceeding or litigation on such terms and conditions as City may elect in its sole and absolute discretion, but at no expense or liability to Developer without Developer's approval, however the term "expense or liability to Developer" shall not include the loss of any benefit anticipated by Developer to be obtained by Developer under this Agreement, the Lease, or Easement, including the abatement of tax.

(d) The severability and reformation provisions of Section 11.3 will apply in the event of any successful challenge to this Agreement.

11.9 Waiver. Without limiting the provisions of Section 9.5 of this Agreement, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement will operate as a waiver of such right, remedy, power or privilege, nor will any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor will any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver will be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

11.10 Third Party Beneficiaries. No Person will be a Third Party beneficiary to this Agreement, except for permitted transferees, assignees, or lenders under Section 11.22 to the extent that they assume or succeed to the rights and/or obligations of Developer under this Agreement, and except that the City Indemnified Parties referred to in the indemnification provisions of Section 4.10(b), Section 6.1, and Section 9.4.1 (or elsewhere in this Agreement) will be Third Party beneficiaries of such indemnification provisions.

11.11 Exhibits. Without limiting the provisions of Section 1 of this Agreement, the Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.

11.12 Integration. Except as expressly provided in this Agreement, this Agreement constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement.

11.13 Preserve State Shared Revenue. Notwithstanding any other provision of, or limitation in, this Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Agreement violates any provision of state law or the Constitution of Arizona (including but not limited to A.R.S. § 42-6201 *et seq.*), City and Developer shall use all and best faith efforts to modify the Agreement so as to fulfill each Parties rights and obligations in the Agreement while resolving the violation with the Attorney General. If within thirty (30) days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1), City and Developer cannot agree to modify this Agreement so as to resolve the violation with the Attorney General, this Agreement shall automatically terminate at midnight on the thirtieth (30^{th}) day after receiving such notice from the Attorney General, and upon such termination the Parties shall have no further obligations under this Agreement. Additionally, if the Attorney General determines that this Agreement may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and the Arizona Supreme Court requires the posting of a bond under A.R.S. § 41-194.01(B)(2), City shall be entitled to terminate this Agreement, except if Developer posts such bond, if required; and provided further, that if the Arizona Supreme Court, determines that this Agreement violates any provision of state law or the Constitution of Arizona, City or Developer may terminate this Agreement and the Parties shall have no further rights, interests, or obligations in this Agreement or claim against the other Party for a breach or default under this Agreement.

11.14 Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of (a) this Agreement as in full force and effect and (b) the performance of the obligations hereunder at any time during its Term.

11.15 Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement 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 at 5:00 p.m., Arizona time, on the next succeeding day which is not a Saturday, Sunday or legal holiday.

11.16 Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval will not be unreasonably withheld, delayed, or conditioned by such Party, unless this Agreement expressly provides otherwise. Any consent or approval required by this Agreement may be provided by the City Manager (or designee), unless otherwise specified or required by Applicable Laws. In addition, the City Manager is expressly authorized to execute and deliver all amendments to this Agreement, the Lease, the Easement and other transaction documents required by, contemplated under or authorized in this Agreement.

11.17 Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this Agreement relating to use of the Property will run with the Property and will be binding upon, and will inure to the benefit of the Parties and their respective permitted successors and assigns with respect to such Property. Wherever the term "Party" or the name of any particular Party is used in this Agreement such term will include any such Party's permitted successors and assigns.

11.18 Recordation. Within ten (10) days after this Agreement has been executed by the Parties, City will cause this Agreement to be recorded in the Official Records of Maricopa County, Arizona.

11.19 Amendment. No change or addition is to be made to this Agreement except by written amendment executed by City and Developer. Within ten (10) days after any amendment to this Agreement, such amendment will be recorded in the Official Records of Maricopa County, Arizona. Upon amendment of this Agreement as established in this Agreement, references to "Agreement" or "Development Agreement" will mean the Agreement as amended. If, after the effective date of any amendment(s), the parties find it necessary to refer to this Agreement in its original, unamended form, they will refer to it as the "Original Development Agreement." When the Parties mean to refer to any specific amendment to the Agreement which amendment is unmodified by any subsequent amendments, the Parties will refer to it by the number of the amendment as well as its effective date.

11.20 Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree that each Party will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

11.21 Survival. All obligations to Indemnify contained in Section 4.10(b), Section 6.1, and Section 9.4.1 of this Agreement (or elsewhere in this Agreement) will survive the execution and delivery of this Agreement, the closing of any transaction contemplated in this Agreement, and the rescission, cancellation, expiration or termination of this Agreement upon the terms and for the period set forth in each respective Section, and if none is specified, then for a period of two (2) years.

11.22 Rights of Lenders.

(a) City is aware that Developer may obtain financing or refinancing for acquisition, development and/or construction of the Property and Private Improvements (and appurtenant Public Improvements) to be constructed on the Property, in whole or in part, from time to time, by one or more Third Parties (individually a "**Lender**," and collectively the "**Lenders**").

(b) Developer shall have the right at any time, and as often as it desires, to finance the construction of the Private Improvements (and appurtenant Public Improvements) and to secure such financing with a lien or liens against the Property and Private Improvements (and Public Improvements). Notwithstanding the foregoing, the provisions of Section 4.10 control in the event that Developer conveys the Public Improvements to City and the provisions of Section 5.1 control in the event that Developer conveys the Property (and Private Improvements constructed on the Property) to City for the purposes of leasing back the Property and Private Improvements.

(c) Notwithstanding any other provision of this Agreement, Developer may collaterally assign all or part of its rights and duties under this Agreement as security to any financial

institution from which Developer has borrowed funds for use in constructing the Private Improvements, obtaining furniture, fixtures and equipment, or otherwise developing the Property without such financial institution assuming the obligations of Developer under this Agreement, but without releasing Developer from its obligations under this Agreement.

(d) In the event of an Event of Default by Developer, City will provide notice of such Event of Default, at the same time notice is provided to Developer, to not more than two (2) of such Lenders as previously designated by Developer to receive such notice (the "**Designated Lenders**") whose names and addresses were provided by written notice to City in accordance with Section 11.5. City will give Developer copies of any such notice provided to such Designated Lenders and, unless Developer notifies City that the Designated Lenders names or addresses are incorrect (and provides City with the correct information) within three (3) business days after Developer receives its copies of such notice from City, City will be deemed to have given such notice to the Designated Lenders even if their names or addresses are incorrect. Developer may provide notices to other Lenders. Lender shall have the right, but not the obligation, for a period of thirty (30) days after the expiration of any grace period afforded Developer (or such longer period as Lender may reasonably require to perform any term, covenant or condition and to remedy any uncured default by the Developer as the Borrower named therein), and City shall accept such performance with the same force and effect as if furnished by the Developer as the Borrower named therein and the Lender shall thereby and hereby be subrogated to the rights of City. If a Lender is permitted, under the terms of its agreement with Developer to cure the Event of Default and/or to replace Developer with respect to this Agreement, City agrees to recognize such rights of the Lender and to otherwise permit the Lender to be substituted for Developer and accept all of the rights and obligations of Developer under this Agreement (during its ownership of the Property). City will, at any time upon reasonable request by Developer, provide to any Lender an estoppel certificate, acknowledgement of collateral assignment, consent to collateral assignment, or other document evidencing that this Agreement or other document evidencing that (i) this Agreement is in full force and effect, (ii) no Event of Default by Developer exists hereunder (or, if appropriate, specifying the nature and duration of any existing Event of Default), and (iii) such other matters as institutional lenders typically require in similar financings. Upon request by a Lender, City will enter into a separate non-disturbance agreement with such Lender, in the form attached to this Agreement as Exhibit O, or in such other form requested by Lender that satisfies the criteria for leasehold mortgages to be included in commercial mortgage-backed securities pools issued by the major rating agencies for commercial mortgage-backed securities; provided, however, under no circumstances is the City to be obligated to subordinate its rights in this Agreement to any such security or lender.

11.23 Nonliability of City Officials, Etc., and of Employees, Members and Partners, Etc. of Developer. No City Council member, official, representative, agent, attorney or employee of City will be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any Default or breach by City or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Developer under this Agreement will be limited solely to the Property and will not extend to or be enforceable against: (i) the individual assets of any of the individuals or entities who are shareholders, members, managers constituent partners, officers or directors of the general partners or members of Developer; (ii) the shareholders, members or managers or constituent partners of Developer; or (iii) officers of Developer.

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

11.25 No Boycott of Israel. To the extent enforceable under Applicable Law, Developer 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.

11.26 Proposition 207 Waiver. Developer hereby waives and releases City ("**Waiver**") from any and all claims under A.R.S. § 12-1134, *et seq.*, including any right to compensation for reduction to the fair market value of all or any part of the Property, as a result of City's approval of this Agreement, any and all restrictions and requirements imposed on Developer, the Project and the Property by this Agreement or the Zoning, City's approval of Developer's plans and specifications for the Project, the issuance of any permits, and any other actions permitted to be taken by City pursuant to this Agreement. The terms of this Waiver shall run with all land that is the subject of this Agreement and shall be binding upon all subsequent landowners, assignees, lessees and other successors, and shall survive the expiration or earlier termination of this Agreement.

11.27 City Council Action. City and Developer acknowledge that, notwithstanding any language of this Agreement or any subsequent additional document, no act, requirement, payment or other agreed-upon action to be done or performed by City which would, under any federal, state or local constitution, statute, charter provision, ordinance or regulation, require formal action, approval or concurrence by the City Council, will be required to be done or performed by City unless and until said formal City Council action has been taken and completed. "Completed" under this provision means that such City Council action is no longer subject to referral. This Agreement does not bind the City Council or remove its independent authority to make determinations related to formal action of the City Council in any way.

11.28 Consent. Wherever City's consent is required to be given in this Agreement, such consent will be the consent of the City Manager (or his/her designee), without the requirement of the prior approval of the City Council unless required by Applicable Law, City policy, or the City Manager, and the City Manager (or his/her designee) will enter into such amendments to this Agreement demonstrating such consent as deemed necessary or appropriate by the Parties.

11.29 Estoppel Certificates. City will, upon reasonable request by Developer, provide an estoppel certificate to Developer, or any prospective lender, investor, or purchaser, certifying that (i) this Agreement and to the extent then applicable the Lease and Easement, are in full force and effect, (ii) no Event of Default, or act or omission actually known to the City's Downtown Transformation Manager that with the giving of notice and/or passage of time could become an Event of Default, by Developer exists hereunder or under the Lease or Easement (or, if appropriate, specifying the nature and duration of any existing Event of Default), (iii) No Event of Default, or act or omission actually known to the City's Downtown Transformation Manager that with the giving of notice and/or passage of time could become an Event of Default, by City exists hereunder or under the Lease (or, if appropriate, specifying the nature and duration of any existing Event of Default), (iv) City has received no formal notice of claim requiring Developer to Indemnify the City Indemnified Parties, and (v) if applicable, for the purpose of satisfying Section 5.1(i) related to the conditions precedent for City entering into the Lease, the Public Improvements were built in accordance with the Approved Plans and dedicated to, and accepted by, City, and the Private Improvements were built in accordance with the Approved Plans.

11.30 Further Assurances. The Developer and City (acting through the City Manager (or his/her designee), without the requirement of the prior approval of the City Council unless required by Applicable Law, City policy, or the City Manager) each agree to do, execute, acknowledge, and deliver all such further acts, instruments, and assurances, and to take all such further actions as shall be reasonably necessary or desirable to fully carry out the intent of this Agreement and to fully consummate and effect the transactions contemplated hereby.

(*Signatures are on the following two (2) pages)*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

CITY

CITY OF MESA, ARIZONA, an Arizona municipal corporation

By: _____

Its: City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____ the _____ of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of City.

_____
Notary Public

My commission expires:

_____

DEVELOPER

_____, a(n)
_____
By:_____
Name:_____
Title:_____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the _____ of _____, a(n) _____, who acknowledged that he/she signed the foregoing instrument on behalf of Developer.

_____
Notary Public

My commission expires:

_____

LIST OF EXHIBITS

A. LEGAL DESCRIPTION OF PROPERTY

B. LEASE

C. INTENTIONALLY OMITTED

D. ON-SITE AMENITIES

E. UNIT AMENITIES

F. DEPICTIONS OF THOROUGHFARE AND PLAZA

G. EXTERIOR QUALITY STANDARDS

H. PROGRAM COMPLIANCE

I. PUBLIC IMPROVEMENTS DESCRIPTION & DEPICTION

J. EASEMENT

K. DEVELOPER MAINTAINED ROW PUBLIC IMPROVEMENTS

L. PROHIBITED USES

M. SPECIAL WARRANTY DEED

N. INSURANCE REQUIREMENTS

O. NON-DISTURBANCE AND RECOGNITION AGREEMENT

P. CUSTOMIZED REVIEW SCHEDULE

Q. ENCROACHMENT PLAN DETAIL

R. PHASE II DEVELOPMENT

S. PHASING PLAN

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:

LOTS 1, 2, 3, 4, 5, 6, 7 AND 8, BLOCK 9, MESA CITY, ACCORDING TO BOOK 3 OF MAPS, PAGE 11 AND IN BOOK 23 OF MAPS, PAGE 18, RECORDS OF MARICOPA COUNTY, ARIZONA;

EXCEPT THAT PART OF LOT 2, BLOCK 9, MESA CITY, ACCORDING TO BOOK 3 OF MAPS, PAGE 11, RECORDS OF MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 2;

THENCE EAST 140 FEET;

THENCE NORTH 115 FEET;

THENCE WEST 140 FEET;

THENCE SOUTH 115 FEET TO THE POINT OF BEGINNING.

EXHIBIT B
LEASE

(SEE ATTACHED)

When recorded, return to:

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

==========

GOVERNMENT PROPERTY IMPROVEMENTS LEASE

==========

1. **Date**. The date of this Government Property Improvements Lease (the "Lease") is _____, 202__ (the "Execution Date").

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

A. CITY OF MESA, ARIZONA, an Arizona municipal corporation ("Landlord")

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

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

B. _____, an _____ ("Tenant")

_____
_____
_____

C. Parties. Landlord and Tenant may be referred to in this Lease individually as a "Party" or collectively as the "Parties."

3. **Recitals**. As background to this Lease, the Parties agree, acknowledge and recite as follows, each of which shall be deemed a material term and provision of this Lease:

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

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

B. In partial consideration for Landlord's promise to execute and deliver this Lease, Tenant has agreed separately to construct, operate and maintain a redevelopment project on the Land in accordance with the terms of a development agreement dated _____ (the "Development Agreement"), which was recorded on _____, as Recording no. _____ in the Official Records of Maricopa County, Arizona ("Official Records").

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

D. Pursuant to the Development Agreement, Tenant (as the named Developer) agreed to construct certain improvements and to conduct redevelopment activities on the Land (the "Project").

E. Further pursuant to the Development Agreement, Tenant (as the named Developer of the Project) agreed to dedicate, at no cost or expense to Landlord, certain public improvements constructed by Tenant as part of its redevelopment construction activities on the Land.

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

G. Further pursuant to the Development Agreement, Tenant (as the named Developer of the Project) agreed (i) to construct as part of the Project an area containing at least eighty-three thousand (83,000) square feet and which will include two (2) thoroughfares through the Project with motor vehicle access and parking, as well as open outdoor space with seating, landscaping, walking paths and sidewalks (collectively, the "Thoroughfare and Plaza"), and (ii) to grant City a perpetual easement on and over the Thoroughfare and Plaza that will specifically allow the general public access to use the Thoroughfare and Plaza area at no cost to the public or to City for the purpose of parking of motor vehicles and access to the outdoor space (the "Easement Agreement"). The Easement Agreement is an integral part of the Project and is further material consideration for City's agreeing to enter into the transaction with Developer (including but not limited to entering into this Lease).

H. All of the foregoing obligations of Developer, *inter alia*, were referred to collectively in the Development Agreement as the "Developer Undertakings."

I. In consideration of Tenant's completion of the Developer Undertakings required by the Development Agreement, and in further recognition of the direct, tangible benefits to be received by the Landlord as a result of Tenant's performance under the Development Agreement (including, but not limited to, the construction of the Project in a formerly blighted area and the grant to City of the Easement Agreement), upon the conveyance of the Land and the Improvements to Landlord by Tenant, Landlord has agreed to lease the Land and Improvements to Tenant, and Tenant has agreed to lease the Land and Improvements from Landlord, on the terms and conditions set forth in this Lease.

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

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

4. **Lease of the Premises**.

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

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

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

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

(4) Any public easements granted to the City of Mesa (including but not limited to the Easement Agreement);

(5) The Easement Agreement; and

(5) The Development Agreement.

B. Condition of Premises. Subject to Section 4(A), the Premises are being leased to Tenant in their as-is, where-is condition, with no representation or warranty of any nature from the Landlord, and specifically as to (but in no event limited to) any hazardous conditions or Hazardous Materials in, on, at or under the Premises. Tenant acknowledges that it (i) designed and constructed the Improvements, (ii) owned the Land and Improvements prior to their conveyance to Landlord, and (iii) has been in continuous, uninterrupted possession of the Land and Improvements; and by executing this Lease and entering onto the Premises, Tenant accepts the Premises in their as-is, where-is condition and unconditionally releases Landlord from any liability with respect to the condition of the Premises.

C. Term. Notwithstanding the actual date of conveyance of the Land and Improvements by Tenant to Landlord, the term of this Lease ("Term") shall commence on the date of the first certificate of occupancy issued for any Improvements constructed on the Land ("Commencement Date"), and shall expire at 12:00 midnight on the last day of the Rental Period, unless this Lease is sooner terminated as hereinafter provided. Concurrently with their execution of this Lease, Landlord and Tenant shall execute a Certificate of Commencement Date in form attached hereto as Exhibit E. Notwithstanding the foregoing, Tenant may terminate this Lease at any time during the Term by written notice to Landlord, subject to Tenant's obligations of Indemnity that survive the termination of this Lease, in which event the Land and Improvements will be conveyed to Tenant by Landlord pursuant to the terms of Section 34. Upon termination or expiration of this Lease or for any other reason whatsoever, and notwithstanding the conveyance of fee title to the Land and Improvements to Tenant, all public easements in favor of the City of Mesa, including but not limited to the Easement Agreement, shall survive pursuant to the terms of Section 34.

5. **Definitions**.

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

(a) "Additional Payments" means as defined in Section 7(A).

(b) "Administrative Fee" means as defined in Section 11(D).

(c) "Affiliate" means, with respect to Tenant (including all entities that have an ownership interest in Tenant), any person or legal entity that is controlled by Tenant, that controls Tenant or that is under common control with Tenant, whether direct or indirect, and whether through ownership of voting securities, by control or otherwise. For purposes of this definition,

"control" shall be conclusively presumed in the case of direct or indirect ownership of fifty percent (50%) or more of outstanding interests in terms of value or voting power of Tenant.

(d) "Applicable Laws" means as defined in Section 12(A).

(e) "Commencement Date" means as defined in Section 4(C).

(f) "Commence" or "Commencement of Construction" has the meaning given in the Development Agreement.

(g) "Complete" or "Completion of Construction" has the meaning given in the Development Agreement.

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

(i) "Developer Undertakings" means as defined in Section 3(H).

(j) "Development Agreement" means as defined in Section 3(B).

(k) "Easement Agreement" means as defined in Section 3(G).

(l) "Environmental Laws" means as defined in Section 33(A)(1).

(m) "Event of Default" means as defined in Section 21(A).

(n) "Force Majeure" means as defined in Section 31.

(o) "Impositions" means as defined in Section 7(A).

(p) "Improvements" means as defined in Section 4(A).

(q) "Indemnify," "Indemnity" and "Indemnification" mean as defined in Section 16(A).

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

(s) "Land" means as defined in Section 4(A), and as legally described in Exhibit A.

(t) "Landlord" means the City of Mesa, Arizona, a municipal corporation.

(u) "Lease" means this Government Property Improvements Lease.

(v) "Mortgagee" means the holder, trustee, or beneficiary of any Permitted Mortgage.

(w) "Permitted Mortgage" means any mortgage or deed of trust that constitutes a lien upon this Lease, the leasehold estate hereby created, or all (or any portion of) Tenant's interest in the Project, and which complies with the requirements of Section 20.

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

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

(z) "Project" means the Land and the Improvements, and other construction and redevelopment activities on the Land conducted by Tenant, in accordance with the Development Agreement, as defined in Section 3(D).

(aa) "Public Health Event" means as defined in Section 31.

(bb) "Purchase Price" means as defined in Section 33(C).

(cc) "Regulated Substances" means as defined in Section 32(A)(2).

(dd) "Release" means as defined in Section 32(A)(3).

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

(ff) "Tenant" means the Tenant named herein and its permitted successors and assigns.

(gg) "Term" means as defined in Section 4(C).

(hh) "Thoroughfare and Plaza" means as defined in Section 3(G).

(ii) "Transfer" means as defined in Section 20(B).

(jj) "Work" means as defined in Section 17(A).

6. **Rent**.

A. Net Rent.

(1) Net Annual Rental. Tenant will pay to Landlord, in collected funds and at the addresses specified or furnished pursuant to Section 23, during the Term of this Lease net rental ("Net Rent") in the amount of $10,000.00 per year. The amount of Net Rent reflects the fact that Tenant owned the Land and Improvements prior to the conveyance of the Land and Improvements to Landlord at no cost to Landlord and is intended to compensate Landlord for Landlord's administrative and other expenses in maintaining this Lease, rather than to reflect fair market rental value.

(2) Annual Installments. All payments of Net Rent will be made in annual installments, in advance, without notice, commencing on the Commencement Date, and on each anniversary of the Commencement Date, during the Term.

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

B. Rent Absolutely Net. It is the purpose and intent of the Landlord and Tenant that Net Rent payable hereunder will be absolutely net to Landlord so that this Lease will yield to Landlord the Net Rent herein specified, free of any charges, assessments, Impositions, or deductions of any kind charged, assessed, or imposed on or against the Premises and without abatement, deduction or set-off by the Tenant, and Landlord will not be expected or required to pay any such charge, assessment or Imposition or be under any obligation or liability hereunder except as herein expressly set forth, and that all costs expenses, and obligations of any kind relating to the maintenance and operation of the Premises, including all construction, alterations, repairs, reconstruction, and replacements as hereinafter provided, which may arise or become due during the Term hereof (collectively, "Maintenance Costs") will be paid by Tenant; and Tenant will Indemnify, defend, pay and hold harmless Landlord for, from and against any and all such costs, expenses, and obligations in accordance with Section 16.

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

D. No Release of Obligations. Except for either a mutual release and waiver of rights and liabilities arising under this Lease or to the extent expressly provided in this Lease, no happening, event, occurrence, or situation during the Rental Period, whether foreseen or unforeseen, and however extraordinary (including, without limitation, Tenant's failure, refusal, or inability for any reason to operate and maintain the Project) shall permit the Tenant to quit or surrender the Premises or this Lease nor shall it relieve the Tenant of its liability to pay the Net Rent and Additional Payments and other charges under this Lease, nor shall it relieve the Tenant

of any of its other obligations under this Lease (including, but not limited to, Tenant's obligation to Indemnify Landlord).

7. **Additional Payments**. Tenant shall pay ("Additional Payments") during the Term hereof, without notice and without abatement, deduction or setoff, before any fine, penalty, interest, or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, the following:

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

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

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

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

C. Payments In-Lieu. Because of the applicability to this Lease of GPLET as defined in Section 7(G), Tenant recognizes and acknowledges that the removal of the Land and

Improvements from the ad valorem tax rolls may reduce revenue to local school districts. Accordingly, and in order to address such reduction in revenue, Tenant, in lieu of payment of such ad valorem taxes, will make a one-time, lump sum payment directly to the Maricopa Community College District, Mesa Public School District, and East Valley Institute of Technology District (collectively, the "School Districts") as follows:

Maricopa Community College District	$ 29,854.00
Mesa Public School District	$170,806.00
East Valley Institute of Technology District	$1,159.00
Total	$201,819.00

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

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

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

F. Hold Harmless. Landlord shall not be required to join in any action or proceeding referred to in Section 7(D) (unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event any such action or proceeding may be taken by Tenant in the name of the Landlord only with Landlord's prior written consent). Tenant hereby agrees to Indemnify, defend, pay and hold Landlord harmless for, from and against any and all costs, expenses, claims, loss or damage by reason of, in connection with, on account of, growing out of or resulting from, any such action or proceeding (collectively, "Landlord Claims").

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

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

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

(3) Notwithstanding the foregoing, or any other term of this Lease (including, but not limited to, the Recitals to this Lease), Landlord does not represent, warrant or guarantee that the benefits provided by GPLET, including but not limited to any abatement of GPLET during any portion of the Term, will be available or in effect at any time during the Term. The benefits provided by GPLET are not a condition to the effectiveness of this Lease or Tenant's obligations under this Lease; and the nonexistence or failure of GPLET to be maintained, or any changes in or amendments to GPLET, will not be a default by Landlord. In the event that GPLET is no longer available, or the provisions of GPLET are modified to the extent that Tenant believes that this Lease no longer provides the benefits intended by Tenant, then either Landlord or Tenant may terminate this Lease by delivering not less than thirty (30) days written notice to the other, subject to Tenant's obligations of Indemnity that survive the termination of this Lease, in which event the Land and Improvements will be conveyed to Tenant by Landlord as though Tenant had exercised the Purchase Option granted in Section 34. In the event of a termination hereunder, Landlord shall execute and record a Special Warranty Deed to Tenant in form attached hereto as Exhibit D.

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

8. **Insurance**.

A. Tenant Obligation to Insure. Tenant shall procure and maintain for the duration of this Lease, at Tenant's own cost and expense, insurance against casualty to or loss of the Premises and against claims for injuries to persons or damages to property which may arise from or in connection with this Lease by the Tenant, its agents, subtenants, employees, contractors, licensees or invitees in accordance with the insurance requirements set forth in Exhibit B attached hereto. Additionally, Tenant shall be responsible for carrying fire and extended risk insurance coverage for the full replacement value of the Improvements. The Landlord shall be named as Loss Payee on all property insurance policies; provided further, if Tenant's insurance is not sufficient to pay claim(s) which arise in connection with this Lease, the Landlord's insurance (or self-insurance retention) will not be obligated to, and will not pay, any claims, including but not limited to, any claims for damage to the Land or the Improvements. Notwithstanding the foregoing, in the event of casualty to the Project (whether or not such casualty is insured or fully insured with respect to the cost of restoration), Tenant must promptly repair, restore or rebuild the Project to its pre-casualty condition pursuant to Section 17.

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

C. Relationship to Obligations to Indemnify Landlord. Tenant's obligation to maintain insurance is in addition to, and not in lieu of, Tenant's obligation of Indemnity set forth in Section 11(C), Section 16, Section 33, and elsewhere in this Lease.

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

10. **Landlord's Performance for Tenant**. If Tenant shall fail to pay any Imposition or make any other payment required to be made under this Lease or shall default in the performance of any other covenant, agreement, term, provision, limitation, or condition herein contained, following any applicable Notice required by and Tenant's failure to cure under Section 21, Landlord, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default for the account and at the expense of Tenant, without additional notice and without unreasonable interference with any tenants on the Premises. Tenant will promptly pay (but no later than thirty (30) days from Landlord's Notice to Tenant and evidence of such payment by Landlord) all bills for any expense required by Landlord in connection therewith, and bills for all such expenses and disbursements of every kind and

nature whatsoever, including reasonable attorney's or administrative fees involved in collection or endeavoring to collect Net Rent, Additional Payments or any part thereof, or enforcing or endeavoring to enforce any right against Tenant, under or in connection with this Lease, or pursuant to law, including (without being limited to) any such cost, expense, and disbursements involved in instituting and prosecuting summary proceedings, as well as bills for any property, material, labor or services provided, furnished, or rendered, or caused to be provided, furnished or rendered, by Landlord to Tenant, with respect to the Premises and other equipment and construction work done for the account of the Tenant within; and if not paid within thirty (30) days, the amount thereof shall immediately become due and payable (together with interest at the Default Rate) with no further Notice required, as Additional Payments.

11. **Uses and Maintenance**.

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

B. Permitted Uses. Tenant agrees that it shall use the Premises only for those purposes and uses described in the Development Agreement. In no event shall the Premises (or any part) be used for any purpose (i) prohibited by any Applicable Laws or (ii) prohibited by this Lease. Regardless of the uses which would otherwise be allowed pursuant to the zoning classification or other ordinances which may be applicable to the Premises at any time during the Rental Period, the uses set forth in Exhibit C are expressly prohibited. Additionally, during the Rental Period use of the Premises by Tenant or related subtenants is hereby restricted to the maintenance and operation of the Project and its reasonably related activities; and the Premises may not be used for any other purpose without the prior written consent of Landlord, which may be given or withheld at Landlord's sole and absolute discretion. Moreover, any permitted use which involves the handling, production and/or storage of Hazardous Materials on the Premises shall be subject to all applicable federal, state and local laws rules and regulations.

C. Maintenance, Repairs, and Indemnity. Tenant, at its sole cost and expense, shall take good care of the Premises, make all repairs thereto, interior and exterior, structural and

nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Premises and the sidewalks, curbs, and landscaping in commercially acceptable order, repair, and condition in accordance with City of Mesa standards and this Lease, whichever is more stringent. As stated in Section 6(B), it is the intent of Landlord and Tenant that this Lease be an absolute net lease to Landlord, with Landlord having no obligation during the Term for the maintenance, repair or replacement of the Project (or any part of the Project). Tenant shall also keep the sidewalks in front of the Premises and the adjacent alley free and clear from rubbish and shall not obstruct the same or allow the same to be obstructed in any manner. Tenant shall Indemnify, defend, pay and hold the Landlord Indemnified Parties harmless for, from and against any and all claims or demands, upon or arising out of any accident, injury, or damage to any person or property occurring in or upon the Premises or any part thereof, or upon the sidewalks about the Premises, however caused, or any act (whether intentional or negligent) of any employee, agent, director, officer, contractor or invitee of Tenant, and shall keep the Premises free and clear of any and all mechanics' liens or other similar liens or charges incidental to work done or material supplied in or about the Premises.

D. Tenant's Failure to Maintain or Repair. In the event Tenant fails to maintain and repair the Premises in the condition required by Section 11(C) of this Lease, Landlord may send the notice required under Sections 21 and 24 of this Lease, and after the expiration of the cure period set forth therein, may terminate this Lease in accordance with Section 21(G).

E. Alterations. After the Commencement Date, Tenant shall not, absent compliance with all Applicable Laws, erect any structures, make any improvements, or do any other construction work on the Premises or alter, modify, or make additions, improvements, or repairs to or replacements of any structure, now existing or built at any time during the Term hereof, or install any fixtures (other than trade fixtures removable without injury to the Premises) except in compliance with all Applicable Laws. No Landlord consent shall be required in connection with the foregoing work, except for normal municipal approvals required for plans, permits, approvals, and the like; provided, however, that if any improvements, construction work, alterations, modifications, additions, repairs or replacement of structures affect the Thoroughfare and Plaza or the portion of the Land subject to the Easement Agreement, Tenant shall be subject to and shall comply with the requirements and restrictions in the Easement Agreement. In the event of any failure on the part of Tenant to comply with this requirement, Landlord may terminate this Lease in accordance with Section 20(G).

F. Duties of Grantor under Easement Agreement. All of the obligations of the Grantor under the Easement Agreement (including but not limited to Grantor's obligations of Indemnity of City, as Grantee) are fully and unconditionally assumed by Tenant during the term of the Lease, and for all periods thereafter for which such obligations may survive.

12. **Compliance With Applicable Laws**.

A. Tenant Obligations. Tenant shall timely assume and perform any and all obligations of Landlord under any covenants, easements, and agreements affecting the title to the

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

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

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

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

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

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

A. No Liens. Tenant shall not create, or suffer to be created or to remain, and shall promptly discharge any mechanic's, laborer's, or materialman's lien which might be or become a

lien, encumbrance, or charge upon the Premises or any part thereof or the income therefrom and Tenant will not suffer any other matter or thing arising out of Tenant's use and occupancy of the Premises whereby the estate, rights, and interests of Landlord in the Premises or any part thereof might be impaired.

B. Discharge. If any mechanic's, laborer's, or materialman's lien shall at any time be filed against the Premises or any part thereof, Tenant, within thirty (30) days after Tenant's receipt of a notice of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise. Tenant shall notify Landlord in writing of its action to either satisfy or contest the lien and, if contested, of the matter's status on a monthly basis until concluded. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by Landlord and costs and expenses incurred by Landlord in connection therewith, shall constitute an Additional Payment payable by Tenant and shall be paid by Tenant to Landlord within thirty (30) days from demand therefor, together with proof of payment and detailed invoices.

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

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

15. **Inspection**. Landlord has and retains the right to enter upon the Premises, or any part thereof, for the purpose of confirming that Tenant is observing and performing the obligations assumed by it under this Lease, all without hindrance from Tenant; provided that (absent an emergency) such entry does not interfere with Tenant's business operations; and provided further that Landlord shall give Tenant at least three (3) days; written notice prior to any inspection of any building interior. This three-day Notice provision shall not be construed to prohibit or delay any entry by Landlord (i) in the event of an emergency; (ii) in its capacity as a municipality exercising its police power or in its criminal law enforcement capacity; (iii) authorized by any writ or warrant issued by any Court; or (iv) authorized by any health or welfare statute, code, ordinance, rule or regulation.

16. **Indemnification of Landlord**.

A. Indemnification. Tenant shall indemnify, defend, pay and hold Landlord, its successors and assigns, its elected and appointed officials, employees, agents, boards,

commissions, representatives, and attorneys (collectively, "Landlord Indemnified Parties") harmless for, from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including property damage, personal injury and wrongful death and further including, without limitation, architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against Landlord Indemnified Parties by reason of any of the following occurring during the Term unless caused solely by the gross negligence or willful misconduct of the Landlord Indemnified Parties:

(1) Tenant's construction of any Improvements constituting the Project, or any other work done therein, on or about the Premises or any part thereof by Tenant or its agents;

(2) any use, nonuse, possession, occupancy, alteration, repair, condition, operation, maintenance or management of the Premises or Improvements;

(3) any nuisance made or suffered on the Premises or Improvements;

(4) any failure by Tenant to keep the Premises or Improvements, or any part thereof, in a safe condition;

(5) any acts or omissions of the Tenant or any subtenant or any of its or their respective agents, contractors, employees, licensees or invitees;

(6) any fire, accident, injury (including death) or damage to any person or property occurring in, on or about the Premises or any part thereof;

(7) any failure on the part of Tenant to pay rent or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with and the exercise by Landlord of any remedy provided in this Lease with respect thereto;

(8) any lien or claim which may be alleged to have arisen against or on the Premises or improvements or any part thereof or any of the assets of, or funds appropriated to, Landlord or any liability which may be asserted against Landlord with respect thereto to the extent arising, in each such case, out of the acts of Tenant, its contractors, agents, subtenants;

(9) any failure on the part of Tenant to keep, observe, comply with and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the subleases or other contracts and agreements affecting the Premises or improvements or any part thereof, on Tenant's part to be kept, observed or performed;

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

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

(12) any loss of or reduction in state shared monies arising in connection with a claim brought or maintained under A.R.S. §41-194.01 to the extent that Tenant prevents or delays any termination of this Lease pursuant to Section 30(O) of this Lease.

Any or all of the foregoing obligations may be referred to as an "Indemnification" or "Indemnity"; and the obligation of Tenant to provide Indemnification of Landlord may be referred to as an obligation to "Indemnify."

B. Tenant will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises and improvements at the sole risk of Tenant and Indemnify, defend, pay and hold Landlord harmless for, from and against any and all loss or damage thereto by any cause whatsoever, other than ordinary wear and tear and repair and replacement arising out of Tenant's maintenance obligations.

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

D. If any claim, action or proceeding is made or brought against Landlord by reason of any event to which reference is made in this Section 16, then, upon demand by Landlord, Tenant, at its sole cost and expense, shall resist or defend such claim, action or proceeding in Landlord's name, if necessary, by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys as Landlord shall approve, which approval shall not be unreasonably withheld or delayed.

E. The provisions of this Section 16 shall survive the expiration or earlier termination of this Lease for a period of two (2) years.

17. **Damage or Destruction**.

A. Tenant's Obligations to Repair and Restore. If, at any time during the Term, the Premises, or any improvement thereon, or any part thereof, shall be damaged or destroyed by fire, casualty or other occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant, at its sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, shall repair, alter, restore, replace, or rebuild the same as nearly as possible to its value, and equal to or better than condition, and character immediately prior to such damage or destruction. The restoration shall comply with the timeframes in Subsections 17(A)(1) and 17(A)(2), as applicable, and must be performed by licensed and bondable Arizona contractors. Anything herein to the contrary notwithstanding, Tenant shall immediately secure the Premises and undertake temporary repairs and work necessary to protect the public and to protect the Premises from further damage.

(1) Minor Repairs or Restoration. Repair, alteration, or restoration estimated to cost ten thousand dollars ($10,000) or less and temporary repairs for the protection of other property pending the completion of any thereof, are considered and referred to in this Section as the "Minor Work." Minor Work shall Commence within thirty (30) days from the date of the damage or destruction and must be Completed within one hundred and twenty (120) days after timely commencement of the Minor Work.

(2) Major Repairs, Restoration or Replacement. Any repair, alteration, restoration estimated to cost more than ten thousand dollars ($10,000), or any replacement or rebuilding, are considered and referred to in this Section as "Major Work." Major Work shall Commence within one hundred and eighty (180) days from the date of the damage or destruction and must be Completed within two hundred and forty (240) days after timely commencement of the Major Work.

B. Payment of Insurance Proceeds. All proceeds from insurance policies obtained by Tenant to cover such damage or destruction (except proceeds to cover loss for Tenant's personal property) shall be used to repair and restore the Premises as required under this Lease.

C. Property Insurance. Tenant shall be responsible for carrying fire and extended risk insurance as set forth in Section 8(A).

D. Lease Obligations Continue. Tenant shall not be entitled to any abatement, allowance, reduction, or suspension of rent because part or all of the Premises shall be untenantable owing to the partial or total destruction thereof. No such damage or destruction shall affect in any way the obligation of Tenant to pay the rent, Additional Payments, and other charges required to be paid, or release Tenant from any non-monetary obligations imposed upon Tenant under this Lease.

18. **Condemnation**.

A. Taking. Landlord acknowledges that, due to the nature of the structure of the Premises, if at any time during the Term of this Lease, title to any portion of the Premises shall be taken in condemnation proceedings or by any right of eminent domain or by agreement in lieu of such proceedings, Tenant shall have the right to terminate this Lease effective as of the date possession is transferred to the condemning authority and the Net Rent and Additional Payments reserved shall be apportioned and paid to the date of such taking. All compensation paid by the condemning authority in the case of any condemnation (total or partial) shall be the sole property of Tenant free and clear of any right, title, claim or interest of Landlord.

B. If No Tenant Termination. If Tenant does not elect to terminate this Lease, then, in the event of any taking of less than the whole or substantially all of the Premises, Tenant may, at its sole election and if Tenant is reasonably able to do so, continue to operate and maintain the remaining Premises as contemplated by the Development Agreement, in which case, neither the Net Rent nor the Rental Period of this Lease will be reduced or affected in any way, and the Lease will continue in full force and effect with respect to the balance of the Premises.

C. Rights of Participation. Tenant shall have the sole right, at its own expense, to appear in and defend any condemnation proceeding and participate in any and all hearings, trials, and appeals therein. Landlord shall, at the request of Tenant, shall execute a Disclaimer of Interest in the condemnation action evidencing the fact that Landlord has no interest in the proceeds of the condemnation.

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

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

19. **Encumbrances and Assignments**.

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

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

(2) With respect to such leasehold financing, Landlord will agree to a form of commercially reasonable non-disturbance and recognition agreement with Tenant's Lender as well as other reasonable, non-material or administrative modifications to this Lease requested by a recognized institutional lender. In no event will Landlord subordinate its interest in the Land or the Premises to such leasehold financing.

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

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

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

(6) For the purpose of this Section 19, the making of a Permitted Mortgage shall not be deemed to constitute an assignment or transfer of this Lease, nor shall any holder of a Permitted Mortgage, as such, be deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such holder of a Permitted Mortgage, as such, to assume the performance of any of the terms, covenants, or conditions on the part of Tenant to be performed hereunder; but the purchaser at any sale of this Lease in any proceedings for the foreclosure of any Permitted Mortgage, or the assignee or transferee of this Lease under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Mortgage, shall be deemed to be an assignee or transferee within the meaning of this Section 19 and shall be deemed to have assumed the performance of all the terms, covenants, and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment.

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

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

20. **Default By Tenant**.

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

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

(2) Non-Monetary Default. If default shall be made by Tenant in the performance of or compliance with any of the covenants, agreements, terms, limitations, or conditions of this Lease other than a Monetary Default, and such default shall continue for a period of thirty (30) days after written Notice thereof from Landlord to Tenant; provided, that if Tenant proceeds with due diligence during such thirty (30) day period to substantially cure such default

and is unable by reason of the nature of the work involved, to cure the same within the required thirty (30) days, its time to do so shall be extended by the time reasonably necessary to cure the same, but in no event more than one hundred twenty (120) days; or

(3) Bankruptcy -- Voluntary. If Tenant shall file a voluntary petition in bankruptcy or take the benefit of any relevant legislation that may be in force for bankrupt or insolvent debtors or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state, or other statute, law or regulation, or if Tenant shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties, or shall make any general assignment for the benefit of creditors and not dismiss such actions within sixty (60) days; or

(4) Bankruptcy -- Involuntary. If a petition shall be filed against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statue, law or regulation, and has not been dismissed, vacated or stayed for ninety (90) days, or if any trustee, receiver or liquidator of Tenant, or of all or substantial part of its properties, shall be appointed without the consent or acquiescence of Tenant and such appointment has not been dismissed, vacated or stayed for ninety (90) days; or

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

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

(7) Easement Agreement. Any Event of Default of Grantor (or the party responsible for the obligations of Grantor) under the Easement Agreement, subject to all grace periods, cure periods and periods of Force Majeure provided in the Easement Agreement.

B. Tenant Liability Continues. No such expiration or termination of this Lease shall relieve Tenant of its obligations of Indemnity under this Lease, and all such obligations of Indemnity arising prior to the Lease expiration or termination shall survive any such expiration or termination of this Lease for a period of two (2) years and shall apply to any claim or action that is commenced within such two (2) year period.

C. No Implied Waivers. No failure by Landlord to insist upon the strict performance of any covenant, agreement, term or condition hereof or to exercise any right or remedy consequent upon a breach hereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition hereof to be performed or complied with

by Landlord or Tenant, and no breach thereof, shall be waived, altered or modified, except by a written instrument executed by the Party to be charged therewith. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term, limitation and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach hereof.

D. Remedies Cumulative. In the event of any breach by Tenant of any of the covenants, agreements, terms or conditions hereof, Landlord, in addition to any and all other rights, shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity, by statute or by this Lease for such breach. In the event of Tenant's failure to pay Net Rent or Additional Payments on the date when due, Tenant shall pay Landlord interest on any such overdue payments and associated late charges at the Default Rate, but in no event an amount greater than permitted by law, but this shall in no way limit any claim for damages for Landlord for any breach or default by Tenant, except that Landlord shall not be entitled to special, consequential or punitive damages.

E. Late Charge. In the event that any payment required to be made by Tenant to Landlord under the terms of this Lease is not received within ten (10) days after the due date thereof, a late charge may, at Landlord's option, be charged, following Notice to Tenant, and shall become an Additional Payment in an amount equal to ten percent (10%) of the late payment.

F. Termination of Lease. If a default is not cured within any applicable time period after service of Notice of the default, Landlord, may, at its option and with no further Notice to Tenant required, terminate this Lease and quitclaim the Land and all Improvements to Tenant; provided, however, that the termination of this Lease and the conveyance of the Land and Improvements to Tenant will not terminate or otherwise restrict Tenant's obligations to Landlord under the Easement Agreement and to Indemnify Landlord as required in this Lease.

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

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

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

If to Landlord:	City of Mesa Attn: City Manager 20 East Main Street Mesa, Arizona 85211 and City of Mesa Attn: Real Estate Administrator 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 Tenant:	_____ Attn: _____ _____ _____
With a required copy to:	_____ Attn: _____ _____ _____

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

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

25. **Quiet Enjoyment**. Subject to all of the conditions, terms, and provisions contained in this Lease, Landlord covenants that Tenant, upon paying the Net Rent, and Additional Payments

and observing and keeping all terms, covenants, agreements, limitations, and conditions hereof on its part to be kept, shall quietly have and enjoy the Premises during the term hereof, without hindrance or molestation by Landlord.

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

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

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

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

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

27. **Consents**.

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

B. No Unreasonable Withholding. Wherever in this Lease the consent or approval of either Party is required, such consent or approval shall not be unreasonably withheld, conditioned or delayed, except and unless where otherwise specifically provided. The remedy of the Party requesting such consent or approval, in the event such Party should claim or establish that the other Party has unreasonably withheld or delayed such consent or approval, shall be limited to injunction or declaratory judgment and in no event shall such other Party be liable for a money judgment.

28. **Limitation of Landlord's Liability**. Landlord shall not be responsible or liable for any damage or injury to any property, fixtures, merchandise, or decorations or to any person or persons at any time on the Premises from steam, gas, electricity, water, rain, or any other source whether the same may leak into, issue or flow from any part of the Improvements or from pipes or plumbing work of the same, or from any other place or quarter; nor shall Landlord be in any way responsible or liable in case of any accident or injury including death to any of Tenant's employees, agents, subtenants, or to any person or persons in or about the Premises or the streets,

sidewalks or vaults adjacent thereto; and Tenant agrees that it will not hold Landlord in any way responsible or liable therefor and will Indemnify the Landlord Indemnified Parties pursuant to Section 16. Landlord shall not be liable for interference with light or incorporeal hereditaments caused by anybody or the operation of or for any governmental authority in the construction of any public or quasi-public work, and Landlord shall not be liable for any latent or any other defects in the Premises.

29. **Miscellaneous**.

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

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

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

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

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

F. Amendments. No amendment to this Lease will be effective unless it is in writing and has been approved by the Parties (including, but not limited to, approval by the City Council of the City of Mesa, except as set forth in subsection E above). In addition, in compliance with A.R.S. §42-6209(C)(3), Landlord may not approve an amendment to change the use of the Premises during the period that any statutory abatement of GPLET applies unless:

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

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

G. Captions. The captions of Sections in this Lease and its Table of Contents are inserted only as a convenience and for reference, and they in no way define, limit, or describe the scope of this Lease or the intent of any provision thereof. References to Section numbers are to those in this Lease unless otherwise noted.

H. Execution and Delivery. This Lease shall bind Tenant upon its execution thereof. Landlord shall be bound only after it executes and delivers the Lease to Tenant following approval by the City Council of the City of Mesa, in such Council's sole discretion.

I. Counterparts. This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

J. Singular and Plural, Gender. If two or more persons, firms, corporations, or other entities constitute either the Landlord or the Tenant, the word "Landlord" or the word "Tenant" shall be construed as if it reads "Landlords" or "Tenants," and the pronouns "it," "he," and "him" appearing herein shall be construed to be the singular or plural, masculine, feminine, or neuter gender as the context in which it is used shall require.

K. Multiple Parties. If at any time Landlord, Tenant, or any Permitted Mortgagee (Landlord, Tenant or any such mortgagee being in this Section referred to as a "Party") is other than one individual, partnership, firm, corporation, or other entity, the act of, or notice, demand, request, or other communication from or to, or payment of refund from or to, or signature of, or any one of the individuals, partnerships, firms, corporations, or other entities then constituting such Party with respect to such Party's estate or interest in the Premises or this Lease shall bind all of them as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed, unless all of them previously have executed and acknowledged in recordable form and given a notice (which has not theretofore been revoked by notice given by all of them) designating not more than three individuals, partnerships, firms, corporations, or other entities as the agent or agents for all of them. If such a notice of designation has previously been given, then, until it is revoked by notice given by all of them, the act of, or notice, demand, request or other communication from or

to, or payment or refund from or to, or signature of, the agent or agents so designated with respect to such Party's estate or interest in the Premises or this Lease shall bind all of the individuals, partnerships, firms, corporations, or other entities then constituting such Party as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed.

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

Exhibit A	Legal Description
Exhibit B	Required Insurance
Exhibit C	Prohibited Uses
Exhibit D	Special Warranty Deed
Exhibit E	Certificate of Commencement Date
Exhibit F	Memorandum of Lease

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

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

O. Preserve State Shared Revenue. Notwithstanding any other provision of, or limitation in, this Lease to the contrary, if pursuant to A.R.S. §41-194.01 the Attorney General determines that this Lease violates any provision of state law or the Constitution of Arizona, Landlord and Tenant are not able (after good faith attempts) to modify the Lease so as to resolve the violation with the Attorney General within thirty days of notice from the Attorney General pursuant to and under the provisions of A.R.S. §41-194.01(B)(1), this Lease shall automatically terminate at midnight on the thirtieth day after receiving such notice from the Attorney General, and upon such termination, the Parties shall have no further obligations under this Lease. Additionally, if the Attorney General determines that this Lease may violate a provision of state law or the Constitution of Arizona under A.R.S. §41-194.01(B)(2), City shall be entitled to terminate this Lease, except if Tenant timely posts such bond, if required; and provided further, that if the Arizona Supreme Court determines that this Lease violates any provision of state law or the Constitution of Arizona, City may terminate this Lease and convey or quitclaim the Land and Improvements to Tenant; and the Parties shall have no further obligations hereunder.

30. **Equal Employment Opportunity**. Tenant shall comply with all ordinances and other requirements of the City of Mesa relating to nondiscrimination and equal employment opportunity. In performing under this contract, Tenant shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender,

national origin, age, sexual orientation or disability, nor otherwise commit an unfair employment practice. Tenant will take affirmative action to ensure that applicants are employed, and that employees are dealt with during employment, without regard to their race, color, religion, gender, national origin, age, sexual orientation or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Tenant further agrees that this clause will be incorporated in all subcontracts entered into with suppliers of materials or services, and all labor organization furnishing skilled, unskilled and union labor, or who may perform such labor or services in connection with this contract.

31. **Force Majeure; Extension of Time of Performance**. In addition to specific provisions of this Lease, performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes, lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; a Public Health Event (as defined below); freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability (when either Party is faultless) of any contractor, subcontractor or supplier; acts of the other Party (each, an event of "Force Majeure"). For purposes of this Agreement, "Public Health Event" means any one or more of the following but only if and as ordered by an applicable governmental authority: 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. A lack of funds or inability to obtain funds shall not be included in this definition of Force Majeure; nor shall events of Force Majeure excuse any required payment by Tenant to Landlord that are required under this Lease. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. If, however, notice by the Party claiming such extension is sent to the other Parties more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice.

32. **Compliance With Environmental Laws**.

A. Definitions.

(1) "Environmental Laws" means those laws promulgated for the protection of human health or the environment, including (but not limited to) the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Clean Water Act, 33 U.S.C. §§1251 et seq.; the Clean

Air Act, 42 U.S.C. §§7401 et seq.; the Arizona Environmental Quality Act, A.R.S. §§49-101 et seq.; the Occupational Safety and Health Act of 1970, as amended, 84 Stat. 1590, 29 U.S.C. §§651-678; Maricopa County Air Pollution Control Regulations; Archaeological Discoveries, A.R.S. §§41-841 et seq.; regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, county, state or federal government) now in effect or hereinafter enacted that deal with Regulated Substances and the regulation or protection of human health and the environment, including but not limited to the ambient air, ground water, surface water, and land use, including substrata soils.

(2) "Regulated Substances" means:

(a) Any substance identified or listed as a hazardous substance, pollutant, hazardous material, or petroleum in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq., and in the regulations promulgated thereto; and Underground Storage Tanks, U.S.C. §§6991 to 6991i.

(b) Any substance identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or as a special or solid waste in the Arizona Environmental Quality Act, A.R.S. §§49-201 et seq.; including, but not limited to, the Water Quality Assurance Revolving Fund Act, A.R.S. §§49-281 et seq.; the Solid Waste Management Act, A.R.S. §§49-701 et seq.; the Underground Storage Tank Regulation Act, A.R.S. §§49-1001 et seq.; and Management of Special Waste, A.R.S. §§49-851 to 49-868.

(c) All substances, materials and wastes that are, or that become, regulated under, or that are classified as hazardous or toxic under any Environmental Law during the term of this Agreement.

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

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

C. Indemnification.

(1) Tenant shall indemnify, defend, pay and hold harmless, upon written demand, the Landlord Indemnified Parties (as defined in Section 16(A)), for, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, claims, legal and investigation fees or costs, arising from or related to any claim or action for injury,

liability, breach of warranty or representation, or damage to persons, property, the environment or the Premises and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, human health, property or the environment pursuant to any Environmental Law, the common law, or other statute, ordinance, rule, regulation, judgment or order of any governmental agency or judicial entity, which are incurred or assessed as a result, whether in part or in whole, of any use of the Premises during the Term of this Lease or any previous lease or uses of the Premises by Tenant or its owners or affiliated entities, agents, employees, invitees, contractors, visitors or licensees. Regardless of the date of termination of this Lease, Tenant's obligations and liabilities under this Section 32 shall continue so long as the Landlord bears any liability or responsibility under the Environmental Laws for any use of the Premises during the term of this Lease. This Indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial actions, removal or restoration work required or conducted by any federal, state or local governmental agency or political subdivision because of Regulated Substances located on the Premises or present in the soil or ground water on, or under the Premises. The Parties agree that Landlord's right to enforce this covenant to Indemnify is not an adequate remedy at law for Tenant's violation of any provision of this Section and that Landlord shall also have the rights set forth in this Section in addition to all other rights and remedies provide by law or otherwise provided for in this Lease.

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

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

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

(4) Tenant shall immediately notify Landlord, and Landlord shall immediately notify Tenant, as applicable, of any of the following: (a) any correspondence or communication from any governmental agency regarding the application of Environmental Laws to the Premises or Tenant's use of the Premises, (b) any change in Tenant's or Landlord's use of the Premises that will change or has the potential to change Tenant's or Landlord's obligations or liabilities under Environmental Laws, and (c) any assertion of a claim or other occurrence for which Tenant or Landlord may incur an obligation under this Section 32.

(5) Tenant shall insert the provisions of this Section 32 in any sublease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

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

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

D. Noncompliance.

(1) Tenant's failure or the failure of its agents, employees, contractors, invitees or of a third party to comply with any of the requirements and obligations of this Section 32 or applicable Environmental Law shall constitute a material default of this Lease. Notwithstanding any other provision in this Lease to the contrary, after applicable notice and right to cure, Landlord shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Law on, or under the Premises, without waiving any of its rights under this Lease. The exercise by Landlord of any of its rights under this Section 32 shall not release Tenant from any obligation it would otherwise have hereunder.

(2) The covenants in this Section 32 shall survive the expiration or earlier termination of this Lease for a period of two (2) years.

33. **Purchase and Re-acquisition of Premises**. The Parties acknowledge the requirement of A.R.S. §42-6209(G) that the Term of this Lease is prohibited from extending beyond eight (8) years from the issuance of a certificate of occupancy for the Project. In recognition of this limitation and requirement, Tenant agrees to re-acquire its fee interest in the Premises at the end

of the Term (or earlier termination of this Lease). Landlord and Tenant hereby confirm Tenant's obligation to purchase the Premises according to the terms and conditions hereinafter set forth.

A. Requirement of Exercise. Notwithstanding anything in this Lease to the contrary, Tenant is obligated to purchase the Premises at the expiration of the Term (or earlier termination of this Lease). In the event that Tenant fails to complete the purchase of the Premises within six (6) months following the expiration of the Term (or earlier termination of this Lease), Landlord will quitclaim its interest in the Premises to Tenant (subject to the Easement Agreement and all other public and public utility easement existing in favor of or benefiting the City of Mesa, Arizona), but will retain all rights of Indemnification granted in this Lease, including (but not limited to) Section 16 and Section 32.

B. Exercise of Obligation. Tenant's obligation to purchase the Premises is effective, and Tenant has the right to purchase of the Premises, at any time after the execution of this Lease; provided that Tenant's right to purchase is conditioned upon Tenant curing any monetary default then existing under this Lease; and further provided that Landlord may waive this requirement in Landlord's sole discretion. Tenant may purchase the Premises at any time during the Rental Period by delivering Notice of its intent to purchase the Premises to Landlord (the "Reacquisition Notice"); and the purchase of the Premises by Tenant must be completed no later than the earlier of (i) six (6) months following the delivery of the Reacquisition Notice to Landlord, or (ii) six (6) months after the expiration of the Term (or earlier termination of this Lease).

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

D. Conveyance of Title and Delivery of Possession. Landlord and Tenant agree to perform all acts necessary to complete the conveyance of the Premises to Tenant within ninety (90) days after delivery to Landlord of Tenant's Reacquisition Notice, or on the last day of the Rental Period, whichever first occurs. Landlord shall convey title to the Premises to Tenant (by Special Warranty Deed in the form attached to this Lease as Exhibit D) in the same condition as title was transferred to Landlord in the Landlord Deed, and subject to the Exceptions and all other matters of record, and further subject to all easements and similar rights in favor of the City of Mesa, including but not limited to the Easement Agreement, with Tenant accepting all matters, claims, liens, instruments and exceptions (and Landlord having no liability or responsibility therefor) recorded against (or otherwise affecting) the Land and Improvements from and after the date of the Landlord Deed. Landlord has no responsibility to eliminate, cure or "endorse over" any exceptions to title; and provided further, the Parties agree that all public easements in favor of the City of Mesa, including the Easement Agreement, are approved title exceptions on the Land. Landlord's then acting City Manager (or such City Manager's designee) is authorized to execute and deliver the Deed on behalf of Landlord. All expenses in connection with conveyance of the Premises to Tenant including, but not limited to, title insurance (if requested by Tenant),

recordation and notary fees and all other closing costs (including escrow fees if use of an escrow is requested by Tenant), shall be paid by Tenant. Tenant is not required to deliver a Reacquisition Notice to Landlord at the expiration of the Rental Period if there has been no earlier termination of this Lease. Although Tenant will have been in actual possession of the Premises throughout the Term, (i) legal possession of the Premises will be deemed to have been delivered to Tenant concurrently with the conveyance of title pursuant to the Deed, and (ii) Landlord will retain all rights of Indemnification granted in this Lease, including (but not limited to) Section 16 and Section 32. The terms of this Section 33 will survive the termination of this Lease and the recordation of any deed from Landlord to Tenant.

E. No Merger; Survival of Easement Agreement.

(1) Tenant agrees, acknowledges and confirms that the conveyance of fee title to the Land, accompanied by the concurrent existence of this Lease and the Easement Agreement previously granted by Tenant to Landlord, does not cause or create a merger of estates in Landlord, such that the Easement Agreement would be extinguished or deemed extinguished; and in the event that any court of applicable jurisdiction determines that such merger has occurred, Landlord and Tenant agree that this Lease shall be void *ab initio*, and Landlord will immediately reconvey the Land and Improvements to Tenant in order to preserve the primacy of the Easement Agreement.

(2) Notwithstanding anything to the contrary herein, upon the conveyance of the Premises to Tenant due to termination or expiration of this Lease or for any other reason whatsoever, the Easement Agreement rights shall survive and Landlord shall have the right to do either or both of the following: (i) require that the deed transferring the Premises back to Tenant, includes a provision that allows the Landlord to retain the Easement Agreement rights by, *inter alia*, providing that the Easement Agreement does not merge with the deed and shall survive the transfer, (ii) require Tenant, immediately following the recordation of the deed transferring the Premises to Tenant, to record a new Easement Agreement granting the same rights to Landlord as provided in the existing Easement Agreement. The terms and conditions of this Section 33(E) shall survive the termination or expiration of this Lease and may be enforced through an action seeking specific performance or by any other action or claim in law or equity.

Signatures of Landlord and Tenant are on the following two (2) pages.

35. **Signatures**. The Parties have executed this Lease to be effective as of the Execution Date.

LANDLORD:

CITY OF MESA, ARIZONA,
a municipal corporation

By:_____
Its:_____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

TENANT:

_____,
A _____

By:_____
Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 202__, by _____, the _____ of _____, a _____, on behalf of the company.

_____
Notary Public

My commission expires:

_____

{00390999.1}

Exhibit A to Government Property Improvements Lease

Legal Description of the Land

Exhibit B to Government Property Improvements Lease

Insurance Requirements

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

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

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

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

Workers' Compensation Employers' Liability	Statutory Limits $500,000 each accident, each employee	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Liquor Liability	$5,000,000	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease, provided Tenant sells and/or serves alcohol
Professional Liability	$2,000,000	Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Blanket Crime Policy	$5,000,000	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Equipment Breakdown Coverage	$5,000,000 (or such other amount as agreed to in writing between the Parties that is sufficient to cover all such risks)	Coverage shall be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit C to Government Property Improvements Lease

Prohibited Uses

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

- Group Residential, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Non-chartered Financial Institution, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Pawn Shops, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Social Service Facilities, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Tattoo and Body Piercing Parlors, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Group Residential, as defined by Chapter 86 of the Mesa Zoning Ordinance
- Off-Track Betting Establishment, as defined by Chapter 86 of the Mesa Zoning Ordinance
- Medical Marijuana Dispensary, as defined by Chapter 86 of the Mesa Zoning Ordinance
- Package liquor stores
- Kennels

Exhibit D to Government Property Improvements Lease

When Recorded, Mail to:

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SPECIAL WARRANTY DEED

==========

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

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

SUBJECT TO those matters described in Exhibit "B" attached hereto and by this reference made a part hereof; all matters of record; municipal and public taxes and assessment; and to any and all conditions, easements, encroachments, rights-of-way, or restrictions which a physical inspection, or accurate ALTA survey, of the Property would reveal; and all applicable municipal, county, state or federal zoning and use regulations;

AND FURTHER SUBJECT TO all easements and similar rights in favor of the City of Mesa, including but not limited to that certain "Easement Agreement" dated _____ and recorded in the Official Records of Maricopa, County, Arizona, on or about _____ as Instrument No. _____ (collectively, "Easements"), all of which Easements are retained fully by Grantor;

AND GRANTOR hereby binds itself and its successors to warrant and defend the title against all of the acts of Grantor done or performed in Grantor's capacity and status as holder of fee title to the Property pursuant to the terms of that certain Government Property Improvements Lease dated _____ and which has expired, but not as against the lawful acts of Grantor in its capacity as a municipal corporation) and no other, subject to the matters set forth above.

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed as of this ___ day of _____, 202__.

GRANTOR:

City of Mesa, Arizona, an Arizona municipal corporation

By:_____
Name: _____
Its:_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

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

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

_____
Notary Public

My Commission Expires:

_____

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

GRANTEE:

_____ a_____

By:_____
Name: _____
Its:_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

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

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

_____
Notary Public

My Commission Expires:

_____

Exhibit E to Government Property Improvements Lease

==========

CERTIFICATE OF COMMENCEMENT DATE

==========

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

DATED: _____, 202__.

TENANT:

_____,
a _____

By: _____
Printed Name: _____
Its: _____

LANDLORD:

City of Mesa, Arizona, an Arizona municipal corporation

By: _____
Printed Name: _____
Its: _____

Exhibit F to Government Property Improvements Lease

Form of Memorandum of Lease

WHEN RECORDED RETURN TO:

_____
_____
_____
_____
_____

==========

MEMORANDUM OF LEASE

==========

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

1.	Name of Document:	Government Property Improvements Lease (the "Lease")
2.	Name of Landlord:	City of Mesa, Arizona, an Arizona municipal corporation ("Landlord")
3.	Name of Tenant:	_____, a _____ ("Tenant")
4.	Address of Landlord:	20 East Main Street, Suite 200 Mesa, Arizona 85211-1466
5.	Address of Tenant:	_____ _____ _____
6.	Date of Lease:	_____
7.	Lease Term:	Commencing on the Commencement Date and expiring eight (8) years thereafter.

8. Commencement Date: _____

9. Title Transfer: Landlord will convey title to the Premises at the end of the Lease Term, on the conditions set forth in the Lease.

10. Demised Premises: The real property more particularly described in Exhibit "A" attached hereto.

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

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

Signatures and acknowledgments are on the following two pages.

LANDLORD'S SIGNATURE PAGE

Landlord:

City of Mesa, Arizona, an Arizona municipal corporation

By: _____
Name: _____
Its: _____

STATE OF _____)
) ss.
County of _____)

On this the ____ day of _____, 20___, before me, the undersigned Notary Public, personally appeared _____, who acknowledged ____self to be the _____ of the City of Mesa, Arizona, an Arizona municipal corporation, and that, being authorized so to do, __he executed the foregoing instrument for the purposes herein contained on behalf of the Landlord.

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

_____
Notary Public
My Commission Expires:_____

TENANT'S SIGNATURE PAGE

Tenant:

_____,
_____, a _____

By: _____
Name: _____
Its: _____

STATE OF _____)
) ss.
County of _____)

On this the ____ day of _____, 20___, before me, the undersigned Notary Public, personally appeared _____, who acknowledged ____self to be the _____ of _____, a _____, and that, being authorized so to do, __he executed the foregoing instrument for the purposes herein contained on behalf of the Tenant.

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

_____
Notary Public
My Commission Expires:_____

EXHIBIT C
INTENTIONALLY OMITTED

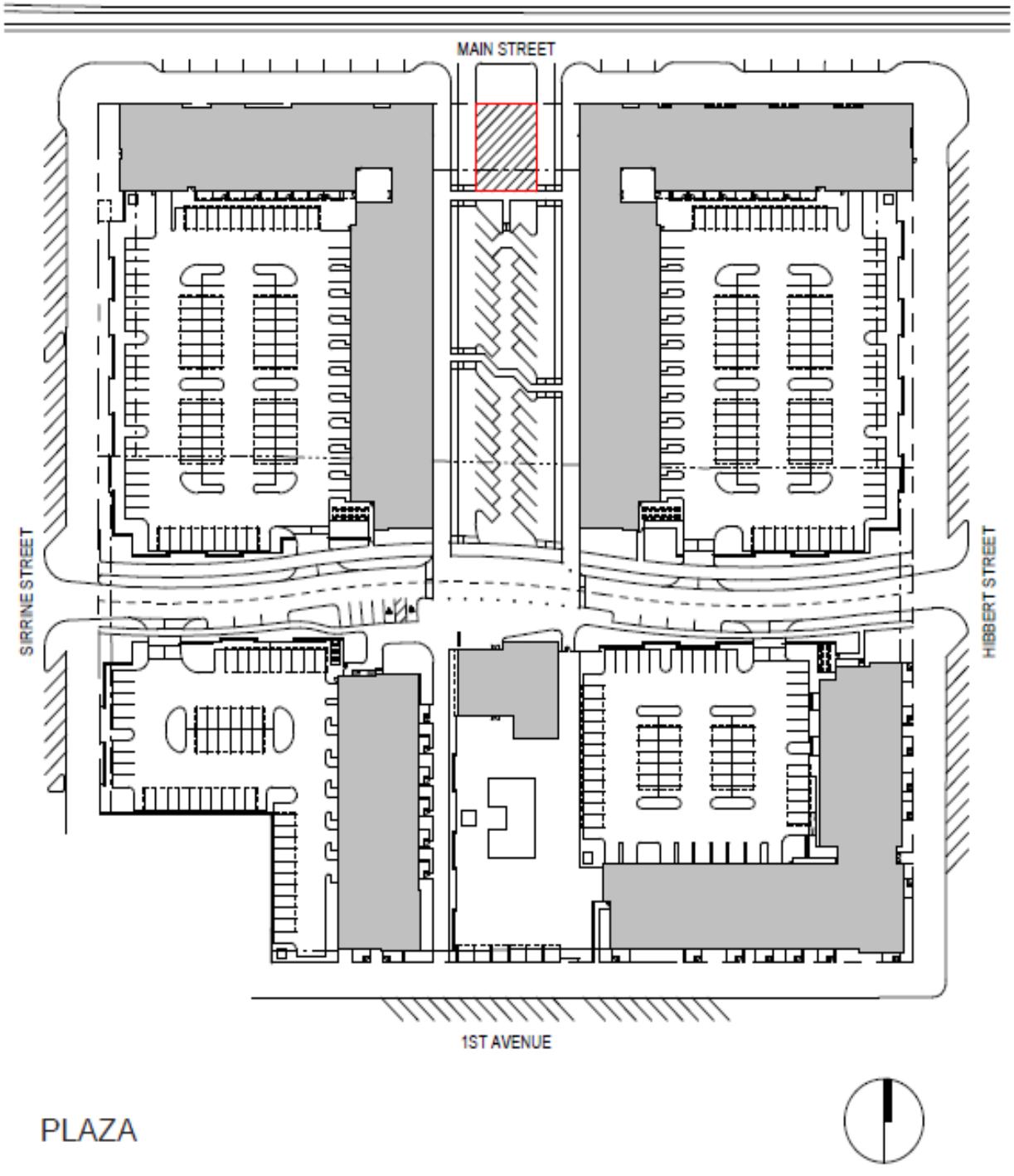
EXHIBIT D
ON-SITE AMENITIES

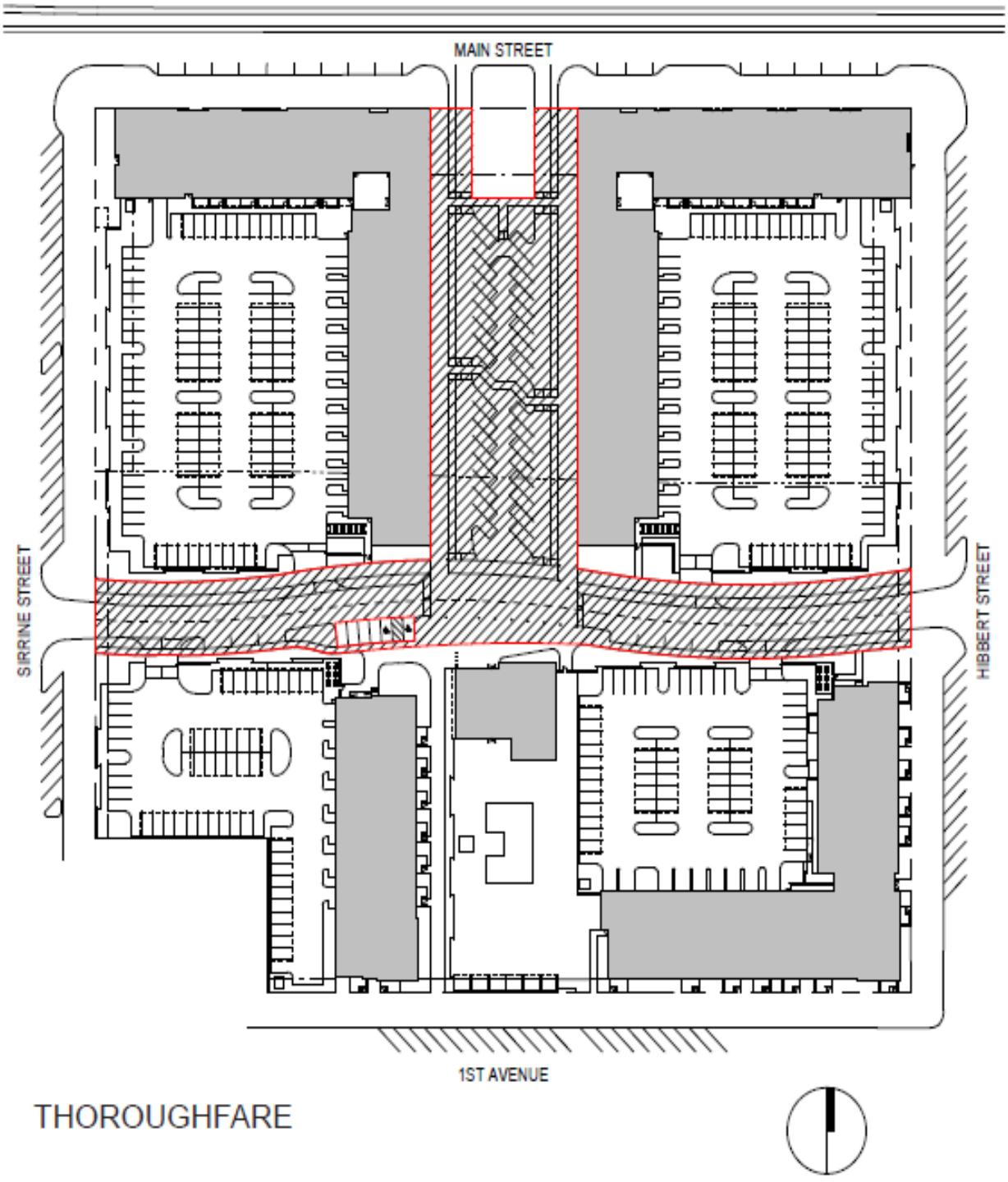
1. Some covered/shaded parking located within all central parking fields designated for private resident parking which will include a minimum of 180 shaded/covered parking spaces.
2. Fitness center
3. Swimming pool and spa
4. A minimum of six (6) pool cabanas
5. An art feature/sculpture in the Plaza
6. Programmed outdoor amenity spaces as determined by Developer that may include such items as a bocce ball court, fire pit, outdoor fitness area, social gathering spaces, and conversation pits
7. Secure building entries and controlled access to On-Site Amenities
8. Covered bicycle parking per zoning requirements
9. Pet-washing station and pet friendly policies and amenities
10. Clubhouse/community room/party room
11. Resident package delivery and receiving, including storage for oversized packages

EXHIBIT E
UNIT AMENITIES

1. Private deck, minimum 4' by 8' balcony, or patio (minimum 50 percent of units)
2. Each residential unit will have high-speed internet access
3. Full size washer and dryer within each residential unit – except studios
4. High quality appliances (refrigerator, stove/oven, dishwasher, microwave)
5. Energy star rating for all major appliances (washer, dryer, refrigerator, stove/oven, dishwasher, microwave)
6. Plumbing fixtures with sensitivity for sustainable water usage that meets City's plumbing code requirements
7. Central heating and air-conditioning for each residential unit
8. Programmable thermostat for each residential unit
9. Hard, natural kitchen and bathroom countertop materials for each residential unit (*e.g.*, stone, engineered stone, polished concrete)
10. Tile, hardwood, luxury vinyl plank, or similar flooring in, at a minimum, the living areas, bathroom, and kitchen (no linoleum) - carpet can be used in bedrooms only.
11. Minimum 9-foot ceilings except for loft areas
12. Ceiling fan(s) with integrated lighting in each unit
13. Wireless internet access available in residential common amenity areas
14. At least one charging outlet with integrated USB port (or then technology equivalent) in each unit
15. LED lighting per City Code
16. Mid-grade or higher cabinetry
17. A Sound Transmission Class (STC), as defined by the Uniform Building Code, designed to a minimum of 55 on demising walls between residential units, and designed to a minimum of 50 on exterior and party walls, floors, and ceilings
18. An Impact Isolation Class (IIC), as defined by the Uniform Building Code, designed to a minimum impact rating of 50 on floor/ceiling assemblies

EXHIBIT F
DEPICTION OF THOROUGHFARE AND PLAZA




MAIN STREET
SIRRINE STREET
HIBBERT STREET
1ST AVENUE
THOROUGHFARE

THOROUGHFARE AND PLAZA EXHIBIT

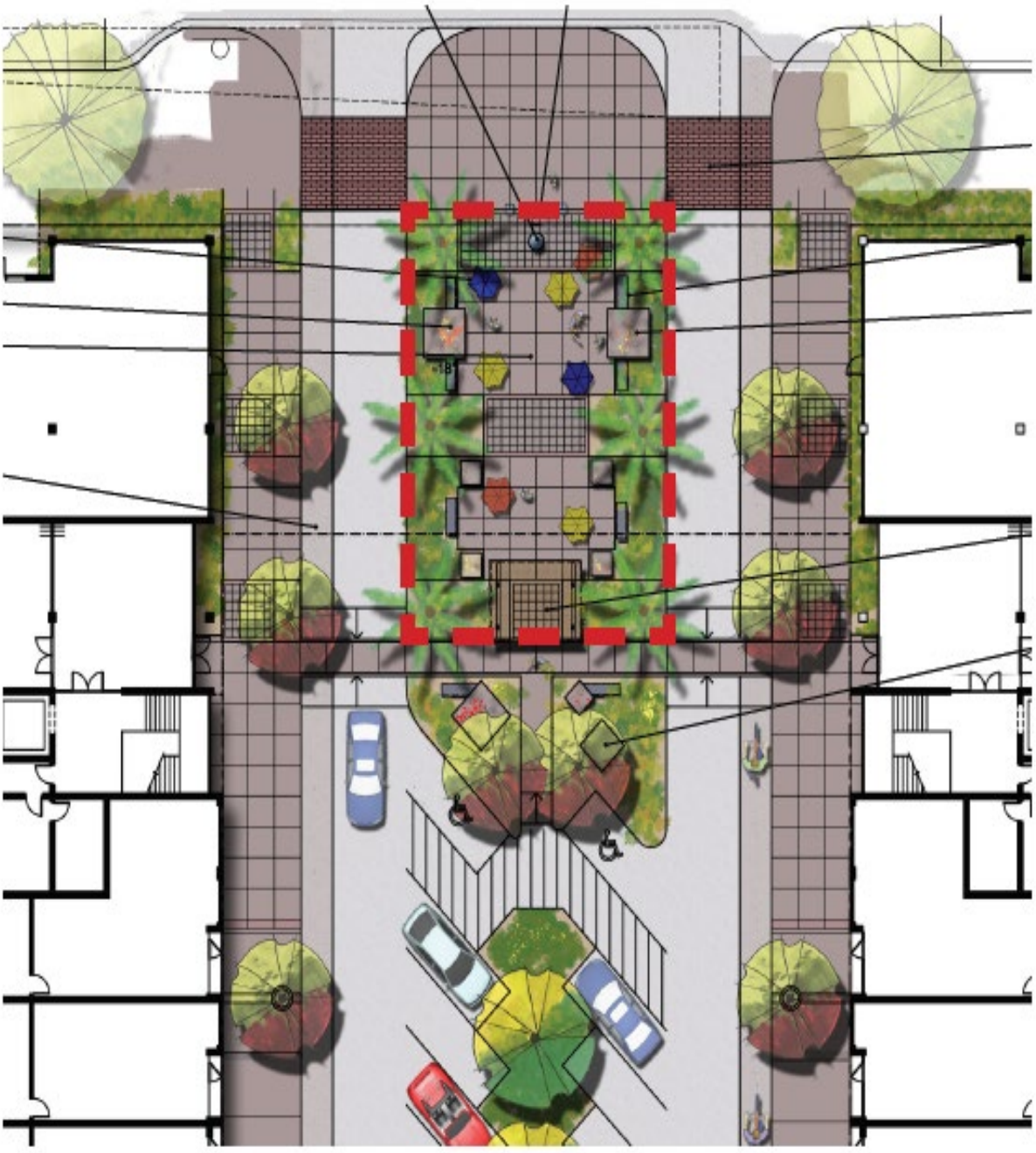


EXHIBIT G
EXTERIOR QUALITY STANDARDS

1. All exterior elevations will incorporate high quality design (*i.e.*, four-sided architecture)
2. Minimum three high quality and durable exterior building materials
3. All building mounted equipment screened from public view – Solar Array excluded
4. All exterior building vents, such as furnace and dryer, are integrated into the building architecture
5. All exterior south-facing windows will include a high-performance, energy-efficient Low-E glazing unit
6. High Albedo roof or another solution that results in a cool roof
7. Minimum seventy-five percent (75%) ground floor transparency fronting Main Street
8. Incorporation of one (1) attached identification sign that includes a neon component
9. Incorporation of pedestrian scale signage (*e.g.*, blade or projecting) for ground floor commercial tenant space(s)
10. Incorporation of a consistent sign area for one attached sign per ground floor commercial tenant space
11. Pedestrian areas shall incorporate pavers, stamped or colored concrete, or similar specialty paving materials
12. Minimum thirty-six inch (36") box size trees will be planted along public streets, and such trees will be planted in accordance with City of Mesa Detail M-103.03.
13. All on-site landscape will be native, or desert adapted species as included in *Landscape Plants for the Arizona Desert* http://www.amwua.org/plants/
14. Electric vehicle charging stations for eight (8) total vehicles

EXHIBIT H
PROGRAM COMPLIANCE

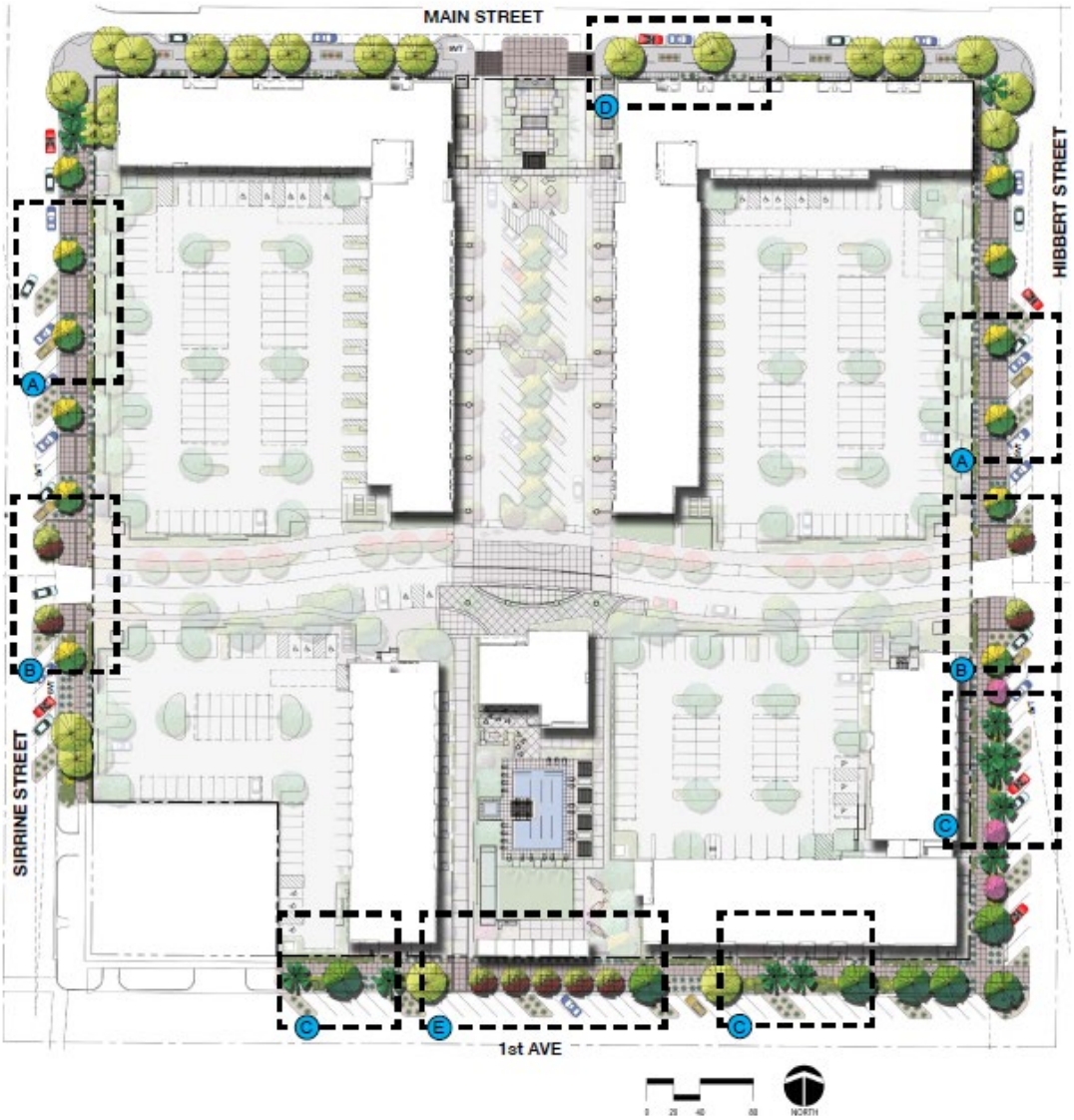
1. All construction by Developer will be designed and constructed using sustainable strategies based on the National Green Building Standard. These strategies will address key elements of sustainability in the categories of energy efficiency, water efficiency, resource efficiency, operation & maintenance, site development, and indoor air quality. The Developer will submit a report summarizing the project's sustainable features and self-certification at the Bronze NGBS level.

2. To the extent feasible, Developer will implement a waste recycling program during construction, with a goal of recycling construction waste, which program will include, without limitation, diverting construction and land-clearing debris from disposal in landfills and incinerators, redirecting recyclable recovered resources back to the manufacturing process, and redirecting reusable materials to appropriate sites. Soil may not be counted towards diversion totals. Developer will engage the Mesa Solid Waste to haul diverted materials.

3. Developer will design to Crime Prevention Through Environmental Design (CPTED) principles and will participate in the Tri-Star Program of the Mesa Police Department as a Level Three Property.

EXHIBIT I
PUBLIC IMPROVEMENTS DESCRIPTION & DEPICTION

OPUS
THE OPUS GROUP



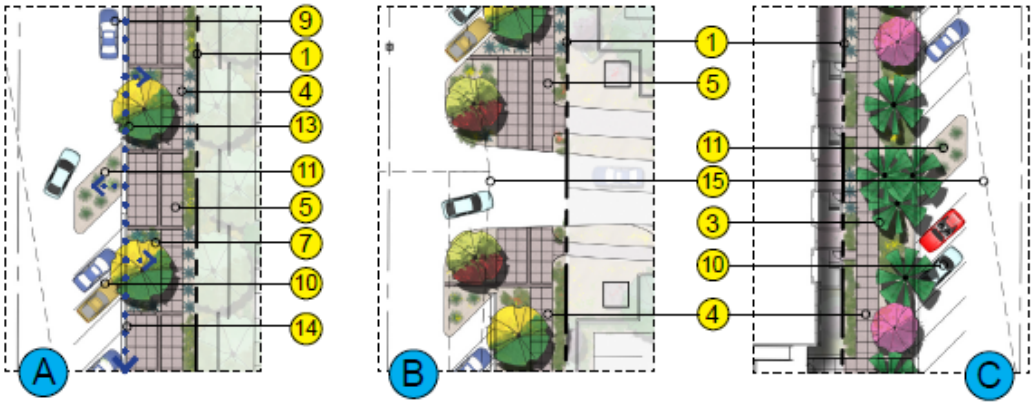
Mesa Arts District Lofts

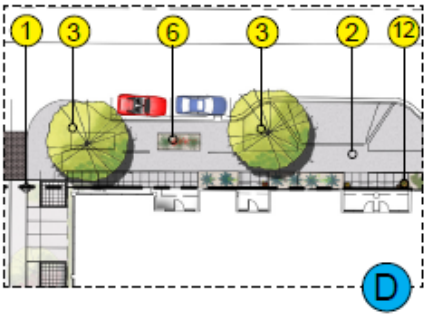
Mesa, Arizona

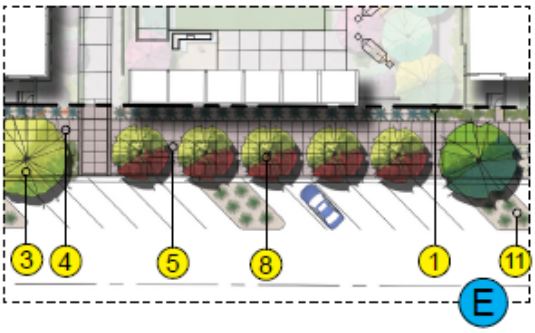
February 23, 2021

studio DPA
Planning and Landscape Architecture

OPUS
THE OPUS GROUP







Keynotes

1. Property Line / ROW
2. Existing Sidewalk to Remain
3. Existing Tree/Palm to Remain
4. Proposed Concrete Sidewalk (8 ft. width)
5. Proposed Concrete Sidewalk (Expanded Width)
6. New Planting in Existing Cutouts
7. Rainwater Havesting Planters
8. Planter cutouts in Paving
9. Ride Share Drop-Off
10. On-Street Parking
11. Proposed Landscape Island
12. Pot / Urn
13. Curb-Cuts for Rainwater
14. Storm Flow for Rainwater
15. Sight Visibility Triangle

Mesa Arts District Lofts

Mesa, Arizona

February 23, 2021

studio DPA
Planning and Landscape Architecture

EXHIBIT J
EASEMENT

(*See Attached*)

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

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).

PERPETUAL EASEMENT AGREEMENT

This Perpetual Easement Agreement ("**Agreement**") is made on this ____ day of _____, 20__, by and between _____, a(n) _____ limited liability company ("**Grantor**"), and the City of Mesa, a municipal corporation ("**Grantee**"). Grantor and Grantee may be herein referred to collectively as "**Parties**" and each individually as a "**Party**."

R E C I T A L S

A. Grantor holds fee title to that certain real property generally located within the square mile south of East Main Street, north of East 1st Avenue, east of South Sirrine, and west of South Hibbert within Mesa, Arizona and totaling approximately 9.67 acres ("**Property**").

B. The Property is located within Grantee's downtown area, specifically the town center redevelopment area within Grantee's single central business district. To further the redevelopment of Grantee's downtown, Grantee (designated as "City") and Grantor (designated as "Developer") entered into a development agreement pertaining to the Property dated _____, 2021, recorded as Instrument No. _____, Records of Maricopa County, Arizona ("**Development Agreement**"). The Development Agreement involves the construction of a mixed-use development on the Property, including commercial space, live-work, market rate residential apartments, and other improvements (the "**Project**" as defined in the Development Agreement).

C. The Development Agreement, among other matters, requires the Project to include a central thoroughfare area facilitating motor vehicle and pedestrian access through the Project (collectively, the "**Thoroughfare**" as defined in the Development Agreement); and (ii) central open space and related improvements (collectively, the "**Plaza**" as defined in the Development

Agreement). The portion of the Property constituting the Thoroughfare and the Plaza is referred to collectively in this Agreement as the "**Easement Area**" and is legally described in Exhibit A, which is attached to this Agreement and incorporated into this Agreement for all purposes.

D. In accordance with the terms of the Development Agreement, Grantee agreed to accept conveyance of the Property from Grantor and subsequently lease the Property to Grantor for a specified period in exchange for Grantor meeting certain obligations, including: (i) Grantor constructing and operating the Project; (ii) Grantor constructing and maintaining the Thoroughfare and Plaza; and (iii) Grantor giving Grantee the easements evidenced by this Agreement and as more fully set forth in Section 2.1 and Section 2.2 of this Agreement (collectively, the "**Easement**") allowing the public access to and use of the Thoroughfare and the Plaza at no cost to Grantee or to the public, as set forth in Section 4.7 of the Development Agreement and herein.

E. Grantor's agreement to construct and maintain the Thoroughfare and Plaza, and to grant the Easement to Grantee on and over the Thoroughfare and the Plaza, was valuable partial consideration in Grantee's decision to accept conveyance of the Property from Grantor and subsequently lease the Property to Grantor and to allow the development of the Project in accordance with the Development Agreement; and Grantee would not have entered into the Development Agreement, or agreed to accept ownership of the Property and lease the Property back to Grantor, but for Grantor's granting of the Easement to Grantee in accordance with the terms of this Agreement, and Grantor would not have granted the Easement to Grantee in accordance with the terms of this Agreement, but for Grantee entering into the Development Agreement and agreeing to accept ownership of the Property and lease the Property back to Grantor.

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 Thoroughfare. Grantor hereby grants to Grantee, for the benefit of the public, a perpetual easement for access to and use of the Thoroughfare as set forth in this Section 2.1.

2.1.1 Description and Location. Grantor constructed the Thoroughfare legally described on Exhibit A and generally depicted on Exhibit B attached hereto, and as further described in Section 4.3(c) of the Development Agreement and Exhibit F to the Development Agreement. The Thoroughfare includes those minimum improvements described in Section 4.3(c) of the Development Agreement and Exhibit F of the Development Agreement, including motor vehicle access and restricted public parking, sidewalks, bike lanes, lighting, and landscaping as shown on and in compliance with the Approved Plans (as that term is defined in the Development Agreement).

2.1.2 Rights of Grantee and the Public. Upon recordation of this Agreement, Grantee and the public shall have free, open and continuous access to and use of the Thoroughfare for pedestrian and vehicular ingress, egress, and access, including use of the driveways, drive lanes, drive aisles, bike lanes, pedestrian walkways, and restricted parking spaces within the Thoroughfare

2.1.3 Rights to the Parking Spaces. Upon recordation of this Agreement, Grantee and the public shall have free continuous access to and use of every parking space located in the Thoroughfare ("**Parking Spaces**") subject to the following restrictions: (a) Grantor may impose with signage or posting on the Parking Spaces the time a vehicle is permitted to be parked at a particular location on any day, at any time and for any duration, and citing any enforcement rights that are permissible under the applicable laws permitting Grantor to tow, disable or incapacitate any vehicle violating the parking restrictions; and (b) Grantor may provide the commercial and residential tenants of the Project exemptions to the aforementioned time restrictions on the Parking Spaces using a parking permit system or other system determined by Grantor, provided, however that such permitting of tenants is done in a manner that reasonably allows the general public access to parking. Grantor shall not place any signage at or near the Parking Spaces which would impede or prevent the public's use of the Parking Spaces for any lawful public purpose, including signage that indicates the Parking Spaces are available only to patrons of a specified business or visitors to a specified location. Grantor shall not use any mechanical device (including gates) or any metered or other device requiring payment or tokens of any kind for use of or access to the Parking Spaces. Grantor shall be responsible for enforcing the parking restrictions at the sole cost and expense of Grantor and Grantor shall be responsible for doing so in compliance with applicable laws, rules, and regulations, including the towing, incapacitating or disabling of any illegally parked vehicles. At Grantor's request, Grantee may, at Grantee's discretion and subject to availability, allow Grantor to utilize for the enforcement of parking restrictions on the Parking Spaces, a City program or service available for parking enforcement at properties located in downtown Mesa. If Grantor chooses to impose the parking restrictions permitted under this Section, Grantor shall place signage, in accordance with all applicable laws, rules, and regulations, notifying the public of the parking regulation. The term "Parking Spaces" in this Agreement does not include the six (6) diagonal on street parking spaces adjacent to the leasing office as depicted in Exhibit B.

2.2 Plaza. Grantor hereby grants to Grantee, for the benefit of the public, a perpetual easement for access to and use of the Plaza as set forth in this Section 2.2.

2.2.1 Description and Location. Grantor will cause to be constructed the Plaza legally described on Exhibit A and generally depicted on Exhibit C attached hereto, and as further described in Section 4.3(d) of the Development Agreement and Exhibit F to the Development Agreement that will be a central open space consisting of outdoor space available for use by the public, as shown on, and in compliance with the Approved Plans (as that term is defined in the Development Agreement).

2.2.2 Rights of Grantee and the Public. Upon recordation of this Agreement, Grantee and the public shall have free, open and continuous access in, on, over, upon, across, and through the Plaza for any lawful use, including use of the open space, seating areas, shade structures, and landscaped and paved areas within the Plaza (except as otherwise provided in Section 4 and Section 5 below).

2.3 No Right Granted to any Individual. Nothing in this Agreement confers any right or interest in the Easement Area or this Agreement to any individual or member of the public, it being expressly agreed to by Grantor and Grantee that, although the Easement is given for the use and benefit of the public, the sole Grantee of the Easement provided under this Agreement is the City of Mesa, Arizona.

3. Interferences With and Obstructions to Grantee's and the Public's Use of the Easement Area.

3.1 General. Except as otherwise set forth herein, from and after the recordation of this Agreement, Grantor shall not interfere with Grantee's and the public's right to the use of, and access to, the Easement Area as provided in this Agreement.

3.2 Structures and Other Obstructions in the Easement Area. Within the Easement Area, Grantor shall not, whether directly or indirectly by affirmatively granting permission, (i) construct, install, or place any building, structure, fence, access control, or other travel, or access barrier (except for restricted parking signage) that restricts or prohibits the free, open and continuous access to and use of the Easement Area by the public; (ii) store materials of any kind (except for temporary storage of materials to be used for the repair, maintenance, construction, and reconstruction of the improvements on the Easement Area); or (iii) permit any activity that restricts or prohibits the public's use of, or access to, the Easement Area as provided in this Agreement other than as set forth in Section 2.1.3, Section 4, and Section 5.

3.3 Grantee's Right to Remove Obstructions. Without limiting the grant of the Easement in this Agreement, Grantee shall have the right, but not the obligation, to remove anything constructed, installed or placed within the Easement Area that restricts or prohibits the public's use of, or access to, the Easement Area including, but not limited to, structures, improvements, fences, gates, barriers, materials, vehicles, and stored items (except for restricted parking signage), subject to Section 3.2.

4. Temporary Closure and Restrictions.

4.1 Closure or Restriction that Affects Grantee's or the Public's Use of or Access to the Easement Area. The Easement Area shall remain open at all times to ensure Grantee and the public have access to and can use the Easement Area as provided in this Agreement. Grantor shall not close, restrict or otherwise limit Grantee's and the public's use of the Easement Area or any portion thereof as provided in this Agreement; except Grantor may temporarily close, restrict or limit ("**Temporary Closure**") Grantee's and the public's use of and access to the Easement Area (i) if required in order to perform maintenance and repairs for the Easement Area, (ii) if required by law enforcement, (iii) for a public health or safety emergency, or (iv) if Grantor sponsors or permits a special event or other temporary, short-term event to be held in in the Easement Area, such as a festival, fair, outdoor movie, theater, or concert, or farmers' market.

4.2 Notice of Closure. Grantor shall notify Grantee of any Temporary Closure which Grantor in good faith believes will last longer than thirty (30) days.

5. Control of Easement Area; Enforcement of Easement. The Easement shall not: (a) materially impair the rights of Grantor as a private property owner, including the rights of Grantor

to control or restrict trespass, signage, and camping; (b) create an interest in the Easement Area for Grantee or the public that would deem the Easement Area to be the real property of Grantee or the public (other than Grantee's and the public's express easement rights set forth herein), including, by way of example but not limitation, the creation of a right of way, or public park, or other public forum; (c) subject to Grantor's approval, in its sole and absolute discretion, and in compliance with all applicable licensing requirements, permit Grantee or the public to sponsor, host, or undertake, any special events, including, without limitation, a festival, fair, outdoor movie, theater, or concert, or farmers' market; or (d) permit Grantee or the public to construct or install any buildings, structures, fences, access control, or other travel, or access barriers. Grantor may, but shall not be obligated to, in accordance with applicable law, remove members of the public that are creating a public or private nuisance, that are intoxicated, that are violating any applicable law, or that are otherwise interfering with the public's quiet use and enjoyment of the Easement Area. Grantor may, but shall not be obligated to, prohibit access to, or use of, the Plaza from 10:00 p.m. to 8:00 a.m. Grantor may, but shall not be obligated to, impose or construct traffic calming and other safety-related control measures including, without limitation, posting maximum speed limits and constructing speed bumps, speed humps, roundabouts, or traffic circles. Although this Easement is granted to Grantee for the benefit of the public, the terms and conditions of this Agreement are enforceable only by the Parties, and the public shall not have any right to enforce the terms and conditions herein.

6. Signage. Grantor may, at its sole cost and expense, place signage within the Easement Area provided that Grantor does so in accordance with all applicable laws, rules, and regulations regarding signage and the signage does not interfere with the rights of Grantee as provided in this Agreement and is not in violation of this Agreement.

7. Maintenance and Repairs. Grantor shall, at its sole cost and expense, be responsible for all repairs, maintenance, and replacement obligations of any kind whatsoever in the Easement Area including, but not limited to, maintenance of all improvements, including but not limited to pavement, restricted parking spaces, sidewalks, bike lanes, seating areas, landscaping, irrigation, lighting, art sculptures, shade structures, raised planters, and concrete and specialty paved areas. All maintenance and repairs shall be completed in a sound, clean, safe, and attractive manner, in accordance with industry standards and in compliance with all applicable laws, rules and regulations. Grantee shall have no maintenance or repair obligations under this Agreement or in the Easement Area, except that Grantee shall repair and replace any improvements in the Easement Area damaged or destroyed directly by Grantee or its employees or contractors.

8. Security. This Agreement does not impose any security obligations on Grantor or Grantee. Grantor may, but shall not be obligated to, at its sole cost and expense, provide security or install security improvements in the Easement Area including, but not limited to, bollards, fences, security cameras, and Grantor shall be responsible for any permits or fees required in connection therewith by applicable law; provided, however, that no security measures installed by Grantor may restrict public access to and use of the Easement Area in violation of this Agreement.

9. Encumbrance. This Easement and the easement rights and obligations created and granted in this Agreement shall run with the land as a burden upon the Easement Area, for the benefit of Grantee and the public. Although this Easement is granted to Grantee for the benefit of the public, the terms and conditions of this Agreement are enforceable only by the Parties, and the public shall

not have any right to enforce the terms and conditions of this Agreement. This Easement is granted free and clear of all liens, claims and encumbrances for financing (or with a consent from any such financing lienholder subordinating its lien to the Easement, such consent to be in in the form following the signature page of this Easement, or other form reasonably approved by City).

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

11. Waiver of Claims. Grantor, as the fee owner of the Property, on behalf of itself and its successors and assigns, hereby waives and releases any and all claims, demands, suits, or rights of action against Grantee, its officers, officials, employees or volunteers, resulting or arising, in whole or in part, from the public's use of the Easement Area, including, but not limited to, claims for damages.

12. Insurance. Grantor shall procure and maintain for the duration of the Easement, at Grantor's sole cost and expense, the following insurance:

(a) Commercial general liability insurance for, among other things, bodily injury (including wrongful death) and damage to property with a of not less than Three Million and No/100 Dollars ($3,000,000.00), per occurrence, in, on or at the Easement Area, insuring against any and all liability and claims for injury to persons or damage to property which may arise from or in connection with accessing and using the Easement Area, and for injuries to persons or damages to property which may arise from or in connection with this Easement by Grantor, its agents, subtenants, employees, contractors, licensees or invitees. At the time this Agreement was executed and delivered by the Parties, the amount of general liability insurance described in this Agreement is reasonable; however, the Parties recognize that this Agreement creates a perpetual obligation of, and relationship between, Grantor and Grantee; and that inflation and other economic pressures arising after the date of this Agreement 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 in this Agreement, Grantor shall maintain general liability insurance in amounts which are prudent and commercially reasonable for the types of activities being conducted at or from the Easement Area, in amounts sufficient to provide adequate public liability as contemplated by this Section 12. 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) per occurrence coverage with respect to any one (1) accident occurring in, on or at the Easement Area.

(b) 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 insureds up to the full coverage limit. Grantor's insurance policies shall be the sole and primary insurance coverage and must contain a waiver of transfer rights of recovery (waiver of subrogation) in favor of Grantee, its agents, officers, elected officials, volunteers and employees. Any insurance the City may have, and its self-insured retention, shall not be contributory to the coverage provided by Grantor.

13. Indemnification. Grantor will pay, defend, indemnify and hold harmless (collectively, "**Indemnify**") Grantee and its City Council members, officers, officials, agents, and employees (collectively, including Grantee, "**Indemnified Parties**") for, from and against any and all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and court costs associated with all such matters) which may be imposed upon, incurred by or asserted against Indemnified Parties by Third Parties, as defined in the Development Agreement ("**Claims**"), which arise from or relate in any way, whether in whole or in part, to: (i) the public's, or Grantor's or its employees', tenants', subtenants', licensees', sublicensees', contractors', subcontractors', independent contractors', agents', clients', or invitees' (collectively, "**Grantor's Agents**") use of the Easement Area, which includes, but is not limited to, security or lack or adequacy of security; (ii) Grantor or Grantor's Agents use or nonuse of, or any condition created by Grantor or Grantor's Agents on, the Property or the Easement Area or any part thereof and the improvements thereon; (iii) performance of any labor or service or the furnishing of any materials or other property with respect to the Property or Easement Area, or any part thereof and any improvements thereon for Grantor or Grantor's Agents; (iv) the design or construction of the improvements on the Property or the Easement Area and all subsequent design, construction, engineering, and other work and improvements by or on behalf of Grantor or Grantor's Agents associated with the Property or the Easement Area and the improvements thereon; (v) Grantor's obligation to repair, maintain and operate the Easement Area as required by this Easement; (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 Easement Area; (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 Property or contamination of the Property by Hazardous Material if attributable to the actions or omissions of Grantor or Grantor's Agents; provided, however, the foregoing duty to Indemnify the Indemnified Parties shall not apply as to Claims that arise solely from the gross negligence or intentional actions of the Indemnified Parties.

Promptly after Grantee receives a formal written notice of claim against Grantee that may be subject to Grantor's obligations to Indemnify the Indemnified Parties under this Agreement, Grantee will deliver written notice thereof to Grantor, and Grantee will tender sole control of the indemnified portion of the Claim to Grantor, but Grantee shall have the right to approve counsel, which approval shall not be unreasonably withheld or delayed. If and to the extent that Grantee's failure to deliver written notice to Grantor within a reasonable time after Grantor receives notice of any such Claim is materially prejudicial to Grantor's ability to defend such action, Grantor shall be relieved of any liability to the Grantee under this indemnity to the extent caused by Grantee's failure to timely deliver written notice of the Claim. Upon Grantor's acceptance of a tender from Grantee without a reservation of right, Grantee may not settle, compromise, stipulate to a

judgment, or otherwise take any action that would adversely affect Grantor's right to defend the Claim.

14. Limitation on Grantee's Liability. In addition to the rights and obligations to Indemnify in Section 13, the Indemnified Parties shall have no liability whatsoever to Grantor, in any form or for any purpose, whether for public liability, property damage or injury to persons, related to the public's use of the Easement Area.

15. Events of Default. Grantor shall be in default of this Agreement if Grantor breaches any of the terms, covenants, restrictions or conditions under this Easement or fails to fully and timely perform any of Grantor's obligations under this Agreement and such failure continues for thirty (30) days after receipt of written notice from Grantee; or, if such default is of a nature that it is not capable of being cured within thirty (30) days, then Grantor must commence to cure such default within such thirty (30) day period and diligently pursue such cure to completion, but not more than one hundred twenty (120) days in total (each, an "**Event of Default**"). Provided further, if Grantor is working diligently and in good faith to cure a non-monetary Event of Default, the City Manager, in the City Manager's sole and absolute discretion, may extend the period of time the Grantor has to cure the non-monetary Event of Default for another sixty (60) days; however, in no event shall the overall period of time for completion exceed one hundred eighty (180) days. Any lender that has a lien on the Property or Easement Area may effect a cure of any Event of Default by Grantor and Grantee will accept such cure as if made by Grantor.

16. Remedies for Events of Default. Upon the occurrence of an Event of Default by Grantor, Grantee's sole and exclusive remedies are any combination of the following:

(a) enjoin any breach by Grantor;

(b) remedy any breach at Grantee's sole cost and expense, and recover all amounts expended by Grantee from Grantor;

(c) seek or obtain any other equitable remedies against Grantor; or

(d) seek or obtain specific performance.

16.1 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. Notwithstanding anything to the contrary in this Section 16, Grantee hereby waives any and all right to recover special, consequential, incidental, indirect, punitive, exemplary, or similar types of damages whatsoever against Grantor for an Event of Default, except Grantee does not waive the right to recover such damages to the extent payable by Indemnified Parties to Third Parties as they relate to Grantor's obligation in this Agreement to Indemnify the Indemnified Parties.

16.2 Effect of Event of Default. No Event of Default shall terminate the Easement or this Agreement or render the Easement or provisions of this Agreement invalid or unenforceable,

nor shall any such Event of Default entitle Grantor to cancel, rescind, or otherwise terminate the Easement or this Agreement.

17. Obligations of Grantor During Term of Lease; No Merger of Estates. Whenever the term "Grantor" is used in this Easement, it will mean and refer to the owner of the Easement Area described in Exhibit A and such person's successors and assigns; provided, however, at any time that the City of Mesa owns or otherwise holds fee title to the Easement Area and has leased the Easement Area pursuant to a Government Property Improvements Lease (the "**Lease**"), then (a) there shall be no merger of estates, and this Easement shall remain in full force and effect as a separate estate in favor of Grantee and apart from the bare fee title held by the City of Mesa pursuant to the Lease, and (b) the tenant under the Lease, at such tenant's sole cost and expense, shall fully and unconditionally assume and discharge all of Grantor's rights and obligations under this Easement (including but not limited to Grantor's obligations of maintenance, repair, insurance and indemnity of the Indemnified Parties) accruing during the term of the Lease and for all periods thereafter for which such obligations may survive based upon the terms of the Lease.

18. Perpetual Nature of Easement. The Easement, and Grantee's and the public's rights granted by this Agreement, shall be perpetual and shall not terminate, except that the Easement, and Grantee's and the public's rights granted by this Agreement, shall terminate and be of no further force or effect if the Development Agreement is terminated pursuant to Section 11.13 of the Development Agreement [Preserve State Shared Revenue] or Section 29(O) of the Lease [Preserve State Shared Revenue].

19. Notices.

(a) Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement 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 Grantee:
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 Grantor: c/o Opus Development Company, LLC
Attn: Lawrence A. Pobuda and Brett Hopper
2555 East Camelback Road, Suite 100
Phoenix, Arizona 85016

and

Griffin Capital Company, LLC
Attn: Eric J. Kaplan
1520 East Grand Avenue
El Segundo, CA 90245

With a required copy to: Opus Holding, L.L.C.
Attn: Tom Hoben
10350 Bren Road West
Minnetonka, Minnesota 55342

and

Fennemore Craig, P.C.
Attn: Jay S. Kramer
2394 East Camelback Road, Suite 600
Phoenix, Arizona 85016-3429

(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 by recording an instrument in the Official Records of Maricopa County, Arizona, referencing this Agreement and its recording information.

20. Ownership and Authority to Execute. Each Party represents and warrants to the other Party that: (i) such Party has the full right, power and authority to enter into and perform this Agreement and its obligations and undertakings under this Agreement; (ii) such Party's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with such Party's charter or organizational documents and applicable laws; (iii) all of such Party's consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained by such Party, and no further action needs to be taken by such Party in connection with such execution, delivery, and performance by such Party of this Agreement; and (iv) the execution, delivery and performance of this Agreement by such Party is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which such Party is a party or is otherwise subject.

21. Priority of Agreement. In the event of a conflict or ambiguity between this Agreement and the Development Agreement, or between this Agreement and any other document, agreement or

instrument previously given with respect to the subject matter of this Agreement, the terms of this Agreement will prevail.

22. Governing Law, Venue and Jurisdiction. This Agreement 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 Agreement 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 22.

23. Severability and Construction. If any provision of this 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 this Agreement shall remain in full force and effect so long as removing the severed portion does not materially alter the overall intent of this Agreement. This Agreement shall be given a reasonable construction so that the intention of the Parties is implemented. Grantor and Grantee acknowledge and agree: (i) they were advised and had the opportunity to obtain independent legal counsel to review this Agreement; (ii) this Agreement is the product of arm's length negotiations among the Parties and shall not be construed against any Party due to authorship; and (iii) the Parties understand the terms and conditions contained in this Agreement.

24. Amendments. This Agreement 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 Official Records of Maricopa County, Arizona.

25. Running of Benefits and Burdens. The benefits and burdens, and the covenants and agreements in this Agreement 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. Upon the conveyance of all or any portion of the Easement Area, the Grantor shall be relieved of all duties, obligations, and liabilities under this Agreement arising on or after the date of the recording of the deed for such portion of the Easement Area in the Official Records of Maricopa County, Arizona, with respect to the portion of the Easement Area so conveyed, and the assignee shall be deemed to have assumed all of the Grantor's duties, obligations, and liabilities under this Agreement arising on or after the date of the recording of the deed for such portion of the Easement Area in the Official Records of Maricopa County, Arizona, with respect to the portion of the Easement Area so conveyed. Each owner of fee simple title to the Easement Area shall be liable for the duties, obligations, and liabilities of the Grantor under this Agreement arising during the period of such person's ownership of the Easement Area.

26. Exhibits. The exhibits attached to this Agreement are incorporated as if fully set forth herein.

27. Attorneys' Fees and Costs. In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, 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 costs of expert witnesses, transportation, lodging and meal costs of the parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

28. Estoppel Certificates. Grantee will, upon reasonable request by Grantor, provide an estoppel certificate to Grantor, or any prospective lender, investor, or purchaser, certifying that (i) this Agreement and to the extent then applicable the Lease and Development Agreement, are in full force and effect, (ii) no Event of Default, or act or omission actually known to the Grantee's Downtown Transformation Manager that with the giving of notice and/or passage of time could become an Event of Default, by Grantor exists hereunder or under the Lease or Development Agreement (or, if appropriate, specifying the nature and duration of any existing Event of Default), (iii) No Event of Default, or act or omission actually known to the Grantee's Downtown Transformation Manager that with the giving of notice and/or passage of time could become an Event of Default, by Grantee exists hereunder or under the Lease or Development Agreement (or, if appropriate, specifying the nature and duration of any existing Event of Default), and (iv) Grantee has received no formal notice of claim requiring Grantor to Indemnify the Indemnified Parties.

29. Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement falls on a Saturday, Sunday or legal holiday (or day on which the offices of the City of Mesa are closed), 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 (or day on which the offices of the City of Mesa are closed).

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

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, _____has caused its name to be executed by its duly authorized representative(s) this _____ day of _____, 202_.

GRANTOR:

_____,
a(n) _____ limited liability company

By:_____
Name:_____
Title:_____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Perpetual Easement Agreement was acknowledged before me this _____ day of _____, 202_, by _____, acting as _____, for _____, who executed the foregoing instrument for the purposes therein contained.

_____
Notary Public

_____
(Notary Stamp/Seal)

IN WITNESS WHEREOF, _____has caused its name to be executed by its duly authorized representative(s) this _____ day of _____, 202_.

GRANTEE:

City of Mesa, a municipal corporation

By _____

Its _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Perpetual Easement Agreement was acknowledged before me this _____ day of _____, 202_, by _____, acting as _____, for _____, who executed the foregoing instrument for the purposes therein contained.

_____
Notary Public

_____
(Notary Stamp/Seal)

CONSENT OF LENDER TO PERPETUAL EASEMENT AGREEMENT

The undersigned, owner and holder of a Mortgage or Deed of Trust recorded on _____ as Instrument No. _____ in the office of the County Recorder of Maricopa County, Arizona, hereby consents to the execution by _____ of the attached Perpetual Easement Agreement (the "Easement"), which Easement affects the property subject to the Deed of Trust, and hereby agrees that any foreclosure of the lien of said Deed of Trust shall not extinguish the Easement and any purchaser of the property subject to the Deed of Trust through judicial or non-judicial foreclosure, or deed-in-lieu of foreclosure, will acquire the property subject to and subordinate to the terms of the Easement.

_____

By:_____
Name:_____
Title:_____

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me, the undersigned notary public, this _____ day of _____, 202__ by _____, the _____ of _____, a(n) _____, on behalf thereof.

_____
Notary Public

(Seal)

Exhibit A

Easement Area: Legal Description

[To be inserted per Section 4.7 of the Development Agreement]

Exhibit B

Thoroughfare: Depiction

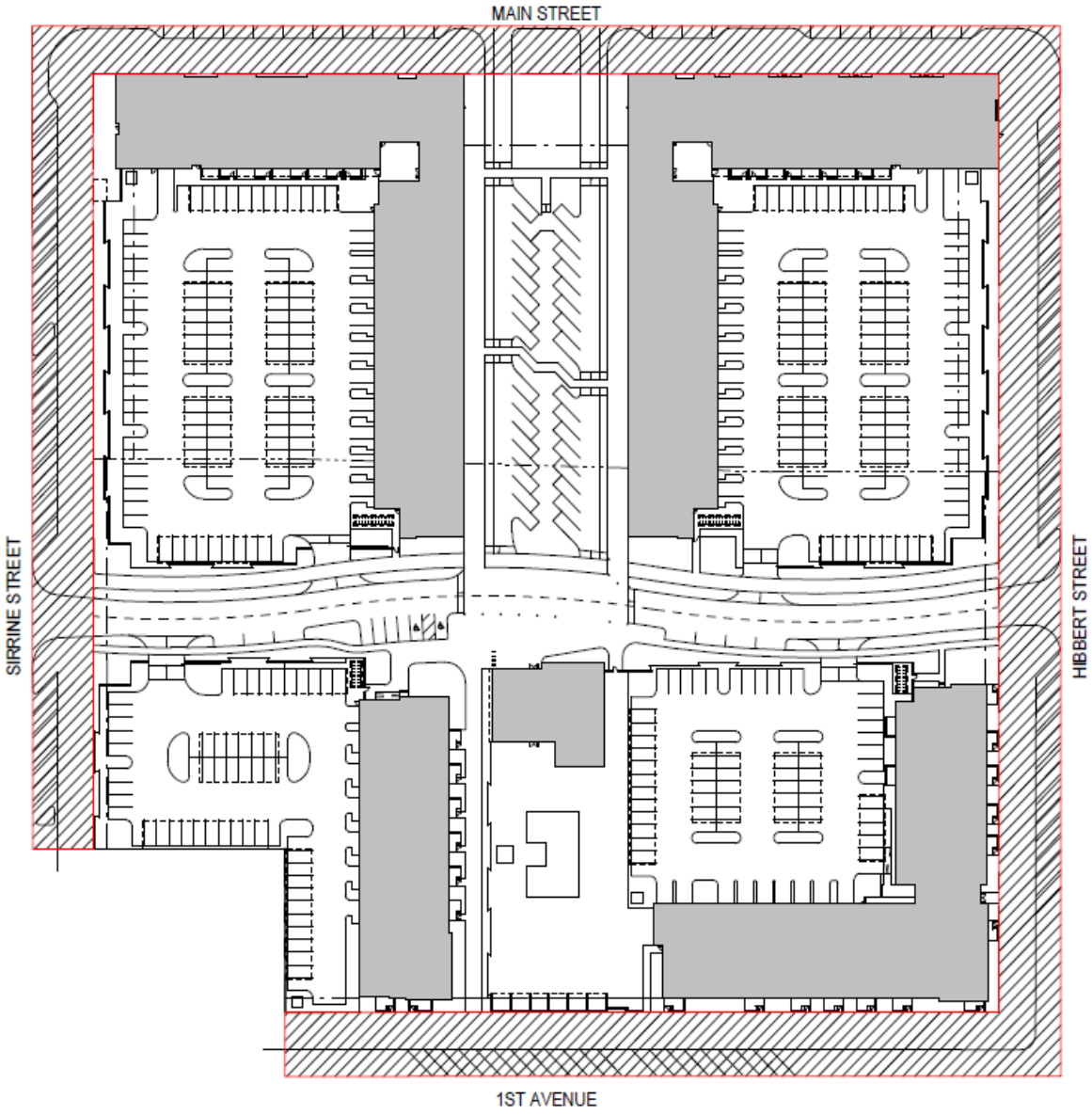
[To be inserted per Section 4.7 of the Development Agreement]

Exhibit C

Plaza: Depiction

[To be inserted per Section 4.7 of the Development Agreement]

EXHIBIT K
DEVELOPER MAINTAINED ROW PUBLIC IMPROVEMENTS



LANDSCAPE AND LANDSCAPE IRRIGATION IMPROVEMENTS

Developer will maintain in perpetuity the landscaping, landscape irrigation, and landscape lighting within the City right-of-way (hash-marked area shown above).

EXHIBIT L
PROHIBITED USES

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

1. Group Residential, as defined by Chapter 64 of the Mesa Zoning Ordinance
2. Non-chartered Financial Institution, as defined by Chapter 64 of the Mesa Zoning Ordinance
3. Pawn Shops, as defined by Chapter 64 of the Mesa Zoning Ordinance
4. Social Service Facilities, as defined by Chapter 64 of the Mesa Zoning Ordinance
5. Group Residential such as Boarding House, Correctional Transitional Housing Facility, and Group Home for the Handicapped, as each term is defined by Chapter 86 of the Mesa Zoning Ordinance
6. Off-Track Betting Establishment, as defined by Chapter 86 of the Mesa Zoning Ordinance
7. Medical Marijuana Dispensary, as defined by Chapter 86 of the Mesa Zoning Ordinance
8. Package liquor stores, except for stores selling beer and/or wine
9. Kennels

EXHIBIT M
SPECIAL WARRANTY DEED

When Recorded, Mail to:

==========

SPECIAL WARRANTY DEED

==========

For the consideration of the sum of Ten Dollars ($10.00) and other valuable consideration received, _____, a _____ ("**Grantor**"), does hereby convey to _____, a _____ ("**Grantee**"), all of Grantor's right, title and interest in and to the following described real property (the "**Property**") situated in _____ County, Arizona, together with all improvements thereon and all of Grantor's interest in any rights and privileges appurtenant thereto:

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

SUBJECT ONLY TO those matters described in Exhibit "B" attached hereto and by this reference made a part hereof; accrued municipal and public taxes and assessments not yet due and payable; and all applicable municipal, county, state or federal zoning and use regulations.

AND GRANTOR hereby binds itself and its successors to warrant and defend the title against all of the acts of Grantor and no other, subject to the matters set forth above.

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed as of this ___ day of _____, 20____.

GRANTOR:

By:_____
Printed Name: _____
Its: _____

EXHIBIT N
INSURANCE REQUIREMENTS

Developer, at its sole cost and expense, will maintain, or cause to be maintained, insurance coverage as follows:

A. Property. During the period of any construction involving the Public Improvements, builder's risk insurance on an all-risk, replacement cost basis for the Public Improvements.

B. Liability. During the period of any construction involving the Public Improvements, insurance covering the Developer and (endorsing as an additional insured) City against liability imposed by law or assumed in any written contract, and/or arising from personal injury, bodily injury or property damage, with a limit of liability of $5,000,000.00 per occurrence with a $5,000,000.00 products/completed operations limit and a $10,000,000.00 general aggregate limit. Such policy must be primary and written to provide blanket contractual liability, broad form property damage, premises liability and products and completed operations.

C. Contractor. During the period of any construction involving the Public Improvements, each of the general or other contractors with which the Developer directly contracts for any such construction will be required to carry liability insurance of the type and providing the minimum limits set forth below:

1. Workman's Compensation insurance and Employer's Liability with limits of $1,000,000.00 per accident, $1,000,000.00 per disease and $1,000,000.00 policy limit disease.
2. Commercial general liability insurance on a $5,000,000.00 per occurrence basis providing coverage for (and endorsing the City as additional insured for):

   Products and Completed Operations
   Blanket Contractual Liability
   Personal Injury Liability
   Broad Form Property Damage
   X.C.U.
3. Business automobile liability including all owned, non-owned and hired autos with a limit of liability of not less than $1,000,000.00 combined single limit for personal injury, including bodily injury or death, and property damage.

D. Architect. In connection with any construction involving the Public Improvements, the Developer's architect will be required to provide architect's or engineer's professional liability insurance with a limit of $1,000,000.00 per claim. This policy, or other policies, will cover claims for a period of not less than three (3) years after the Completion of Construction involving the Property and the Public Improvements.

E. Engineer. In connection with any construction involving the Public Improvements, the Developer's soils engineer or environmental contractor will be required to provide engineer's professional liability insurance with a limit of $1,000,000.00 per claim. This policy, or other policies, will cover claims for a period of not less than three (3) years after the Completion of Construction involving the Property and the Public Improvements.

F. CPI Adjustments. The minimum coverage limits set forth in clause (B) above will be adjusted every five (5) years by rounding each limit to the million-dollar amount which is nearest the percentage of change in the Consumer Price Index (the "**CPI**") determined in accordance with this paragraph. In determining the percentage of change in the CPI for the adjustment of the insurance limits every five (5) years, the CPI for the month October in the preceding year, as shown in the column for "All Items" in the table entitled "All Urban Consumers" under the "United States City Averages"

as published by the Bureau of Labor Statistics of the United States Department of Labor, will be compared with the corresponding index number for the month of October five (5) years earlier.

G. Primary Coverage. Developer's insurance coverage will be primary insurance with respect to City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by City, its officers, officials, agents, and employees will be in excess of the coverage provided by Developer and will not contribute to it.

H. Indemnities. Coverage provided by the Developer will not be limited to the liability assumed under the indemnification provisions of the Agreement.

I. Waiver of Subrogation. All policies will contain a waiver of subrogation against City, its officers, officials, agents, and employees.

J. Notice of Cancellation**.** Developer will use reasonable and good faith efforts to cause each insurance policy to include provisions to the effect that it may not be suspended, voided, reduced, or cancelled except after thirty (30) days' prior written notice has been given to City. Such notice must be provided directly to City in accordance with the provisions of Section 11.5 of the Agreement.

K. Acceptability of Insurers**.** Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with an "A.M. Best" rating of not less than A-VII. City in no way warrants that the required minimum insurer rating is sufficient to protect Developer from potential insurer insolvency.

L. Endorsements and Verification of Coverage**.** Developer will furnish City with endorsements naming the City, its officers, officials, agents, and employees as additional insureds. The endorsements will be original certificates of insurance on ACCORD forms approved by City. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict limit coverage will be clearly noted on the certificate of insurance.

   1. All certificates are to be received and approved by City before the Commencement of Construction, with updated copies provided to City within a commercially reasonable time. Each insurance policy must be in effect at or prior to the Commencement of Construction and must remain in effect for the duration set forth for the specific type of insurance or, if no duration is stated, for the duration of the construction. Failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal will be considered a material breach of the Agreement.
   2. All certificates required by this Agreement will be sent directly to City of Mesa, Attn: Lisa Lorts, Risk Manager, 20 E. Main Street, P.O. Box 1466, Mesa, Arizona 85211-1466.

M. Approval. Any modification or variation from the insurance requirements in this Exhibit must have prior approval from the City Manager (or their designee), whose decision will be final. Such action will not require a formal contract amendment, but may be made by administrative action.

N. Miscellaneous. References to "the Agreement" will mean the Development Agreement of which this Exhibit is a part. Capitalized terms not otherwise defined in this Exhibit will have the meanings set forth in the Agreement. City in no way warrants that the minimum limits contained in this Agreement are sufficient to protect Developer from liabilities that might arise, and Developer may purchase such additional insurance as Developer determines necessary.

EXHIBIT O
NON-DISTURBANCE AND RECOGNITION AGREEMENT

When recorded, return to:
_____
_____
_____

==========

NON-DISTURBANCE AND RECOGNITION AGREEMENT

==========

THIS NON-DISTURBANCE AND RECOGNITION AGREEMENT (this "**NDRA**") is made as of the ___ day of _____, 20___, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by and among: (a) _____ ("**Developer**"); (b) _____ ("**Lender**"); and (c) City of Mesa, Arizona, an Arizona municipal corporation ("**City**").

1. Recitals.

1.1 Developer is the present developer under a Development Agreement entered into with City, dated _____, 20___, and recorded in the Official Records of Maricopa County, Arizona, at _____ (the "**Agreement**"), which Agreement sets forth certain rights and responsibilities of Developer with respect to the development of that certain real property referred to in the Agreement (and in this Agreement) as the "**Property**," and more particularly described in Exhibit "A" attached hereto.

1.2 Developer's obligations arising under the Agreement include but are not limited to the leasing and development of the Property, and the construction of improvements upon the Property, and the construction of certain "**Public Improvements**" (as defined in the Agreement) in and around the Property (collectively, the "**Obligations**").

1.3 Lender has agreed to lend money to Developer, and Developer will execute certain loan documents (the "**Loan Documents**") including but not limited to a leasehold deed of trust for the use and benefit of Lender (the "**Deed of Trust**") and an assignment of Developer's rights under the Agreement (the "**Assignment**") to secure the loan from Lender to Developer (the "**Loan**"). The Deed of Trust, the Assignment and certain other Loan Documents will be recorded in the Official Records of Maricopa County, Arizona, and will encumber the Property.

1.4 Lender has certain rights under the Loan Documents in the event of a Default by Developer of its obligations either under the Loan Documents or the Agreement, including but not limited to the right of Lender to be substituted for Developer under the Agreement and to assume Developer's position with respect to the Agreement; and the Agreement states in Section 11.22 thereof that a Lender may be allowed to assume Developer's rights and obligations with respect to the Agreement (collectively, "**Developer's Position**").

1.5 Accordingly the parties have executed this NDRA to be effective as of the date set forth above.

2. No Subordination. Subject only to the specific provisions of (i) Section 3 of this NDRA regarding the right of Lender to assume Developer's Position with respect to the Agreement and (ii) Section 4 of this NDRA regarding non-disturbance and recognition, all rights of Developer and Lender under the Deed of Trust are and will continue to be junior, inferior, subject and subordinate to the Agreement, as it may hereafter be modified, amended, restated or replaced.

3. Notice of Developer Default.

3.1 If Lender is a "Designated Lender" as defined in Section 11.22 of the Agreement, City will give Lender written notice of any claimed Event of Default by Developer (the "**Notice**") under the Agreement and 30 days following the expiration of Developer's cure period under the Agreement to cure such claimed Event of Default (as the Agreement exists as of the date of this NDRA), prior to terminating the Agreement or invoking such other remedies as may be available to City under the Agreement.

3.2 Lender will have the option, following Lender's receipt of the Notice, and within the time period set forth in this Agreement for curing an Event of Default of Developer, in its sole election either: (a) to cure the Default of Developer, in which event Developer will retain its position with respect to the Agreement; or (b) in addition to any other remedies available to Lender under law, equity or contract (including but not limited to the Deed of Trust and the Assignment) to assume Developer's Position with respect to the Agreement only for the period of Lender's ownership of the Property (to "**Assume**" or an "**Assumption**"). Lender will give written notice to City of its intention to Assume on or before the expiration of any applicable cure period available to Lender.

3.3 If Lender agrees to Assume Developer's Position with respect to the Agreement, Lender and City will execute an amendment to the Agreement (an "**Amendment**") and will cause the Amendment to be recorded in the Official Records of Maricopa County, Arizona. The Amendment will state that Lender has fully assumed Developer's Position with respect to the Agreement, and that Lender is thereafter substituted for Developer with respect to all Obligations, payment and performance rights and responsibilities arising under or in connection with the Agreement. The execution or approval by Developer of the Amendment will not be necessary or required, and upon execution and recordation of the Amendment, City will (i) look to Lender and/or Developer for performance of the Obligations under the Agreement and (ii) make to Lender all payments, and render all performance required to be made by the City, required to be made to Developer under the Agreement.

3.4 In connection with (i) any foreclosure by Lender (whether by notice or judicially) of the Deed of Trust, or any other acquisition by Lender of the Property in lieu of such foreclosure (collectively, a "**Foreclosure**") and (ii) the transfer of the Property to a third-party purchaser or purchasers (by way of illustration and not in limitation, a purchaser or purchasers at a trustee's sale conducted pursuant to A.R.S. §33-810) concurrently with such Foreclosure or thereafter (a "**Purchaser**"), the Developer's Position under the Agreement will accompany and be deemed covenants running with the Property, and the Purchaser will be deemed to have assumed Developer's Position with respect to the Agreement. Upon the acquisition of the Property by a Purchaser, City will (i) look to Purchaser and/or Developer for performance of the Obligations under the Agreement and (ii) make to Purchaser all payments, and render all performance required to be made by the City, required to be made to Developer under the Agreement.

3.5 Until an Assumption as defined in this Agreement, nothing in this NDRA will constitute an assumption by Lender of any Obligation. Developer will continue to be liable for all of the Obligations thereunder and will perform all such Obligations, will comply with all terms and conditions of the Agreement applicable to Developer, and will take such steps as may be necessary or appropriate to secure performance by City under the Agreement.

3.6 Whether before or after an Assumption as defined in this Agreement, nothing in this NDRA will constitute a release of Developer of any Obligation.

4. Nondisturbance and Recognition.

4.1 In the event that City institutes any proceedings to enforce the Agreement, City agrees that, so long as Lender is not in default (beyond any applicable cure period provided to Lender under this NDRA) under the Agreement:

4.1.1 City will not interfere with or disturb Lender's rights under the Agreement and this NDRA; and

4.1.2 Lender will not be made a party to any proceeding commenced pursuant to the Agreement, unless Lender is determined to be a necessary party for purposes of maintaining the action or securing other necessary relief not involving the termination of Lender's interest under the Deed of Trust or the Assignment, provided that nothing in this Agreement will prevent City from giving any required notice to Lender.

4.2 Upon and following an Assumption, Lender will recognize the City's rights under the Agreement for the balance of the Term thereof. The recognition described in this Section 4.2 will automatically become effective upon an Assumption by Lender.

5. Estoppel

5.1 City and Developer hereby confirm to Lender that as of the date of this NDRA and to the best of their respective actual knowledge:

(a) Neither City nor Developer has acted or failed to act in a manner giving rise to an Event of Default under the Agreement;

(b) The Agreement has not been assigned, modified or amended in any way except as set forth in Recital 1;

(c) The Agreement is in full force and effect; and

(d) [If applicable] "Completion of Construction," as defined in the Agreement, occurred on _____.

6. Miscellaneous.

6.1 This NDRA will be binding upon and inure to the benefit of City, Developer and Lender and their respective successors and assigns, including, without limitation, any successful bidder at any judicial foreclosure or trustee's sale.

6.2 Except as otherwise required by law, any notice required or permitted under this NDRA will be in writing and will be given by (i) personal delivery, (ii) deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the parties at their respective addresses set forth below, or at such other address as such party may designate in writing pursuant to the terms of this Section 6.2, or (iii) any nationally recognized express or overnight delivery service (*e.g.*, Federal Express or UPS), delivery charges prepaid:

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

With required copy to:
City of Mesa
Attn: City Attorney
20 East Main Street
Mesa, Arizona 85211

If to Developer:
_____
_____
_____
_____

With required copy to:
_____
_____
_____
_____

If to Lender:
_____
_____
_____
_____

With required copy to:
_____
_____
_____
_____

Any notice sent by United States Postal Service certified or registered mail will be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service will be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service will be deemed effective upon its receipt or refusal to accept receipt by the addressee. Any party may designate a different person or entity or change the place

to which any notice will be given as in this Agreement provided, by giving notice to the other parties as provided in this Section 6.2.

6.3 This NDRA is delivered in and relates to property located in Maricopa County, Arizona, and the rights and obligations of the parties hereunder will be governed by and construed in accordance with the substantive laws and judicial decisions of the State of Arizona (regardless of Arizona conflict of laws principles or the residence, location, domicile or place of business of the parties and their constituent principals) and applicable federal laws, rules and regulations, subject to Section 11.1 of the Agreement.

6.4 This NDRA integrates all of the terms and conditions of the parties' agreement regarding the subordination of the Deed of Trust and Lender's interest thereunder to the Agreement, and supersedes all prior oral or written agreements with respect to such subordination (only to the extent, however, as would affect the priority between the Agreement and the Deed of Trust). This NDRA may not be modified or amended except by a written agreement signed by the parties or their respective successors in interest.

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

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

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

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

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

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

"CITY"

CITY OF MESA, an Arizona municipal corporation

By: _____
Its:_____

"DEVELOPER"

_____

By: _____
Name:_____
Its:_____

"LENDER"

_____, a(n) Arizona _____

By: _____
Name:_____
Its: _____

Acknowledgment by City

==========

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing was acknowledged before me this day of _____, 20__, by _____, the City _____ of the City of Mesa, Arizona, on behalf of the City.

_____
Notary Public

My Commission Expires:
_____

Acknowledgment by Developer

==========

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing was acknowledged before me this day of _____, 20__, by _____, the _____ of _____, on behalf of the _____.

_____
Notary Public

My Commission Expires:
_____

Acknowledgment by Lender

==========

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing was acknowledged before me this day of _____, 200_, by _____, the _____of _____, a _____, on behalf of the _____.

_____
Notary Public

My Commission Expires:
_____

EXHIBIT P

CUSTOMIZED REVIEW SCHEDULE

City and the Developer have agreed to a Customized Review Schedule for the Project. The implementation of the Customized Review Schedule will follow the meeting and submittal process below.

Project Review Meetings

1. Initial Meeting. Developer will contact the Downtown Transformation Office ("DTO") to discuss the Project timeline and anticipated needs. The Developer will prepare an anticipated timeline or key Project milestones for this meeting that will include, at a minimum, the planned permit submittal and construction commencement dates. Developer will request this meeting at their earliest ability to allow DTO to coordinate with the Development Services Department to establish the Customized Review Schedule.

2. Code Analysis Meeting. If requested by Developer or Developer's design team, City staff will meet with Developer's design team prior to submittal of Project documents to discuss any code related questions that arise during the design phase.

3. Plan Review Comment Meeting(s). Prior to resubmittal of Project documents, Developer or Developer's design team may request a meeting with City staff to discuss any questions about the City's review comments.

Submittal Process

City and Developer will both provide a single point of contact ("POC") for coordination during the submittal process.

Submittal of plans for the Project will be made in City's online permitting system (DIMES). At the request of Developer or Developer's design team, City staff will assist Developer or Developer's design team with the submittal of Project documents in DIMES.

First Review:

On the date Developer or Developer's design team submits Project documents in DIMES ("Submission Date") Developer shall notify City POC of the submittal ("Notification"). If the City POC is not notified on the Submission Date the documents will be reviewed by City pursuant to the City's standard review cycle which is currently eighteen (18) City business days. Upon receiving Notification and if the submittal documents associated with the Notification are deemed complete and approvable (as determined by City in its reasonable discretion) City will complete a review within _____ City business days from the Submission Date, or the first business day thereafter if the Submission Date was not on a business day. For the purposes of this review schedule, a City business day shall be Monday through Thursday, excluding any federal holidays.

Subsequent Review(s):

Developer shall notify City POC of construction document submittal to DIMES on the date of submittal. If the City POC is not notified of the submittal the review cycle will be set to eighteen-days (standard review cycle). Upon approval of improvement plans the City shall issue the appropriate permits within _____ City business days.

If requested, following the completion of any Subsequent Review, should there be only minor noncompliance issues that need to be addressed prior to the issuance of building permit(s), the Building Official has the option to extend the Subsequent Review period to allow the Development/Project Team time to address such minor comments without a Subsequent Review.

Project Documents

Developer acknowledges and agrees that in order to establish accurate review timeframes in the Customized Review Schedule, it requires Developer to submit Project documents that are high quality and include all of the required documentation. City is not required to comply with the Customized Review Schedule if the Project documents are not high quality or do not include all of the required documentation. Should issues with the quality and completeness of the Project documents arise, City will notify Developer within three (3) City business days after receipt of the Project documents and promptly meet with Developer or Developer's design team to resolve the issues.

EXHIBIT Q
ENCROACHMENT PLAN DETAIL

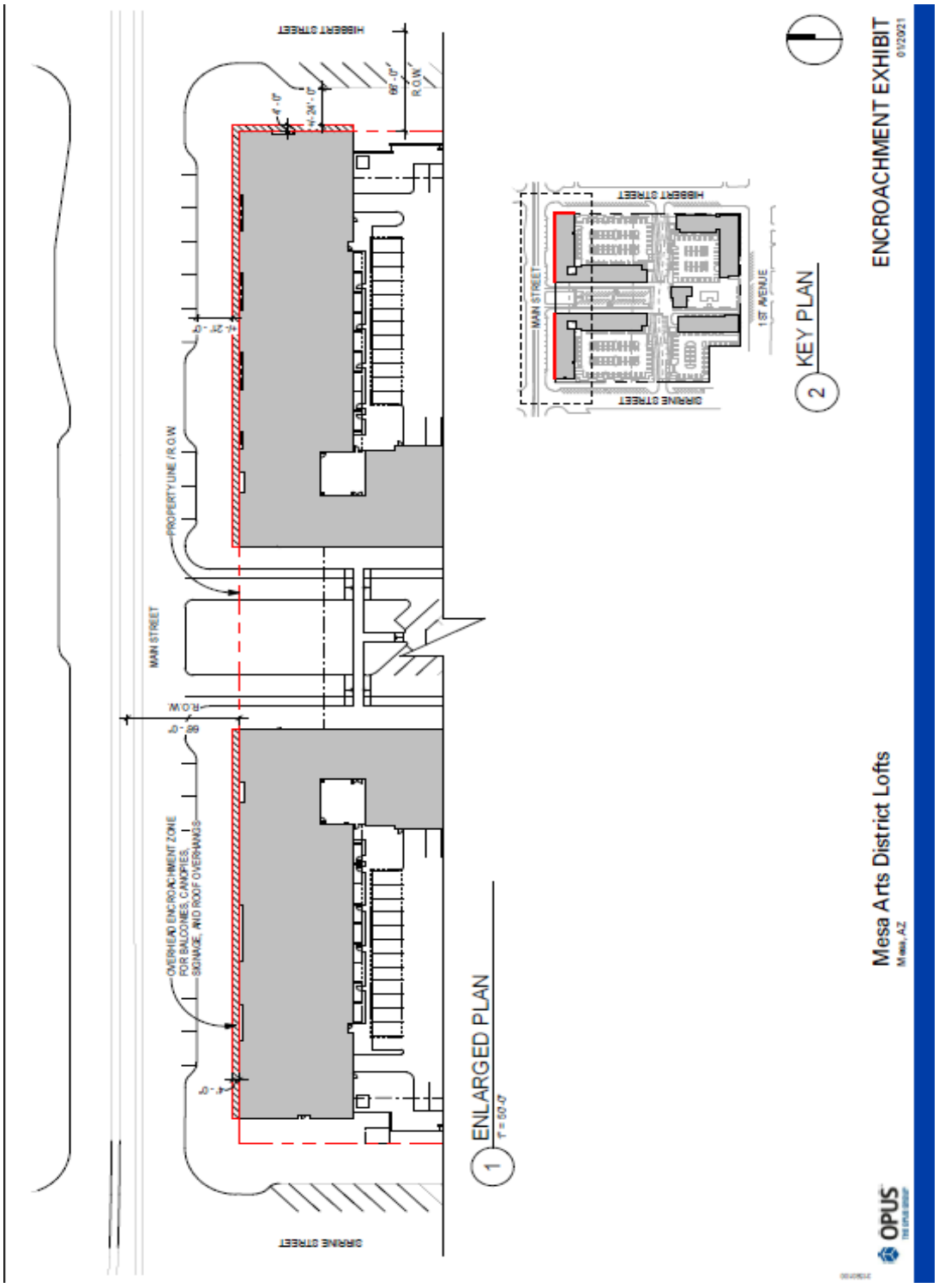


EXHIBIT R
PHASE II DEVELOPMENT

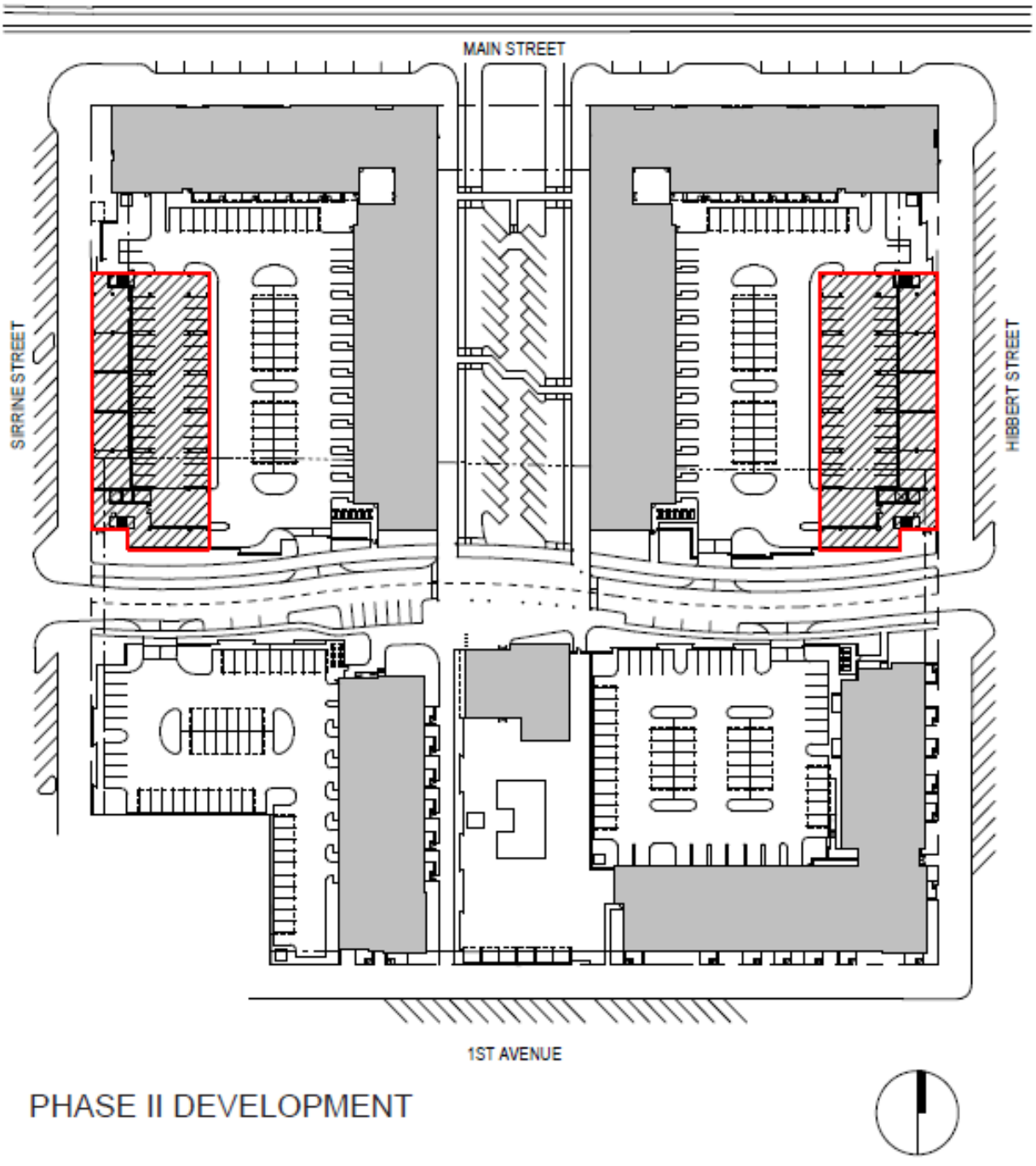


EXHIBIT S
PROJECT PHASES