

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 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)

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.

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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]