

WHEN RECORDED, RETURN TO:  
City of Tempe Basket

112637ejv011323-93-1-1--  
crocfers

RE-RECORDING OF  
DEVELOPMENT AND DISPOSITION AGREEMENT  
[SOUTH PIER AT TEMPE TOWN LAKE]  
C2022-36

THE DEVELOPMENT AND DISPOSITION AGREEMENT RECORDED ON MARCH 23, 2022 AT DOCUMENT NO. 20220259754 IS BEING RE-RECORDED FOR THE SOLE PURPOSE OF CORRECTING A TYPOGRAPHICAL ERROR IN EXHIBIT A-1. SPECIFICALLY, THE LISTED MARICOPA COUNTY ASSESSOR'S PARCEL NUMBER FOR 132-32-020 WAS INCORRECTLY LISTED AS 132-32-20. THE CORRECTED EXHIBIT A-1 IS SET FORTH IN ITS ENTIRETY AT THE LAST PAGE OF THIS RE-RECORDING.

When recorded, return to:

C2022\_36-90-1-1--  
Garcia

City of Tempe  
31 East Fifth Street  
Tempe, Arizona 85281  
Attention: City Clerk

C2022-36

**DEVELOPMENT AND DISPOSITION AGREEMENT**  
(SOUTH PIER AT TEMPE TOWN LAKE)

THIS DEVELOPMENT AND DISPOSITION AGREEMENT (“**Agreement**”) is entered into as of the 17<sup>th</sup> day of March, 2022 (the “**Effective Date**”), by and between the CITY OF TEMPE, an Arizona municipal corporation (“**City**”), and SOUTH PIER TEMPE HOLDINGS LLC, an Arizona limited liability company (“**Developer**”).

**RECITALS**

- A. Developer owns that certain real property located within the municipal boundaries of the City of Tempe described on Exhibit “A-1” attached hereto and incorporated herein (the “**Developer Property**”).
- B. City owns that certain real property located within the municipal boundaries of the City of Tempe described on Exhibit “A-2” attached hereto and incorporated herein (the “**City Property**”). The Developer Property and the City Property shall be referred to as the “**Property**.”
- C. In furtherance of its desire to promote development of the City Property, City issued Request for Qualification No. 19-201. Developer was chosen as the successful respondent for the development of the City Property by a review committee and was selected by City pursuant to unanimous City Council approval of Agenda Item 5A8 under the City of Tempe Request for Council Action for the Council Meeting dated July 31, 2019 to enter into exclusive negotiations for the purposes of entering into a Development and Disposition Agreement for the lease/purchase and development of the Property.
- D. Developer intends to develop the Property as a master-planned real estate development to be known as South Pier at Tempe Town Lake (the “**Project**”). The Project will be a mixed-use, entertainment destination within an urban setting, which will include a mix of housing, retail, senior housing, office, hotel restaurant and entertainment / venue uses.
- E. Developer intends to purchase the City Property in a phased manner based upon the terms outlined herein. The Project will also be constructed in a phased manner pursuant to the terms outlined herein. Each component of the Project may be developed by a separate entity pursuant to the terms outlined herein.

F. City and Developer hereby acknowledge and agree that significant benefits will accrue to City from the development of the Property by Developer, including, without limitation, increased tax revenues, and the creation of jobs in the City, and that the development of the Property in accordance with the Conceptual Development Plan (hereafter defined), will otherwise improve or enhance the economic welfare of the inhabitants of the City.

G. By its approval of this Agreement, the City Council hereby mandates each GPLET Lease (hereafter defined) with regard to the Property must conform to the form thereof attached to this Agreement, and that the execution of a GPLET Lease is an administrative action in furtherance of this policy.

H. This Agreement is a development agreement within the meaning of A.R.S. §9-500.05 and shall be construed as such.

## AGREEMENT

NOW, THEREFORE, in consideration of the above premises, the promises contained in this Agreement and for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties hereto agree as follows:

### ARTICLE I. DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

- 1.1 “**Affiliate**” means an entity that controls, is controlled by or is under common control with Developer or any other entity in which one or more of the members of South Pier Tempe Holdings LLC or its managing member, McBride-Cohen Management Group, LLC, maintains an interest.
- 1.2 “**Agreement**” means this Development and Disposition Agreement, together with all Exhibits and Schedules referred to herein, all as may be amended from time to time in accordance with the terms and conditions hereof.
- 1.3 “**Certificate of Completion**” means a certificate of occupancy (final, temporary, shell, conditional or otherwise) for any buildings or improvements constructed on the Property issued by the Community Development Department of the City of Tempe,
- 1.4 “**City**” means the City of Tempe, an Arizona municipal corporation, and any successor public body or entity.
- 1.5 “**City Council**” means the Tempe City Council.
- 1.6 “**City Property**” has the meaning given to such term in the Recitals.

1.7 “**City Property Appraisal**” means that certain appraisal dated July 24, 2019 prepared by Dennis L. Lopez & Associates, LLC; provided that, if this Agreement is amended, at Developer’s request, to extend dates for completion of construction, then the City may require that such appraisal be updated (as used in this *Section 1.9*, “amendment” shall not include extension by Developer as expressly contemplated in this Agreement). For clarification, the Parties shall agree, in their reasonable discretion, on the appraiser, the cost of the appraisal shall be paid for by Developer, and the reappraisal shall apply only with respect to Parcels to which such extended dates apply.

1.8 “**Conceptual Development Plan**” means Developer’s plan for the development of the Property, a reduced copy of which is attached hereto as **Exhibit “D”** and incorporated herein by this reference, as amended from time to time in accordance with this Agreement.

1.9 “**Conveyance**” means when the City Property is conveyed upon Certificate of Occupancy unless conveyance occurs pursuant to Section 3.7.

1.10 “**Default**” is defined in *Section 10.1*.

1.11 “**Developer**” means SOUTH PIER TEMPE HOLDINGS LLC, an Arizona limited liability company, its permitted successors and assigns.

1.12 “**Developer Default**” means a Default by Developer.

1.13 “**Developer Property**” has the meaning given to such term in the Recitals.

1.14 “**Districts**” means the Improvement District 180 and the Rio Salado Community Facilities District, and any other improvement, community facilities, redevelopment, or similar, district from time to time affecting the City Property while this Agreement is in effect.

1.15 “**District Payment Obligation**” means all amounts owed to or assessed by the Districts with respect to the City Property.

1.16 “**Enhanced Amenities**” means those amenities and infrastructure Improvements constructed by or for Developer within or for the Project described on **Exhibit “H”** attached hereto, together with such other improvements, enhancements and upgrades above City Code requirements as City and Developer may agree in writing.

1.17 “**Escrow Agent**” and “**Title Company**” means an escrow agent or title insurer from time to time selected by Developer and approved by City in its reasonable discretion.

1.18 “**Effective Date**” means the date on which this Agreement has been fully executed by the City and Developer, which will be thirty (30) days after approval by the City Council, and which date shall be inserted in the introductory paragraph above prior to the recording of this Agreement.

- 1.19 “**Force Majeure Event**” means an act of war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority (other than restrictions or priorities of the City, which shall not excuse performance by the City), unusually severe weather, inability (when the party required to perform is faultless) of any contractor, subcontractor or supplier to perform acts for such party, or acts or the failure to act of any public or governmental agent or entity (other than acts or failure to act of the City, which shall not excuse performance by the City), litigation relating to the Property initiated by a third party other than Developer or the City, or any other causes beyond the control or without the fault of the party claiming an extension of time to perform (including, without limitation, recession, depression, and changes in market conditions).
- 1.20 “**GPLET Lease**” means one or more ground and improvement leases to be executed by City and Developer, in substantially the form of Exhibit “F” attached hereto.
- 1.21 “**Improved City Parcel**” means a parcel of City Property that has received a Certificate of Completion or equivalent.
- 1.22 “**Improvement District 180**” means that certain improvement district affecting some or all of the Property commonly known as The Pier at Town Lake Improvement District No. 180.
- 1.23 “**Improvements**” means all public and private improvements which may be constructed from time to time on or for the Property, including, without limitation, all structures, buildings, roads, driveways, parking areas, walls, landscaping and other improvements of any type or kind, or any other alteration of the natural terrain built, developed or owned by the Developer on the Property.
- 1.24 “**Master Lease**” means a ground lease for the City Property to be executed by City and Developer, in substantially the form of Exhibit “G” attached hereto.
- 1.25 “**Memorandum of Master Lease**” means a Memorandum of Master Lease in the form reasonably approved by City and Developer to be executed, acknowledged, and recorded by City and Developer concurrently with the execution of the Master Lease.
- 1.26 “**Mortgage**” means a mortgage or deed of trust or other instrument creating an encumbrance or lien upon any portion of the Property, or any part thereof, as security for a loan.
- 1.27 “**Mortgagee**” means the mortgagee or beneficiary under any Mortgage, and shall include any insurer or guarantor of any obligation or condition secured by such Mortgage.
- 1.28 “**New Matters**” means matters of record affecting the City Property which are not caused or created by Developer or its agents or contractors or which are caused or created by the City without Developer’s consent.
- 1.29 “**Net Site Area**” means the square footage of site area of the Project less the square footage of any exactions, easements or rights-of way on or within the Project that are or will be required to be dedicated to the City, including, without limitation, Dorsey Lane.

- 1.30 “**Owner**” means each individual owner or ground lessee of a Parcel within the Property.
- 1.31 “**PAD**” means the most current Planned Area Development from time to time approved by City, if any, with respect to the development of the Property or any portion thereof, and which sets forth the specific uses, densities, features, and other development matters applicable to the Property or any portion thereof.
- 1.32 “**Parcel**” means any separate parcel or tract of land within the Property now existing or hereafter created pursuant to one or more Subdivision Plats, lot splits, or the imposition of a condominium regime approved by the City in accordance with its standard approval procedure governing such matters.
- 1.33 “**Parcel Development Agreement**” means a separate and subordinate agreement between the City and Developer or other person setting forth specific terms and conditions for development and/or use of a particular Parcel.
- 1.34 “**Phase**” means each separate component or portion of the Project, which is or may be developed by Developer pursuant to this Agreement, as more particularly described herein.
- 1.35 “**Project**” means the “Project” as described in the Recitals hereof. Notwithstanding the use of or reference to the term “South Pier at Tempe Town Lake” to refer to the Project, such name shall not be deemed to imply that the Project must be developed and operated under the name “South Pier at Tempe Town Lake,” and the parties hereby acknowledge that the Property and the Project may be developed under any other name deemed to be desirable by Developer.
- 1.36 “**Property**” means, collectively, the Developer Property and the City Property.
- 1.37 “**Purchase Price**” means \$74.02 per square foot of Net Site Area based upon the City Property Appraisal.
- 1.38 “**Rio Salado CFD**” or “**Rio Salado Community Facilities District**” means that certain community facilities district affecting some or all of the Property and commonly known as the Rio Salado Community Facilities District.
- 1.39 “**Schedule of Performance**” means the schedule of performance attached hereto as **Schedule 1**, as the same may change from time to time.
- 1.40 “**Subdivision Plat**” means the creation or reconfiguration of one or more Parcels comprising some or all of the Property as submitted by Developer and approved by City. A Subdivision Plat may be a condominium plat, a vertical property regime, or other division or combination of the Parcels prepared and approved in accordance with applicable law.
- 1.41 “**Town Lake**” means Tempe Town Lake.

**ARTICLE II.  
PRELIMINARY MATTERS**

2.1 Incorporation of Recitals. The Recitals are true and correct and are incorporated herein by reference.

2.2 Conceptual Development Plan. The Conceptual Development Plan sets forth Developer's current plan for development of the Property. The parties acknowledge that the Conceptual Development Plan initially attached to this Agreement reflects the parties' general intent regarding development of the Property, and that as Developer finalizes its plans and in the event it determines any parts of the Conceptual Development Plan are not feasible or otherwise require modification including as may be necessary to accommodate any unforeseen factors, events or unexpected occurrences (including, without limitation, changes in market conditions), the Conceptual Development Plan may be amended from time to time subject to approval of the City's Community Development Department, which approval will not be unreasonably withheld, conditioned or delayed as long as the revised Conceptual Development Plan does not differ materially from that contained herein.

2.3 Schedule of Performance; Extensions. City and Developer intend that the planning and development of the Property shall be achieved pursuant to the Schedule of Performance. From time to time following the Effective Date, however, Developer and City may, by mutual written agreement, refine and revise the Conceptual Development Plan and Schedule of Performance as may be necessary to accommodate any factors, events or occurrences (including, without limitation, changes in market conditions) which may necessitate such refinement or revision. Developer and City shall each use commercially reasonable efforts to enable development of the Property to occur in accordance with the Conceptual Development Plan and Schedule of Performance. So long as no Developer Default has occurred and remains uncured, Developer shall have the right to extend the time for performance only one time for a period of one year and a nonrefundable fee of \$100,000. Such an extension would automatically extend the deadline of all subsequent Phases in the Schedule of Performance for the same period of time. Any additional extensions will require City Council approval of an amendment to this Agreement.

(a) Failure of Timely Performance. Subject to delay caused by any Force Majeure Event or economic impracticability as set forth in *Sections 2.3(b) or 2.3(c)* below, in the event that either party hereto fails to perform any of its obligations which are set forth in or contemplated by this Agreement or in the Schedule of Performance in a timely manner, and should such failure not otherwise be excused by agreement of the parties or by the terms of this Agreement, such failure shall be considered to be a breach of this Agreement and the non-breaching party shall have their respective remedies set forth in *Article 10* of this Agreement.

(b) Excused Delay in Performance. In addition to the specific provisions of this Agreement, the performance by either party hereunder shall not be deemed to be a default where delays or defaults are due to a Force Majeure Event. In the event that one party to this Agreement is unable or fails to perform due to a Force Majeure Event, then the time for the performance shall be extended for a period of time equal to the period of

the delay plus a reasonable start-up period, provided that the party claiming entitlement receives written authorization acknowledging the applicability of the Force Majeure Event to the particular circumstances. An extension of time for any such cause shall only be for the period of the forced delay as set forth in the agreement of the parties, which period shall commence to run from the time of the commencement of the cause.

(c) Economic Impracticability. The City hereby acknowledges that circumstances and events may occur whereby the Developer determines, for reasons of market considerations, adverse interest rates or other market factors, that it is no longer economically feasible to pursue or complete the development of the Property or an individual Phase therein in accordance with the PAD and/or the Schedule of Performance. In the event that the Developer makes such a determination and provides notice of such to the City, the City and Developer shall work together to mutually agree to a suspension of the Developer's performance for a reasonable period of time, and a like suspension for any performance required of the City where performance by the Developer is practically required or is required as a condition precedent to the City's obligation to perform, whereupon the Schedule of Performance shall be accordingly revised. In the event that the Developer and the City are unable to agree upon a reasonable revised Schedule of Performance, and either Developer or the City reasonably believe that the economic considerations of development of the Property can be cured by further modifying the PAD, then, in that event, the City and the Developer shall meet in good faith and attempt to resolve such economic infeasibility by, among other things, reallocating uses of the Parcels within the Property or processing further modifications and amendments to the PAD as may be reasonable to permit economically feasible development thereof. If the Developer and the City are unable to agree upon a reasonable revised Schedule of Performance and neither party believes the economic considerations of development of the Property can be cured by further modifying the PAD, then, in that event, the issue of the revision of the Schedule of Performance shall be submitted to mediation pursuant to the provisions of *Section 10.3* below (it being understood by the parties that the mediator shall only be requested to address the issue of revising the Schedule of Performance and shall not have any authority with respect to modifications to the PAD).

2.4 Enhanced Amenities. The parties acknowledge that the Developer proposes and will maintain enhanced amenities in the form of landscape improvements that exceed City design requirements within the Property and adjacent public property that may be economically feasible only by the commitment to provide the applicable Owner with the benefit of such enhanced amenities. The parties agree to an enhanced amenities benefit of \$2,000,000 for the Enhanced Amenities generally described in **Exhibit H**.

2.5 Construction Sales Tax Rebate. The parties acknowledge that the future development of any individual Parcel within the Property may be economically feasible only by the commitment of the City to provide the applicable Owner with the benefit of a sales tax rebate of the City's share of construction sales taxes ("**Construction Sales Taxes**") generated by Parcel-specific development. This rebate shall include 50% of Construction Sales Taxes generated on by or through Developer on the Parcels (the "**Construction Tax Rebate**") in an amount not to exceed \$1,500,00.00 (the "**Rebate Cap**"). Developer has five (5) years from the Effective Date to claim this Rebate. This Agreement is a development agreement within the meaning of A.R.S. §9-



500.11(k). A Notice of Intent to enter into this Agreement was adopted by the City Council on December 9, 2021, at which time City Council made the statutorily-required findings.

(a) In order to facilitate Developer's requests for reimbursement pursuant to this Section 2.5, the City requires that Developer follow the following procedures: (i) Developer's contractors should obtain a new, separate Arizona Department of Revenue ("ADOR") tax license specific for the New Premises expenses, which license should reflect the City as the city for this license because the municipal tax is due to the city in which the contracting project takes place; (ii) Developer must ensure that retailers supplying to the New Premises report gross sales and taxes based on the specific location code in the retailer's monthly tax filing with ADOR; (iii) Developer will include a spreadsheet with each taxable purchase (line itemed) that is being claimed for the rebate as well as the accompanying receipt; and (iv) Developer will receive a copy of the tax returns for transaction privilege tax and supporting documentation from contractors and retailers to properly calculate its rebate request and will submit such reports when submitting the certification required pursuant to this Section 2.5.

### ARTICLE III. MASTER LEASE

3.1 Master Lease. To facilitate master planning of the Project, the City and Developer shall, contemporaneously with execution of this Agreement on the Effective Date, execute the Master Lease and Memorandum of Master Lease with respect to the City Property and, promptly following the City's recording of this Agreement, the City shall also cause the Memorandum of Master Lease to be recorded in the Official Records of Maricopa County. Except for any improvements to be constructed pursuant to or in connection with the granting of an easement contemplated in **Section 3.5** below, Developer shall not have the right to commence construction of any Improvements on any Parcel of City Property unless and until a Master Lease with respect to such Parcel of City Property has been executed by City and the Developer. The term of the Master Lease shall be consistent with the Schedule of Performance and shall contain such early termination provisions as the City and Developer agree, but in all events the Master Lease shall permit the City to terminate the Master Lease pursuant to the City's exercise of its remedies under **Section 10.1(c)** hereof. The City shall bear all costs of maintenance and ownership of each Parcel of City Property from and after the Effective Date until the execution of a Master Lease for such Parcel of the City Property.

3.2 Master Lease Rent. During the term of the Master Lease, Developer shall pay to City rent in arrears on each anniversary date of the Master Lease (the "Master Lease Rent"), which shall be prorated for each partial year, as applicable. The Master Lease Rent is comprised of the taxes and assessments (including, without limitation, the District Payment Obligation) (collectively, as the same may change from time to time, the "Taxes and Assessments") with respect to the City Property that is the subject of the Master Lease as follows:

(a) Years 1 -3 (and any partial year of the year in which this Agreement is dated): The City shall pay 100% of Taxes and Assessments.

(b) Year 4: The City shall pay 80% and Developer shall pay 20% of Taxes and Assessments.

(c) Year 5: The City shall pay 70% and Developer shall pay 30% of Taxes and Assessments.

(d) Year 6: The City shall pay 60% and Developer shall pay 40% of Taxes and Assessments.

(e) From and after Year 7: The City shall pay 50% and Developer shall pay 50% of Taxes and Assessments.

3.3 Master Lease Leasehold Title Policy. If requested by Developer, Developer's interest in the Master Lease shall be insured pursuant to an ALTA extended coverage leasehold policy of title insurance issued by the Escrow Agent, together with such endorsements as may be requested by the Developer (the "**Master Lease Title Policy**"), all at Developer's expense. The Master Lease Title Policy shall be subject only to the Approved Exceptions. City shall, upon request by Developer or Escrow Agent, execute such other documents as Developer or Escrow Agent may reasonably request to issue the Master Lease Title Policy to Developer.

3.4 Master Lease Title Insurance and Escrow Fees. Developer shall pay the premiums for the Master Lease Title Policy and for any endorsements requested by Developer (except for any endorsements required to cure any New Matter. In addition, Developer shall pay Escrow Agent's fees, if any, and the costs charged by Escrow Agent, if any, to record the documents which are to be recorded in connection with the execution of the Master Lease.

3.5 Temporary Construction Easements; Utility Easements. City shall, upon written request of Developer, at no additional cost or charge, grant to Developer or any other Owner reasonable temporary easements which are within the City control for construction and provide its consent to any utility or other easements within the City Property as Developer or any other Owner may reasonably request in connection with the development of the Property. Developer or the applicable grantee shall, in accordance with the terms of such easements, maintain and reasonably restore any portions of the City Property with respect to which the City has conveyed any such easements at its sole cost and expense. Developer agrees and understands that there are external utility providers which are not part of the City of Tempe. The City can only give consent or provide easements that are on City Property.

3.6 Construction. The Master Lease shall permit Developer to construct Improvements on the City Property, which shall include the rights to obtain permits, design, construct, install and maintain such Improvements. The City shall reasonably allow such development activity.

#### ARTICLE IV. DUE DILIGENCE INVESTIGATION

4.1 Status of Title. Developer hereby approves the condition of title to the City Property as described in the Approved Exceptions, expressly excluding any New Matters, which New Matters shall be removed by City if requested by Developer and the City can reasonably do so.

4.2 Reports. Within ten (10) business days after the Effective Date, and if City has not previously provided the same to Developer, City shall deliver to Developer copies of all relevant surveys, reports, or studies (collectively "**Reports**"), in City's possession on the Effective Date,

pertaining to the Property or the development thereof, including but not limited to all Reports pertaining to drainage, soil, flood, hazardous or toxic substances or pollutants, archaeological or environmental conditions, or power or transmission lines on or adjacent to the Property, as well as all topographical surveys. Any such Reports not in City's possession concurrently with the execution hereof but which come into City's possession during the term of this Agreement shall be delivered to Developer promptly after receipt. If this Agreement is terminated for any reason, Developer shall return the Reports to City. On written request, City shall provide Developer with access to any and all data and information as City may have pertaining to the Property which is not otherwise confidential or privileged materials or any City Attorney files. Developer agrees that it shall not attempt to assert any liability against the City by reason of the City's having furnished any data or information pursuant to the terms of this Agreement or by reason of any such data or information becoming or proving to have been incorrect or inaccurate in any respect.

4.3 Conveyances As Is. Prior to execution of the Master Lease, Developer shall have made its own examination, inspection and investigation of the condition of the City Property (including, without limitation, the personal property contained therein, the subsurface thereof, all soil, environmental, engineering and other conditions which may affect construction thereon and/or the development thereof) as it deems necessary or appropriate. Except as provided in this Agreement, Developer is entering into this Agreement, the Master Lease and the GPLET Leases based upon the results of such inspections and investigations. Developer acknowledges and agrees that it is or may be leasing or acquiring the City Property in an "AS IS" and "WHERE IS" condition, with all faults, except that the City Property shall be delivered vacant and free of all parties in possession (other than any parties claiming possession through Developer), and City shall not be responsible or liable to Developer for any conditions affecting the City Property. Other than with respect to claims arising as a result of the acts of City or its Council members, officers, employees, representatives and agents which affect the condition of or title to the City Property, Developer or anyone claiming by, through or under Developer, hereby fully releases City, its Council members, officers, employees, representatives and agents from any and all claims that it may now have or hereafter acquire against the indemnified parties, for any cost, loss, liability, damage, expense, demand, action or cause of action arising from or related to the condition of the City Property. Developer further acknowledges and agrees that this release shall be given full force and effect according to each of its expressed terms and provisions, including, but not limited to, those relating to unknown and unsuspected claims, damages and causes of action.

**ARTICLE V.  
INTENTIONALLY OMITTED**

**ARTICLE VI.  
GPLET LEASES**

6.1 Government Property Lease. City hereby acknowledges and agrees that as and when Certificates of Completion for the Improvements on a Parcel are issued and Developer has otherwise satisfied, in all material respects, its obligations which are then due under this Agreement (taking into account all applicable cure periods, if any), then Developer shall be entitled to all statutorily-authorized property tax abatements, including, without limitation, all

such abatements currently available pursuant to the provisions of A.R.S. §42-6201 through §42-6209. Following issuance of a Certificate of Completion on a Parcel, and upon City's receipt of Developer's written request therefor, the Parcel will be subject to the Government Property Lease Excise Tax as provided for under A.R.S. §42-6201 through §42-6209.

(a) In order to provide such property tax abatements to Developer, the City hereby agrees to accept, from time to time, conveyances or reconveyances of Parcels and/or Improvements and to lease all such Parcels and Improvements, or portions thereof, to the person or entity making such request and referencing the provisions of this *Article VI* upon the terms and conditions set forth in a GPLET Lease for a period of eight (8) years following the issuance of a Certificate of Completion with respect to any Improvements constructed on a Parcel, and to execute and record a GPLET Lease and a memorandum of GPLET Lease for such Parcel. The current parcels which may be eligible for GPLET Lease status for this project are Arizona Parcel Numbers (APN) 132-32-015, 132-32-016, 132-32-018, 132-32-020, 132-32-021-132-32-022, 132-32-026, 132-32-027. Any replat of these APNs prior to issuance of a GPLET Lease would make the replatted lots eligible as well.

(b) With regard to any Improved City Parcel which Developer elects to be the subject of a GPLET Lease, promptly upon request by Developer, (i) Developer shall execute and record an Improvements Deed in the form reasonably acceptable to Developer and City to convey to the City the Improvements constructed by or for Developer with respect to such Improved City Parcel; and (ii) concurrently therewith, City and Developer shall execute and record a GPLET Lease and a memorandum of GPLET Lease for such Improved City Parcel.

(c) The parties hereby confirm that (i) the Property is located in a single central business district within the municipal boundaries of the City; (ii) the Property is located entirely within a slum or blighted area that is established pursuant to A.R.S. Title 36, Chapter 12, Article 3; and (iii) the Improvements to be constructed in accordance with this Agreement will result in an increase in property value of at least one hundred percent. Accordingly, Developer shall be entitled to all statutorily-authorized property tax abatements, including, without limitation, all such abatements currently available pursuant to the provisions of A.R.S. §42-6201 through §42-6209.

(d) During the term of a GPLET Lease, the Parcel that is the subject of such GPLET Lease shall be taxed at the applicable Government Property Lease Excise Tax rate as provided in A.R.S. §42-6201 through 6209, subject, however, to an abatement of such Government Property Lease Excise Tax for the eight (8) year term of the GPLET Lease pursuant to the provisions of A.R.S. §42-6209. During the term of a GPLET Lease, City may not approve an amendment to change the use of the Parcel that is the subject thereof during the period of abatement unless the requirements of A.R.S. §42-6209(C)(3) have been satisfied.

(e) As set forth in the GPLET Lease, upon commencement of such GPLET Lease, and to assist the Tempe Union High School Foundation and the Tempe Impact Education Foundation (together, the "**Foundations**") with their important educational

missions, the lessee shall make a one-time voluntary contribution to the Foundations in the amount of \$50,000 (\$25,000 to each Foundation) payable on the date of Developer's and City's execution of each GPLET Lease for the Property until such time as the total amount of donations made to the Foundations pursuant to this Agreement equal \$250,000 (\$125,000 to each Foundation), whereupon no additional contributions to the Foundations shall be required. The individual and cumulative amount of donations to the Foundations set forth in this paragraph have been determined and agreed upon between City and Developer and each GPLET Lease executed by City and Developer is and shall be an implementation of this determination and agreement. City has the right to enforce Developer's donation obligations set forth in this paragraph.

(f) City hereby confirms that the requirements of A.R.S. §42-6209(C)(1) and (2) have been satisfied prior to the Effective Date.

(g) During the term of a GPLET Lease, Developer shall pay, as and when due, all taxes and assessments (including, without limitation, the District Payment Obligation) with respect to the Property that is the subject of the GPLET Lease; provided, however, such taxes and assessments (including, without limitation, the District Payment Obligation) shall be prorated between City and Developer for any Improved City Property that is the subject of a GPLET Lease, with City being responsible for the period prior to the parties' execution of the applicable GPLET Lease.

(h) Upon the expiration or earlier termination of a GPLET Lease, City shall convey the Parcel and Improvements that are the subject of such GPLET Lease to Developer by special warranty deed in the form reasonably approved by City and Developer, and if requested by Developer, City shall reasonably cooperate with Developer and shall execute such documents and instruments as Developer may reasonably request to cause Escrow Agent, at Developer's cost, to issue an ALTA extended coverage owner's title policy to Developer. If the Parcel that is the subject of an expired or terminated GPLET Lease is an Improved City Parcel, then the provisions of *Article VII* shall apply.

6.2 GPLET Lease Leasehold Title Policy. If requested by Developer, Developer's interest in a GPLET Lease shall be insured pursuant to an ALTA extended coverage leasehold policy of title insurance issued by the Escrow Agent, together with such endorsements as may be requested by the Developer (each, a "**GPLET Lease Title Policy**"), and paid for by Developer. Each GPLET Lease Title Policy for a City Parcel that is the subject of a GPLET Lease shall be subject only to the Approved Exceptions. Each GPLET Lease Title Policy for any other Parcel that is the subject of a GPLET Lease shall be subject to all matters of record affecting such Parcel as determined by Developer and Escrow Agent; excluding, however, any New Matters with regard to the City Property. If the City fails to, and is legally required to cure and remove all New Matters affecting a Parcel of City Property prior to the parties' execution of a GPLET Lease for such Parcel, then, in addition to all other rights and remedies available to Developer under this Agreement, at law or in equity, Developer may, by giving written notice to the City, elect to (i) take such action(s) as may be necessary to cause such New Matters to be removed or to cause the Escrow Agent to issue an endorsement over such matters, in which event the costs incurred by Developer in connection therewith shall be offset against any other amounts owed by

Developer to City hereunder; (ii) pursue specific performance of City's obligation to remove such New Matter(s); and/or (iii) without waiving its rights under this Agreement, proceed to the execution of the GPLET Lease. City shall, upon request by Developer or Escrow Agent, execute such other documents as Developer or Escrow Agent may reasonably request to issue each GPLET Lease Title Policy to Developer.

6.3 GPLET Lease Title Insurance and Escrow Fees. Developer shall pay the premiums for each GPLET Lease Title Policy and for any endorsements requested by Developer. In addition, Developer shall pay Escrow Agent's fees, if any, and the costs charged by Escrow Agent, if any, to record the documents which are to be recorded in connection with the execution of a GPLET Lease.

6.4 Reserved.

6.5 Workforce Housing and Transit. Developer hereby covenants and agrees that, during the term of any GPLET Lease, Developer shall make an in-lieu cash payment to the City to contribute to the Tempe Housing Affiliate and Transit Fund in the following applicable amounts per Lot. The City will distribute these payments 80% to the Housing Affiliate and 20% to the Tempe Transit Fund. Payments for each lot shall (A) be paid in eight (8) equal annual installments to the City, and (B) shall commence for each Lot after the initial Certificate of Completion is obtained for Improvements constructed thereon:

Lot*	Total In-Lieu Payment	Annual Installments of In-Lieu Payment
Lot 1	\$2,179,157	\$272,394.63
Lot 2	\$1,720,387	\$215,048.38
Lot 4	\$1,039,401	\$127,925.13
Lot 6	\$2,379,869	\$297,483.63
Lot 7	\$1,878,089	\$234,761.13
Lot 8	\$1,254,449	\$156,806.13
Lot 9	\$2,229,335	\$278,666.88

\* Lots are identified on the Conceptual Plan

6.6 Pedestrian Bridge Cash Payment. Developer hereby covenants and agrees that Developer will make a cash payment to the City to be used by the City for the construction of the Pedestrian Bridge and Pier in the amount of \$2,000,000 payable in seven (7) installments of \$285,714.29 each payable upon execution of the first GPLET lease and annually thereafter for seven years.

## ARTICLE VII. CLOSINGS

7.1 Closing Date. City shall convey to Developer each Improved City Parcel upon the earlier of (i) expiration of the GPLET Lease for such Improved City Parcel; or (ii) within forty-five (45) days after City's receipt of Developer's written request or such other date and time mutually agreed to by the City and the Developer in writing. The conveyance of an Improved City Parcel to Developer is referred to herein as the "Closing" and the date upon which such Closing occurs is the "Closing Date." To facilitate a Closing, City and the Developer shall establish an escrow

with Escrow Agent, who shall hold all documents, receive all monies and perform such other acts as are normal and customary for a commercial escrow agent in similar transactions. At the Closing, Developer shall pay to the City the attributable Purchase Price for the Improved City Parcel. The following additional terms and conditions shall apply with respect to the Closing for an Improved City Parcel:

(a) Purchase Price. The Purchase Price to be paid with respect to an Improved City Parcel shall be determined on a gross square foot basis calculated by multiplying the gross square footage of the Improved City Parcel by the Purchase Price. At the Closing of an Improved City Parcel, the developer shall deposit with the Escrow Agent cash in an amount equal to the Purchase Price.

7.2 Owner's Title Policy. If requested by Developer, Developer's interest in each Improved City Parcel shall be insured at the Closing for such Improved City Parcel pursuant to an ALTA extended coverage owner's policy of title insurance in an amount equal to the Purchase Price issued by the Escrow Agent, together with such endorsements as may be requested by the Developer (each, an "**Owner's Title Policy**"). Each Owner's Title Policy for an Improved City Parcel shall be subject only to the Approved Exceptions and paid for by Developer. If the City fails to, and is legally able to cure and remove all New Matters affecting an Improved City Parcel prior to Closing for such Improved City Parcel, then, in addition to all other rights and remedies available to Developer under this Agreement, at law or in equity, Developer may, by giving written notice to the City, elect to (i) take such action(s) as may be necessary to cause such New Matters to be removed or to cause the Escrow Agent to issue an endorsement over such matters, in which event the costs incurred by Developer in connection therewith shall be offset against the Purchase Price payable by Developer for such Parcel or, at Developer's election, any other amounts owed by Developer to City hereunder; (ii) pursue specific performance of City's obligation to remove such New Matter(s); and/or (iii) without waiving its rights under this Agreement, proceed to the Closing for such Improved City Parcel. City shall, upon request by Developer or Escrow Agent, execute such other documents as Developer or Escrow Agent may reasonably request to issue each Owner's Title Policy to Developer.

7.3 Closing Costs; Prorations. Developer shall pay Escrow Agent's fees, if any, and the costs charged by Escrow Agent, if any, to record the documents which are to be recorded at the Closing. All real property taxes and assessments (including, without limitation, the District Payment Obligation) shall be prorated between the City and Developer as of the date of Closing for the applicable Improved City Parcel, based upon the latest available information; provided, however, if the Improved City Parcel is being conveyed to Developer upon the expiration or earlier termination of a GPLET Lease, the property taxes and assessments shall not be prorated but shall be paid by Developer as and when due.

7.4 Closing Documents. At each Closing, the City and/or Developer shall execute, acknowledge (as applicable), and deliver such documents as either party or Escrow Agent may reasonably request to effectuate such Closing and to issue the Owner's Title Policy to Developer.

7.5 Tax-Deferred Exchange. In the event that Developer desires to consummate a Closing as part of a tax-deferred exchanged pursuant to and in accordance with the provisions of Section 1031 of the Internal Revenue Code of 1986, as amended (an "**Exchange**"), then, in that

event, the City shall reasonably cooperate with Developer and shall execute and deliver any and all documents and instruments which may be necessary or desirable in order to accomplish such Exchange; provided, however, that the City shall not incur any additional cost or expense, liability or obligation in connection with such Exchange.

## ARTICLE VIII. DEVELOPMENT PROCESSES

8.1 Parcel Development Agreements. City and Developer hereby acknowledge that the development of the Property in accordance with the Conceptual Development Plan might be accomplished by Developer through assignments, subleases, joint ventures and/or other dispositions to or arrangements with other experienced investors in or developers of real property. In connection therewith, it is anticipated and contemplated by City and Developer that such persons might desire to become parties to this Agreement or to enter into separate and subordinate Parcel Development Agreements with City and/or Developer. City and Developer hereby agree that any and all Parcel Development Agreements entered into by City with any such developer, investor or Developer shall be subordinate in all respects to the terms and conditions of this Agreement, and in the event of any conflict or discrepancy between the provisions of any such Parcel Development Agreement and the terms and conditions of this Agreement, this Agreement shall govern and control. City shall have no legal obligation to modify the terms of this Agreement without approval of the City Council.

8.2 PAD. As required by the Schedule of Performance, Developer shall submit to City a PAD for the Property in accordance with normally applicable City submission requirements for such applications. The PAD shall be in sufficient form to comply with applicable City requirements and shall include a list of proposed standards and other authorizations required to develop the Property, and which may include future Phases of the Project. City agrees to provide such authorizations and consents as may be required to enable Developer to submit the PAD. Upon City's approval of the PAD, the PAD shall govern and control the development of the Property over the Conceptual Development Plan and may be submitted to the City for modification from time to time.

8.3 Phasing. Generally, the Project consists of multiple Phases and separate, but related, structures, which are intended to be developed over a number of years. Phases may be contiguous or noncontiguous. The various Phases may be separately approved and developed. The City's approval of any Phase shall not be contingent on its approval of any other phase; however, the density, uses, and general scope of any Phase may be transferred to one or more other Phases, but in any event the overall density, mix of uses, and overall scope of the Project shall be consistent as generally set forth in the PAD.

8.4 General Cooperation and Expedited Approvals.

(a) City and Developer acknowledge and agree that they shall cooperate in good faith with each other and use their respective good-faith and commercially reasonable efforts to pursue development of the Property. City agrees to use its reasonable best efforts to assist Developer in obtaining all approvals required by state, federal, county



or other governmental authorities in order to develop the Property in accordance with the Conceptual Development Plan and the Schedule of Performance.

(b) The City hereby acknowledges and agrees that development of the Property in accordance with the PAD, as may be further modified, will, as a result of unusual site conditions, the size of the Property, market conditions and other economic factors, occur over a span of a number of years and will require the City's ongoing participation in the review and approval of modifications and amendments to the PAD, site plans, infrastructure plans, drainage plans, design plans, building plans, grading permits, building permits, archaeological and historic preservation review and disposition, and other plans, permit applications and inspections which are a part of the City's current building and development requirements (hereinafter collectively called "**Approval Requests**").

(c) The City hereby agrees to designate a representative of the City to act as a liaison between the City and the Developer and between the City's various internal departments and the Developer. Such representative shall be available at all reasonable times to serve as such liaison, it being the intention of this *Section 8.4(c)* to provide Developer with one individual as the City's principal representative with respect to the Property. The Developer shall also designate a representative who shall serve as a liaison between the Property and the City. The initial representative for the City ("**City Representative**") shall be Maria Laughter or appointee, and the initial representative for Developer ("**Developer Representative**") shall be Loren McBride Cohen. Both the City Representative and the Developer Representative shall be available at reasonable times to discuss and review the performance of the City and Developer under this Agreement and the development of the Property. A party may change its Representative at any time by giving notice to the other party as provided in *Section 11.4*.

8.5 Pier Drive. The parties acknowledge that the Conceptual Development Plan requires that some or all of Pier Drive be abandoned and/or that the use thereof be converted from publicly dedicated right of way to an alternative use which permits Developer to develop, use and maintain Pier Drive as some combination of roadway, utility corridor, park-like area, landscaping, and/or pedestrian walkways (the "**Pier Drive Conversion**"). City shall make best efforts to work with the Developer to provide all consents necessary required for Developer's ability to develop, maintain and use Pier Drive Conversion as shown on the conceptual site plan **Exhibit "D"**. The City agrees it will not obstruct or block access from or to any of the improved parcels to the Enhanced Amenities constructed by the Developer.

8.6 Pedestrian Pier. The City acknowledges that Developer's Conceptual Development Plan utilizes the Pedestrian Pier adjacent to the Project, as shown in Exhibit "J" and that Developer is relying on the City's commitments with respect to the Pedestrian Pier herein. City shall cooperate and take all actions that it reasonably and legally can take and provide all consents necessary to provide Developer with the right to construct and operate a pier and other related improvements and/or amenities over the Town Lake. In connection therewith, promptly following City's receipt of Developer's request therefor, City and Developer shall work together in good faith to mutually agree upon the terms and conditions of a Lease for Pier Improvements and Operation with respect to Developer's use and operation of the Pedestrian Pier.

8.7 Concessions. The City hereby agrees that, to the extent that concessions relating to amenities and facilities are permitted by the City with respect to the use and enjoyment of the Town Lake, which concessions may include, without limitation, the operation of marinas, boating operations and other public entertainment, the operation and maintenance of food and beverage operations within the boundaries of the Town Lake and such other amenities as may be desired by the City or Developer, such concessions shall be provided within the Property to the same extent that they are provided or made available within other properties adjacent to the Town Lake and operated by the Developer. Any proposed concessions must first be approved by the Economic Development and Community Services Departments.

8.8 Public Right-of-Way. The City hereby agrees that development of the Property by Developer in accordance with the PAD, as may be further modified, will involve the construction and installation of site-related sidewalks, curb, gutter, parking, water, sewer, electrical, cable, telephone, gas and other utility distribution lines, conduits and structures, in addition to public utilities constructed and installed by the City. The City shall also permit Developer to utilize on-street parking in the City's right of way in accordance with City Code.

8.9 Subdivision Plats. If Developer so desires, it may have prepared at its sole cost and expense, one or more Subdivision Plats of the Property.

8.10 Signage. The City and the Developer hereby acknowledge that the distinctive location of the Property between the downtown business district of the City and the Town Lake, as well as its location immediately adjacent to the Scottsdale Road bridge and its visibility from the Red Mountain Freeway (State Highway No. 202), provides a unique opportunity for both the City and the Developer to establish the Property as a first-class, high-profile commercial development within a highly visible part of the downtown business district in the City. As a result, the parties acknowledge and agree that appropriate signage will and should be an integral part of the development of the Property and will be necessary in order to attract and retain first-class tenants, users and occupants of the Improvements to be constructed on the Property. City and Developer agree to coordinate their efforts and agree on appropriate signage for the Project. City agrees that it will consider approval of unique signage concepts which may be proposed by Developer for the Project in accordance with its normal process for such requests. City authorizes and empowers the Director of Community Development to consent to any additional request of the Developer for sign approval that meet the intent of the Project and deviate from the Tempe Zoning Code.

8.11 Art in Private Development. City and Developer hereby acknowledge and agree that the distinctive location of the Project, and its development into a mixed-use development, presents a unique opportunity to enhance the visual design elements to be incorporated into the Improvements. City agrees that if Developer incorporates "Art in Private Development" amenities within the Project that meet the requirements of the City Code (and such has been approved in accordance with City's usual and customary procedures therefor) (the "Embellishments") prior to the date required by the City Code, Developer will be allowed to apply expenditures related to the design and installation of the Embellishments on the Improvements or otherwise within the Project's outside locations (i.e., not within the interior of a building or other improvement) to the City's requirements for expenditures toward Art in Private Development (as defined in and determined in accordance with Section 4-407 of the City

of Tempe Zoning and Development Code); provided that no part of the credit shall be available for design, construction or installation of standard architectural elements of any Improvements (i.e., elements which are not singular architectural embellishments or other stylistic enhancements designed by a professional artist).

8.12 Parking Requirements. The City and Developer agree that this Project is a mixed-use project, which creates efficiencies and opportunities to share amenities. As such, the City agrees to consider a shared parking model and to allow the Developer to use the Zoning and Development Code, Section 4-607, Downtown Parking Standards, if requested by the Developer, to calculate the required parking for each Phase of the Project. In addition, based on a traffic study submitted with each phase, the City will consider reducing the total number of overall provided parking spaces that would normally be required for the Project (and each Phase thereof) considering the type and nature of the improvements to be constructed. In reviewing the parking, the City will consider the Project as a whole when reviewing Developer requests related to parking for each Phase(s) and allow off-site shared parking across the Project and the incorporation of central shared parking garages. Such model may include use of temporary parking on Lot 1 and the use parking spaces not owned by Developer. Developer agrees that additional parking may require additional licenses or agreements for the City as may be necessary, and City will consider all executed licenses or agreements that indicate available additional parking. If the Developer requires temporary surface parking on Lot 1 or another Lot not owned by the Developer, City agrees that Developer will process the temporary parking request as part of a Minor Development Plan Review application, subject to parking lot development standards.

8.13 Public Transit Facilities. Developer hereby agrees that it shall not impede the development and implementation of public transit facilities as such facilities may be desired by the City within the Property to serve the needs of the general public and that, subject to the infrastructure needs and requirements of the Improvements to be constructed within the Property as contemplated by the Conceptual Development Plan, the Developer shall cooperate in good faith with the City in connection with the location of any public transit facilities and public rights of way within the Property and the integration of such facilities and rights of way with Improvements constructed or planned to be constructed thereon; provided, however, that the City shall be responsible for all additional architectural, engineering, construction and maintenance costs which may be incurred by Developer or any other Owner and resulting from structural or operational upgrades, betterments or other improvements which may be required to be made to any Improvements from time to time constructed or existing within the Property in order to ameliorate the effect or impact of public transit facilities on such Improvements.

8.14 Public Financing Opportunities. City will work cooperatively with Developer to access public financing options that may be available to support transit-oriented development and leverage the existing public investment in public transit, including but not limited to submitting and pursuing applications for federal grants or other financing options identified by Developer, and at Developer's cost. Furthermore, City hereby acknowledges and agrees that if, for any reason, any incentive programs provided herein are amended, modified or repealed or rescinded such that the full benefits thereof as currently provided on the Effective Date are no longer in effect, then, in that event, City will use its best efforts to provide alternative development incentives and to cooperate with Developer with respect to any other available tax abatement

programs or other public financing mechanisms provided for under Arizona law or otherwise available in order to obtain essentially the same economic benefits for the Property as are currently provided under existing law. Said incentives or tax abatement programs shall be limited such that they result in no greater cost to City than those agreed to herein.

**ARTICLE IX.  
FINANCING; MORTGAGEE PROTECTION**

9.1 Right to Encumber Developer's Interest in City Property. In the event that any Mortgagee of Developer requests confirmation that any proposed lien with regard to the City Property is authorized by this Agreement, the Mayor of the City, the City Manager, or the Deputy City Manager shall each immediately be authorized, and is hereby authorized by the City, and shall be obligated to immediately provide such written consent as may be required by such Mortgagee. Notwithstanding anything to the contrary in this Agreement, Developer acknowledges that it cannot lien the City's fee interest in any portion of the City Property until such time that Developer receives a Conveyance of said interest.

9.2 Consent Not Required. The Developer or any other Owner shall be entitled, without obtaining the prior consent of the City, to impose a Mortgage or other monetary encumbrance or lien upon any Parcel within the City Property simultaneously with or at any time after City's and Developer's execution of the Master Lease and/or a GPLET Lease for such Parcel; provided, however, such Mortgage or other monetary encumbrance or lien shall only encumber Developer's leasehold interest (i.e., pursuant to the Master Lease or a GPLET Lease) in the applicable Parcel of City Property.

9.3 Delivery of Notice. If Developer would like a Mortgagee to receive notices under this Agreement, the Developer shall notify the City in writing of (a) any financing secured by a Mortgage or other similar lien instrument that it proposes to enter into with respect to a Parcel, and (b) any encumbrance or lien that has been created on or attached to a Parcel of the City Property, whether by voluntary act of the Developer or otherwise. The notice shall set forth the name and address of the proposed Mortgagee or other benefited party.

9.4 Copy of Notice of Default to Mortgagee. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations or covenants under this Agreement, the City shall, at the same time, forward a copy of such notice or demand to each Mortgagee permitted under the terms of this Agreement at the last address of such Mortgagee set forth in the latest notice delivered to the City. Failure to deliver such notice shall make the notice of default invalid for all purposes until such copy is delivered to each Mortgagee. If the default is specific to a particular Parcel, then City shall only provide notice to the Mortgagee of such Parcel.

9.5 Mortgagee Not Obligated to Construct. No Mortgagee, including any Mortgagee who obtains title to any portion of the Property, or any part thereof, as a result of foreclosure proceedings or action in lieu thereof, shall be contractually obligated by the provisions of this Agreement to construct or complete the construction of any Improvements or to guarantee such construction or completion; nor shall any covenant or any other provisions of this Agreement be construed so as to obligate such Mortgagee.

9.6 Mortgagee's Option to Cure Defaults. Notwithstanding the provisions of *Section 9.5* above, after any breach or default under this Agreement, each Mortgagee shall have the right, but not the obligation, to cure or remedy any breach or default under this Agreement (or such breach or default to the extent that it relates to the particular Parcel covered by the Mortgage) within the same period of time to cure which is provided to the Developer hereunder following receipt of notice by such Mortgagee, except that in the event that any such Mortgagee must take any judicial or nonjudicial foreclosure action or other proceeding in order to effect any such cure or remedy, then such Mortgagee shall have such additional period of time to cure or remedy a default as may be necessary in order to permit Mortgagee to complete such foreclosure or other legal proceeding, including, without limitation, resuming or recommencing the construction of any Improvements permitted under this Agreement in order to complete said Improvements and to add the cost thereof to the Mortgage debt and the lien of its Mortgage. In the event that any Mortgagee cures any default or breach hereunder, the City shall accept such performance by Mortgagee as if the same had been made by the Developer and shall thereupon rescind the notice of default. Any Mortgagee who shall properly complete any Improvements within the Property pursuant to the terms of this Agreement shall be entitled, upon written request made to the City, to a Certificate of Completion issued by the City. Any such Certificate of Completion shall have the same effect as if it had been delivered to Developer and shall mean and provide that any rights or remedies which the City has with respect to the Property covered by the Certificate of Completion due to a default by Developer or a successor-in-interest to Developer, or that the City shall have or have been entitled to due to the failure of the Developer or any successor-in-interest to cure or remedy any default, shall not apply to the Parcel as to which such Certificate of Completion relates. In the event that Developer or any Mortgagee disputes whether a default has occurred, such dispute shall be subject to mediation as provided for in *Section 10.3* of this Agreement.

#### **ARTICLE X. DEFAULT; REMEDIES; MEDIATION**

10.1 Default. It shall be a “**Default**” hereunder if either party fails to perform any of its obligations hereunder and such failure continues for a period of thirty (30) days after written notice from the non-defaulting party specifying in reasonable detail the nature of the failure; provided that if the nature of such failure to perform is such that it cannot reasonably be cured within the thirty-day period, no Default shall be deemed to exist if the defaulting party commences a cure within that thirty-day period and diligently and expeditiously pursues such cure to completion.

(a) Developer Defaults. In addition to the foregoing, it shall be a Default by Developer hereunder if (a) Developer makes an assignment of this Agreement for the benefit of creditors, is not paying material debts as they become due, or is granted an order for relief under any chapter of the Bankruptcy Code; (b) garnishment, attachment, levy or execution in an amount in excess of an amount equal to ten percent (10%) of its net worth is issued against any of the property or effects of Developer, or any partnership of which Developer is a partner, and such issuance is not bonded against within ninety (90) days; or (c) the dissolution or termination of existence of Developer unless its successor by transfer or operation of law is continuing the business of operating the Project.

(b) Developer's Remedies. If City is in Default under this Agreement and the parties do not resolve the City's Default, Developer shall have the right to (i) terminate this Agreement upon written notice to City, and/or (ii) subject to the provisions of *Section 10.3*, pursue all other legal and equitable remedies which Developer may have at law or in equity, including, without limitation, the right to seek specific performance, the right to seek and obtain actual damages and the right to self-help.

(c) City's Remedies. If Developer is in Default under this Agreement and the parties do not resolve the Developer's Default either through direct negotiation or, if direct negotiations are unsuccessful, through mediation pursuant to *Section 10.3*, then the City shall have the right, upon written notice to Developer, as City's sole and exclusive remedy for a Default, to terminate this Agreement and the Master Lease; provided, however, such termination shall not affect any GPLET Lease then in effect or the parties' rights and obligations under *Article 7*. City's termination of this Agreement shall not affect Developer's indemnification and restoration obligations under *Article 4* or Developer's indemnification obligations under *Section 11.2* but the limitations of *Section 10.2* shall apply to such obligations.

10.2 Limitation. Neither party shall be entitled to pursue an award of incidental, consequential, punitive, special, speculative, or similar damages in the event of a Default by the other party, and each party hereby waives the right to pursue an award of such damages.

10.3 Mediation. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a ninety (90) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Developer and the City. In the event that the parties cannot agree upon the selection of a mediator within ten (10) days, then within five (5) days thereafter, the City and the Developer shall request the presiding judge of the Superior Court in and for the County of Maricopa, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to commercial property development. The cost of any such mediation shall be divided equally between the City and Developer, or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation upon the conclusion of mediation or ninety (90) days after the date the parties first reached an impasse on the subject matter of the dispute, whichever occurs later.

## ARTICLE XI. GENERAL PROVISIONS

11.1 No Personal Liability. No member, shareholder, director, partner, manager, officer or employee of Developer shall be personally liable to City, or any successor or assignee, (a) in the event of any default or breach by Developer, (b) for any amount which may become due to the City or its successor or assign, or (c) pursuant to any obligation of Developer under the terms of this Agreement.

11.2 Liability and Indemnification. Developer hereby agrees to indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense to the extent arising, directly or indirectly, in whole or in part, out of Developer's performance or failure to perform its obligations under this Agreement. Notwithstanding the foregoing, Developer shall not be prevented from seeking contribution or indemnification from City in connection with any claim, litigation or proceeding brought against Developer by a third party, including any governmental entity, for events occurring on or affecting a Parcel of City Property prior to the execution of the Master Lease.

11.3 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to A.R.S. § 38-511. Developer represents and warrants that it 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 and attorneys.

11.4 Notice. All notices which shall or may be given pursuant to this Agreement shall be in writing and transmitted by registered or certified mail, return receipt requested, or by personal delivery or by overnight mail, addressed as follows:

To Developer:	South Pier Tempe Holdings LLC Attn: Loren McBride Cohen 5020 Main Street, Suite H Tacoma, WA 98407
With a copy to:	Manjula Vaz Gammage & Burnham Forty North Central Ave., 20 <sup>th</sup> Floor Phoenix, AZ 85004
To the City:	City Manager City of Tempe 31 East Fifth Street Tempe, Arizona 85281

With a copy to:

City Attorney  
 City of Tempe  
 21 East Sixth Street, Suite 201  
 Tempe, Arizona 85281

Either party may designate any other address for this purpose by written notice to the other party in the manner described herein. The date of service of any communication hereunder shall be the date of personal delivery or seventy-two (72) hours after the postmark on the certified or registered mail, or the date received if sent by overnight mail, as the case may be.

11.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been made and entered into in Maricopa County, Arizona.

11.6 Successors and Assigns. This Agreement shall run with the land and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

11.7 Waiver. No waiver by either party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

11.8 Severability. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law, provided that the overall intent of the parties is not materially vitiated by such severability.

11.9 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

11.10 Attorneys' Fees. In the event of any actual litigation between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

11.11 Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

11.12 Recordation of Agreement. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after execution of this Agreement by the City.

11.13 City Manager's Power to Consent. The City authorizes and empowers the City Manager to consent to any and all requests of Developer requiring the consent of the City hereunder without further action of the City Council, except for any actions requiring City Council approval



as a matter of law, including, without limitation, any amendment or modification of this Agreement.

11.14 Assignment. Upon prior written notice to City, Developer may assign its interest in this Agreement, in whole or in part, to any Affiliate. Neither Developer nor any permitted assignee of Developer may otherwise assign its interest in this Agreement without the prior written consent of City, which consent may be reasonably withheld by City.

11.15 Additional Property. If Developer or an Affiliate acquires title to additional property adjacent to the Property, Developer can approach the City to do an amendment to this Agreement with respect to such additional property.

11.16 No Third Party Beneficiaries. No term or provision of this Agreement is intended to, or shall be for the benefit of any person, firm, organization or corporation not a party to this Agreement (or a permitted assignee of Developer), and no such other person, firm, organization or corporation shall have any right or cause of action under this Agreement.

11.17 Apprenticeship and Highly Skilled Worker Programs. To the extent permitted by state law, Developer and each Owner agrees to use its commercially reasonable efforts to register and utilize apprenticeship and highly skilled worker programs that meet federal and state standards in the undertaking of the duties and obligations contemplated herein. Developer and each Owner acknowledges and agrees that it will comply with applicable federal and state law with regard to the use of apprenticeship and highly skilled worker programs, and that its contractors and/or subcontractors shall agree to provide high quality training for the production of skilled, competent workers for this Project. For the purposes of this *Section 11.17*, the City and Developer agree that the preferred method of demonstrating the use of skilled, competent workers is participation in a registered apprenticeship program that has graduated journeymen three of the last five years.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and attested to by the City Clerk, and Developer has executed the same on or as of the day and year first above written.

ATTEST

"CITY"

Kara R. Reece for  
Carla R. Reece, City Clerk

THE CITY OF TEMPE,  
an Arizona municipal corporation,

By: [Signature]  
Corey D. Woods, Mayor

APPROVED AS TO FORM:

Sonia M. Blain  
Sonia M. Blain, Deputy City Attorney

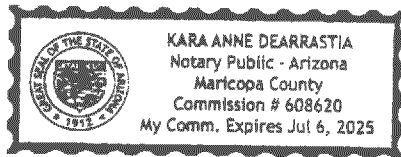
STATE OF ARIZONA                    )  
  ) SS.  
COUNTY OF MARICOPA            )

The foregoing Development and Disposition Agreement was acknowledged before me this 14th day of February, 2022, by Corey D. Woods, Mayor of THE CITY OF TEMPE, an Arizona municipal corporation, and that in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

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

Kara Anne Dearrastia  
Notary Public

My Commission Expires:



http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=284932 [202202259754] 91 Pages



LIST OF EXHIBITS AND SCHEDULES

[LIST TO BE UPDATED]

Exhibit "A-1" ..... Developer Property

Exhibit "A-2" ..... City Property

Exhibit "B" ..... Not Used

Exhibit "C" ..... Certificate of Completion

Exhibit "D" ..... Conceptual Development Plan

Exhibit "E" ..... Not Used

Exhibit "F" ..... Form of GPLET Lease

Exhibit "G" ..... Form of Master Lease

Exhibit "H" ..... Enhanced Amenities

Exhibit "I" ..... Not Used

Exhibit "J" ..... Pedestrian Pier

Schedule 1 ..... Schedule of Performance

[EXHIBITS TO COME]

http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=284932 [20220259754] 91 Pages

EXHIBIT "A-1"

**LEGAL DESCRIPTION**

**Maricopa County Assessor's Parcel Numbers 132-32-015, 132-32-20 and 132-32-025**

The land referred to herein is situated in the City of Tempe, County of Maricopa, State of Arizona, and is described as follows:

Lots 1, 6 and Tract B, PIER 202 AMENDED, according to Book 949 of Maps, page 48, records of Maricopa County, Arizona.

**EXHIBIT "A-2"**

**LEGAL DESCRIPTION**

**Maricopa County Assessor's Parcel Number 132-32-014**

Tract A, PIER 202, according to Book 943 of Maps, page 33, records of Maricopa County, Arizona.

**LEGAL DESCRIPTION**

**Maricopa County Assessor's Parcel Numbers 132-32-016, 132-32-018, 132-32-021, and 132-32-022**

Lots 2, 4, 7, and 8, PIER 202 AMENDED, according to Book 949 of Maps, page 48, records of Maricopa County, Arizona.

**LEGAL DESCRIPTION**

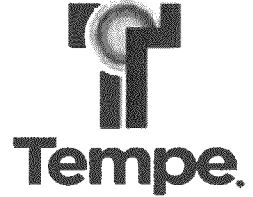
**Maricopa County Assessor's Parcel Numbers 132-32-026, and 132-32-027**

Lots 9A and 9B, PIER 202-2<sup>ND</sup> AMENDED, according to Book 1052 of Maps, page 16, records of Maricopa County, Arizona.

EXHIBIT "C"

**Certificate of Completion**

City of Tempe  
P.O. Box 5002  
31 E 5th Street  
Tempe, AZ 85281  
www.tempe.gov



Community Development  
Department  
Building Safety Division

**LETTER OF COMPLETION**

So far as ascertained by or made known to the undersigned, the project located at \_\_\_\_\_ constructed under permit BP \_\_\_\_\_,  
\_\_\_\_\_.

has been constructed in accordance with the applicable Codes and Ordinances of the City of Tempe.

By: \_\_\_\_\_  
Community Development Department  
Building Safety Division

Date: \_\_\_\_\_

Exhibit on file with the Tempe City Clerk





Exhibit on file with the Tempe City Clerk

**EXHIBIT "F"****Form of GPLET Lease****WHEN RECORDED, RETURN TO:**

City of Tempe Basket

**LAND AND IMPROVEMENTS LEASE****C2022-**

THIS LAND AND IMPROVEMENTS LEASE ("**Lease**") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the **CITY OF TEMPE**, a municipal corporation ("**Landlord**"), and an Arizona limited liability company ("**Tenant**").

**RECITALS**

- A. Landlord has title of record to the real property as described in *Exhibit A* hereto (the "**Land**"), together with all rights and privileges appurtenant thereto and all improvements and future additions thereto or alterations thereof (collectively, the "**Premises**").
- B. The Premises are located in a single central business district in a redevelopment area established pursuant to Title 36, Chapter 12, Article 3 of Arizona Revised Statutes (A.R.S. §§36-1471 et seq.). Tenant's construction of the Premises resulted in an increase in property value of at least one hundred percent.
- C. The Premises will be subject to the Government Property Lease Excise Tax as provided for under A.R.S. §42-6203(B) (the "**Tax**"). The Tax shall be payable for the period beginning upon the date of the issuance of the certificate of occupancy for the Premises ("**Commencement Date**"), and ending eight (8) years thereafter.

**AGREEMENT**

For and in consideration of the rental and of the covenants and agreements hereinafter set forth to be kept and performed by Tenant, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises for the term, at the rental and subject to and upon all of the terms, covenants and agreements hereinafter set forth.

1. Quiet Enjoyment. Landlord covenants and agrees with Tenant that conditioned upon Tenant's paying the Total Rent herein provided and performing and fulfilling all the covenants, agreements, conditions and provisions herein to be kept, observed or performed by Tenant, Tenant may at all times during the term hereof peaceably, quietly and exclusively have, hold and enjoy the Premises.

2. Term. The term of this Lease shall be for eight (8) years, commencing on the Commencement Date and ending at midnight on the eighth (8th) anniversary of the Commencement Date, subject to earlier termination at Tenant's option, as provided herein. Landlord and Tenant acknowledge and agree that the certificate of occupancy for the Premises was issued on \_\_\_\_\_.

3. Rental; Annual In-Lieu Payment.

3.1 Tenant covenants to pay to Landlord as rental for the Premises the sum of \$10.00 per year on the Commencement Date and every anniversary thereof. Tenant shall have the right to prepay the \$80.00 total rent for the entire term of this Lease. The consideration for this Lease includes, without limitation: Tenant's payment of the entire cost of construction of the improvements constituting the Premises, Tenant's performance of all of the covenants and obligations under this Lease and Tenant's contribution toward fulfillment of Landlord's policy and desire to promote development within a redevelopment area, to encourage the creation of jobs within the City of Tempe, and to enhance tax revenues resulting from the operation of businesses on the Premises, including transaction privilege taxes and the government property lease excise tax. Tenant, at its option and without prejudice to its right to terminate this Lease as provided herein, may prepay the rental for the entire lease term, but upon any early termination of this Lease, Landlord shall not be obligated to refund any portion of the prepaid rental.

3.2 In addition to the rent payable by Tenant pursuant to Section 3.1 above, upon commencement of such GPLET Lease, and to assist the Tempe Union High School Foundation and the Tempe Impact Education Foundation (together, the "Foundations") with their important educational missions, the Tenant shall make a one-time voluntary contribution to the Foundations in the amount of \$50,000 (\$25,000 to each Foundation) payable on the date of Developer's and City's execution of each GPLET Lease for the Property until such time as the total amount of donations made to the Foundations pursuant to this Agreement equal \$250,000 (\$125,000 to each Foundation), whereupon no additional contributions to the Foundations shall be required. The individual and cumulative amount of donations to the Foundations set forth in this paragraph have been determined and agreed upon between City and Developer and each GPLET Lease executed by City and Developer is and shall be an implementation of this determination and agreement. City has the right to enforce Developer's donation obligations set forth in this paragraph.

4. Leasehold Mortgage of Premises.

4.1 Subject to the applicable provisions of this Lease, Tenant is hereby given the absolute right without the Landlord's consent to create a security interest in Tenant's leasehold interest under this Lease (and in any subleases and the rents, income and profits therefrom) by mortgage, deed of trust or collateral assignment or otherwise. Any such security interest shall be referred to herein as a "Leasehold Mortgage," and the holder of a Leasehold Mortgage shall be referred to herein as a "Leasehold Mortgagee."

4.2 No liability for the performance of Tenant's covenants and agreements hereunder shall attach to or be imposed upon any Leasehold Mortgagee, unless such Leasehold Mortgagee forecloses its interest and becomes the Tenant hereunder, following which the liability shall attach only during the term of ownership of the leasehold estate by said Leasehold Mortgagee.

5. Taxes; Lease Obligations.

5.1 Payment. Tenant shall pay and discharge all general and special real estate and/or personal property taxes and assessments levied or assessed against or with respect to the Premises during the term hereof and all charges, assessments or other fees payable with respect to or arising out of this Lease and all recorded deed restrictions affecting or relating to the Premises. Any sales, use, excise or transaction privilege tax consequence incurred by Landlord because of this Lease or in relation to the Premises or improvements included therein may be passed on to the Tenant either directly if applicable or as "additional rent." Notwithstanding anything herein, the Tenant shall be responsible for all Town Lake assessments and payments.

5.2 Protest. Tenant may, at its own cost and expense protest and contest, by legal proceedings or otherwise, the validity or amount of any such tax or assessment herein agreed to be paid by Tenant and shall first pay said tax or assessment under protest if legally required as a condition to such protest and contest, and the Tenant shall not in the event of and during the bona fide prosecution of such protest or proceedings be considered as in default with respect to the payment of such taxes or assessments in accordance with the terms of this Lease.

5.3 Procedure. Landlord agrees that any proceedings contesting the amount or validity of taxes or assessments levied against the Premises or against the rentals payable hereunder may be filed or instituted in the name of Landlord or Tenant, as the case may require or permit, and the Landlord does hereby appoint the Tenant as its agent and attorney-in-fact, during the term of this Lease, to execute and deliver in the name of the Landlord any document, instrument or pleading as may be reasonably necessary or required in order to carry on any contest, protest or proceeding contemplated in this Section. Tenant

shall hold the Landlord harmless from any liability, damage or expense incurred or suffered in connection with such proceedings.

5.4 Allocation. All payments contemplated by this Section 5 shall be prorated for partial years at the Commencement Date and at the end of the Lease term.

5.5 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.* Failure of Tenant to pay the tax after notice and 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.

6. Use. Subject to the applicable provisions of this Lease and A.R.S. §42-6201(2), the Premises may be used and occupied by Tenant for any lawful purpose, including without limitation the sale of alcoholic beverages, subject to Tenant obtaining all required permits, licenses, and approvals from the Arizona Department of Liquor Licenses and Control.

7. Landlord Non-Responsibility. Landlord shall have no responsibility, obligation or liability under this Lease whatsoever with respect to any of the following:

7.1 Utilities, including gas, heat, water, light, power, telephone, sewage, and any other utilities supplied to the Premises;

7.2 Disruption in the supply of services or utilities to the Premises;

7.3 Maintenance, repair or restoration of the Premises;

7.4 Any other cost, expense, duty, obligation, service or function related to the Premises.

8. Entry by Landlord. Landlord and Landlord's agents shall have the right at reasonable times and upon reasonable notice to enter upon the Premises for inspection, except that Landlord shall have no right to enter portions of any building on the Premises without consent of the occupant or as provided by law.

9. Alterations. Subject to the applicable provisions of this Lease, Tenant shall have the right to construct additional improvements and to make subsequent alterations, additions or other changes to any improvements or fixtures existing from time to time, and the Premises shall constitute all such improvements as they exist from time to time. In connection with any action which Tenant may take with respect to Tenant's rights pursuant hereto, Landlord shall not be responsible for and Tenant shall pay all costs, expenses and liabilities arising out of or in any way connected with such improvements, alterations, additions or other changes made by Tenant, including without limitation, materialmen's and mechanics' liens. Tenant covenants and agrees that Landlord shall not be called upon or be obligated to make any improvements, alterations or repairs whatsoever in or about the Premises, and Landlord shall not be liable or accountable for any damages to the

Premises or any property located thereon. Tenant shall have the right at any time to demolish or substantially demolish improvements located upon the Premises. In making improvements and alterations, Tenant shall not be deemed Landlord's agent and shall hold Landlord harmless from any expense or damage Landlord may incur or suffer. During the term of this Lease, title to all improvements shall at all times be vested in Landlord.

10. Easements, Dedications and Other Matters. At the request of Tenant, and provided that no Event of Default shall have then occurred and be continuing, Landlord shall dedicate or initiate a request for dedication to public use of the improvements owned by Landlord within any roads, alleys or easements and convey any portion so dedicated to the appropriate governmental authority, execute (or participate in a request for initiation by the appropriate commission or department of) petitions seeking annexation or change in zoning for all or a portion of the Premises, consent to the making and recording, or either, of any map, plat, condominium documents, or declaration of covenants, conditions and restrictions of or relating to the Premises or any part thereof, join in granting any easements on the Premises, and execute and deliver (in recordable form where appropriate) all other instruments and perform all other acts reasonably necessary or appropriate to the development, construction, demolition, redevelopment or reconstruction of the Premises.

11. Insurance. During the term of this Lease, the Tenant shall, at Tenant's expense, maintain general public liability insurance against claims for personal injury, death or property damage occurring in, upon or about the Premises. The limitation of liability of such insurance shall not be less than \$5,000,000 (which may include umbrella coverage for any amount above \$1,000,000) combined single limit per occurrence for bodily injury and property damage, including coverages for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products and completed operations. The minimum policy limits shall be increased whenever deemed appropriate by Landlord's Risk Management to adequately reflect current market conditions. All of Tenant's policies of liability insurance shall name Landlord and all Leasehold Mortgagees as additional insureds, and, at the written request of Landlord, certificates with respect to all policies of insurance or copies thereof required to be carried by Tenant under this Section 11 shall be delivered to Landlord. Each policy shall contain an endorsement prohibiting cancellation or non-renewal without at least thirty (30) days prior notice to Landlord (ten (10) days for nonpayment) if such endorsement is available on commercially reasonable terms. Tenant may self-insure the coverages required by this Section with the prior approval of Landlord, which will not be unreasonably withheld, and may maintain such reasonable deductibles and retention amounts as Tenant may determine.

12. Liability; Indemnity. Tenant covenants and agrees that Landlord is to be free from liability and claim for damages by reason of any injury to any person or persons, including Tenant, or property of any kind whatsoever and to whomsoever while in, upon or in any way connected with the Premises during the term of this Lease or any extension hereof, or any occupancy hereunder, Tenant hereby covenanting and agreeing to indemnify and save harmless Landlord from all liability, loss, costs and obligations on account of or

arising out of any such injuries or losses, however occurring, unless caused by the sole and gross negligence or willful misconduct of Landlord, its agents, employees, or invitees. Landlord agrees that Tenant shall have the right to contest the validity of any and all such claims and defend, settle and compromise any and all such claims of any kind or character and by whomsoever claimed, in the name of Landlord, as Tenant may deem necessary, provided that the expenses thereof shall be paid by Tenant. The provisions of this Section shall survive the expiration or other termination of this Lease.

13. Fire and Other Casualty. In the event that all or any improvements or fixtures within the Premises shall be totally or partially destroyed or damaged by fire or other insurable casualty, then, at Tenant's election, either: (i) this Lease shall continue in full force and effect, and, subject to the applicable provisions of this Lease, Tenant, at Tenant's sole cost and expense, may, but shall not be obligated to, rebuild or repair the same; or (ii) this Lease shall terminate with respect to all of the Premises or to such portions of the Premises as Tenant may elect. Landlord and Tenant agree that the provisions of A.R.S. § 33-343 shall not apply to this Lease. In the event that, subject to the applicable provisions of this Lease, Tenant elects to repair or rebuild the improvements, any such repair or rebuilding shall be performed at the sole cost and expense of Tenant. If there are insurance proceeds resulting from such damage or destruction, Tenant shall be entitled to such proceeds, whether or not Tenant rebuilds or repairs the improvements or fixtures, subject to the applicable provisions of this Lease and of any Leasehold Mortgage.

14. Condemnation.

14.1 Entire or Partial Condemnation. If the whole or any part of the Premises shall be taken or condemned by any competent authority for any public use or purposes during the term of the Lease, this Lease shall terminate with respect to the part of the Premises so taken and any other portion of the Premises as may be specified by Tenant, and, subject to the applicable provisions of this Lease, Tenant reserves unto itself the right to claim and prosecute its claim in all appropriate courts and agencies for any award or damages based upon loss, damage or injury to its leasehold interest (as well as relocation and moving costs). In consideration of Tenant's payment for all of the cost of construction of the improvements constituting the Premises, Landlord hereby assigns to Tenant all claims, awards and entitlements relating to the Premises arising from the exercise of the power of condemnation or eminent domain.

14.2 Continuation of Lease. In the event of a taking of less than all of the Premises, this Lease shall continue in effect with respect to the portion of the Premises not so taken or specified by Tenant to be removed from this Lease.

14.3 Temporary Taking. If the temporary use of the whole or any part of the Premises or the appurtenances thereto shall be taken, the term of this Lease shall not be reduced or affected in any way. The entire award of such taking (whether paid by way of damages, rent, or otherwise) shall be payable to Tenant, subject to the applicable provisions of this Lease and of any Leasehold Mortgage.



14.4 Notice of Condemnation. In the event any action is filed to condemn the Premises or Tenant's leasehold estate or any part thereof by any public or quasi-public authority under the power of eminent domain or in the event that an action is filed to acquire the temporary use of the Premises or Tenant's leasehold estate or any part thereto, or in the event that action is threatened or any public or quasi-public authority communicates to Landlord or Tenant its desire to acquire the temporary use thereof, by a voluntary conveyance or transfer in lieu of condemnation, either Landlord or Tenant shall give prompt notice thereof to the other and to any Leasehold Mortgagee. Landlord, Tenant and each Leasehold Mortgagee shall each have the right, at its own cost and expense, to represent its respective interest in each proceeding, negotiation or settlement with respect to any taking or threatened taking. No agreement, settlement, conveyance or transfer to or with the condemning authority affecting Tenant's leasehold interest shall be made without the consent of Tenant and each Leasehold Mortgagee.

15. Termination Option.

15.1 Grant of Option. In the event changes in applicable law nullify, remove, or vitiate the economic benefit to Tenant provided by this Lease or if any person or entity succeeds to Tenant's interest hereunder by foreclosure sale, trustee's sale, or deed in lieu of foreclosure (collectively, "Foreclosure"), or if Tenant, in its sole and absolute discretion, so elects, Tenant or Tenant's successor by Foreclosure shall have the option, exercisable by written notice to Landlord, to terminate this Lease as to the entire Premises or as to such portions of the Premises as Tenant may specify effective sixty days after the date of the notice. Upon default under the Leasehold Mortgage (after giving effect to all applicable notice and cure rights), Tenant or Leasehold Mortgagee shall have the option, exercisable by written notice to Landlord, to terminate this Lease effective sixty (60) days after the date of the notice. Simultaneously with, and effective as of such termination, title to the Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant and Landlord shall comply with the obligations under Section 31.

15.2 Leasehold Mortgagees and Termination. If there are any Leasehold Mortgagees as defined in Section 4.1, Tenant may not terminate, modify or waive its Option under this Section without the written approval of the Leasehold Mortgagees, and Landlord will not recognize or consent thereto without such approval.

15.3 Condominium Release Provisions. From time to time during the term of this Lease upon written request by Tenant, Landlord shall allow the Premises or portion thereof to be divided into legally defined condominium units ("Units") and, thereafter, subjected to a horizontal property regime to allow condominium sales. Tenant shall have the right to have Units released from this Lease and the fee simple interest in the Units reconveyed to the Tenant for the purposes of facilitating the sale of the Units as condominiums. Landlord and Tenant agree to cooperate in all respects to ensure that the remaining unreleased portions of the Premises shall remain subject to this Lease and the Tax.

16. Assignment; Subletting.

16.1 Transfer by Tenant. At any time and from time to time Tenant shall have the right to assign this Lease and Tenant's leasehold interest or to sublease all of or any part of the Premises to any person or persons for any use permitted under this Lease, without the consent of the Landlord.

16.2 Liability. Each assignee, other than any residential subtenant, hereby assumes all of the obligations of Tenant under this Lease (but not for liabilities or obligations arising prior to such assignment becoming effective). Each assignment shall automatically release the assignor from any personal liability in respect of any obligations or liabilities arising under this Lease from and after the date of assignment, and Landlord shall not seek recourse for any such liability against any assignor or its personal assets. Landlord agrees that performance by a subtenant or assignee of Tenant's obligations under this Lease shall satisfy Tenant's obligations hereunder and Landlord shall accept performance by any such subtenant.

17. Default Remedies; Protection of Leasehold Mortgagee and Subtenants.

17.1 Default. The failure by Tenant to observe and perform any material provision of this Lease to be observed or performed by Tenant or a failure to pay the Tax when due, where such failure continues for one hundred eighty (180) days after written notice thereof by Landlord to Tenant shall constitute an "Event of Default"; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such one hundred eighty (180) day period, no Event of Default shall be deemed to have occurred if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.

17.2 Remedies. Upon the occurrence of an Event of Default, Landlord may at any time thereafter, by written notice to Tenant terminate this Lease, in which case Tenant shall immediately surrender possession of the Premises to Landlord. This Section constitutes the provision required under A.R.S. §42-6206(2) that failure by the prime lessee to pay the Tax after notice and an opportunity to cure is an event of default that could result in divesting the prime lessee of any interest or right or occupancy of the government property improvement.

17.3 Leasehold Mortgagee Default Protections. If any Leasehold Mortgagee shall give written notice to Landlord of its Leasehold Mortgage, together with the name and address of the Leasehold Mortgagee, then, notwithstanding anything to the contrary in this Lease, until the time, if any, that the Leasehold Mortgage shall be satisfied and released of record or the Leasehold Mortgagee shall give to Landlord written notice that said Leasehold Mortgage has been satisfied, Landlord shall provide written notice of any default under this Lease to Leasehold Mortgagee and Leasehold Mortgagee shall have the rights described in Section 20 of this Lease.

18. Consent of Leasehold Mortgagee. No act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender, amend, or modify this Lease or Tenant's right to possession shall be binding upon or effective as against the Leasehold Mortgagee without its prior written consent.

19. Notice to Leasehold Mortgagee. If Landlord shall give any notice, demand, election or other communication required hereunder (hereafter collectively "Notices") to Tenant hereunder, Landlord shall concurrently give a copy of each such Notice to the Leasehold Mortgagee at the address designated by the Leasehold Mortgagee. Such copies of Notices shall be sent by registered or certified mail, return receipt requested, and shall be deemed given seventy-two (72) hours after the time such copy is deposited in a United States Post Office with postage charges prepaid, addressed to the Leasehold Mortgagee. No Notice given by Landlord to Tenant shall be binding upon or affect Tenant or the Leasehold Mortgagee unless a copy of the Notice shall be given to the Leasehold Mortgagee pursuant to this Section. In the case of an assignment of the Leasehold Mortgage or change in address of the Leasehold Mortgagee, the assignee or Leasehold Mortgagee, by written notice to Landlord, may change the address to which such copies of Notices are to be sent.

20. Leasehold Mortgagee Cure Rights. The Leasehold Mortgagee shall have the right for a period of sixty (60) days after the expiration of any grace period afforded Tenant to perform any term, covenant, or condition and to remedy any Event of Default by Tenant hereunder or such longer period as the Leasehold Mortgagee may reasonably require to affect a cure, and Landlord shall accept such performance with the same force and effect as if furnished by Tenant, and the Leasehold Mortgagee shall thereby and hereby be subrogated to the rights of Landlord. The Leasehold Mortgagee shall have the right to enter upon the Premises to give such performance.

21. Prosecution of Foreclosure or Other Proceedings. In case of an Event of Default by Tenant in the performance or observance of any nonmonetary term, covenant or condition to be performed by it hereunder, if such default cannot practicably be cured by the Leasehold Mortgagee without taking possession of the Premises, in such Leasehold Mortgagee's reasonable opinion, or if such default is not susceptible of being cured by the Leasehold Mortgagee, then Landlord shall not serve a notice of lease termination pursuant to Section 17.2, if and so long as:

(i) the Leasehold Mortgagee shall proceed diligently to obtain possession of the Premises as mortgagee (including possession by a receiver), and, upon obtaining such possession, shall proceed diligently to cure Events of Default as are reasonably susceptible of cure (subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession); or

(ii) the Leasehold Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire

Tenant's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure and subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession).

22. Effect of Cure Upon Event of Default. The Leasehold Mortgagee shall not be required to obtain possession or to continue in possession as mortgagee of the Premises pursuant to Section 21(i) above, or to continue to prosecute foreclosure proceedings pursuant to Section 21(ii) above, if and when such Event of Default shall be cured. If a Leasehold Mortgagee, its nominee, or a purchaser at a foreclosure sale shall acquire title to Tenant's leasehold estate hereunder, an Event of Default that is not reasonably susceptible to cure by the person succeeding to the leasehold interest shall no longer be deemed an Event of Default hereunder.

23. Extension of Foreclosure or Other Proceedings. If any Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant, the times specified in Sections 21(i) and (ii) above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

24. Additional Consent of Leasehold Mortgagee. No option of Tenant hereunder may be exercised, and no consent of Tenant allowed or required hereunder shall be effective without the prior written consent of any Leasehold Mortgagee.

24.1 Protection of Subtenant. Landlord covenants that notwithstanding any default under or termination of this Lease or of Tenant's possessory rights, Landlord: (i) so long as a subtenant within the Premises complies with the terms and conditions of its sublease, shall not disturb the peaceful possession of the subtenant under its sublease, and in the event of a default by a subtenant, Landlord may only disturb the possession or other rights of the subtenant as provided in the tenant's sublease, (ii) shall recognize the continued existence of the sublease, (iii) shall accept the subtenant's attornment, as subtenant under the sublease, to Landlord, as landlord under the sublease, and (iv) shall be bound by the provisions of the sublease, including all options, and shall execute documents as may be reasonably required by such subtenants to evidence these agreements. Notwithstanding anything to the contrary in this Lease, no act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender or modify this Lease or Tenant's right to possession shall be binding upon or effective as against any subtenant without its prior written consent.

25. New Lease.

25.1 Right to Lease. Landlord agrees that, in the event of termination of this Lease for any reason (including but not limited to any default by Tenant), Landlord, if

requested by any Leasehold Mortgagee, will enter into a new lease of the Premises with the most senior Leasehold Mortgagee requesting a new lease, which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of the original term of this Lease, at the rent and upon the terms, covenants and conditions herein contained, provided:

- a. Such Leasehold Mortgagee shall make written request upon Landlord for the new lease within sixty (60) days after the date such Leasehold Mortgagee receives written notice from Landlord that the Lease has been terminated;
- b. Such Leasehold Mortgagee shall pay to Landlord at the time of the execution and delivery of the new lease any and all sums which would, at that time, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto all reasonable expenses, including reasonable attorneys' fees, which Landlord shall have incurred by reason of such termination; and
- c. Such Leasehold Mortgagee shall perform and observe all covenants in this Lease to be performed and observed by Tenant, and shall further remedy any other conditions which Tenant under the Lease was obligated to perform under its terms, to the extent the same are reasonably susceptible of being cured by the Leasehold Mortgagee.

25.2 The Tenant under the new lease shall have the same right of occupancy to the buildings and improvements on the Premises as Tenant had under the Lease immediately prior to its termination.

25.3 Notwithstanding anything to the contrary expressed or implied in this Lease, any new lease made pursuant to this Section 25 shall have the same priority as this Lease with respect to any mortgage, deed of trust, or other lien, charge, or encumbrance on the fee of the Premises, and any sublease under this Lease shall be a sublease under the new Lease and shall not be deemed to have been terminated by their termination of this Lease.

26. No Obligation. Nothing herein contained shall require any Leasehold Mortgagee to enter into a new lease pursuant to Section 25 or to cure any default of Tenant referred to above.

27. Possession. If any Leasehold Mortgagee shall demand a new lease as provided in Section 25, Landlord agrees, at the request of, on behalf of and at the expense of the Leasehold Mortgagee, upon a guaranty from it reasonably satisfactory to Landlord, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to

oust or remove the original Tenant from the Premises, but not any subtenants actually occupying the Premises or any part thereof.

28. Grace Period. Unless and until Landlord has received notice from each Leasehold Mortgagee that the Leasehold Mortgagee elects not to demand a new lease as provided in Section 25, or until the period therefore has expired, Landlord shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new leases or subleases with respect to the Premises without the prior written consent of each Leasehold Mortgagee.

29. Effect of Transfer. Neither the foreclosure of any Leasehold Mortgage (whether by judicial proceedings or by virtue of any power of sale contained in the Leasehold Mortgage), nor any conveyance of the leasehold estate created by this Lease by Tenant to any Leasehold Mortgagee or its designee by an assignment or by a deed in lieu of foreclosure or other similar instrument shall require the consent of Landlord under, or constitute a default under, this Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize the purchaser or other transferee in connection therewith as the Tenant under this Lease.

30. No Merger. In no event shall the leasehold interest, estate or rights of Tenant hereunder, or of any Leasehold Mortgagee, merge with any interest, estate or rights of Landlord in or to the Premises. Such leasehold interest, estate and rights of Tenant hereunder, and of any Leasehold Mortgagee, shall be deemed to be separate and distinct from Landlord's interest, estate and rights in or to the Premises, notwithstanding that any such interests, estates or rights shall at any time be held by or vested in the same person, corporation or other entity.

31. Surrender, Reconveyance.

31.1 Reconveyance Upon Termination or Expiration. On the last day of the term of this Lease or upon any termination of this Lease, whether under Article 15 above or otherwise, title to the Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant at no cost or expense to Tenant other than as set forth in Section 33 below.

31.2 Reconveyance Documents. Without limiting the foregoing, Landlord upon request shall execute and deliver: (i) a special warranty deed reconveying all of Landlord's right title and interest in the Premises to Tenant; (ii) a memorandum in recordable form reflecting the termination of this Lease; (iii) an assignment of Landlord's right, title and interest in and to all licenses, permits, guaranties and warranties relating to the ownership or operation of the Premises to which Landlord is a party and which are assignable by Landlord, and (iv) such other reasonable and customary documents as may be required by Tenant or its title insurer including, without limitation, FIRPTA and mechanic's lien affidavits, to confirm the termination of this Lease and the reversion of title to the Premises in all respects in Tenant.

32. Title and Warranties. Notwithstanding anything to the contrary in this Section, Landlord shall convey the Premises subject only to: (i) matters affecting title as of the date of this Lease, and (ii) matters created by or with the written consent of Tenant. The Premises shall be conveyed "AS IS" without representation or warranty whatsoever. Notwithstanding the prohibition on the creation of any liens by or through Landlord set forth in this Section, upon any reconveyance, Landlord shall satisfy all liens and monetary encumbrances on the Premises created by Landlord.

33. Expenses. All costs of title insurance, escrow fees, recording fees and other expenses of the reconveyance, except Landlord's own attorneys' fees and any commissions payable to any broker retained by Landlord, shall be paid by Tenant.

34. Trade Fixtures, Machinery and Equipment. Landlord agrees that all trade fixtures, machinery, equipment, furniture or other personal property of whatever kind and nature kept or installed on the Premises by Tenant or Tenant's subtenants may be removed by Tenant or Tenant's subtenants, or their agents and employees, in their discretion, at any time and from time to time during the entire term or upon the expiration of this Lease. Tenant agrees that in the event of damage to the Premises due to such removal it will repair or restore the same. Upon request of Tenant or Tenant's assignees or any subtenant, Landlord shall execute and deliver any consent or waiver forms submitted by any vendors, Landlords, chattel mortgagees or holders or owners of any trade fixtures, machinery, equipment, furniture or other personal property of any kind and description kept or installed on the Premises by any subtenant setting forth the fact that Landlord waives, in favor of such vendor, Landlord, chattel mortgagee or any holder or owner, any lien, claim, interest or other right therein superior to that of such vendor, Landlord, chattel mortgagee, owner or holder. Landlord shall further acknowledge that property covered by such consent or waiver forms is personal property and is not to become a part of the realty no matter how affixed thereto and that such property may be removed from the Premises by the vendor, Landlord, chattel mortgagee, owner or holder at any time upon default by the Tenant or the subtenant in the terms of such chattel mortgage or other similar documents, free and clear of any claim or lien of Landlord.

35. Estoppel Certificate. Landlord shall at any time and from time to time upon not less than ten (10) days' prior written notice from Tenant or any Leasehold Mortgagee execute, acknowledge and deliver to Tenant or the Leasehold Mortgagee a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the dates to which the rental and other charges are paid in advance, if any; (ii) acknowledging that there are not, to Landlord's knowledge, any uncured defaults on the part of Tenant hereunder, or specifying such defaults if they are claimed; and (iii) certifying such other matters relating to this Lease as Tenant or the Leasehold Mortgagee may reasonably request. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the leasehold estate and/or the improvements.

Landlord's failure to deliver a statement within the time prescribed shall be conclusive upon Landlord (i) that this Lease is in full force and effect, without modification except as may be represented by Tenant; (ii) that there are no uncured defaults in Tenant's performance; and (iii) the accuracy of such other matters relating to this Lease as Tenant as may have been set forth in the request.

36. General Provisions.

36.1 Attorneys' Fees. In the event of any suit instituted by either party against the other in any way connected with this Lease or for the recovery of possession of the Premises, the parties respectively agree that the successful party to any such action shall recover from the other party a reasonable sum for its attorneys' fees and costs in connection with said suit, such attorneys' fees and costs to be fixed by the court.

36.2 Transfer or Encumbrance of Landlord's Interest. Landlord may not transfer or convey its interest in this Lease or in the Premises during the term of this Lease without the prior written consent of Tenant, which consent may be given or withheld in Tenant's sole and absolute discretion. In the event of permitted sale or conveyance by Landlord of Landlord's interest in the Premises, other than a transfer for security purposes only, Landlord shall be relieved, from and after the date specified in such notice of transfer, of all obligations and liabilities accruing thereafter on the part of the Landlord, provided that any funds in the hands of Landlord at the time of transfer in which Tenant has an interest, shall be delivered to the successor of Landlord. This Lease shall not be affected by any such sale and Tenant agrees to attorn to the purchaser or assignee provided all of Landlord's obligations hereunder are assumed in writing by the transferee. Landlord shall not grant or create mortgages, deeds of trust or other encumbrances of any kind against the Premises or rights of Landlord hereunder, and, without limiting the generality of the foregoing, Landlord shall have no right or power to grant or create mortgages, deeds of trust or other encumbrances superior to this Lease without the consent of Tenant in its sole and absolute discretion. Any mortgage, deed of trust or other encumbrance granted or created by Landlord shall be subject to this Lease, all subleases and all their respective provisions including, without limitations, the options under this Lease and any subleases with respect to the purchase of the Premises.

36.3 Captions; Attachments; Defined Terms.

- a. The captions of the sections of the Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Lease.
- b. Exhibits attached hereto, and addendums and schedules initialed by the parties, are deemed by attachment to constitute part of this Lease and are incorporated herein.



c. The words "Landlord" and "Tenant", as used herein, shall include the plural as well as the singular. The obligations contained in this Lease to be performed by Tenant and Landlord shall be binding on Tenant's and Landlord's successors and assigns only during their respective periods of ownership.

36.4. Entire Agreement. This Lease along with any addenda, exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant relative to the Premises and this Lease and the addenda, exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by the party to be bound thereby. Landlord and Tenant agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing of the Premises are merged in or revoked by this Lease, except as set forth in any addenda hereto.

36.5 Severability. If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

36.6 Binding Effect; Choice of Law. The parties hereto agree that all the provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate paragraph hereof. All of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall be governed by the laws of the State of Arizona.

36.7 Memorandum of Land and Improvements Lease. The parties shall, concurrently with the execution of this Lease, complete, execute, acknowledge and record (at Tenant's expense) a Memorandum of Land and Improvements Lease, a form of which is attached hereto as *Exhibit B*.

36.8 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or if mailed by United States certified or registered mail, return receipt requested, postage prepaid, as follows:

If to Landlord:

City of Tempe  
City Manager's Office  
31 East 5th Street  
Tempe, Arizona 85281

With a copy to:

City of Tempe  
 City Attorney's Office  
 31 East 5th Street  
 Tempe, Arizona 85281

If to Tenant:

South Pier Tempe Holdings LLC  
 Attn: Loren McBride Cohen  
 5020 Main Street, Suite H  
 Tacoma, WA 98407

With a copy to:

Manjula Vaz  
 Gammage & Burnham  
 Forty North Central Ave., 20<sup>th</sup> Floor  
 Phoenix, AZ 85004

or at such other place or to such other persons as any party shall from time to time notify the other in writing as provided herein. The date of service of any communication hereunder shall be the date of personal delivery or seventy-two (72) hours after the postmark on the certified or registered mail, as the case may be.

36.9 Waiver. No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition.

36.10 Negation of Partnership. Landlord shall not become or be deemed a partner or a joint venturer with Tenant by reason of the provisions of this Lease.

36.11 Hold Over. If Tenant shall continue to occupy the Leased Premises after the expiration of the term hereof without the consent of Landlord, such tenancy shall be from month to month on the same terms and conditions as are set forth herein.

36.12 Leasehold Mortgagee Further Assurances. Landlord and Tenant shall cooperate in including in this Lease by suitable amendment from time to time any provision which may be reasonably requested by any proposed Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Lease, of allowing that Leasehold Mortgagee reasonable means to protect or preserve the lien of its Leasehold Mortgage upon the occurrence of a default under the terms of this Lease and of confirming the elimination of the ability of Tenant to modify, terminate or waive this

Lease or any of its provisions without the prior written approval of the Leasehold Mortgagee. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the term or rent under this Lease nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

37. Nonrecourse. Landlord's sole recourse for collection or enforcement of any judgment as against Tenant shall be solely against the leasehold interest under this Lease and the improvements on the Premises and may not be enforced against or collected out of any other assets of Tenant nor of its beneficiaries, joint venturers, owners, partners, shareholders, members or other related parties.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date and year first written above.

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

LANDLORD:

CITY OF TEMPE, a municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TENANT:

BY:

By: \_\_\_\_\_

http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=284932 [20220259754] 91 Pages



**EXHIBIT A**

**LEGAL DESCRIPTION OF PREMISES**

**Maricopa County Assessor's Parcel Number 132-32-014**

Tract A, PIER 202, according to Book 943 of Maps, page 33, records of Maricopa County, Arizona.

**Maricopa County Assessor's Parcel Numbers 132-32-016, 132-32-018, 132-32-021, 132-32-022 132-32-026, and 132-32-027**

Lots 2, 4, 7, 8, 9A and 9B, PIER 202-2<sup>ND</sup> AMENDED, according to Book 1052 of Maps, page 16, records of Maricopa County, Arizona.

**EXHIBIT B****WHEN RECORDED, RETURN TO:****MEMORANDUM OF LAND AND IMPROVEMENTS LEASE**

THIS MEMORANDUM OF LAND AND IMPROVEMENTS LEASE ("Memorandum") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the CITY OF TEMPE, an Arizona municipal corporation ("City"), and \_\_\_\_\_, a \_\_\_\_\_ ("Tenant").

1. The City and Tenant have entered into that certain Land and Improvements Lease, dated \_\_\_\_\_, 20\_\_ ("Lease"), whereby the City leases to Tenant that real property and improvements more particularly described in Exhibit "A" attached hereto and by this reference incorporated herein ("Property").

2. This Memorandum is being recorded to give constructive notice to all persons dealing with the Property that the City leases to Tenant the Property, and that the City and Tenant consider the Lease to be a binding agreement between the City and Tenant regarding the Property.

3. This Memorandum is not a complete summary of the Lease. The provisions of this Memorandum shall not be used in interpreting the Lease. In the event of any conflict between the terms and provisions of this Memorandum and the Lease, the terms and provisions of the Lease shall govern and control.

IN WITNESS WHEREOF, this Memorandum has been executed as of the day and year first set forth above.

ATTEST:

By: \_\_\_\_\_  
Carla R. Reece, City Clerk

LANDLORD:  
CITY OF TEMPE, a municipal corporation

APPROVED AS TO FORM:

By: \_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_  
Sonia M. Blain, Deputy City Attorney

Title: \_\_\_\_\_

STATE of            )  
                          ) ss.  
County of            )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_ 20\_\_ by \_\_\_\_\_, \_\_\_\_\_ of CITY OF TEMPE, an Arizona municipal corporation.

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

My Commission Expires:  
\_\_\_\_\_





**EXHIBIT "G"****Master Lease**

This Master Lease ("Lease") is made and entered into as of \_\_\_\_\_, 2022 (the "Commencement Date"), between the CITY OF TEMPE, an Arizona municipal corporation ("Landlord"), and SOUTH PIER TEMPE HOLDINGS LLC, an Arizona limited liability company ("Tenant"), in accordance with Section 3.1 of that certain Development and Disposition Agreement (C2022\_\_\_\_\_) dated \_\_\_\_\_, 2022, (the "Development Agreement").

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

**ARTICLE I.  
DEFINITIONS**

1.1 **Definitions.** The following terms shall have the meanings set forth below when used in this Lease, unless the context in which they appear clearly indicates otherwise. Other capitalized terms not separately defined in this Lease shall have the meanings ascribed to them in the Development Agreement.

1.1.1 **"Award"** means all compensation, sums or anything of value awarded, paid, or received for a Total, Substantial or Partial Taking, whether pursuant to judgment, agreement, or otherwise.

1.1.2 **"Development Agreement"** is defined in the preamble to this Lease.

1.1.3 **"Hazardous Substances"** means any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive or corrosive, including petroleum, PCBs, mold, asbestos, materials known to cause cancer or reproductive problems and all other materials, substances and/or wastes, which are or later become regulated by any local governmental authority, the State of Arizona or the United States, including substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in any Hazardous Substance Laws.

1.1.4 **"Hazardous Substance Laws"** means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; all corresponding and related Arizona and local statutes, ordinances and regulations, including any dealing with underground storage tanks; and any other environmental law, regulation, or ordinance now existing or later enacted.

1.1.5 **"Improvements"** means all improvements located on the Premises from time to time and all permanent attachments thereto.

1.1.6 "**Lease**" means this Master Lease, its attachments, exhibits and other writings incorporated by reference, or any modifications thereof agreed to in writing by Landlord and Tenant.

1.1.7 "**Notice of Intended Taking**" means any notice which a reasonably prudent person would interpret as expressing a governmental agency's existing intention of Taking (as distinguished from a mere preliminary inquiry or proposal), including service of a condemnation summons and complaint on a Party. The notice is considered to have been received when a Party receives from the condemning agency or entity a notice of intent to take, in writing, containing a description or map reasonably defining the extent of the Taking.

1.1.8 "**Party**" or "**Parties**" means either Landlord or Tenant or both as the context requires.

1.1.9 "**Partial Taking**" means any Taking that is not either a Total Taking or a Substantial Taking.

1.1.10 "**Person**" means a person or persons or entity or entities or any combination of persons and entities.

1.1.11 "**Premises**" means the City Property which within the municipal boundaries of the City of Tempe described in the Development Agreement and on Exhibit "A-2" attached hereto and incorporated herein.

1.1.12 "**Substantial Taking**" means the Taking of so much of the Premises (or any part thereof) that the remainder of the Premises could not, in the reasonable judgment of Tenant be used by Tenant for the purposes stated in Section 5.1 hereof.

1.1.13 "**Taking**" means taking or damaging, including severance damages, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation, in avoidance of an exercise of eminent domain, or while condemnation proceedings are pending. Taking shall be considered to take place as of the later of: (a) the date actual physical possession is taken by the condemning authority; or (b) the date on which the right to compensation and damages accrues under applicable law.

1.1.14 "**Tenant**" means South Pier Tempe Holdings LLC, an Arizona limited liability company and its permitted successors and assigns.

1.1.15 "**Term**" means, unless otherwise indicated by the context, the period of time between the Commencement Date and Termination Date.

1.1.16 "**Termination Date**" the date on which the Term of this Lease expires unless earlier terminated as provided herein.

1.1.17 "**Total Taking**" means any Taking of the fee title to all the Premises.

**ARTICLE II.  
BASIC TERMS**

2.1 **Lease.** Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord, for the Term, at the Rent, and on all the other terms and conditions contained in this Lease.

2.2 **Condition of Property.** Except as expressly contained in this Lease or in the Development Agreement, Tenant leases the Premises in "AS IS" and "WHERE IS" condition. Except as expressly contained in this Lease or in the Development Agreement, Landlord makes no representations or warranties of any nature, express or implied, concerning the Premises, including without limitation any representation or warranty concerning: (a) the suitability of the Premises for Tenant's intended use, or (b) the physical condition of the Premises.

2.3 **Tenant's Investigation.** Tenant acknowledges that it is solely responsible for investigating the suitability of the Premises in accordance with the Development Agreement.

2.4 **Term.** The Term of this Lease shall commence on the Commencement Date and continue for a period of twenty-five (25) years, unless sooner terminated or extended pursuant to any provision of this Lease or the Development Agreement. Notwithstanding any provision of this Lease to the contrary, the Term of this Lease shall be coterminous with the Development Agreement, and the Term of this Lease shall automatically be extended for the same time periods which the Development Agreement is extended under Section 2.3 of the Development Agreement, and Landlord shall have the right to terminate this Lease pursuant to Landlord's exercise of its remedies under Section 10.1(c) of the Development Agreement.

2.5 **Gross Lease.** This Lease is a gross lease, and the Parties intend that, subject to Section 4.1 below, Tenant shall not be required to pay any amounts in excess of the Rent set forth in Schedule 2.5, including any amounts for any assessment, imposition, tax, lien, charge, or obligations or expense of any nature whatsoever relating to the use or operation of the Premises, all of which Landlord shall pay and/or discharge at its sole cost and expense.

**ARTICLE III.  
TAXES AND ASSESSMENTS**

3.1 **Master Lease Rent.** During the term of the Master Lease, Developer shall pay to City rent in arrears on each anniversary date of the Master Lease (the "Master Lease Rent"), which shall be prorated for each partial year, as applicable. The Master Lease Rent is comprised of the taxes and assessments (including, without limitation, the District Payment Obligation) (collectively, as the same may change from time to time, the "Taxes and Assessments") with respect to the City Property that is the subject of the Master Lease as follows:

(a) Years 1 -3 (and any partial year of the year in which this Agreement is dated): The City shall pay 100% of Taxes and Assessments.

(b) Year 4: The City shall pay 80% and Developer shall pay 20% of Taxes and Assessments.

(c) Year 5: The City shall pay 70% and Developer shall pay 30% of Taxes and Assessments.

(d) Year 6: The City shall pay 60% and Developer shall pay 40% of Taxes and Assessments.

(e) From and after Year 7: The City shall pay 50% and Developer shall pay 50% of Taxes and Assessments.

**3.2 Taxes and Assessments.** Landlord shall pay directly to the appropriate taxing authority or otherwise discharge, prior to delinquency, all taxes, assessments, impositions, fees, levies and charges or surcharges, whether general or special, ordinary or extraordinary, foreseen or unforeseen (including "in-lieu" taxes), which are directly or indirectly levied, charged, assessed or imposed on or against the Premises during the Term, or which shall or may become a lien on this Lease or any part of the Premises and all fees and assessments for governmental service(s) to the Premises, including service payments in lieu of taxes, together with any and all interest or other penalties on any of the foregoing. Landlord shall indemnify, defend and hold Tenant harmless from and against all liability, cost and expense for all such taxes, assessments, impositions, fees, levies and charges, and all such interest or other penalties, and from any sale or other proceeding to enforce payment of such items.

**3.3 Taxes Paid by Tenant.** During the Term of this Lease, Tenant shall pay all taxes assessed against Tenant's personal property and Improvements located upon the Premises. Tenant shall also pay any and all taxes: (A) upon or with respect to the leasing, operation, management, maintenance, alteration, repair, use or occupancy of the Premises or any portion thereof, including any sales, use or service tax imposed as a result thereof, or (B) upon or measured by the value of Tenant's equipment, furniture, fixtures, and other personal property of Tenant or leasehold improvements, alterations or additions located on the Premises. Tenant shall indemnify, defend and hold Landlord and the Premises harmless from and against all liability, cost and expense for all such taxes, assessments, impositions, fees, levies and charges, and all such interest or other penalties, and from any sale or other proceeding to enforce payment of such items.

#### **Contest.**

**3.3.1 Right to Contest.** Tenant shall have the right to contest the validity or amount of any tax, assessment, levy, imposition or other charge required to be paid by Tenant pursuant to this Article 3. Tenant shall promptly notify Landlord of any such contest, and Tenant's legal basis therefor. Tenant may withhold or defer payment of any such obligation, or pay such obligation under protest, but shall defend, indemnify, protect and hold harmless Landlord and the Premises from any lien which might result from such contest.

**3.3.2 Landlord Participation.** Landlord shall not be required to join in any proceeding or contest brought by Tenant unless the law requires that the proceeding or contest be brought by or in the name of Landlord or the owner of the Premises, in which case Landlord's participation shall be at Tenant's cost and expense. Tenant shall immediately pay or discharge any tax, assessments, levy, imposition or other charge, together with all costs, charges, interest and penalties incidental thereto, determined to be due by any as a result of any proceeding or contest.

3.3.3 **Delivery.** Landlord shall promptly deliver to Tenant all invoices, bills, statements, notices and other instruments relating to the payment of taxes that Landlord may receive from any taxing authority relating to taxes payable by Tenant hereunder.

**ARTICLE IV.  
UTILITIES; OCCUPANCY EXPENSES**

4.1 **Tenant's Obligations.** Tenant shall pay all charges for gas, heat, light, power, sewage, water and other utilities or services in connection with the Premises. On Tenant's written request, Landlord will join with Tenant in any application required for obtaining or continuing any utility service. Tenant shall defend, indemnify and hold Landlord and the Premises harmless from any loss, cost, expense, liability, lien, or the like associated with any utility or service charge unless caused by the negligence or intentional acts or omissions of Landlord or Landlord's agents, contractors or employees. If Tenant does not pay any utility or service charge when due, Landlord may do so, and any amount so paid by Landlord shall immediately become due to Landlord from Tenant as additional Rent, together with interest thereon at the Default Rate.

4.2 **Interruption of Service.** Tenant shall not be entitled to terminate this Lease because of any failure or interruption of any utility service supplied to the Premises. Landlord shall not be liable to Tenant for any damages resulting from any such failure not caused, or any interruption not requested, by Landlord or Landlord's agents, contractors or employees.

**ARTICLE V.  
USE**

5.1 **Use.** Unless otherwise approved in advance in writing by Landlord (which approval may be given or withheld in Landlord's reasonable discretion), the Premises shall be used by Tenant solely for the purpose of construction in connection with any easements contemplated in Section 3.5 of the Development Agreement, performing investigations and other activities contemplated by the Development Agreement and other ancillary uses in accordance with City Code, including construction staging, temporary parking and performance of site mitigation, conducting surveys, appraisals, and hydrological, topographical, environmental, traffic, feasibility and other engineering tests and studies upon the Premises, performing limited remediation of those areas of the Premises approved in advance by Landlord, and constructing certain improvements approved in advance by Landlord, as well as the subleasing the Premises to end users, all as contemplated in the Development Agreement, and such uses incidental to such uses. All such activities shall be conducted at Tenant's sole cost and expense but subject to the terms and conditions of the Development Agreement.

5.2 **Compliance with Law and Encumbrances.** Tenant shall comply with all laws, ordinances, rules, orders, regulations and requirements of any legal, governmental or military board, body or commission relating to, affecting or controlling the construction, maintenance, condition, protection, occupancy or use of the Premises, or any activity thereon or on any adjoining sidewalk or street. Tenant shall obtain or cause to be obtained at its expense all permits, approvals and authorizations required by Tenant's activities on the Premises.

5.3 **Land Use Restrictions.** Without Landlord's prior written consent (which consent will not be unreasonably withheld, conditioned or delayed), Tenant may not enter into agreements restricting the use of, or granting easements over, the Premises except as permitted in the

Development Agreement. Tenant may obtain zoning and other changes in accordance with the Development Agreement.

5.4 **Waste; Nuisance.** Tenant shall not commit, and shall not allow any other Person to commit, any waste on the Premises. Tenant shall not cause or maintain, and shall not allow any other Person to cause or maintain, a nuisance on the Premises.

5.5 **Security.** Tenant shall have the sole responsibility of providing security for the Premises, the Persons and property located thereon or therein.

5.6 **Hazardous Substances.**

5.6.1 **Environmental Compliance.** Tenant shall at all times reasonably comply with applicable environmental laws affecting the Premises as to conditions arising out of Tenant's use and occupancy of the Premises. To the extent environmental matters which pre-date the Commencement Date are discovered on the Premises, Landlord will, at Landlord's sole cost and expense, undertake any and all remediation of such environmental matters as required under applicable laws, and Landlord shall remediate such matters in Landlord's discretion at its sole cost and expense, and, to the maximum extent permitted by law, Landlord shall indemnify, defend and hold the Tenant harmless from any environmental claims arising hereunder relating to environmental matters which pre-date the Commencement Date, except to the extent caused by Tenant or Tenant's agents, contractors or employees.

5.6.2 **Notices.** If at any time Tenant or Landlord shall become aware, or have reasonable cause to believe, that any actionable level of Hazardous Substance has been released or has otherwise come to be located on or beneath the Premises, such party shall immediately upon discovering the release or the presence or suspected presence of the Hazardous Substance, give written notice of that condition to the other party. In addition, the party first learning of the release or presence of an actionable level of Hazardous Substance on or beneath the Premises, shall immediately notify the other party in writing of: (a) any enforcement, cleanup, removal, or other governmental or regulatory action instituted, completed, or threatened pursuant to any environmental laws; (b) any claim made or threatened by any person against Landlord, Tenant or the Premises arising out of or resulting from any actionable level of Hazardous Substances; and (c) any reports made to any local, state, or federal environmental agency arising out of or in connection with any actionable level of Hazardous Substance.

5.7 **Approval of Signs.** Tenant shall have the right to post or display any signs on the Premises in accordance with applicable laws.

## ARTICLE VI. IMPROVEMENTS

6.1 **Construction.** Except for any improvements to be constructed pursuant to or in connection with the granting of any easement contemplated in Section 3.5 of the Development Agreement, Tenant shall not commence any construction on the Premises, without first obtaining all applicable approvals, licenses and permits, including, but not limited to, any approvals required under the Development Agreement.

In its capacity as Landlord under this Lease, the City of Tempe does not have privity of contract with Tenant's subtenants. Tenant improvements to be constructed by subtenants do not require Landlord's approval under this Lease; however, such tenant improvements remain subject to the normal approval process imposed by the City of Tempe in its capacity as the governmental body having jurisdiction over building and life safety.

**ARTICLE VII.  
MAINTENANCE; REPAIR; ALTERATION; RECONSTRUCTION**

**7.1 No Obligation of Landlord.** Landlord shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or to the Premises, or any part thereof, unless due to damage caused by Landlord or Landlord's agents, contractors or employees.

**7.2 Tenant's Duty to Maintain.** Throughout the Term, Tenant shall, at Tenant's sole cost and expense, maintain the Premises in good order, condition and repair, ordinary wear and tear and any construction or site mitigation contemplated in the Development Agreement excepted, and in accordance with all applicable laws, ordinances, orders and regulations of all federal, state, county, municipal and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus and officials.

**7.3 Damage or Destruction.** If the Premises or any portion thereof, or any Improvements located thereon, shall be damaged by fire or other casualty during the Term, Tenant shall have the option to terminate this Lease and, if required by Landlord, Tenant shall remove all above-ground Improvements from the Premises.

**ARTICLE VIII.  
OWNERSHIP OF IMPROVEMENTS**

**8.1 Ownership.** If this Lease is terminated due to a default by Tenant hereunder, or as part of Landlord's remedies under Section 10.1(c) of the Development Agreement, all Improvements placed on the Premises by Tenant and remaining upon the Premises as of the date of such termination shall, without compensation to Tenant, become Landlord's property free and clear of all claims of Tenant, and any personal property of Tenant that remains on the Premises after such termination shall be deemed abandoned and, at Landlord's election, may be retained by Landlord as Landlord's property, disposed of by Landlord, without accountability, in such manner as Landlord sees fit (including having the same stored at the risk and expense of Tenant), or required by Landlord's written notice to Tenant to be removed by Tenant.

**8.2 Right to Remove Personal Property.** Upon the expiration or earlier termination of this Lease, Tenant shall have the right to remove any or all personal property other placed on the Premises by Tenant, provided all resultant injuries to the Premises are completely remedied and Tenant complies with Landlord's reasonable requirements respecting any required restoration.

**8.3 Waiver of Landlord's Lien.** Landlord hereby waives and covenants to waive any landlord's lien or similar lien it might have in any of Tenant's personal property. Although such waiver shall be automatic and self-operative without the necessity of any further instrument, Landlord hereby agrees to execute promptly such further instruments as may be reasonably required by Tenant or Tenant's lender to evidence such waiver.

**ARTICLE IX.  
ASSIGNMENT; SUBLETTING**

9.1 **Assignments or Subleases.** Upon prior written notice to Landlord, Tenant may sell, assign, sublease, encumber, pledge, or transfer its leasehold interest in the Premises, or any portion thereof, to any Affiliate, as defined below.

9.1.1 **Subleases:** Subject to the provisions of Section 9.1.3 hereof, Tenant shall have the right to sublease portions of the Premises to end users as contemplated in the Development Agreement without the need for Landlord's prior written consent.

9.1.2 **Assignments:** Landlord's consent shall not be required for an assignment in accordance with Article 14 of this Lease. If Tenant desires to assign this Lease or sublet all or any portion of the Premises and the same requires Landlord approval, Tenant shall give written notice to Landlord setting forth the terms of the proposed assignment or subletting, except that with respect to an assignment or subletting to an Affiliate, Tenant shall only be required to notify Landlord in writing of such assignment or subletting and Landlord's consent shall not be required.

Following any assignment of this Lease to any Person, Tenant shall be released from the performance of all of Tenant's obligations under this Lease.

9.1.3 Notwithstanding the fact that any subleases executed by Tenant shall be subject and subordinate to this Lease, Landlord agrees that upon termination of this Lease (other than because of a casualty or condemnation) for as long as the subtenant is not in default, beyond any applicable notice and cure period, in the payment of rent or other amounts due under the sublease, or in the performance of any of the terms, covenants and conditions of the sublease on subtenant's part to be performed, the sublease shall not be terminated and the subtenant's rights and interests under the sublease, shall not be disturbed by Landlord and Landlord will recognize the sublease as a direct lease with Landlord. Landlord agrees, upon Tenant's request, to enter into a non-disturbance and recognition agreement with each such subtenant providing for the foregoing. Unless approved by the City, the term of any sublease will not extend past the term of the Master Lease.

9.1.4 For purposes hereof, the term "Affiliate" means any person or entity that controls, is controlled by or is under common control with Tenant or any other entity in which one or more of the members of South Pier Tempe Holdings LLC or its managing member, McBride-Cohen Management Group, LLC, maintains an interest. A person or entity shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another person or entity, whether through ownership or voting securities, by contract or otherwise.

9.2 **Assignment by Landlord.** Landlord has agreed in the Development Agreement and further agrees in this Lease, not to sell or assign all or part of its interest in the Premises, including its interest in this Lease, during the Term.



**ARTICLE X.  
INSURANCE**

10.1 **Cooperation.** In the event of loss or damage, Landlord shall cooperate fully with Tenant in securing the optimal recovery from the insurer(s).

10.2 **Public Liability Insurance.** Throughout the Term, Tenant shall purchase and maintain, for the mutual benefit of Landlord and Tenant, commercial general or comprehensive general public liability insurance against claims and liability for personal injury, death or property damage arising from the use, occupancy, misuse or condition of the Premises or adjoining areas or ways, providing protection of at least Two Million Dollars combined single limit each occurrence for bodily injury or death and property damage resulting from any one accident or occurrence.

10.3 **Other Insurance; Additional Coverage.** At any time during the Term, Tenant may procure and maintain any insurance not required by this Lease in Tenant's sole discretion.

10.4 **Policy Form, Content, Insurer.** All insurance policies required by express provisions hereof shall be carried only in reputable insurance companies licensed to do business in the State of Arizona. All such policies shall name Landlord as an additional insured. Each such policy shall be non-assessable and shall contain language to the effect that (a) any loss shall be payable notwithstanding any act or negligence of Landlord that might otherwise result in the forfeiture of the insurance, (b) the insurer waives the right of subrogation against Landlord and against Landlord's agents and representatives, (c) the policy is primary and noncontributing with any insurance that may be carried by Landlord, and (d) the policy cannot be canceled or materially changed except after ten (10) days' notice by the insurer to Landlord.

10.5 **Delivery of Policies.** Before the Commencement Date, Tenant shall furnish Landlord with copies of all policies of insurance required hereunder, or with certificates evidencing such insurance, together with proof of payment of the premium. At least ten (10) days prior to the expiration of each policy required hereunder, Tenant shall deliver to Landlord copies of or certificates for the renewal of such policy, together with proof of payment of the premium for such renewal policy.

10.6 **Blanket Insurance.** Tenant may provide any insurance required by this Lease by blanket insurance coverage; provided that Landlord is named as an additional insured and the coverage afforded Landlord will not be reduced or diminished by reason of such blanket insurance coverage.

**ARTICLE XI.  
CONDEMNATION**

11.1 **Notice.** The Party receiving one or more of the following notices shall promptly notify the other Party of the receipt, content and date of such notice: (a) Notice of Intended Taking; (b) service of any legal process relating to condemnation of the Premises; (c) notice in connection with any proceedings or negotiations with respect to such condemnation; and (d) notice of intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of condemnation.

11.2 **Representation.** Landlord and Tenant shall each have the right to represent its respective interest in each condemnation proceeding or negotiation and to make full proof of claims. No agreement, settlement, sale or transfer to or with the condemning authority shall be made without

the consent of Landlord. Landlord and Tenant shall each execute and deliver to the other any instruments that may be required to effect or facilitate the provisions of this Lease relating to condemnation.

**11.3 Termination of Lease on Total or Substantial Taking.** In the event of a Total Taking or a Substantial Taking, this Lease shall terminate on the date of such Taking.

**11.4 Determination of Substantial Taking.** If a Taking is not a Total Taking, Tenant shall elect to treat such Taking as a Substantial Taking or a Partial Taking by written notice to Landlord within 60 days after Tenant receives the applicable Notice of Taking. If Tenant elects to treat the Taking as a Partial Taking, or fails to deliver any notice, the Taking shall be deemed a Partial Taking.

**11.5 Award for Total or Substantial Taking.** The entire Award payable as a result of a Total or Substantial Taking shall be allocated between Landlord and Tenant in accordance with their respective interests in the Premises.

**11.6 Partial Taking.** On a Partial Taking, this Lease shall remain in full force and effect covering the remainder of the Premises. On a Partial Taking, Landlord and Tenant shall be entitled to the Award for such Taking in accordance with their respective interests in the Premises.

**11.7 Temporary Takings.** In the event of any Taking of the temporary use of all or any part or parts of the Premises for a period of less than 60 days and such period does not extend beyond the expiration date of the Term, neither the Term nor the Rent shall be reduced or affected in any way, and Tenant shall be entitled to any Award for the use or estate taken, except that portion which Tenant shall pay to Landlord for any expenses or disbursements reasonably and necessarily incurred or paid by or on behalf of Landlord for or in connection with the proceedings. If any such Taking is for a period of more than 60 days or extends beyond the expiration date of the Term, the Taking shall be treated under the foregoing provisions for Total, Substantial and Partial Takings.

## ARTICLE XII. DEFAULT; REMEDIES

**12.1 Tenant's Default.** Each of the events described in the following subsections of this Section 12.1 shall be a material default by Tenant and a breach of this Lease.

(a) The failure by Tenant to make any payment of Rent or any other payment required to be made by Tenant hereunder within thirty (30) days after Landlord notifies Tenant in writing that such payment is past due.

(b) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than described in Subsection (b) above, where such failure shall continue for a period of sixty (60) days after written notice thereof from Landlord to Tenant, provided, however, that if Tenant commences cure within such sixty (60) day period, the cure time shall be extended to the time reasonably required for completion with reasonable diligence.

**12.2 Landlord's Right to Cure Tenant's Default.** After expiration of the applicable time for curing any default, Landlord, at its option, may elect to cure any Tenant default under this Lease,

and the reasonable and actual cost of any such cure, plus interest on such sums at the Default Rate from the date of payment of expenditure by Landlord, shall be deemed to be additional Rent immediately payable by Tenant to Landlord upon demand. No such payment or performance by Landlord shall constitute a waiver of default or of any remedy for default or render Landlord liable for any loss or damage resulting from any such payment or performance. Landlord, or Landlord's authorized representative, may, upon reasonable prior written notice to Tenant, enter the Premises for such purpose and take all such action as may be necessary therefor and such entry shall not constitute or be deemed to be an eviction of Tenant.

**12.3 Landlord's Remedies.** If any default by Tenant shall continue uncured after notice of default and beyond the cure period permitted by this Lease, Landlord shall have the following as its sole remedy:

(a) **Termination.** Landlord may at its election terminate this Lease by giving Tenant notice of termination. On the giving of the notice, all Tenant's rights in the Premises shall terminate. Promptly after the receipt of notice of termination, Tenant shall surrender and vacate the Premises and Landlord may re-enter and take possession of the Premises.

**12.4 Tenant's Personal Property.** After any default by Tenant and subject to any leasehold lender's rights, Landlord shall store Tenant's personal property for the account and at the cost of Tenant.

**12.5 Recovery of Rent.** Landlord shall be entitled at its election to each component of Rent or to any combination of components for any period after default and before termination plus interest at the Default Rate from the due date of each component.

**12.6 Landlord's Default.** Landlord shall not be considered to be in default under this Lease unless Tenant has given notice specifying the default and Landlord has failed for 30 days to cure the default, if it is curable within that time period, or to institute and diligently pursue reasonable corrective or ameliorative acts for defaults not so curable within the 30-day period.

**12.7 Provisions Applicable to Both Parties.**

**12.7.1 Unavoidable Delays.** Any interference or delay in the performance of any obligation caused by strikes, lockouts, labor disputes, acts of public enemies of the United States of America or the State, riots, insurrection, civil commotion, epidemics, pandemics, inability to obtain required materials or reasonable substitutes therefor, governmental restrictions, governmental shutdowns, governmental controls, governmental regulations, government mandated shutdowns or other cause beyond Landlord's or Tenant's control, as applicable ("**Unavoidable Delay**") or any Force Majeure Event (as defined in the Development Agreement) shall excuse nonperformance of such obligation for a period equal to the length of such Unavoidable Delay or Force Majeure Event.

**12.7.2 Waiver.** No waiver of any default by either Party shall constitute a waiver of any other breach or default by such Party, whether of the same or any other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by either Party shall give the other any contractual right by custom, estoppel, or otherwise. No waiver of any condition, covenant, requirement or the like set forth herein by either Party shall be deemed a waiver thereafter of the same or any other provision hereof.

**ARTICLE XIII.  
INDEMNITY**

13.1 **Landlord's Non-Liability.** Subject to Sections 13.3 and 13.4 below, Landlord shall not be liable for any loss, damage, injury (including death), liability, cost, expense, claim, demand or cause of action of any kind or character, including court costs and attorneys' fees (collectively "Claims") to any person or property arising from, related to or caused by (a) construction, maintenance or use of the Premises by Tenant (b) any act or omission of Tenant, or of any of its agents, representatives, contractors, employees, servants, customers, licensees or invitees, or (c) the breach by Tenant of any of its obligations under this Lease.

Landlord agrees that Tenant shall have the right to contest the validity of any and all such Claims and defend, settle and compromise any and all such Claims of any kind or character and by whomsoever claimed, in the name of Landlord, as Tenant may deem necessary, provided that the expenses thereof shall be paid by Tenant.

13.2 **Indemnification of Landlord.** Subject to Sections 13.3 and 13.4 below, Tenant shall indemnify, defend and hold Landlord and its Council members, officers, directors, employees, agents, volunteers and representatives harmless from any and all Claims resulting from Tenant's operation and maintenance of the Premises after the Commencement Date. Landlord shall notify Tenant within a reasonable length of time after discovery of any Claim. Tenant, at Tenant's expense, shall defend Landlord against any such Claim and shall engage counsel reasonably satisfactory to Landlord to prosecute Landlord's defense of such Claim. If Tenant fails or refuses to defend Landlord or engage counsel reasonably satisfactory to Landlord within ten days after Tenant's receipt of notice of any Claim, Landlord may defend such Claim and then seek and recover its actual damages from Tenant.

13.3 **Limitation of Indemnification Obligations.** Sections 13.1 and 13.2 above shall not apply to any Claim by Tenant against Landlord or to any Claim to the extent resulting from the negligence or willful misconduct of Landlord or its agents, contractors or employees. Notwithstanding the foregoing, Tenant shall not be prevented from seeking contribution or indemnification from Landlord in connection with any Claim, litigation or proceeding brought against Tenant by a third party, including any governmental entity, for events occurring on the Premises prior to the Commencement Date.

13.4 **Indemnification of Tenant.** To the maximum extent permitted by law, Landlord shall indemnify, defend and hold Tenant and its members, officers, directors, employees, agents, volunteers and representatives harmless from any and all Claims resulting from the negligence or intentional acts or omissions of Landlord or Landlord's agents, contractors or employees. Tenant shall notify Landlord within a reasonable length of time after discovery of any Claim. Landlord, at Landlord's expense, shall defend Tenant against any such Claim and shall engage counsel reasonably satisfactory to Tenant to prosecute Tenant's defense of such Claim. If Landlord fails or refuses to defend Tenant or engage counsel reasonably satisfactory to Tenant within ten days after Landlord's receipt of notice of any Claim, Tenant may defend such Claim and then seek and recover its actual damages from Landlord.

13.5 The provisions of this Article 13 shall survive the expiration or other termination of this Lease for a period of six (6) years.

**ARTICLE XIV.  
LEASEHOLD MORTGAGES**

14.1 **Leasehold Mortgages.** Tenant and every successor and assign of Tenant is hereby given the right by Landlord, in addition to any other rights herein granted, to mortgage its interests in this Lease, or any part or parts thereof, and any sublease(s) under one or more leasehold mortgage(s) (each, a "Leasehold Mortgage"), and assign this Lease, or any part or parts thereof, and any sublease(s) as collateral security for such Leasehold Mortgage(s), upon the condition that all rights acquired under such Leasehold Mortgage(s) shall, except as otherwise specifically provided herein, be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights and interests of Landlord herein, none of which covenants, conditions and restrictions set forth in this Lease is or shall be waived by Landlord by reason of the right given so to mortgage such interest in this Lease, except as expressly provided herein. Notwithstanding the foregoing, Tenant shall not create or permit to exist any lien, mortgage, or charge on, pledge of, or conditional sale or other title retention agreement with respect to, or encumbrance of any kind on Landlord's interest in Landlord's estate and/or interest in the Premises and/or this Lease. If Tenant shall mortgage this leasehold, or any part or parts thereof, and if the holder(s) of such Leasehold Mortgage(s) (each, a "Leasehold Mortgage") shall, within thirty (30) days of its execution, send to Landlord a true copy thereof, together with written notice specifying the name and address of the Leasehold Mortgagee and the pertinent recording date with respect to such Leasehold Mortgage(s). Landlord agrees that so long as any such Leasehold Mortgage(s) shall remain unsatisfied of record or until written notice of satisfaction is given by the applicable Leasehold Mortgagee(s) to Landlord, the following provisions shall apply:

(a) There shall be no cancellation, surrender or modification of this Lease by joint action of Landlord and Tenant without the prior consent in writing of the Leasehold Mortgagee(s) and as more completely described below;

(b) Landlord shall, upon serving Tenant with any notice of default, simultaneously serve a copy of such notice upon the Leasehold Mortgagee(s). The Leasehold Mortgagee(s) shall thereupon have the right to remedy or cause to be remedied the defaults complained of, and Landlord shall accept such performance by or at the instigation of such Leasehold Mortgagee(s) as if the same had been done by Tenant. If Tenant does not cure within the applicable cure period under this Lease, Landlord shall notify Leasehold Mortgagee(s) if it intends to terminate this Lease and Leasehold Mortgagee(s) shall, after receiving such notice, have forty-five (45) days from the date of service of notice of termination upon such Leasehold Mortgagee(s) to notify Landlord of its desire to nullify such notice and shall have paid to Landlord all Rent and other payments herein provided for, and then in default, and shall have complied or shall commence the work of complying with all of the other requirements of this Lease, except as provided in Section (g) hereof, if any are then in default, and shall prosecute the same to completion with reasonable diligence (not to exceed ninety (90) days unless such default cannot reasonably be cured within said ninety (90) day period or possession of the Premises is required to make such cure;

(c) If Landlord shall elect to terminate this Lease by reason of any default of Tenant, the Leasehold Mortgagee(s) shall have the right to nullify any notice of termination by curing such default, as aforesaid, provided that such Leasehold Mortgagee(s) shall cure or cause to be cured any then existing money defaults and meanwhile pay Rent and comply with and

perform all of the other terms, conditions and provisions of this Lease on Tenant's part to be complied with and performed, other than past non-monetary defaults, and provided further that the Leasehold Mortgagee(s) shall forthwith take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage(s) or otherwise and shall prosecute the same to completion with all due diligence.

(d) Subject to the terms of subsections (b) and (c) above, the Leasehold Mortgagee, or its successors, assignees, or any purchaser at a foreclosure sale (each a "Purchaser") shall have the unrestricted right to acquire Tenant's interest under the Lease by foreclosure, assignment or transfer in lieu of foreclosure or otherwise, and such acquisition shall not require Landlord's consent or be deemed a default under the Lease. Upon Landlord's receipt from Leasehold Mortgagee of written notice of such an acquisition sent to Landlord at the address set forth below (or to any other address given by Landlord in writing to Leasehold Mortgagee), Landlord shall permit the Purchaser to enter into possession of the Property and to hold the same and exercise and enjoy all of the rights, privileges and benefits of Tenant under the Lease (without any representations or warranties of the validity of such rights), and such acquisition shall constitute an assumption by the Purchaser of Tenant's obligations under the Lease, provided, however, that the Purchaser shall not be liable for Tenant's obligations under the Lease until it shall become the owner of the Lease, either by foreclosure or assignment in lieu thereof or otherwise, and then only during the period of time it is the owner of said Lease; provided, however, that, as a condition to the right of the Purchaser to acquire Tenant's leasehold estate as aforesaid, Purchaser shall promptly upon acquiring the leasehold estate, cure all of the defaults of Tenant under the Lease which are outstanding as of the date of such acquisition of the leasehold estate, except as provided in Section (c) above and (g) below;

(e) Landlord agrees that the name of the Leasehold Mortgagee(s) may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant hereunder;

(f) Landlord agrees that in the event of termination of this Lease by reason of any default by Tenant that Landlord will enter into a new lease of the Premises with the Leasehold Mortgagee or its nominee(s) for the remainder of the term effective as of the date of such termination, with the same Rent and upon the terms and, provisions, covenants and agreements as herein contained and subject only to the same conditions of title as this Lease is subject to on the date of the execution hereof, and to the rights, if any, of any parties then in possession of any part of the Premises, provided: said Leasehold Mortgagee(s) or its nominee(s) shall make written request upon Landlord for such new lease within forty-five (45) days after Leasehold Mortgagee receives notice of such termination and such written request is accompanied by payment to Landlord of sums then due to Landlord under this Lease;

(i) Said Leasehold Mortgagee(s) or its nominee(s) shall pay to Landlord at the time of the execution and delivery of said new lease, any and all sums which would at the time of the execution and delivery thereof, be due pursuant to this Lease but for such termination, and in addition thereto, any expenses, including reasonable attorneys' fees, to which Landlord shall have been subjected by reason of such default;

(ii) Said Leasehold Mortgagee(s) or its nominee(s) shall perform and observe all covenants herein contained on Tenant's part to be performed and shall further remedy

any other conditions which Tenant under the terminated lease was obligated to perform under the terms of this Lease; and upon execution and delivery of such new lease, any subleases which may have theretofore been assigned and transferred by Tenant to Landlord, as security under this Lease, shall thereupon be deemed to be held by Landlord as security for the performance of all of the obligations of Tenant under the new lease;

(iii) Landlord shall not warrant possession of the Premises to tenant under the new lease;

(iv) Such new lease shall be expressly made subject to the rights, if any, of Tenant under this Lease as terminated; and

(v) Tenant under such new lease shall have the same right, title and interest in and to the Improvements on the Premises as Tenant had under this Lease as terminated;

(g) Nothing herein contained shall require the Leasehold Mortgagee(s) or its nominee(s) to cure any default of Tenant referred to in the Lease or any other nonmonetary default which are not otherwise curable by Leasehold Mortgagee due to the nature of the default;

(h) Intentionally Omitted.

(i) The proceeds from any insurance policies or arising from a condemnation are to be held by any Leasehold Mortgagee(s) and distributed pursuant to the provisions of the Leasehold Mortgage and any other collateral documents;

(j) The Leasehold Mortgagee(s) shall be given notice of any litigation or arbitration proceedings by the parties hereto and shall have the right to intervene therein and be made a party to such proceedings, and the parties hereto do hereby consent to such intervention. In the event that the Leasehold Mortgagee(s) shall not elect to intervene or become a party to such proceedings, the Leasehold Mortgagee(s) shall receive notice of, and a copy of any award or decision made in said arbitration proceedings.

#### ARTICLE XV. GENERAL PROVISIONS

**15.1 Trial Without Jury.** Landlord and Tenant each acknowledge that it has had the advice of counsel of its choice with respect to its rights to trial by jury under the Constitutions of the United States and the State of Arizona. Each party expressly and knowingly waives and releases all such rights to trial by jury in any action, proceeding, or counterclaim brought by either party against the other on any matters arising out of or in any way connected with this lease, Tenant's use or occupancy of the Premises, and/or any claim for injury or damage.

**15.2 Estoppel Certificate.** Within 30 days after receipt of written request therefor from the other Party, Tenant or Landlord, as the case may be, shall execute, acknowledge and deliver to the requesting Party and/or its lender a statement (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect), (b) stating the date to which Rent and other charges are paid in advance, if any, and (c) acknowledging that there are not, to the certifying Party's

knowledge, any uncured defaults on the part of the other Party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied on by any auditor of either Party, or by any prospective purchaser of the Premises.

A Party's failure to deliver such statement within such time shall result in the conclusive presumption that (a) this Lease is in full force and effect, without modification except as may be represented by the requesting Party, and (b) there are no uncured defaults in the requesting Party's performance.

**15.3 Interpretation.** When the context requires, any gender includes all others, the singular number includes the plural, and vice-versa. Captions are inserted for convenience of reference and do not describe or limit the scope or intent of this Lease. Any recitals above, and any exhibits or schedules referred to and/or attached hereto, are incorporated by reference into this Lease. "Including" means including without limitation. No waiver, amendment or discharge of this Lease shall be valid unless it is in writing and signed by the Party to be obligated. If any provision of this Lease is held by a court to be invalid or unenforceable, the other provisions shall remain in effect. No inference or presumption shall be drawn if a Party or its attorney prepared and/or drafted this Lease; it shall be conclusively presumed that the Parties participated equally in its preparation and/or drafting.

**15.4 Notices.** Unless otherwise provided in this Lease or by law, all notices required or permitted by this Lease or by law to be served on or delivered to a Party shall be in writing and deemed duly served, delivered and received when personally delivered or delivered by a recognized overnight courier service to the Party to whom directed, or instead, three business days after deposit in the U.S. mail, certified or registered, return receipt requested, first-class postage prepaid, addressed as indicated below. A Party may change this address by giving written notice of the change to the other Party. Confirmed fax transmission to a fax machine specified in such a notice shall constitute personal delivery, if followed by hard copy sent by mail or such overnight courier service within one day. The Parties' addresses for this purpose are:



**To Tenant:** South Pier Tempe Holdings LLC  
 Attn: Loren McBride Cohen  
 5219 N. Shirley Street, Ste. 100  
 Ruston, WA 98407

**With a copy to:** Manjula Vaz  
 Gammage & Burnham, PLC  
 40 North Central Avenue, 20<sup>th</sup> Floor  
 Phoenix, AZ 85004

**To Landlord:** City Manager  
 City of Tempe  
 31 East Fifth Street  
 Tempe, Arizona 85281

**With a copy to:** City Attorney  
 City of Tempe  
 21 East Sixth Street, Suite 201  
 Tempe, Arizona 85281

**15.5 Holdover.** If Tenant, with Landlord's consent, remains in possession of the Premises or any part of it after the expiration of the Term, such occupancy shall be a tenancy from month-to-month on all provisions of this Lease pertaining to Tenant's obligations. If Tenant fails to surrender said Premises on expiration of this Lease despite Landlord's demand to do so, Tenant shall indemnify, defend and hold harmless Landlord from all loss or liability, including any claims made by any succeeding lessee, based on or resulting from Tenant's failure to surrender, and Landlord shall be entitled to the benefit of all laws respecting summary recovery of possession. Any occupancy by Tenant after the Termination Date without Landlord's concurrence shall be at the then current market rental rate for the Premises.

**15.6 Attorneys' Fees.** In the event either Landlord or Tenant brings any suit or other proceeding with respect to the subject matter or enforcement of this Lease, the prevailing Party (as determined by the court, agency or other authority before which such suit or proceeding is commenced) shall, in addition to such other relief as may be awarded, be entitled to recover attorneys' fees, expenses and costs of investigation as actually incurred (including without limitation court costs, expert witness fees, costs and expenses of investigation, and all attorneys' fees, costs and expenses in any such suit or proceeding).

**15.7 Landlord's Access.** Landlord and its agents shall have the right after reasonable prior written notice to Tenant to enter the Premises at reasonable times for the purpose of inspecting the Premises, except that Landlord shall have no right to enter portions of the Premises which are subject to a sublease or license agreement without the prior written consent of the occupant and the sublessee or licensee, or as otherwise provided by law. Notwithstanding the foregoing, Landlord, in its role of governmental entity with jurisdiction over the Premises, has the rights to enter the Premises when necessary to undertake its governmental duties relating to health and safety.

15.8 **Intentionally Omitted.**

15.9 **Merger.** If both Landlord's and Tenant's estates in the Premises have both become vested in the same owner, this Lease shall nevertheless not be destroyed by application of a doctrine of merger unless agreed in writing by Landlord and Tenant.

15.10 **Governing Law; Forum.** THIS LEASE SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF ARIZONA (WITHOUT REGARD OF PRINCIPLES OR CONFLICTS OF LAW) AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. FOR ALL PURPOSES OF THIS LEASE, IN ANY PROCEEDING INVOLVING THIS LEASE, THE PROPER PLACE OF TRIAL OR HEARING SHALL BE PHOENIX, ARIZONA, AND THE PARTIES IRREVOCABLY SUBMIT TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS IN MARICOPA COUNTY.

15.11 **Quiet Possession.** On Tenant's paying all Rent and observing and performing all the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises free from any interference by any Person claiming by, through or under Landlord during the entire Term hereof, subject to all provisions of this Lease and the Development Agreement.

15.12 **Authority.** The individuals executing this Lease on behalf of either Party represent and warrant to the other Party that they are fully authorized and legally capable of executing, delivering and performing under this Lease on behalf of such Party and that such execution is binding on all persons holding an interest in the Premises.

15.13 **Entire Agreement; Further Documentation.** This Lease, together with any exhibits hereto and any other documents necessary to effectuate the terms of this Lease, contains the entire understanding of the undersigned with respect to the transactions contemplated hereby and contains all of the terms and conditions thereof and supersedes all prior understandings relating to the subject matter hereof. Nothing in this Section 15.13 shall be construed as affecting any provision of the Development Agreement or any Construction Lease.

15.14 **No Joint Venture.** This Lease shall not in any manner be construed as creating a joint venture or partnership, and each Party shall be solely responsible for all actions it takes and expenses it incurs in carrying out its obligations under this Lease.

15.15 **Memorandum of Lease.** Upon the Commencement Date, Tenant shall record a memorandum of lease in the form attached hereto as **Exhibit A** (the "Memorandum") in the official property records of Maricopa County, Arizona. Upon the expiration or earlier termination of this Lease, or upon the partial termination of this Lease with respect to any portion of the Premises which becomes subject to a Construction Lease (as defined below), Landlord shall promptly record a release or partial release, as applicable, of the Memorandum (each, a "**Release**"), indicating that the Premises, or an applicable portion of the Premises which is subject to a Construction Lease, is no longer subject to this Lease. The form of Release to be recorded is attached hereto as **Exhibit B**.

15.16 **Execution of This and Other Writings.** The Parties have signed below voluntarily after having been advised by their counsel of all provisions hereof, and, in signing below, they are not relying on any inducements, promises and representations made by or on behalf of the other

except as contained in this Lease and the Development Agreement. This Lease may be executed in counterparts, each of which shall be deemed an original. An executed counterpart of this Lease transmitted by fax shall be equally as effective as a manually executed counterpart. Each Party shall take all reasonable steps, and execute, acknowledge and deliver all further instruments necessary or expedient to implement this Lease.

LANDLORD AND TENANT HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH PROVISION OF IT AND, BY EXECUTING THIS LEASE, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, ITS PROVISIONS ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LANDLORD AND TENANT WITH RESPECT TO THE PREMISES.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]**





## EXHIBIT A

## MEMORANDUM

**When recorded, return to:**

Gammage & Burnham, P.L.C.  
 Attn: \_\_\_\_\_  
 40 North Central Avenue, 20<sup>th</sup> Floor  
 Phoenix, Arizona 85004

## MEMORANDUM OF LEASE

This Memorandum of Lease (this "Memorandum") is entered into as of \_\_\_\_\_, 2022, by and between CITY OF TEMPE, an Arizona municipal corporation ("Landlord"), and SOUTH PIER TEMPE HOLDINGS LLC, an Arizona limited liability company ("Tenant").

1. Leased Premises. Landlord and Tenant have entered into that certain Master Lease dated \_\_\_\_\_, 2021 (the "Lease"), pursuant to which Landlord leased to Tenant and Tenant leased from Landlord, that certain premises more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Premises").
2. Term. The initial term of the Lease shall commence on \_\_\_\_\_, 2022 and expires on \_\_\_\_\_, unless terminated earlier or extended as provided in the Lease.
3. Incorporation of Lease. This Memorandum is a memorandum of the Lease. The purpose of this Memorandum is to give notice of the rights and obligations of the parties hereto under the Lease, and all of the terms and conditions of the Lease are incorporated herein by reference as if they were fully set forth herein. In the event of any inconsistency between the terms of this Memorandum and the terms of the Lease, the terms of the Lease shall prevail.
4. Successors. Subject to the terms of the Lease, this Memorandum shall be binding upon and ensure the benefit of the respective successors in interest and assigns of the parties hereto.
5. Counterparts. This Memorandum may be executed in any number of counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same instrument.

[SIGNATURE PAGE TO MEMORANDUM OF LEASE]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Memorandum to be duly executed as of the date first above written.







**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PREMISES**

**Maricopa County Assessor's Parcel Number 132-32-014**

Tract A, PIER 202, according to Book 943 of Maps, page 33, records of Maricopa County, Arizona.

**Maricopa County Assessor's Parcel Numbers 132-32-016, 132-32-018, 132-32-021, 132-32-022 132-32-026, and 132-32-027**

Lots 2, 4, 7, 8, 9A and 9B, PIER 202-2<sup>ND</sup> AMENDED, according to Book 1052 of Maps, page 16, records of Maricopa County, Arizona.

**EXHIBIT B**

**PARTIAL RELEASE OF MEMORANDUM OF LEASE**

**WHEN RECORDED RETURN TO:**

Gammage & Burnham, P.L.C.  
Attn: \_\_\_\_\_  
40 North Central Avenue, 20<sup>th</sup> Floor  
Phoenix, Arizona 85004

**PARTIAL RELEASE OF  
MEMORANDUM OF LEASE**

**WHEREAS**, with respect to the Released Parcel, all obligations of CITY OF TEMPE, an Arizona municipal corporation ("Landlord"), and SOUTH PIER TEMPE HOLDINGS LLC, an Arizona limited liability company ("Tenant"), that are evidenced by that certain Memorandum of Lease (the "Memorandum") executed by Landlord and Tenant dated as of \_\_\_\_\_, 2022 and recorded on \_\_\_\_\_, 20\_\_ as Document No. 20\_\_ - \_\_\_\_\_ in the Office of the County Recorder of Maricopa County, Arizona, have been satisfied.

**NOW, THEREFORE**, the Seller hereby partially release the effect of the Memorandum as to the following described property only:

[INSERT DESCRIPTION OF RELEASED PARCEL] (the "Released Parcel").

This Partial Release of Memorandum of Lease does not in any way affect the balance of the real property described in the Memorandum and only releases the above-described Released Parcel.

**[SIGNATURE APPEARS ON THE FOLLOWING PAGE]**





**EXHIBIT "H"**

**Enhanced Amenities**

Exhibit on file with the Tempe City Clerk

Exhibit on file with the Tempe City Clerk

Exhibit on file with the Tempe City Clerk



SCHEDULE 1**SCHEDULE OF PERFORMANCE**

1.	Lot 6 – Phase 1 – Entitlement (a) PAD Overlay Amendment Approval (b) Development Plan Review Approval	On or before December 31, 2022
2.	Commencement of Construction of: (a) Lot 6 – Phase 1A <ul style="list-style-type: none"> <li>• Below Grade Garage (approx. 304,380 sq. ft. – 820 parking stalls)</li> <li>• Retail Space (approx. 16,213 sq. ft.)</li> <li>• Approx. 248 Unit Multi-family (approx. 316,000 sq. ft.)</li> </ul>	On or before January 31, 2023
2.	Certificate of Completion <sup>1</sup> for: (a) Lot 6 – Phase 1A <ul style="list-style-type: none"> <li>• Below Grade Garage (approx. 304380 sq. ft. – 820 parking stalls)</li> <li>• Retail Space (approx. 16,213 sq. ft.)</li> <li>• Approx. 248 Unit Multi-family Tower (approx. 316,000 sq. ft.)</li> </ul>	On or before December 31, 2026
3.	Certificate of Completion for: (a) Lot 6 – Phase 1B <ul style="list-style-type: none"> <li>• Retail Space (approx. 8,368 sq. ft.)</li> <li>• Approx. 238 Unit Multi-family Tower (approx. 298,400 sq. ft.)</li> </ul> (b) Track B – Site Development	Within 2 years of Phase 1A Certificate of Completion
4.	Certificate of Completion for: (a) Lot 6 – Phase 1C <ul style="list-style-type: none"> <li>• Retail Space (approx. 1,594 sq. ft.)</li> <li>• Approx. 238 Unit Multi-family Tower (approx. 275,100 sq. ft.)</li> </ul>	Within 2 years of Phase 1B Certificate of Completion
5.	Certificate of Completion for: (a) Lot 9 – Phase 2A <ul style="list-style-type: none"> <li>• Below/Above Grade Garage (approx. 395,200 sq. ft.)</li> <li>• Retail Space (approx. 37,000 sq. ft.)</li> <li>• Approx. 210 Unit Multi-family Tower (approx. 218,240 sq. ft.)</li> <li>• Senior Housing (approx. 243,950 sq. ft.)</li> </ul>	Within 2 years of Phase 1C Certificate of Completion
6.	Certificate of Completion for: (a) Lot 9 – Phase 2B <ul style="list-style-type: none"> <li>• Approx. 210 Unit Multi-family Tower (approx. 218,240 sq. ft.)</li> </ul>	Within 2 years of Phase 2A Certificate of Completion

7.	<p>Certificate of Completion for:</p> <p>(a) Lot 2 – Phase 3</p> <ul style="list-style-type: none"> <li>• Below/Above Grade Garage (approx. 717,834 sq. ft.)</li> <li>• Office/Retail (approx. 601,224 sq. ft.)</li> </ul>	<p>Within 2 years of Phase 2B Certificate of Completion</p>
8.	<p>Certificate of Completion for:</p> <p>(a) Lot 1 – Phase 4A</p> <ul style="list-style-type: none"> <li>• Below/Above Grade Garage (approx. 535,090 sq. ft.)</li> <li>• Retail Space (approx. 21,450 sq. ft.)</li> <li>• Approx. 208 Unit Multi-family Tower (approx. 216,000 sq. ft.)</li> </ul>	<p>Within 2 years of Phase 3 Certificate of Completion</p>
9.	<p>Certificate of Completion for:</p> <p>(a) Lot 1 – Phase 4B</p> <ul style="list-style-type: none"> <li>• Approx. 208 Unit Multi-family Tower (approx. 216,000 sq. ft.)</li> </ul>	<p>Within 2 years of Phase 4A Certificate of Completion</p>
10.	<p>Certificate of Completion for:</p> <p>(a) Lot 1 – Phase 4C</p> <ul style="list-style-type: none"> <li>• Approx. 208 Unit Multi-family Tower (approx. 216,000 sq. ft.)</li> </ul>	<p>Within 2 years of Phase 4B Certificate of Completion</p>
11.	<p>Certificate of Completion for:</p> <p>(a) Lot 4 – Phase 5</p> <ul style="list-style-type: none"> <li>• Below/Above Grade Garage (approx. 153,900 sq. ft.)</li> <li>• Approx. 300 Key Hotel (approx. 196,000 sq. ft.)</li> <li>• Approx. 80 Unit Multi-family Tower (approx. 97,200 sq. ft.)</li> </ul>	<p>Within 2 years of Phase 4C Certificate of Completion</p>
12.	<p>Certificate of Completion for:</p> <p>(a) Lot 8 – Phase 6A</p> <ul style="list-style-type: none"> <li>• Below/Above Grade Garage (approx. 280,270 sq. ft.)</li> <li>• Retail Space (approx. 18,500 sq. ft.)</li> <li>• Approx. 210 Unit Multi-family Tower (approx. 218,240 sq. ft.)</li> </ul>	<p>Within 2 years of Phase 5 Certificate of Completion</p>
13.	<p>Certificate of Completion for:</p> <p>(a) Lot 8 – Phase 6B</p> <ul style="list-style-type: none"> <li>• Approx. 204 Unit Multi-family Tower (approx. 211,200 sq. ft.)</li> </ul>	<p>Within 2 years of Phase 6A Certificate of Completion</p>

<p>14. Certificate of Completion for:</p> <p>(a) Lot 7 – Phase 7</p> <ul style="list-style-type: none"> <li>• Below/Above Grade Garage (approx. 181,100 sq. ft.)</li> <li>• Retail Space (approx. 5,350 sq. ft.)</li> <li>• Approx. 220 Key Hotel (approx. 119,520 sq. ft.)</li> <li>• Approx. 80 Unit Multi-family Tower (approx. 97,200 sq. ft.)</li> </ul> <p>(b) Track A – Site Development</p>	<p>Within 2 years of Phase 6B Certificate of Completion</p>
---	---

The City and Developer acknowledge that construction and development of this multi-phased, master planned Project will occur over the span of many years, and will require both parties to cooperate in good faith in the review and approval of the various Project components – each of which will likely occur independent of one another. Given this, through the course of construction and development of the Project, the City commits to processing Project related applications expeditiously. This includes, but is not limited to, expeditious processing of the following onsite and peripheral Project components:

- Project specific site development and building permits;
- The development of the southern portion of the Central Green (atop the existing Pier Drive right of way within the boundaries of the Project);
- The permitting and entitlement of the overwater pier and other public amenities and attractions;
- The development of right of way frontage improvements and modifications adjacent to the Project, including the Dorsey Lane extension;
- The development of other offsite improvements associated with the Project, including related utilities and infrastructure;
- The grant of any future development incentives available to the Project.

The construction and development of this multi-phased, master planned Project will also require flexibility in implementation, and the City and Developer acknowledge that the order of development of any given phase or component may adjust given the Developer's response to market conditions, with the phases and corresponding obligations not necessarily being constructed and developed in the order presented above. Notwithstanding this fact, the ultimate timeline for performance of the Project will not altered, and the delivery of new components shall occur (at a minimum) biennially.

The overall Project completion date will be within 15 years of the first Certificate of Occupancy.


<sup>1</sup> "Certificate of Completion" is defined as the initial Certificate of Occupancy or Temporary Certificate of Occupancy for any portion of the applicable phase.

20220259754  
OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
STEPHEN RICHER



The foregoing instrument is an  
**electronically prepared**  
full, true and correct copy  
of the original record in this  
office.

Attest: 01/13/2023 01:09:06 PM

By  Recorder

To Verify this purchase visit  
<http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=284932>

**EXHIBIT "A-1"**

**LEGAL DESCRIPTION**

**Maricopa County Assessor's Parcel Numbers 132-32-015, 132-32-020 and 132-32-025**

The land referred to herein is situated in the City of Tempe, County of Maricopa, State of Arizona, and is described as follows:

Lots 1, 6 and Tract B, PIER 202 AMENDED, according to Book 949 of Maps, page 48, records of Maricopa County, Arizona.