

GROUND LEASE

C2004-265A

THIS GROUND LEASE ("Lease") is made and entered as of the 4th day of May, 2006, by and between THE CITY OF TEMPE, an Arizona municipal corporation ("Landlord"), and TEMPE TOWN LAKE TOWNHOMES, L.P., an Arizona limited partnership ("Tenant").

RECITALS

A. Landlord owns that parcel of land described in *Exhibit "A"* hereto, together with all rights and privileges appurtenant thereto and all future additions thereto or alterations thereof (collectively, the "Leased Premises").

B. Prior to the date of this Lease, Landlord and Tenant entered into that certain Subordinate Development Parcel Agreement [Ordinance No. 2004.51] dated December 9, 2004, and recorded as Instrument No. 2005-0823874 in the Official Records of Maricopa County, Arizona (the "Development Agreement"), pursuant to which, among other things, the Landlord agreed to lease to Tenant, and the Tenant agreed to lease from Landlord, the Leased Premises.

AGREEMENT

1. Lease of Leased Premises. 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 Leased Premises for the term, at the rental and subject to and upon all of the terms, covenants and agreements hereinafter set forth.

2. Quiet Enjoyment. Landlord covenants and agrees with Tenant that conditioned upon Tenant's paying the Rental 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 Leased Premises.

3. Term. The term of this Lease shall be for ninety-nine (99) years, commencing on the date of this Lease (the "Commencement Date") and ending at midnight on the day immediately prior to the ninety-ninth (99th) anniversary of the Commencement Date, subject to earlier termination as hereinafter provided.

4. Rental. Tenant covenants to pay to Landlord as rental for the Leased Premises the sum of \$1.00 (the "Rental") on the Commencement Date. The full amount of the Rental shall be prepaid on the Commencement Date, without prejudice to Tenant's right to terminate this Lease as provided herein, but in no event shall Landlord be obligated to refund any portion of the prepaid Rental.

5. Mortgage of Leased Premises.

5.1 Subject to the 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."

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.

6. Taxes; Ground Lease Obligations.

6.1 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 the ground lease and all recorded deed restrictions affecting or relating to the Leased Premises. Any sales, use, excise or transaction privilege tax consequence incurred by Landlord because of this Lease or in relation to the Leased Premises or improvements included therein may be passed on to the Tenant either directly if applicable or as "additional rent."

6.2 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.

6.3 Procedure. Landlord agrees that any proceedings contesting the amount or validity of taxes or assessments levied against the Leased 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.

6.4 Allocation. All payments contemplated by this **Section 6** shall be prorated for partial years at the commencement date and at the end of the Lease term.

7. Use. Subject to any restrictions expressly set forth in the Development Agreement, the Leased Premises may be used and occupied by Tenant for any lawful purpose.

8. Landlord Nonresponsibility. Except as otherwise set forth in the Development Agreement, as may be amended, Landlord shall have no responsibility, obligation or liability under this Lease whatsoever with respect to any of the following:

- (a) utilities, including gas, heat, water, light, power, telephone, sewage, and any other utilities supplied to the Leased Premises;
- (b) disruption in the supply of services or utilities to the Leased Premises;
- (c) maintenance, repair or restoration of the Leased Premises;
- (d) any other cost, expense, duty, obligation, service or function related to the Leased Premises.

9. Tenant's Responsibility. Tenant shall have the responsibility, obligation, and liability for any and all expenses set forth in **Section 8** above. In addition, Tenant shall pay upon demand by Landlord, all charges related to any improvement district liens together with any interest or late charges connected therewith which exist against the Leased Premises or which are imposed upon the Leased Premises during the existence of this Lease. If Landlord, during the term of this Lease, is required to pay any costs or expenses in connection with the ownership of the Leased Premises, Tenant shall indemnify, hold harmless, and immediately reimburse Landlord for any costs or expenses. Landlord during the term of this Lease shall not encumber or cause any lien to be imposed upon the Leased Premises except for any cost or expense that is imposed upon the Leased Premises during the normal course of government actions or is imposed by law.

10. Entry by Landlord. Landlord and Landlord's agents shall have the right at reasonable times and upon reasonable prior notice to enter upon the Leased Premises for inspection. Notwithstanding anything contained herein to the contrary, the provisions of this **Section 10** shall not be deemed to operate as an express or implied waiver of any rights of privacy of Tenant or any occupant, subtenant or licensee of any portion of the Leased Premises as guaranteed by the United States Constitution.

11. Improvements. Tenant shall have the right to make improvements to the Leased Premises from time to time, without Landlord's consent, except that Tenant shall comply with all applicable requirements of Landlord's building code, and obtain all approvals as necessary pursuant to local, state and federal law. In connection therewith, 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 and any subsequent 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 Leased Premises, and Landlord shall not be liable or accountable for any

damages to the Leased Premises or any property located thereon. Tenant shall have the right at any time to demolish or substantially demolish improvements located upon the Leased 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.

12. Easements, Dedications and Other Matters. At the request of Tenant, Landlord shall dedicate or initiate a request for dedication to public use of any improvements constructed by Tenant 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) petitions seeking a change in zoning for all or a portion of the Leased 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 Leased Premises or any part thereof, join in granting any easements on the Leased 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, razing, redevelopment or reconstruction of the Leased Premises.

13. 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 Leased Premises, with limits of liability not less than \$1,000,000.00 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. All of Tenant's policies of liability insurance shall name Landlord and all Leasehold Mortgagees as additional insureds, and shall contain no special limitations on the coverage, scope or protection afforded to Landlord, its officials, employees or volunteers. Tenant's policy of liability insurance shall be primary as to Landlord and any failure of any insurance providers to comply with the reporting provisions of such policies shall not affect coverage provided to the Landlord. Certificates with respect to all policies of insurance or copies thereof required to be carried by Tenant under this **Section 13** shall be delivered to Landlord in form and with insurers acceptable to Landlord. Each policy shall contain an endorsement prohibiting cancellation or nonrenewal without at least thirty (30) days prior notice to Landlord (thirty (30) days for nonpayment). In the event that any such policy of insurance required to be maintained by Tenant hereunder is terminated, canceled or not renewed by the carrier thereof, and Tenant fails to immediately cause such insurance policy to be reinstated or secure a new policy as of the effective date of cancellation, termination or nonrenewal, then, in that event, in addition to all other rights and remedies available to Landlord hereunder, Landlord shall have the right (without first being required to provide any notice or opportunity to cure to Tenant) to immediately obtain all such required insurance, whereupon the premiums paid therefor by Landlord shall be due and payable by Tenant to Landlord immediately upon Tenant's receipt of written notice from Landlord. 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 subject to Landlord's reasonable approval.

14. Liability; Indemnity. Tenant covenants and agrees that Landlord, its Council, members, officers, employees and agents are 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 Leased 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, its Council, members, officers, employees and agents from all liability, loss, costs and obligations on account of or arising out of any such injuries or losses, however occurring. 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.

15. Fire and Other Casualty. In the event that all or any improvements or fixtures on the Leased Premises shall be totally or partially destroyed or damaged by fire or other insurable casualty, this Lease shall continue in full force and effect, and Tenant, at Tenant's sole cost and expense, may, but shall not be obligated to, rebuild or repair the same. Landlord and Tenant agree that the provisions of A.R.S. §33-343 shall not apply to this Lease. In the event that 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 rebuild or repairs the improvements or fixtures.

16. Condemnation.

16.1 Entire or Partial Condemnation. If the whole or any part of the Leased 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 Leased Premises so taken, and 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 Leased Premises, Landlord hereby assigns to Tenant all claims, awards and entitlements relating to the Leased Premises arising from the exercise of the power of condemnation or eminent domain, including, without limitation, any claims for loss of fee title interest in the Leased Premises.

16.2 Continuation of Lease. In the event of a taking of less than all of the Leased Premises, then at Tenant's election, this Lease shall continue in effect with respect to the portion of the Leased Premises not so taken.

16.3 Temporary Taking. If the temporary use of the whole or any part of the Leased 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 any Leasehold Mortgage.

16.4 Notice of Condemnation. In the event any action is filed to condemn the Leased 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 Leased Premises or Tenant's leasehold estate or any part thereof, 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.

17. Conveyance of Fee Title by Landlord. Notwithstanding anything contained herein to the contrary, on August 1, 2007, Landlord shall convey fee simple title to all of the Leased Premises to Tenant, or Tenant's successors-in-interest in and to the Leased Premises, which conveyance shall be effected by a Special Warranty Deed in the form attached hereto as ***Exhibit "B"***, duly executed by Landlord and recorded in the Official Records of Maricopa County, Arizona. The conveyance of fee title to the Leased Premises by the Landlord shall be at no additional cost to Tenant or its successors-in-interest. Upon the execution and recordation of the Special Warranty Deed as provided in the foregoing, this Lease shall automatically terminate and be of no further force or effect.

18. Assignment; Subletting.

18.1 Transfer by Tenant. Tenant shall have the right to fully or partially assign or transfer its rights under this Lease to any third party (including, without limitation, each purchaser of a condominium unit within the condominium project intended to be developed on the Leased Premises) without the Landlord's prior consent (in each case, a "Transfer").

18.2 Liability. Each assignee pursuant to a Transfer shall assume all of the obligations of the Tenant under the Lease (but not for liabilities or obligations arising prior to such assignment becoming effective) with respect to the portion of the Leased Premises assigned to such assignee. Each assignment shall automatically release the assignor from any personal liability in respect of any obligations or liabilities arising under the Lease with respect to the portion of the Leased Premises which is the subject of the Transfer 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 an assignee of Tenant's obligations under this Lease shall satisfy Tenant's obligations hereunder and Landlord shall accept performance by any such assignee.

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

19.1 Default. The failure by Tenant to observe and perform any material provision of this Lease to be observed or performed by Tenant, where such failure continues for one hundred eighty (180) days after written notice thereof by Landlord to Tenant, shall constitute

a default and breach of this Lease by Tenant; 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, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.

19.2 Remedies. In the event of any such material default or breach by Tenant, which is not cured by Tenant within the applicable period of time set forth in **Section 19.1** above, then Tenant shall be liable to Landlord for all costs and expenses incurred by Landlord as a result of such default.

19.3 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:

No agreement between Landlord and 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.

If Landlord shall give any notice, demand, election or other communication required hereunder (hereinafter 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 subsection. 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.

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 default, by Tenant hereunder or such longer period as the Leasehold Mortgagee may reasonably require to effect 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 Leased Premises to give such performance.

In case of a 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 Leased 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 19.2** if and so long as:

(i) the Leasehold Mortgagee shall proceed diligently to obtain possession of the Leased Premises as mortgagee (including possession by a receiver), and, upon obtaining such possession, shall proceed diligently to cure such defaults 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).

The Leasehold Mortgagee shall not be required to obtain possession or to continue in possession as mortgagee of the Leased Premises pursuant to **Section 19.3(d)(i)** above, or to continue to prosecute foreclosure proceedings pursuant to **Section 19.3(d)(ii)** above, if and when such default shall be cured.

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 (d)(i) and (ii)** above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

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.

19.4 Protection of Subtenant. Landlord covenants that notwithstanding any default under or termination of this Lease or of Tenant's possessory rights, Landlord: (a) so long as a subtenant within the Leased 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 sublease, (b) shall recognize the continued existence of the sublease, (c) shall accept the subtenant's attornment, as subtenant under the sublease, to Landlord, as landlord under the sublease, and (d) shall be bound by the provisions of the sublease, including all options. 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.

20. New Lease.

20.1 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 Leased 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;

(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; and

(d) The tenant under the new lease shall have the same right of occupancy to the buildings and improvements on the Leased Premises as Tenant had under the Lease immediately prior to its termination. Notwithstanding anything to the contrary expressed or implied in this Lease, any new lease made pursuant to this **Section 20** 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 Leased 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 the termination of this Lease.

20.2 No Obligation. Nothing herein contained shall require any Leasehold Mortgagee to enter into a new lease pursuant to this **Section 20** or to cure any default of Tenant referred to above.

20.3 Possession. If any Leasehold Mortgagee shall demand a new lease as provided in this **Section 20**, 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 Leased Premises, but not any subtenants actually occupying the Leased Premises or any part thereof.

20.4 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 this **Section 20**, or until the period therefor 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 Leased Premises without the prior written consent of each Leasehold Mortgagee.

20.5 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.

21. 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 any Leasehold Mortgagee, shall be deemed to be separate and distinct from Landlord's interest, estate and rights in or to the Leased 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.

22. Surrender; Conveyance.

22.1 Conveyance Upon Termination or Expiration. If, for any reason, fee simple title to the Leased Premises has not been conveyed by the City to Tenant or Tenant's successors-in-interest as and when required pursuant to **Section 17** above, then on the last day of the term of this Lease or upon any earlier termination of this Lease, whether under **Section 20** above or otherwise, title to the Leased Premises shall automatically vest in Tenant or in Tenant's successor (or successors) by Transfer with respect to any Parcel(s), as the case may be.

22.2 Conveyance Documents. Without limiting the foregoing, Landlord upon request shall execute and deliver: (a) a deed, in the form of the Special Warranty Deed attached hereto as **Exhibit "B"**, conveying all of Landlord's right title and interest in the Leased Premises to Tenant or Tenant's successor(s) by Transfer with respect to the Leased Premises; (b) a memorandum in recordable form reflecting the termination of this Lease; (c) 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 Leased Premises to which Landlord is a party and which are assignable by Landlord, and (d) such other reasonable and customary documents as may be required by Tenant or its title insurer.

22.3 Title and Warranties. The Leased Premises shall be conveyed "AS IS" without representation or warranty whatsoever. Upon such conveyance, Landlord shall satisfy all liens and monetary encumbrances on the Leased Premises created by Landlord and which were not consented to or agreed to by Tenant or authorized by applicable law.

23. 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 Leased 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. 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, lessors, chattel mortgages 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 Leased 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 Leased Premises by the vendor, Landlord, chattel mortgagee, owner or holder at any time upon default by the Tenant or the subtenant in accordance with the terms of such chattel mortgage or other similar documents, free and clear of any claim or lien of Landlord.

24. Estoppel Certificate.

24.1 Landlord shall at any time and from time to time within ten (10) business days after receipt of written request from Tenant or any Leasehold Mortgagee execute, acknowledge and deliver to Tenant or the Leasehold Mortgagee a statement in writing (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) and the dates to which the rental and other charges are paid in advance, if any; (b) 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 (c) 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 encumbrances of all or any portion of the leasehold estate and/or the improvements.

24.2 Landlord's failure to deliver a statement within the time prescribed shall be conclusive upon Landlord (a) that this Lease is in full force and effect, without modification except as may be represented by Tenant; and (b) that there are no uncured defaults in Tenant's performance.

25. General Provisions.

25.1 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 Leased 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.

25.2 Transfer or Encumbrance of Landlord's Interest. Landlord may not transfer or convey its interest in this Lease or in the Leased 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. Landlord shall not grant or create mortgages, deeds of trust or other encumbrances of any kind against the Leased 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 Leased Premises.

25.3 Captions; Attachments; Defined Terms.

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.

Exhibits attached hereto, and addenda and schedules initialed by the parties, are deemed by attachment to constitute part of this Lease and are incorporated herein.

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.

25.4 Entire Agreement. This Lease along with any addenda, exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant relative to the Leased 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 Leased Premises are merged in or revoked by this Lease, except as set forth in any addenda hereto and except to the extent of any continuing rights and obligations of the parties under the Development Agreement.

25.5 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.

25.6 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 section 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.

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

25.8 Notices. All notices under this Lease shall be in writing and (a) delivered personally, (b) delivered by a reputable, nationally recognized overnight courier service, (c) mailed by registered or certified mail, postage prepaid, return receipt requested, or (d) sent by a facsimile transmission (provided that any notices delivered by facsimile transmission shall be followed by a confirming hard copy delivered in any other manner for providing notice as described in the foregoing), to the parties at the following addresses:

If to Landlord: City of Tempe
 31 East 5th Street
 Tempe, Arizona 85281
 Attn: City Manager

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

If to Tenant: Tempe Town Lake Townhomes, L.P.
 c/o Weststone Properties, L.P.
 1800 West Colter Street
 Phoenix, Arizona 85015
 Attention: Gerry Barkman and Angela Hood

With a copy to: Jeffrey J. Miller, Esq.
 Gammage & Burnham, P.L.C.
 Two North Central Avenue, 18th Floor
 Phoenix, Arizona 85004

or to such other street address as may be designated by the respective parties in writing from time to time.

26. 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.

27. 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.

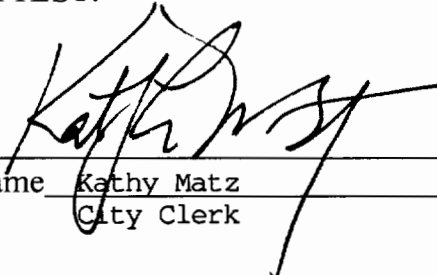
28. Leasehold Mortgagee; Further Assurances. Landlord and Tenant shall cooperate in including in this Lease by suitable amendment from time to time any provision which may be reasonably requested by any proposed Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained 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.

29. Creation of Condominium. Landlord and Tenant hereby acknowledge that Tenant intends to include the Leased Premises in and as part of a residential condominium project to be developed by Tenant on the Leased Premises and adjacent real property owned by Tenant (the "Condominium Project"). In connection with the development and construction of the Condominium Project, upon Tenant's request, Landlord shall cause to be executed and delivered such documents, instruments and authorizations which may be reasonably necessary or required in connection with the development of the Condominium Project, including, without limitation, executing a condominium plat for the Condominium Project to be recorded in the Official Records of Maricopa County, Arizona; provided, however, that Landlord shall not be required to incur any additional cost or expense in connection therewith.

SIGNATURE PAGE FOLLOWS

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

ATTEST:



Name Kathy Matz
City Clerk

APPROVED AS TO FORM:

By Marlene A. Pontrelli
Name Marlene Pontrelli
Title: City Attorney

LANDLORD:

CITY OF TEMPE, an Arizona municipal corporation

By 
Name Hugh Hallman
Title Mayor

TENANT:

TEMPE TOWN LAKE TOWNHOMES, L.P., an Arizona limited partnership


By 
Name Brian Regent
Title President

Exhibit A “Leased Premises”

of the Ground Lease

Page 1 of 3

Lot 4A, PLAYA DEL NORTE, according to book 685 of Maps, Page 32, records of Maricopa County, Arizona

**FINAL PLAT
OF**

"PLAYA DEL NORTE"
A PORTION OF THE NORTHWEST QUARTER OF
SECTION 14, TOWNSHIP 1 NORTH, RANGE 4 EAST
OF THE GILA AND SALT RIVER BASE AND
MERIDIAN, MARICOPA COUNTY, ARIZONA



LINE	TYPE	BEARING	LENGTH
L1	20.31	S 89°00'00" W	300.00
L2	10.78	S 00°00'00" W	300.00
L3	60.05	S 89°00'00" W	300.00
L4	60.05	N 00°00'00" W	300.00
L5	60.05	N 89°00'00" W	300.00
L6	60.05	N 00°00'00" W	300.00
L7	60.05	N 89°00'00" W	300.00
L8	60.05	N 00°00'00" W	300.00
L9	60.05	N 89°00'00" W	300.00
L10	60.05	N 00°00'00" W	300.00
L11	60.05	N 89°00'00" W	300.00
L12	60.05	N 00°00'00" W	300.00
L13	60.05	N 89°00'00" W	300.00
L14	60.05	N 00°00'00" W	300.00
L15	60.05	N 89°00'00" W	300.00
L16	60.05	N 00°00'00" W	300.00
L17	60.05	N 89°00'00" W	300.00
L18	60.05	N 00°00'00" W	300.00
L19	60.05	N 89°00'00" W	300.00
L20	60.05	N 00°00'00" W	300.00
L21	60.05	N 89°00'00" W	300.00
L22	60.05	N 00°00'00" W	300.00
L23	60.05	N 89°00'00" W	300.00
L24	60.05	N 00°00'00" W	300.00
L25	60.05	N 89°00'00" W	300.00
L26	60.05	N 00°00'00" W	300.00
L27	60.05	N 89°00'00" W	300.00
L28	60.05	N 00°00'00" W	300.00
L29	60.05	N 89°00'00" W	300.00
L30	60.05	N 00°00'00" W	300.00

- LEGEND**
- BOUNDARY TO BE SET WITH ROADWAY CONSTRUCTION
 - ⊙ EXISTING CURB CORNER MONUMENT AS NOTED
 - SET 1/2" REBAR WITH TAG NUMBER UNLESS OTHERWISE NOTED
 - SUBDIVISION BOUNDARY
 - MONUMENT LINE
 - EASEMENT LINE
 - RIGHT-OF-WAY
 - MAINTAINED
 - FORMER
 - OPERATIONAL DISTRICT
 - OPERATIONS AND MAINTENANCE
 - MUNICIPAL UTILITY RECORDS

CORNER MARKS

CH	1.71	30.00
CH	4.54	30.00
CH	11.61	30.00
CH	18.68	30.00
CH	25.75	30.00
CH	32.82	30.00
CH	39.89	30.00
CH	46.96	30.00
CH	54.03	30.00
CH	61.10	30.00
CH	68.17	30.00
CH	75.24	30.00
CH	82.31	30.00
CH	89.38	30.00
CH	96.45	30.00
CH	103.52	30.00
CH	110.59	30.00
CH	117.66	30.00
CH	124.73	30.00
CH	131.80	30.00
CH	138.87	30.00
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CH	2217.45	30.00
CH	2224.52	30.00
CH	2231.59	30.00

EXHIBIT "B" TO GROUND LEASE

When recorded, return to:

Jeffrey J. Miller, Esq.
Gammage & Burnham PLC
Two North Central Avenue
18th Floor
Phoenix, Arizona 85004

SPECIAL WARRANTY DEED

For consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, THE CITY OF TEMPE, an Arizona municipal corporation, the Grantor herein, does hereby convey to the person or persons legally entitled thereto, the Grantee, all of its right, title and interest in and to the real property situated in Maricopa County, Arizona, and described in *Exhibit "A"* attached hereto, together with all rights and privileges appurtenant thereto (the "Property").

Subject to those matters expressly set forth in *Exhibit "B"* attached hereto.

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

DATED this _____ day of _____, 200__.

ATTEST:
corporation

CITY OF TEMPE, an Arizona municipal

By _____
Name _____
Title _____

APPROVED AS TO FORM:

By _____
Name _____
Title _____

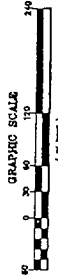
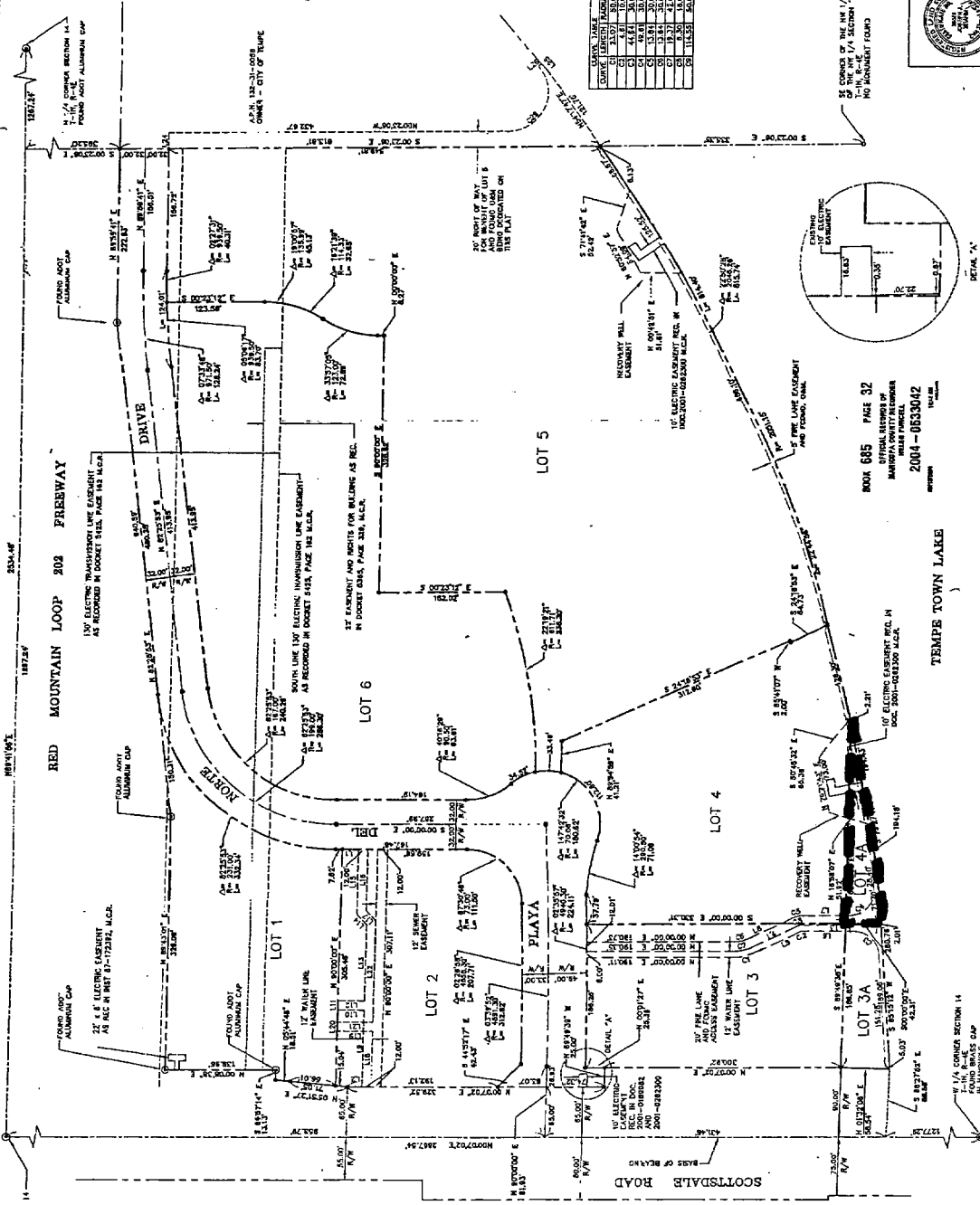
Exhibit A “the Property”
of the Special Warranty Deed
Page 1 of 3

Lot 4A, PLAYA DEL NORTE, according to book 685 of Maps, Page 32, records of
Maricopa County, Arizona

FINAL OF

PLAYA DEL NORTE

A PORTION OF THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 34 NORTH, RANGE 4 EAST OF THE CLAYTON SURVEY, MARICOPA COUNTY, ARIZONA.



LINE	LENGTH	BEARING
1	100.00	S 00°00'00\"/>

LEGEND

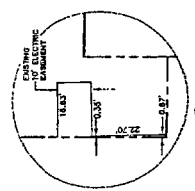
- BRASS CAP TO BE SET WITH FOUNDATION CONSTRUCTION
- ADJUSTED TO THE SURVEY
- SET LOT CORNER MARKS TO BE 10' UNLESS OTHERWISE NOTED

SPURSEWEN BOUNDARY
 HORIZONTAL LINE
 EASEMENT LINE
 RIGHT-OF-WAY
 RECORDED
 HEADROAD
 FENCE
 1000' CORNER DISTRICT MARICOPA COUNTY
 OPERATION AND MAINTENANCE
 MCL
 MARICOPA COUNTY RECORDS



DATE 6-26-04
 SHEET 1 OF 2
 PLAYA DEL NORTE
 JOB NO. 04003

CURVE	LENGTH	BEARING
1	100.00	S 00°00'00\"/>



BOOK 685 PAGE 32
 OFFICIAL RECORDS OF MARICOPA COUNTY
 2004-0633042

DS 090287 SBD 2003.91 REC 04003 SHEET 2 OF 2

6581 PL

Exhibit A "the Property"
 of the Special Warranty Deed
 Page 3 of 3

97-0432433
6/26/91

Exhibit B
of the
Special Warranty Deed

The United States of America

To all to whom these presents shall come, Greeting:

AZA 28907

WHEREAS

City of Tempe

is entitled to a land patent pursuant to Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719, for the following described land:

Gila and Salt River Meridian, Arizona

T. 1 N., R. 4 E.,

sec. 14, NE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$,
NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$,
W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$;
sec. 17, lots 1, 2, W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$.

The areas described aggregate 366.705 acres.

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES, unto the City of Tempe the land described above; TO HAVE AND TO HOLD the said land with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the City of Tempe, its successors and assigns forever; and

EXCEPTING AND RESERVING TO THE UNITED STATES:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 43 U.S.C. 945.
2. A perpetual right-of-way for a Doppler Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (DVORTAC) facility and access road as reserved under Right-of-Way No. AZA 29508, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761, 1767, as to section 17, and the right to enforce all or any of the terms and conditions of the right-of-way.
3. A perpetual right-of-way of the Bureau of Reclamation (Salt River Project) for an electric transmission line, effective April 21, 1971, as to section 14, under Subsection P, Section 4, of the Act of December 5, 1924, 43 U.S.C. 417. (AZA 5402)
4. An appropriation of a right-of-way for a Federal Aid Highway under the Act of August 27, 1958, as amended, 23 U.S.C. 317. (AZA 9289)

Patent Number **02-97-0005**

Exhibit B
of the
Special Warranty Deed

AZA 28907

Page 2 of 7

5. Those rights for highway purposes granted to Arizona Department of Transportation, its successors or assigns, by Right-of-Way No. AZA 23567, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761, and reserving to the United States the right to enforce all or any of the terms and conditions of the right-of-way.
6. With respect to that portion of the Lands conveyed by this patent consisting of lots 1 and 2, W $\frac{1}{2}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$ of section 17, T. 1 N., R. 4 E., Gila and Salt River Meridian (the "Restricted Lands"), the patentee agrees for itself, its assigns and successors in interest to the Restricted Lands herein conveyed, or any part thereof, that the covenants set forth below shall attach to and run with the Restricted Lands:
 - (a) No structures, except as noted below in subdivision (e) of this paragraph, shall penetrate a vertical angle of 1.2 degrees above the horizontal measured from the ground elevation at the center of the DVORTAC antenna site, coordinates and elevations defined as:

Latitude 33 degrees 25 minutes 58.20 seconds North;
Longitude 111 degrees 58 minutes 10.19 seconds West;
Elevation 1,182 feet above mean sea level.
 - (b) No structures exceeding an elevation of 1,182 feet above mean sea level shall be allowed within 750 feet of the center of the DVORTAC antenna.
 - (c) No trees or other vegetation within 1,000 feet of the DVORTAC antenna shall be permitted to exceed 30 feet in height.
 - (d) No structures which are partially or entirely metallic, excluding lighting structures, shall exceed a vertical angle of 1.2 degrees above the DVORTAC antenna.
 - (e) Lighting structures shall not exceed a vertical angle of 2.0 degrees above the DVORTAC antenna elevation, configured radially from the center thereof.
 - (f) Lighting structures shall be designed to present a minimal reflective, or if feasible non-reflective, surface to the DVORTAC antenna.
 - (g) (i) In addition to the restrictions above (subdivisions (a) through (f) of this paragraph), and subject to subdivision (g)(ii)-(iv), no facilities of any kind which would cause disruption of or interference with the safe and effective operation of the DVORTAC antenna, authorized by Right-of-Way No. AZA 29508, reserved to the Federal Aviation Administration (the "FAA"), its successors and assigns, may be placed on any portion of the Restricted Lands. Preliminary plans for any facilities proposed to be constructed on the Restricted Lands must be submitted to the FAA at the same time that such plans are submitted for the City of Tempe's preliminary review. The FAA shall submit written

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comments on the preliminary plans within 30 days of receipt. Final plans for any facilities proposed to be constructed on the Restricted Lands must be submitted to the FAA at the same time that such plans are submitted for the City of Tempe's final review. The FAA shall approve the proposed facility or issue an adverse determination concluding that the facility proposed to be built on the Restricted Lands would cause disruption of or interference with the safe and effective operation of the DVORTAC antenna within 90 days of receipt of the final plans. In exceptional circumstances, if the FAA's Regional Administrator concludes that additional information critical to its determination is needed, he may extend the deadline for issuing its approval by a reasonable amount of time by notifying the builder/developer and the City of Tempe of the extension and the reasons therefor. Any determination by the FAA that a proposed facility on the Restricted Lands would cause interference with the safe and effective operation of the DVORTAC, shall be provided in writing to the City of Tempe and the developer or builder, and shall be based on reasonable grounds adequately supported by the relevant information or analyses necessary to understand the reasoning underlying the determination. In the event the builder/developer decides to construct the proposed facility, it shall modify the proposals to address the FAA's objection at no cost, obligation or charge to the United States or any agency or instrumentality thereof.

- (ii) For the purpose of subdivision (g)(i) of this paragraph, the requirement that preliminary and final development and construction plans be submitted to the FAA shall be satisfied by submission of the plans to the FAA, Logistics Division, AWP-54B, P.O. Box 92007 WPC, Los Angeles, California 90009, or successor office as may be identified by the FAA.
- (iii) In the event that a builder or developer of a site on the Restricted Lands has not secured FAA approval prior to commencement of actual construction, a determination by the Administrator of the FAA, or his or her designee, or successor or assign that any facility placed on the Restricted Lands has caused interference with the safe and effective operation of the DVORTAC antenna is conclusive of the facts and said facility shall be modified or removed at no cost, obligation or charge to the United States or instrumentality thereof.
- (iv) In the event that a builder or developer of a site on the Restricted Lands has received FAA approval prior to the commencement of actual construction and said construction has commenced or been completed, the FAA may still require removal or modification of the facility so long as the FAA determines that the facility actually interferes with the safe and effective operation of the DVORTAC antenna and the FAA pays for the costs of the modification or removal of the facility in question.

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- (v) As part of its review of any proposal submitted, the FAA simultaneously will undertake any review required under Part 77 of the Federal Aviation Regulations.
7. With respect to that portion of the Lands conveyed by this patent consisting of lots 1 and 2, W½NE¼, and NW¼ of section 17, T. 1 N., R. 4 E., Gila and Salt River Meridian (the "Restricted Lands"), the patentee agrees for itself, its assigns, and successors in interest to the Restricted Lands herein conveyed, or any part thereof, that the covenants set forth below shall attach to and run with the Restricted Lands:
- (a) The city of Tempe agrees that aviation safety will govern any aesthetics or physical characteristics of any proposed development within the Restricted Lands, and as part of its review process, shall evaluate any proposal for development of the Restricted Lands to determine the potential for creating an airport wildlife hazard, as defined in part 139 of the Federal Aviation Regulations. No facility or permanent land use constituting an airport wildlife hazard shall be permitted on the Restricted Lands. The FAA Administrator shall make the final determination concerning whether proposed development involving open water or a landfill (as defined by the U.S. Environmental Protection Agency) constitutes a wildlife hazard. Open water includes all deliberately or incidentally created open water, whether ephemeral or permanent, flowing or standing.
- (b) The city's review process will include a "wildlife hazard" assessment addressing the identification of anticipated species, numbers, locations, local movements, daily and seasonal occurrences of wildlife, development features that would attract wildlife, and describe how the anticipated wildlife would be a hazard to aircraft operations at Phoenix Sky Harbor International Airport. The city of Tempe will provide a copy of the wildlife hazard assessment to the State Director, Animal Damage Control, U.S. Department of Agriculture and the FAA Western-Pacific Regional Administrator prior to granting any final approval of a proposed development. The Director and the Regional Administrator shall raise any concerns regarding proposed development that does not involve the items described in subsection (a) of this paragraph within 90 calendar days of receiving the wildlife hazard assessment. In the event that either the Director or the Regional Administrator disagrees with the wildlife hazard assessment's evaluation of the potential for a site to become a hazard, Tempe or any subsequent owner, lessee, or developer shall address any concerns raised by either the Director or Regional Administrator.
8. Patentee agrees that it will not sell, dispose of, or otherwise transfer or attempt to transfer title to any portion of the Lands for a period of 10 years from the date of patent issuance. If a breach of this covenant (the "No Transfer Covenant") occurs, title to the Lands conveyed under this patent shall revert in the United States in full and without reservation. A determination by the Secretary or designate that the No Transfer Covenant has been breached is conclusive of the facts.

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9. Patentee agrees for itself, its assigns, and successors in interest to the Lands herein conveyed, or any part thereof, that the covenants set forth below shall attach to and run with the Lands:
 - (a) No residential use shall be allowed on the Lands (the "No Residential Use Covenant"). Residential use for the purposes of this covenant means any use of the Lands for single-family or multi-family dwelling purposes for residential stays exceeding 90 days. Residential use shall not include hotels, motels, or extended stay facilities which, for the purposes of this covenant, means temporary stay facilities, excluding mobile homes, designed and used for occupancy by transients or as residential dwellings for periods of 90 days or less in any calendar year.
 - (b) If a breach of the No Residential Use Covenant occurs, this grant is terminated as to that portion of the Lands where the breach occurred and any other portion of the Lands held by said Owner. The patentee, by acceptance of this patent, agrees for itself, its assigns, and successors in interest, that termination of this grant as against an Owner of a portion of the Lands where the breach of the No Residential Use Covenant occurred shall operate to revert in the United States full title to each and every portion of the Lands owned by such Owner.
 - (c) In the event of a reversion of all or any portion of the Lands pursuant to subdivision (b) of this paragraph, the United States shall have the right to seek judicial enforcement of the reverter against the Owner of the Lands where a breach of the No Residential Use Covenant occurred, and also as to all other Lands owned by such Owner and conveyed under this patent.
 - (d) A determination by the Secretary or designate that the No Residential Use Covenant has been breached is conclusive of the facts.

SUBJECT TO:

1. Those rights for electric transmission line purposes granted to Arizona Public Service Company, its successors or assigns, by Right-of-Way No. AZAR 020023, as to section 14, pursuant to the Act of March 4, 1911, 43 U.S.C. 961; repealed 1976.
2. Those rights for gas pipeline purposes granted to Southwest Gas Corporation, its successors or assigns, by Right-of-Way No. AZAR 024876, as to section 14, pursuant to the Act of February 25, 1920, 30 U.S.C. 185.
3. Those rights for electric transmission line purposes granted to Arizona Public Service Company, its successors or assigns, by Right-of-Way No. AZAR 025230, as to section 14, pursuant to the Act of March 4, 1911, 43 U.S.C. 961; repealed 1976.
4. Those rights for sewer pipeline purposes granted to the City of Phoenix, its successors or assigns, by Right-of-Way No. AZAR 033748 pursuant to the Act of February 15, 1901, 43 U.S.C. 959; repealed 1976.

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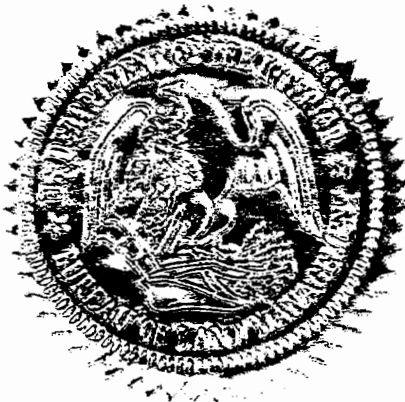
5. Those rights for gas pipeline purposes granted to Southwest Gas Corporation, its successors or assigns, by Right-of-Way No. AZAR 035921, as to section 17, pursuant to the Act of February 25, 1920, 30 U.S.C. 185.
6. Those rights for storm drainage purposes granted to the City of Tempe, its successors or assigns, by Right-of-Way No. AZA 1119, as to section 14, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.
7. Those rights for highway and bridge construction, river channelization, and grading construction purposes granted to Maricopa County Highway Department, its successors or assigns, by Right-of-Way No. AZA 4283, as to section 14, pursuant to the Act of August 4, 1939, 43 U.S.C. 387.
8. Those rights for electric transmission line purposes granted to Salt River Project, its successors or assigns, by Right-of-Way No. AZA 6066, as to section 14, pursuant to the Act of March 4, 1911, 43 U.S.C. 961; repealed 1976.
9. Those rights for road purposes granted to the City of Tempe by Right-of-Way No. AZA 7244, as to section 17, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.
10. Those rights for water distribution pipeline purposes granted to the City of Phoenix, its successors or assigns, by Right-of-Way No. AZA 7289, as to section 17, pursuant to the Act of February 15, 1901, 43 U.S.C. 959; repealed 1976.
11. Those rights for industrial sewer pipeline purposes granted to the City of Tempe, its successors or assigns, by Right-of-Way No. AZA 8636, as to section 17, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.
12. Those rights for flood control structure purposes granted to the Flood Control District of Maricopa County, its successors or assigns, by Right-of-Way No. AZA 8887, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.
13. Those rights for buried telephone cable purposes granted to U.S. West Communications, Inc., its successors or assigns, by Right-of-Way No. AZA 9271, as to section 17, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.
14. Those rights for road purposes granted to the City of Tempe, its successors or assigns, by Right-of-Way No. AZA 20311, as to section 17, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.
15. Those rights for river channelization purposes granted to the City of Tempe, its successors or assigns, by Right-of-Way No. AZA 24632, as to section 14, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.

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16. Those rights for water pipeline purposes granted to the City of Tempe, its successors or assigns, by Right-of-Way No. AZA 25254, as to section 14, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.
17. Those rights for water and sewer pipeline purposes granted to the City of Tempe, its successors or assigns, by Right-of-Way No. AZA 25963, as to section 17, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.
18. Those rights for electric line, telephone and television cable purposes granted to the City of Tempe, its successors or assigns, by Right-of-Way No. AZA 25964, as to section 17, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.
19. Those rights for buried gas pipeline purposes granted to the City of Tempe, its successors or assigns, by Right-of-Way No. AZA 27825, as to section 17, pursuant to the Act of February 25, 1920, 30 U.S.C. 185.
20. Those rights for road purposes granted to the City of Tempe, its successors or assigns, by Right-of-Way No. AZA 29489, as to section 17, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.



IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in Phoenix, Arizona, the fifteenth day of May in the year of our Lord one thousand nine hundred and ninety-seven and of the Independence of the United States the two hundred and twenty first.

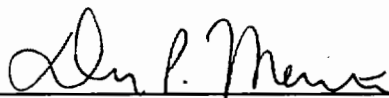
By 
Denise P. Meridith
State Director

EXHIBIT "C" TO GROUND LEASE

WHEN RECORDED, RETURN TO:

Jeffrey J. Miller, Esq.
Gammage & Burnham P.L.C.
Two North Central Avenue
18th Floor
Phoenix, AZ 85004

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made and entered into this ___ day of _____, 2004, by and between THE CITY OF TEMPE, an Arizona municipal corporation ("Landlord"), and TEMPE TOWN LAKE TOWNHOMES, L.P., an Arizona limited partnership ("Tenant").

1. The parties have entered into and executed that certain Lease dated (the "Lease") whereby Landlord has leased to Tenant, and Tenant has leased from Landlord, the land, all improvements owned by Landlord described in *Exhibit "A"* attached hereto and incorporated herein by this reference, together with all rights and privileges appurtenant thereto and all present and future improvements thereon (collectively the "Leased Premises"), for a ninety-nine (99) year term commencing on the date of the Lease and ending at midnight on the day immediately preceding the ninety-ninth (99th) anniversary thereof. The Lease sets forth all terms and provisions relative to the lease of the Leased Premises by Landlord to Tenant. Without limiting the generality of the foregoing, Landlord has the express obligation, under Section 17 of the Lease, to convey fee simple title to the Leased Premises to Tenant or Tenant's successor(s), as and when described in said section. Further, Tenant has the right to mortgage its leasehold interest as described in Section 5 of the Lease and there are restrictions on the right of Landlord to transfer or encumber its interest in the Leased Premises or the Lease as described in Section 25.2 of the Lease.

2. The parties consider the Lease to be a binding agreement between them creating vested rights in and for Tenant superior to the right, title and interest of any party hereafter acquiring any interest in the Leased Premises, including but not limited to purchasers of the Leased Premises or lien holders acquiring any lien or encumbrance interest against the Leased Premises. All persons dealing with the Leased Premises are advised to contact Tenant and Landlord to ascertain the current status of the Lease and Lessee's tenancy rights and leasehold interests in the Leased Premises. The parties are executing and recording this Memorandum, as authorized by the Lease, to provide notice to all persons dealing with the Leased Premises of the binding and vested rights of Tenant and the leasehold interests of Tenant created by the Lease.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease to be effective on the date first written above.

ATTEST:
corporation

CITY OF TEMPE, an Arizona municipal

By _____
Name _____
Title _____

APPROVED AS TO FORM:

By _____
Name _____
Title _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 2004, before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be _____ of the CITY OF TEMPE, an Arizona municipal corporation:

_____ whom I know personally;
_____ whose identity was proven to me on the oath of _____, a credible witness by me duly sworn;
_____ whose identity I verified on the basis of his/her _____,

and s/he, 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.

NOTARY SEAL:

Notary Public

Exhibit A “Leased Premises”

of the Memorandum of Lease

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Lot 4A, PLAYA DEL NORTE, according to book 685 of Maps, Page 32, records of Maricopa County, Arizona

