

**AMENDED AND RESTATED
GROUND LEASE
C92-176B**

Resolution No. 2013.44

THIS AMENDED AND RESTATED GROUND LEASE ("Lease") is made and entered into as of May 9, 2013 (the "Execution Date"), by and between THE CITY OF TEMPE, a municipal corporation ("Lessor"), and CENTERPOINT HOLDINGS LLC, a Delaware limited liability company, successor by merger with CENTERPOINT PLAZA-I LIMITED PARTNERSHIP, an Arizona limited partnership ("Lessee").

RECITALS:

A. Lessor and Lessee are parties to that certain Ground Lease dated August 16, 1993, as recorded with the City Clerk of the City of Tempe as City Contract No. C92-176 (the "Initial Lease").

B. The Initial Lease was amended by that First Addendum to Centerpoint Plaza-I Limited Partnership Ground Lease (C92-176A) dated as of June 23, 2004. The Initial Lease, as amended, is hereafter referred to as the "Original Lease".

C. Lessor and Lessee desire to further amend the Original Lease on the terms and conditions set forth herein, and to restate certain terms and conditions of the Original Lease upon and subject to the terms and conditions set forth herein.

D. This Amended and Restated Ground Lease is intended to, and shall, supersede and replace the Original Lease in its entirety. Upon the execution and delivery of this Amended and Restated Ground Lease by all parties hereto and the recording with the City Clerk of the City of Tempe, the Original Lease shall be of no further force or effect.

AGREEMENT

NOW, THEREFORE, for and in consideration of the rental previously paid and of the covenants and agreements hereinafter set forth to be kept and performed by Lessee, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the real property 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 "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.** Lessor covenants and agrees with Lessee that conditioned upon Lessee's performing and fulfilling all the covenants, agreements, conditions and provisions herein to be kept, observed or performed by Lessee, Lessee may at all times during the term hereof peaceably, quietly and exclusively have, hold and enjoy the Premises.

The parties acknowledge that Lessee has obtained the right to lease the Premises from Centerpoint Plaza Limited Partnership, which obtained such rights pursuant to that certain Redevelopment and Disposition Agreement dated December 31, 1985, and recorded

January 8, 1986, as Document No. 86-009532, Official Records of Maricopa County, Arizona, as the same has been amended and assigned thereafter (the "RDA"). During the term of this Lease, Lessee shall have all liabilities, obligations, rights and abilities of the "Owner" of the Premises for purposes of that certain Declaration of Covenants, Conditions, Restrictions and Easements for Centerpoint Plaza (the "Declaration") dated May 4, 1988, and recorded May 5, 1988, at Document No. 88-218242, Official Records of Maricopa County, Arizona, as amended thereafter, including voting rights, assessment liabilities and amendment of the Declaration.

2. Term. If Lessee obtains a certificate of occupancy for a theatre at the Premises within twelve (12) months after the Execution Date, then the term of this Lease shall automatically be extended for ten (10) years, expiring at midnight on July 1, 2024; otherwise, this Lease shall terminate as currently scheduled on July 1, 2014. If the term is extended as aforesaid, then Lessee shall have the right to extend the term of this Lease for no more than two (2) additional periods of five (5) years each by giving written notice to Lessor no less than 90 days prior to the expiration of the current terms of the Lease, unless this Lease is earlier canceled. Lessee has the right and option, under Section 15 of this Lease, to terminate this Lease and receive conveyance of the title to the Premises, at no cost to the Lessee, as described in said section. Further, upon termination of this Lease, title to the Premises shall be transferred to the Lessee at no cost to the Lessee, subject to further City Council approval.

3. Rental Obligation Satisfaction. Lessee and Lessor acknowledge that Lessee has paid total rent of \$262,923.00 representing the agreed net present value of Lessee's rental obligation under the Original Lease. Lessor and Lessee reconfirm that the entire rental obligation for the entire term of this Lease has been fully satisfied and discharged. Further, under no circumstances, including termination of this Lease for default or otherwise in accordance with its terms, or a conveyance of the Lessor's interest under Section 15 or otherwise, shall any portion of the total rent paid in advance be refundable by the Lessor.

4. Leasehold Mortgage of Premises. Lessee is hereby given the absolute right without Lessor's consent to create security interests in Lessee'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 Lessee's covenants and agreements hereunder shall attach to or be imposed upon any Leasehold Mortgagee, unless such Leasehold Mortgagee forecloses its interest and becomes Lessee hereunder, following which the liability shall attach only during the term of ownership of the leasehold estate by said Leasehold Mortgagee.

5. Taxes.

5.1 Payment. Lessee shall pay and discharge all general and special real estate taxes and assessments levied or assessed against or with respect to the Premises, during the term of this Lease, including but not limited to any Government Property Lease Excise Tax applicable to Lessee's use of a government property improvement (as defined in ARS Sec. 42-6201(2)) and the Downtown Tempe Enhanced Services District Assessment, and

all charges, assessments or other fees payable with respect to or arising out of all recorded deed restrictions affecting or relating to the Premises.

5.2 Protest. Lessee 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 Lessee and shall first pay said tax or assessment under protest if legally required as a condition to such protest and contest, and Lessee 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. Lessor 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 Lessor or Lessee, as the case may require or permit, and Lessor does hereby appoint Lessee as its agent and attorney-in-fact, during the term of this Lease, to execute and deliver in the name of Lessor 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 5. Lessee shall hold Lessor 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.

6. Use. The Premises shall not be used for any purpose prohibited by any recorded declaration of covenants, conditions and restrictions applicable to the Premises or for any purpose not permitted by City Ordinance or the City Zoning and Development Code.

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

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

provided, however, that this Lease shall not act to obviate or release Lessor from Lessor's obligations, if any, arising by virtue of Lessor's municipal corporate status unrelated to this Lease.

8. Entry by Lessor. Lessor and Lessor's agents shall have the right at reasonable times and upon reasonable notice to enter upon the Premises for inspection, except

that Lessor shall have no right to enter any building on the Premises without consent of the occupant or as provided by law.

9. Alterations. Lessee shall have the right to construct improvements and to make subsequent alterations, additions or other changes to any improvements or fixtures existing from time to time upon the Premises or any part thereof. In connection with any action which Lessee may take with respect to Lessee's rights pursuant hereto, Lessor shall not be responsible for and Lessee 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 Lessee, including without limitation materialmen's and mechanic's liens. Lessee covenants and agrees that Lessor shall not be called upon or be obligated to make any improvements, alterations or repairs whatsoever in or about the Premises, and Lessor shall not be liable or accountable for any damages to the Premises or any property located thereon. Lessee shall have the right at any time to demolish or substantially demolish improvements located upon the Premises; provided, however, that this Lease shall automatically terminate without further action or notice if a certificate of occupancy for a hotel or grocery store is not issued within 12 months after the demolition or substantial demolition of the improvements on the Premises. In making improvements or alterations, Lessee shall not be deemed Lessor's agent and shall hold Lessor harmless from any expense or damage Lessor may incur or suffer. During the term hereof and prior to exercise of the purchase option set forth herein, title to all improvements shall at all times be vested in Lessor.

10. Easements, Dedications and Other Matters. At the request of Lessee, when not in default hereunder, Lessor shall dedicate or initiate a request for dedication to public use 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 of 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, razing, redevelopment or reconstruction of the Premises.

11. Insurance. During the term of this Lease, Lessee shall, at Lessee'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 \$2,000,000.00 per occurrence, and no less than \$5,000,000 in the aggregate. All of Lessee's policies of liability insurance shall name Lessor as an additional insured and, at the written request of Lessor, certificates with respect to all policies of insurance or copies thereof required to be carried by Lessee under this Section 11 shall be delivered to Lessor. Each policy shall contain an endorsement prohibiting cancellation or non-renewal without at least thirty (30) days prior notice to Lessor.

12. Liability; Indemnity. Lessee covenants and agrees that Lessor is to be free from liability and claim for damages by reason of any injury to any person or persons, including Lessee, 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, Lessee hereby covenanting and agreeing to indemnify and save harmless Lessor from all liability, loss, costs and obligations on account of or arising out of any such injuries or losses, however occurring, except to the extent caused by the sole and gross negligence or willful misconduct of Lessor, its agents, employees, or invitees. Lessor agrees that Lessee 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 Lessor, as Lessee may deem necessary, provided that the expenses thereof shall be paid by Lessee. 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 on the 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 Lessee, at Lessee's sole cost and expense, may, but shall not be obligated to, rebuild or repair the same; provided that if Lessee does not commence to repair or rebuild the damaged or destroyed improvements within 270 days after the occurrence of the damage or destruction, then this Lease shall terminate automatically on the 271st day without further notice. Lessor and Lessee agree that the provisions of A.R.S. § 33-343 shall not apply to this Lease. In the event that Lessee elects to repair or rebuild the improvements, any such repair or rebuilding shall be performed at the sole cost and expense of Lessee. If there are insurance proceeds resulting from such damage or destruction, Lessee shall be entitled to such proceeds, whether or not Lessee rebuilds or repairs the improvements or fixtures. Lessee has or will have constructed and maintained all improvements upon the Premises at its sole cost and expense. Lessee is entitled to the exclusive use and occupancy of said Premises and all improvements so long as this Lease continues in full force and effect.

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 this Lease, this Lease shall terminate with respect to the part of the Premises so taken, and Lessee 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) without impairing any rights of Lessor for the taking of or injury to the reversion (subject to and encumbered by this Lease).

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.

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 Lessee, unless the period of occupation and use of the condemning authority shall extend beyond the date of expiration of this Lease, in which

event the award made for such taking shall be apportioned between Lessor and Lessee as of the date of such expiration.

14.4 Notice of Condemnation. In the event any action is filed to condemn the Premises or Lessee'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 any action is filed to acquire the temporary use of the Premises or Lessee's leasehold estate or any part thereto, or in the event that any such action is threatened or any public or quasi-public authority communicates to Lessor or Lessee its desire to acquire the Premises or Lessee's leasehold estate or any part thereof, or the temporary use thereof, by a voluntary conveyance or transfer in lieu of condemnation, either Lessor or Lessee shall give prompt notice thereof to the other and to any Leasehold Mortgagee. Lessor, Lessee 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 and to make full proof of its claims. No agreement, settlement, conveyance or transfer to or with the condemning authority affecting Lessee's leasehold interest shall be made without the consent of Lessee and each Leasehold Mortgagee.

15. Purchase Option. Lessor grants to the Lessee the option, at any time during the term of this Lease, to terminate this Lease and receive conveyance of title to the Premises as additional consideration for Lessee's fulfillment of Lessee's rental obligation as described in Section 3. At the end of the term of this Lease, the title to the Premises will be conveyed "AS IS" without representation or warranty whatsoever by Quit Claim Deed, at no cost to the Lessee subject to further City Council approval.

16. Assignment: Subletting. At any time and from time to time Lessee shall have the right to assign this Lease and Lessee's leasehold interest or to sublease all or any part of the Premises to any person or persons, without the consent of Lessor. Each assignee hereby assumes all of the obligations of Lessee under the Lease. Each assignment shall automatically release the assignor from any personal liability in respect of any obligations or liabilities arising under the Lease from and after the date of assignment, and Lessor shall not seek recourse for any such liability against any assignor or its personal assets.

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

17.1 Default. The failure by Lessee to observe and perform any material provision of this Lease to be observed or performed by Lessee, where such failure continues for one hundred eighty (180) days after written notice thereof by Lessor to Lessee shall constitute a default and breach of this Lease by Lessee; 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, Lessee shall not be deemed to be in default if Lessee shall within such period commence such cure and thereafter diligently prosecute the same to completion.

17.2 Remedies. In the event of any such material default or breach by Lessee that remains uncured beyond the applicable cure period, Lessor may at any time thereafter, by written notice to Lessee, terminate this Lease.

17.3 Leasehold Mortgagee Default Protections. If any Leasehold Mortgagee shall give written notice to Lessor of its Leasehold Mortgage, together with the name and address of the Leasehold Mortgagee, then, notwithstanding anything to the contrary to 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 Lessor written notice that said Leasehold Mortgage has been satisfied:

- (a) No act or agreement between or on the part of Lessor or Lessee to cancel, terminate, surrender or modify this Lease or Lessee's right to possession shall be binding upon or effective as against the Leasehold Mortgagee without its prior written consent.
- (b) If Lessor shall give any notice, demand, election or other communication required hereunder (hereafter collectively "Notices") to Lessee hereunder, Lessor shall concurrently give a copy of each such Notice to the Leasehold Mortgagee at the address designated by it. 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 Lessor to Lessee shall be binding upon or affect Lessee 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 Lessor, may change the address to which such copies of Notices are to be sent.
- (c) The Leasehold Mortgagee shall have the right for a period of sixty (60) days after the expiration of any grace period afforded Lessee to perform any term, covenant or condition and to remedy any default by Lessee hereunder or such longer period as the Leasehold Mortgagee may reasonably require to affect a cure, and Lessor shall accept such performance with the same force and effect as if furnished by Lessee, and the Leasehold Mortgagee shall thereby and hereby be subrogated to the rights of Lessor. The Leasehold Mortgagee shall have the right to enter upon the Premises to give such performance.

17.4 Protection of Sublessee. Lessor covenants that notwithstanding any default under or termination of this Lease or of Lessee's possessory rights, Lessor, so long as a subtenant within the Premises complies with the terms and conditions of its sublease:

- (a) shall not disturb the peaceful possession of the subtenant under its sublease, and in the event of a default by a subtenant, Lessor may only disturb the possession or other rights of the subtenant as provided therein,
- (b) shall recognize the continued existence of the sublease,
- (c) shall accept the subtenant's attornment, as subtenant under the sublease, to Lessor, 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 Lessor or Lessee to cancel, terminate, surrender or modify this Lease or Lessee's right to possession shall be binding upon or effective as against any subtenant without its prior written consent.

18. New Lease.

18.1 Right to Lease. Lessor agrees that, if this Lease is terminated for any reason (including but not limited to any default by Lessee) while a theatre remains in operation on the Premises, upon request from any Leasehold Mortgagee, Lessor 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 Lessor for the new lease within sixty (60) days after the date such Leasehold Mortgagee receives written notice from Lessor that the Lease has been terminated;
- (b) Such Leasehold Mortgagee shall pay to Lessor 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 Lessor 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 Lessee, and shall further remedy any other conditions which Lessee 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 lessee under the new lease shall have the same right of occupancy to the buildings and improvements located on the Premises as Lessee 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 18 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.

18.2 Obligation. Nothing herein contained shall require any Leasehold Mortgagee to enter into a new lease pursuant to this Section 18 or to cure any default of Lessee referred to above.

18.3 Possession. If any Leasehold Mortgagee shall demand a new lease as provided in this Section 18, Lessor agrees, at the request of, on behalf of and at the expense of the Leasehold Mortgagee, upon a guaranty from it reasonably satisfactory to Lessor, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove Lessee from the Premises, but not any subtenants actually occupying the Premises or any part thereof.

18.4 Grace Period. Unless and until Lessor has received notice from each Leasehold Mortgagee that the Leasehold Mortgagee elects not to demand a new Lease as provided in this Section 18, or until the period therefor has expired, Lessor 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.

18.5 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 Lessee 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 Lessor under, or constitute a default under, this Lease, and upon such foreclosure, sale or conveyance, Lessor shall recognize the purchaser or other transferee in connection therewith as Lessee under this Lease.

19. No Merger. In no event shall the leasehold interest, estate or rights of Lessee hereunder, or of any Leasehold Mortgagee, merge with any interest, estate or rights of Lessor in or to the Premises. Such leasehold interest, estate and rights of Lessee hereunder, and of any Leasehold Mortgagee, shall be deemed to be separate and distinct from Lessor'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.

20. Surrender. On the last day of the term of this Lease or upon any termination of this Lease, the title to the Premises will be conveyed "AS IS" without representation or warranty whatsoever by Quit Claim Deed, at no cost to the Lessee subject to

further City Council approval. Lessor shall convey title to the Premises to Lessee by Quit Claim Deed at no cost to Lessee, subject to further City Council approval.

21. Trade Fixtures, Machinery and Equipment. Lessor agrees that all trade fixtures, machinery, equipment, furniture or other personal property of whatever kind and nature kept or installed on the Premises by Lessee or Lessee's subtenants may be removed by Lessee or Lessee'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. Lessee agrees that in the event of damage to the Premises due to such removal, it will repair or restore the same. Upon request of Lessee or Lessee's assignees or any subtenant, Lessor shall execute and deliver any consent or waiver forms submitted by any vendors, lessors, 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 Lessor waives, in favor of such vendor, lessor, chattel mortgagee or any holder or owner, any lien, claim, interest or other right therein superior to that of such vendor, lessor, chattel mortgagee, holder or owner. Lessor 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, lessor, chattel mortgagee, owner or holder at any time upon default by Lessee or the subtenant in the terms of such chattel mortgage or other similar documents, free and clear of any claim or lien of Lessor.

22. Estoppel Certificate. Lessor shall at any time and from time to time upon not less than ten (10) days' prior written notice from Lessee or any Leasehold Mortgagee execute, acknowledge and deliver to Lessee 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 Lessor's knowledge, any uncured defaults on the part of Lessee hereunder, or specifying such defaults if they are claimed; and (c) certifying such other matters relating to this Lease as Lessee 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. Lessor's failure to deliver a statement within the time prescribed shall be conclusive upon Lessor (a) that this Lease is in full force and effect, without modification except as may be represented by Lessee; and (b) that there are no uncured defaults in Lessee's performance.

23. General Provisions.

23.1 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.

23.2 Transfer or Encumbrance of Lessor's Interest. Lessor may not transfer or convey its interest, in whole or part, in this Lease or in the Premises during the term

of this Lease, without the prior written consent of the Lessee, which consent may be given or withheld in the Lessee's sole and absolute discretion.

23.3 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 addendums and schedules initialed by the parties, are deemed by attachment to constitute part of this Lease and are incorporated herein. The words "Lessor" and "Lessee", as used herein, shall include the plural as well as the singular. The obligations contained in this Lease to be performed by Lessee and Lessor shall be binding on Lessee's and Lessor's successors and assigns only during their respective periods of ownership.

23.4 Entire Agreement. This Lease along with any exhibits and attachments hereto constitutes the entire agreement between Lessor and Lessee relative to the Premises and this Lease and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by the party to be bound thereby. Lessor and Lessee 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.

23.5 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 enforceable to the fullest extent permitted by law.

23.6 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.

23.7 Memorandum of Ground Lease. If requested by Lessee, the parties shall complete, execute, acknowledge and record an amendment to the Memorandum of Ground Lease recorded at the time the Original Lease was executed.

23.8 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 Lessor:

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 Lessee:

Centerpoint Holdings, LLC
c/o DMB Associates, Inc.
7600 E. Doubletree Ranch Road, Suite 300
Scottsdale, AZ 85258-2137

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.

23.9 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 of 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.

23.10 Negation of Partnership. Lessor shall not become or be deemed a partner or a joint venture with Lessee by reason of the provisions of this Lease.

23.11 Leasehold Mortgagee Further Assurances. Lessor and Lessee 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 Lessee to modify, terminate or waive this Lease or any of its provisions without the prior written approval of the Leasehold Mortgagee. Lessor and Lessee 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 Lessor under this Lease.

[Signature Pages Follow]

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

ATTEST:

"CITY"

Brigitta M. Kuiper
Brigitta M. Kuiper, City Clerk

THE CITY OF TEMPE, an Arizona municipal corporation

APPROVED AS TO FORM:

By: Mark W. Mitchell
Mark W. Mitchell, Mayor

Judith R. Baumann
Judith R. Baumann, Interim City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing Development and Disposition Agreement was acknowledged before me this 9th day of May, 2013, by Mark W. Mitchell, Mayor of THE CITY OF TEMPE, an Arizona municipal corporation, and that 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.

Kay E Savard
Notary Public

My Commission Expires:



LESSEE:

CENTERPOINT HOLDINGS LLC, a Delaware limited liability company, successor by merger with Centerpoint Plaza Limited Partnership, an Arizona limited partnership

By: DMB Associates, Inc., an Arizona corporation, its Manager

By: Michael F. Burke

Its: V.P. OF DEVELOPMENT

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 28th day of May, 2013, by Michael F. Burke, the V.P. of Development of DMB Associates, Inc., an Arizona corporation, the Manager of DMB Consolidated Holdings, L.L.C., an Arizona limited liability company, the Manager of CENTERPOINT HOLDINGS LLC, a Delaware limited liability company, successor by merger with Centerpoint Plaza Limited Partnership, an Arizona limited partnership, for and on behalf thereof.

Toni K. Grucky
Notary Public

My Commission Expires:

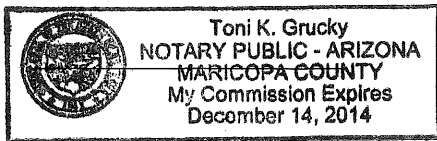


Exhibit "A"

LEGAL DESCRIPTION

LOT 4, OF CENTERPOINT ON MILL, ACCORDING TO THE PLAT OF RECORD
IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA,
RECORDED IN BOOK 1102 OF MAPS, PAGE 27