

## LAND AND IMPROVEMENTS LEASE

C2017-281D

THIS LAND AND IMPROVEMENTS LEASE ("Lease") is made and entered into as of the 12<sup>th</sup> day of August, 2020, by and between the **CITY OF TEMPE**, a municipal corporation ("Landlord"), and **Watermark Tempe I, LLC**, a Delaware limited liability company ("Tenant").

### RECITALS

A. Landlord has title of record to the real property legally described as **Lot 1, of Watermark Amended, according to plat recorded in Book 1425 of Maps, page 48, records of Maricopa County, Arizona** (the "Land"), together with all rights and privileges appurtenant thereto and all improvements and future additions thereto or alterations thereof (collectively, the "Premises").

B. The Premises are "Government Property Improvements" under A.R.S. §42-6201(2), Landlord is a "Government Lessor" under A.R.S. § 42-6201(1), and Tenant is a "Prime Lessee" under A.R.S. §42-6201(4).

C. The Premises are located within the corporate limits of Landlord and in a single central business district in a redevelopment area established pursuant to Title 36, Chapter 12, Article 3 of Arizona Revised Statutes (A.R.S. §§36-1471 et seq.) (the "CBD"). More than one year has lapsed from Landlord's designation of the CBD, and Landlord has determined (based on an estimate of an independent third party) that (i) Tenant's construction or renovation of, or improvements to, the Premises (collectively, "construction") will result in an increase in property value of at least one hundred percent, and (ii) within the term of this Lease, the economic and fiscal benefit to the state of Arizona and the City will exceed the benefits received by Tenant as the Prime Lessee under the Lease.

D. The Premises will be subject to the Government Property Lease Excise Tax as provided for under A.R.S. §42-6203 (A) and (B) (the "GPLET"). As more specifically provided herein, Landlord will abate the GPLET for the period beginning upon the first day following the date of the issuance of the certificate of occupancy for the Premises ("**Commencement Date**"), and ending eight (8) years thereafter, all as provided in A.R.S. §42-6209(A).

### AGREEMENT

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

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

hold and enjoy the Premises, including, without limitation, the right to make improvements to, and sublet the use of, the Premises.

2. Term. The term of this Lease shall be for eight (8) years, commencing on the Commencement Date and ending at midnight on the eighth (8th) anniversary of the Commencement Date, subject to earlier termination at Tenant's option, as provided herein. The parties acknowledge that the Commencement Date occurred within ten (10) years of Landlord's approval of this Lease, to the extent required by ARS Section 42-6206(C), and acknowledge and agree that the certificate of occupancy for the Premises was issued on May 18, 2020.

3. Rental; GPLET.

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

3.2 Notice of GPLET. As required under A.R.S. §42-6206(A)(1), Tenant is hereby notified of its potential tax liability under the GPLET provisions of A.R.S. § 42-6201 through § 42-6209, as now or hereafter amended. Notice is further given that failure by Tenant to pay the GPLET after notice and an opportunity to cure could result in divesting Tenant of any interest in or occupancy of the government property improvements to which this Lease applies, subject, however, to Landlord's satisfaction of its obligations and the accuracy of its representations hereunder.

3.3 Abatement. Landlord hereby abates Tenant's obligation for the GPLET with respect to the Premises pursuant to A.R.S. § 42-6209 for the eight (8) year period commencing on the Commencement Date. Landlord acknowledges receipt of Tenant's application for such abatement. Landlord represents that it has satisfied the conditions, and the Premises meets the requirements, described in ARS Sections 42-6209(A) and 42-6209(C). Landlord agrees to take any additional action reasonably requested by Tenant and which Tenant deems to be reasonably necessary for the Premises to qualify for GPLET treatment during the full Term, including, without limitation, the eight (8) year GPLET abatement. Notwithstanding the foregoing, Tenant shall comply with all requirements applicable to a Prime Lessee under the GPLET provisions including, without limitation, those provided in ARS Sections 42-6204(B) and 42-6209(B). Additionally, Tenant shall not change the use of the Premises without an amendment to this Lease, and any such amendment shall comply with the provisions of A.R.S. Section 42-6209(C).

#### 4. Leasehold Mortgage of Premises.

4.1 Subject to the applicable provisions of this Lease, Tenant or any successor 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." The parties acknowledge and agree that upon the Commencement Date and as long as the Landlord holds fee title to the Property, the Existing Deed of Trust (as defined in Section 38) will be amended to encumber only the Tenant's leasehold interest in the Premises (instead of fee title), but that upon the expiration or termination of this Lease and reversion of the Premises' title to Tenant, the Existing Deed of Trust will again encumber fee title to the Premises. All protections and notices required by this Lease to be given to a Leasehold Mortgagee shall be extended and given to the beneficiaries under the Existing Deed of Trust. Landlord agrees that this Lease shall be subject and subordinate to any Leasehold Mortgage presently existing or hereafter created upon the Premises, and to any amendments, modifications, renewals and extensions thereof, and Tenant shall execute and deliver to Leasehold Mortgagee a subordination, non-disturbance and attornment agreement in a form reasonably acceptable to Leasehold Mortgagee, in recordable form, wherein Tenant shall subordinate its rights under this Lease to the Leasehold Mortgagee.

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

4.3 Landlord shall upon request of a Leasehold Mortgagee execute, acknowledge and deliver to each Leasehold Mortgagee an instrument prepared at the sole cost and expense of Tenant, in form satisfactory to such Leasehold Mortgagee and Landlord, agreeing to all the provisions of this Section 4 and Sections 17-24 hereof.

#### 5. Taxes; Lease Obligations.

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

5.2 Protest. Tenant may, at its own cost and expense protest and contest, by legal proceedings or otherwise, the validity or amount of any such tax or assessment herein agreed

to be paid by Tenant and shall first pay said tax or assessment under protest if legally required as a condition to such protest and contest, and the Tenant shall not in the event of and during the bona fide prosecution of such protest or proceedings be considered as in default with respect to the payment of such taxes or assessments in accordance with the terms of this Lease.

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

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

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

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

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

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

7.3 Maintenance, repair or restoration of the Premises;

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

Nothing set forth herein waives or otherwise modifies the City's obligations as a municipality to provide municipal services and municipal utilities to the Premises in accordance with the requirements applicable to the provision of such services.

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

the right to enter the Premises without notice if it is addressing its responsibilities for public health or safety concerns that it is required to address as a municipality.

9. Alterations. Subject to the applicable provisions of this Lease, Tenant, without the requirement of Landlord's consent, shall have the right to construct additional improvements and to make subsequent alterations, additions or other changes to any improvements or fixtures existing from time to time, and the Premises shall include all such improvements as they exist from time to time as long as they are constructed in accordance with all applicable City laws building safety standards. In connection with any action which Tenant may take with respect to Tenant's rights pursuant hereto, Landlord shall not be responsible for and Tenant shall pay all costs, expenses and liabilities arising out of or in any way connected with such improvements, alterations, additions or other changes made by Tenant, including without limitation materialmen's and mechanic's liens. Tenant covenants and agrees that Landlord shall not be called upon or be obligated to make any improvements, alterations or repairs whatsoever in or about the Premises, and Landlord shall not be liable or accountable for any damages to the Premises or any property located thereon as a result of Landlord's status as the owner of the Premises and Landlord under this Lease. Tenant shall have the right at any time to demolish or substantially demolish improvements located upon the Premises. In making improvements and alterations, Tenant shall not be deemed Landlord's agent and shall hold Landlord harmless from any expense or damage Landlord may incur or suffer. During the Term of this Lease, title to all improvements shall at all times be vested in Landlord. All improvements shall be constructed in accordance with all applicable governmental requirements.

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

11. Insurance. During the Term of this Lease, the Tenant shall, at Tenant's expense, maintain general public liability insurance against claims for personal injury, death or property damage occurring in, upon or about the Premises. The limitation of liability of such insurance shall not be less than \$5,000,000.00 combined single limit. The minimum policy limits shall be reviewed whenever deemed appropriate by Landlord's Risk Management and may be increased as reasonably necessary, after not less than 60 days' prior written notice to Tenant, to adequately reflect current market conditions and so as to be in an amount customarily provided for similar types of facilities and uses. All of Tenant's policies of liability insurance shall name Landlord and all Leasehold Mortgagees as additional insureds, and, at the written request of Landlord,

certificates with respect to all policies of insurance or copies thereof required to be carried by Tenant under this Section 11 shall be delivered to Landlord. Each policy shall contain an endorsement prohibiting cancellation or non-renewal without at least thirty (30) days prior notice to Landlord (ten (10) days for nonpayment), provided, however, that if Tenant's insurance carrier refuses to provide such an endorsement, Tenant shall immediately notify Landlord of any notices received by Tenant relating to any potential event of cancellation or nonrenewal, and the failure to obtain such endorsement shall not be an Event of Default hereunder.. Tenant may self-insure the coverages required by this Section with the prior approval of Landlord, which will not be unreasonably withheld, and may maintain such reasonable deductibles and retention amounts as Tenant may determine.

12. Liability; Indemnity. Except for any claims and liability which could have been asserted against Landlord if Landlord were not the owner of the Premises or if Landlord were not a party to this Lease, Tenant covenants and agrees that Landlord is to be free from liability and claim for damages by reason of any injury to any person or persons, including Tenant, or property of any kind whatsoever and to whomsoever while in, upon or in any way connected with the Premises during the term of this Lease or any extension hereof, or any occupancy hereunder, Tenant hereby covenanting and agreeing to indemnify and save harmless Landlord from all liability, loss, costs and obligations on account of or arising out of any such injuries or losses, however occurring, unless caused by the sole and gross negligence or willful misconduct of Landlord, its agents, employees, or invitees as established by a court of competent jurisdiction. Landlord agrees that Tenant shall have the right to contest the validity of any and all such claims and defend, settle and compromise any and all such claims of any kind or character and by whomsoever claimed, in the name of Landlord, as Tenant may deem necessary, provided that the expenses thereof shall be paid by Tenant. The provisions of this Section shall survive the expiration or other termination of this Lease.

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

14. Condemnation.

14.1 Entire or Partial Condemnation. If the whole or any part of the Premises shall be taken or condemned by any competent authority for any public use or purposes during the Term of the Lease, this Lease shall terminate with respect to the part of the Premises so taken and

any other portion of the Premises as may be specified by Tenant, and, subject to the applicable provisions of this Lease, Tenant reserves unto itself the right to claim and prosecute its claim in all appropriate courts and agencies for any award or damages based upon loss, damage or injury to its leasehold interest (as well as relocation and moving costs), including with respect to the following sentence. In consideration of Tenant's payment for all of the cost of construction of the improvements constituting the Premises, Landlord hereby assigns to Tenant all claims, awards and entitlements relating to the Premises arising from the exercise of the power of condemnation or eminent domain, including, without limitation, any claims for loss of fee title interest in the Premises, subject to the applicable provisions of any Leasehold Mortgage.

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

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

14.4 Notice of Condemnation. In the event any action is filed to condemn the Premises or Tenant's leasehold estate or any part thereof by any public or quasi-public authority under the power of eminent domain or in the event that an action is filed to acquire the temporary use of the Premises or Tenant's leasehold estate or any part 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 (taking into account Landlord's assignment pursuant to the last sentence of Section 14.1). No agreement, settlement, conveyance or transfer to or with the condemning authority affecting the Premises or Tenant's leasehold interest shall be made without the consent of Tenant and each Leasehold Mortgagee.

## 15. Termination Option.

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

Simultaneously with, and effective as of such termination, title to the Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant, Tenant's successor, or any person or entity that succeeds to Tenant's interest through Foreclosure, and Landlord shall comply with the obligations under Article 31.

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

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

16. Assignment; Subletting.

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

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

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

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



17.2 Remedies. Upon the occurrence of an Event of Default by Tenant, subject to the rights, privileges and protections granted to the Leasehold Mortgagees hereunder, Landlord may at any time thereafter, by written notice to Tenant and all Leasehold Mortgagees, terminate this Lease. This Section constitutes the provision required under A.R.S. §42-6206(2) that failure by the prime lessee to pay the GPLET after notice and an opportunity to cure is an event of default that could result in divesting the prime lessee of any interest or right or occupancy of the government property improvement.

17.3 Leasehold Mortgagee Default Protections. If any Leasehold Mortgagee shall give written notice to Landlord of its Leasehold Mortgage, together with the name and address of the Leasehold Mortgagee (including by way of recorded Deed of Trust or similar recorded instrument), then, notwithstanding anything to the contrary in this Lease, until the time, if any, that the Leasehold Mortgage shall be satisfied and released of record or the Leasehold Mortgagee shall give to Landlord written notice that said Leasehold Mortgage has been satisfied, Landlord shall provide written notice of any default under this Lease to Leasehold Mortgagee and Leasehold Mortgagee shall have the rights described in Sections 20-25 of this Lease.

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

19. Notice to Leasehold Mortgagee. If Landlord shall give any notice, demand, election or other communication required hereunder (hereafter collectively "**Notices**") to Tenant hereunder, Landlord shall concurrently give a copy of each such Notice to the Leasehold Mortgagee at the address designated by the Leasehold Mortgagee. Such copies of Notices shall be sent by registered or certified mail, return receipt requested, and shall be deemed given three (3) business days 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, Tenant's leasehold interest, or the Leasehold Mortgagee unless a copy of the Notice shall be given to the Leasehold Mortgagee pursuant to this Section. In the case of an assignment of the Leasehold Mortgage or change in address of the Leasehold Mortgagee, the assignee or Leasehold Mortgagee, by written notice to Landlord, may change the address to which such copies of Notices are to be sent.

20. Leasehold Mortgagee Cure Rights. The Leasehold Mortgagee shall have the right to cure or eliminate such Event of Default, and shall commence the cure within thirty (30) days after the expiration of any grace period afforded Tenant to perform any term, covenant, or condition under this Lease and to remedy any Event of Default by Tenant hereunder or such longer period as the Leasehold Mortgagee may reasonably require, and Landlord shall accept such performance with the same force and effect as if furnished by Tenant, and the Leasehold Mortgagee shall thereby and hereby be subrogated to the rights of Landlord. The Leasehold Mortgagee shall have the right to enter upon the Premises to give such performance. Leasehold Mortgagee shall have the right at reasonable times and upon reasonable notice to enter upon the Premises for inspection.

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

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

(ii) the Leasehold Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire Tenant's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure and subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession).

22. Effect of Cure Upon Event of Default. The Leasehold Mortgagee shall not be required to obtain possession or to continue in possession as mortgagee of the Premises pursuant to Section 21(i) above, or to continue to prosecute foreclosure proceedings pursuant to Section 21(ii) above, if and when such Event of Default shall be cured. Moreover, such Leasehold Mortgagee, nominee or purchaser at a foreclosure sale shall immediately thereafter be entitled to all benefits that would thereafter accrue to Tenant under this Lease and become liable under this Lease to the same extent as Tenant, and Landlord hereby agrees to recognize such Leasehold Mortgagee as the Tenant under this Lease without the necessity of the execution and delivery of any further instruments on the part of Landlord to effectuate such recognition; provided, however, Landlord shall execute and deliver such further instrument or instruments evidencing such recognition as may be reasonably requested by such Leasehold Mortgagee within thirty (30) days from Landlord's receipt of such request. If a Leasehold Mortgagee, its nominee, or a purchaser at a foreclosure sale shall acquire title to Tenant's leasehold estate hereunder, an Event of Default that is not reasonably susceptible to cure by the person succeeding to the leasehold interest shall no longer be deemed an Event of Default hereunder.

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

24. Additional Consent of Leasehold Mortgagee. No option of Tenant hereunder may be exercised, and no consent of Tenant allowed or required hereunder shall be effective without the prior written consent of any Leasehold Mortgagee, except to the extent provided in Sections 15.2 and 31.

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

24.2 Liability of Leasehold Mortgagee. If any Leasehold Mortgagee becomes the Tenant hereunder, by foreclosure of the Leasehold Mortgage, deed in lieu of foreclosure or under a new Lease under Section 25 below, the parties agree and acknowledge such Leasehold Mortgagee shall not be liable or responsible for and shall not be deemed to have assumed liability for any other prior actions, omissions, defaults, breaches or other events caused by or relating to the original Tenant. Rather, such Leasehold Mortgagee shall only be liable and responsible for acts, omissions, defaults, breaches or events occurring while it is the Tenant hereunder. Nothing in this Section (i) releases the Tenant from liability arising from events during Tenant's operation of the Property, nor (ii) limits or otherwise modifies Landlord's remedy under Section 17.2 to terminate this Lease for certain Events of Default, subject to Leasehold Mortgagee's right to cure an Event of Default in accordance with the provisions of Section 20, and right to enter into a new lease in accordance with the provisions of Section 25. In the event that Leasehold Mortgagee acquires Tenant's position under the Lease, Leasehold Mortgagee assumes all terms of the Lease during the period of its interest as Tenant hereunder.

## 25. New Lease.

25.1 Right to Lease. Leasehold Mortgagee shall have the option, but not the obligation, following Leasehold Mortgagee's receipt of the Notice, and within the time period set forth herein for curing an Event of Default of Tenant, in its sole election: (a) to cure the Event of Default of Tenant, in which event Tenant shall retain its position with respect to the Lease (and in which case Tenant will be liable to Leasehold Mortgagee to repay any protective advances made by Leasehold Mortgagee); (b) in addition to any other remedies available to Leasehold Mortgagee under law, equity or contract (including but not limited to the Leasehold Mortgage and any of the other Loan Documents) to assume Tenant's position with respect to the Lease (to "**Assume**" or an "**Assumption**"); or (c) to obtain a new lease ("**New Lease**") covering the Premises naming Leasehold Mortgagee (or its designee) as Tenant by delivering to Landlord within one hundred twenty (120) days of Leasehold Mortgagee's receipt of the Notice a request for a New Lease.

25.2 If Leasehold Mortgagee agrees to Assume Tenant's position with respect to the Lease, Leasehold Mortgagee shall give written notice to Landlord of its intention to Assume on or before the expiration of any applicable cure period available to Leasehold Mortgagee, and Leasehold Mortgagee and Landlord shall execute an acknowledgement of such assumption (an "**Amendment**") and shall cause a memorandum of the Amendment to be recorded in the Official Records of Maricopa County, Arizona. The Amendment shall state that Leasehold Mortgagee has fully assumed Tenant's position with respect to the Lease, and that Leasehold Mortgagee is thereafter substituted for Tenant with respect to all Obligations, payment and performance rights and responsibilities arising under or in connection with the Lease after of the date of the execution of the Amendment. The execution or approval by Tenant of the Amendment described above in this Section 25 shall not be necessary or required, and upon and after execution and recordation of the Amendment, Landlord shall (i) look to Leasehold Mortgagee and/or Tenant for performance of the Obligations under the Lease and (ii) make and/or render to Leasehold Mortgagee all payments and/or performance (if any) required to be made by the Landlord to Tenant under the Lease.

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

25.3 If Leasehold Mortgagee elects to obtain a New Lease pursuant to this Section 25 above by delivering to Landlord a request for such New Lease, Landlord agrees that such New Lease shall be upon the same terms and conditions as the Lease and shall have a term expiring on the same date as the Lease. Notwithstanding anything to the contrary expressed or implied in this Lease, any new lease made pursuant to this Section 25 shall have the same priority as this Lease with respect to any mortgage, deed of trust, or other lien, charge, or encumbrance on the fee title to 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 the termination of this Lease.

25.4 The effectiveness of any provisions of the New Lease entered into with Leasehold Mortgagee pursuant to this Section 25 which are incapable of performance by Leasehold Mortgagee due to the laws, rules, and regulations pertaining to Leasehold Mortgagee as a financial institution shall be temporarily waived and suspended while Leasehold Mortgagee is the lessee under the New Lease. Landlord agrees that, following the termination of the Lease by Landlord on Tenant's default and until Leasehold Mortgagee has failed to request a new lease within one hundred twenty (120) days of its receipt of the Notice, Landlord shall not alter or in any way demolish any improvements on the Premises, nor modify or terminate any subleases with respect to the Premises.

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

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

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

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

29. Effect of Transfer. Neither the foreclosure of any Leasehold Mortgage (whether by judicial proceedings or by virtue of any power of sale contained in the Leasehold Mortgage), nor any conveyance of the leasehold estate created by this Lease by Tenant to any Leasehold Mortgagee or its designee by an assignment or by a deed in lieu of foreclosure or other similar instrument shall require the consent of Landlord under, or constitute a default under, this Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize the purchaser or other transferee in connection therewith as the Tenant under this Lease. In the event that Leasehold Mortgagee shall succeed to the interest of Tenant under the Lease, whether by foreclosure or assignment in lieu of foreclosure, or in the event that Leasehold Mortgagee shall enter into a New Lease with Landlord in accordance with Section 25 above, then Leasehold Mortgagee shall have the right to assign without the consent of Landlord its interest under the Lease or such New Lease to another party notwithstanding any contrary provision contained in the Lease or the New Lease. Upon the assignment of the Lease or New Lease by Leasehold Mortgagee, and the assumption by the assignee of the obligations of Leasehold Mortgagee under the Lease or New Lease, as the case may be, Leasehold Mortgagee shall have no further obligations or liability with respect to the Lease or New Lease, notwithstanding any contrary provision set forth in the Lease. Any assignee of Leasehold Mortgagee shall be entitled to all of the rights, privileges and benefits of Tenant or New Tenant provided under the Lease or the New Lease, as the case may be, including, but not limited to, application of any advance rents or deposits held by Landlord to obligations under the Lease or New Lease, and such assignee shall be subject to all obligations under the Lease or New Lease, as the case may be. Whether before or after an Assumption as defined in Section 25 above, nothing in this Lease shall constitute a release of Tenant of any obligation.

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

31. Surrender, Reconveyance.

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

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

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

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

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

35. Estoppel Certificate. Landlord shall at any time and from time to time upon not less than ten (10) days' prior written notice from Tenant, any successor or any Leasehold Mortgagee execute, acknowledge and deliver to Tenant, any successor or the Leasehold Mortgagee

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

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

### 36. General Provisions.

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

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

### 36.3 Captions; Attachments; Defined Terms.

- a. The captions of the sections of the Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Lease.
- b. Exhibits attached hereto, and addendums and schedules initialed by the parties, are deemed by attachment to constitute part of this Lease and are incorporated herein.
- c. The words "Landlord" and "Tenant", as used herein, shall include the plural as well as the singular. The obligations contained in this Lease to be performed by Tenant and Landlord shall be binding on Tenant's and Landlord's successors and assigns only during their respective periods of ownership.

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

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

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

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

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

If to Landlord:

City of Tempe



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

With a copy to:

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

If to Tenant:

Watermark Tempe I, LLC  
10866 Wilshire Boulevard, Suite 400  
Los Angeles, California 90024  
Attn: David Norouzi

With a copy to:

Werner J. Meyer, Esq.  
5727 North 7<sup>th</sup> Street, Suite 407  
Phoenix, Arizona 85014

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 three (3) business days after the postmark on the certified or registered mail, as the case may be.

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

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

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

36.12 Leasehold Mortgagee Further Assurances. Landlord and Tenant shall cooperate in, including by suitable amendment from time to time of any provision, of this Lease 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. Upon Leasehold Mortgagee's request, Tenant shall execute and deliver to Leasehold Mortgagee a subordination, non-disturbance and attornment agreement in a form reasonably acceptable to Leasehold Mortgagee, in recordable form, wherein Tenant shall subordinate its rights under this Lease to the Leasehold Mortgagee.

37. Existing Deeds of Trust. The Premises and this Lease are subject and subordinate to the terms of that certain Deed of Trust, Security Agreement and Fixture Financing Statement, in which Tenant is the trustor and Bank OZK (successor in interest to Bank of the Ozarks) ("**Existing Lender**"), is the beneficiary, and recorded September 29, 2017, at Document Number 2017-0724732, records of the Maricopa County, Arizona (the "**Existing Deed of Trust**"), securing a construction and permanent loan on the Premises, and to any amendments, modifications, renewals and extensions thereof. The notices and protections given to a Leasehold Mortgagee in this Lease shall also be given and extended by the Landlord to the Existing Lender as beneficiary under the Existing Deed of Trust (as amended and converted to a Leasehold Mortgage). Existing Lender is recognized by the parties as a third-party beneficiary of those portions of this Lease which require notices to and give protections to a Leasehold Mortgagee, until Existing Lender gives written notice to Landlord that its Leasehold Mortgage is satisfied or that its Leasehold Mortgage is released of record as a lien against all portions of the Premises.

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

ATTEST:

By: Karen Doncorio for  
City Clerk

APPROVED AS TO FORM:

Sonia M. Blain for  
City Attorney

LANDLORD:

CITY OF TEMPE, a municipal corporation

By: Andrew B. Ching  
Name: Andrew B. Ching  
Title: City Manager

TENANT:

**Watermark Tempe I, LLC**, a Delaware limited liability company

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

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. Upon Leasehold Mortgagee's request, Tenant shall execute and deliver to Leasehold Mortgagee a subordination, non-disturbance and attornment agreement in a form reasonably acceptable to Leasehold Mortgagee, in recordable form, wherein Tenant shall subordinate its rights under this Lease to the Leasehold Mortgagee.

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By: Karen Doncorio for  
City Clerk

APPROVED AS TO FORM:

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

LANDLORD:

**CITY OF TEMPE**, a municipal corporation

By: Andrew B. Ching

Name: Andrew B. Ching

Title: City Manager

TENANT:

**Watermark Tempe I, LLC**, a Delaware limited liability company

By: [Signature]

Its: Manager