

WHEN RECORDED RETURN TO:

City of Tempe Basket

**DEVELOPMENT PARCEL AGREEMENT
(Business Park Parcel)**

C2003-174C

THIS DEVELOPMENT PARCEL AGREEMENT (this "**Agreement**") is entered into this 2nd day of July, 2009, by and among the CITY OF TEMPE, an Arizona municipal corporation ("**City**"), and MIRAVISTA HOLDINGS L.L.C., an Arizona limited liability company ("**Miravista**"), (Miravista is sometimes hereinafter referred to as "**Developer**").

RECITALS

A. City and Miravista are parties to that certain City of Tempe Marketplace Redevelopment Agreement (Loop 101 and Loop 202) (c2003-174), dated as of September 25, 2003, as amended and supplemented (the "Master Agreement"), pursuant to which City and Miravista agreed on certain parameters to govern development of land identified therein as the Master Developer Property.

B. Miravista, as Developer, has prepared a Conceptual Site Plan with respect to the development of that real property within the City of Tempe more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "**Property**").

C. The Property is located within the Redevelopment Area established by City pursuant to Resolution No. 2001.44 dated September 13, 2001, as amended by Resolution No. 2002.51 dated January 9, 2003 (the "**Redevelopment Area**").

D. Pursuant to Section 6.3 of the Master Agreement, City and Developer desire to enter into this Agreement to provide for certain matters pertaining to the Property, which constitutes Phase Two of the Project, as defined and described in the Master Agreement.

E. City and Developer believe that the development and redevelopment contemplated in and required by this Agreement will result in improvements to, and new uses of, portions of the Redevelopment Area, and will benefit the City and the public in general. This Agreement is consistent with, and will further the redevelopment goals of, the Slum Clearance and Redevelopment Act of the State of Arizona, A.R.S. §36-1471, et seq., and the Redevelopment Plan approved by the City in Resolution No. 2002.51 dated January 9, 2003, as amended (the "**Redevelopment Plan**") to provide a guideline for redevelopment and other activities in the Redevelopment Area.. Without limiting the foregoing, City finds and determines that it will, directly or indirectly, realize substantial tangible and intangible benefits from Developer's performance of its obligations under this Agreement, including, but not limited to, the redevelopment of a key area within the City, increased tax revenues, increased opportunities for employment within the City, creation and retention of jobs in the City, increased tourism, expansion and improvement of available public parking facilities within the City in general and

the Redevelopment Area in particular, and will otherwise improve or enhance the economic welfare of the inhabitants of the City.

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

AGREEMENT

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

ARTICLE I DEFINITIONS

In addition to words and terms defined elsewhere herein, the following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise.

1.1 "**Commencement of Construction**" (and any derivation thereof) means (a) the obtaining of a building, excavation, grading or similar permit by an Owner for the construction of the subject Improvement, (b) actual commencement of the work described in the permit within thirty (30) days after issuance of such permit, and (c) diligent pursuit of such work to completion.

1.2 "**Developer**" shall mean and refer to Miravista and any successor-in-interest or assignee of Miravista who has assumed the responsibilities of the Developer under Articles III and IV of this Agreement.

1.3 "**Effective Date**" means the date on which this Agreement has been fully executed by all parties after approval by the City Council.

1.4 "**ID Agreement**" means a Development and Waiver Agreement outlining the specific terms and conditions of the Improvement District.

1.5 "**Improvements**" means any and all improvements that may be constructed within the Property.

1.6 "**Improvement District**" means any district created to finance the design and construction of the Public Improvements.

1.7 "**Owner**" or "**Owners**" means any owner of fee simple title to any portion of the Property, and any successor-in-interest to any portion of the Property owned by any such Owner.

1.8 "**PAD**" means a Planned Area Development, approved by the City with respect to the development of the Property within the Redevelopment Area, which sets forth the specific uses, densities, features and other development matters with respect to the Property.

1.9 "**Phase**" shall mean and refer to each separate parcel within the Project which is or may be developed by an Owner pursuant to this Agreement.

1.10 "**Project**" means the mixed use commercial project planned for the Property by Developer as generally depicted on the conceptual site plan attached hereto as **Exhibit B**.

1.11 "**Public Improvements**" means improvements to public streets and roads, public utilities, storm water retention facilities and other onsite and associated offsite public infrastructure that will be designed and constructed by the Improvement District and owned by the City.

1.12 "**Schedule of Performance**" means the schedule of performance attached hereto as **Exhibit C** and incorporated herein by this reference.

ARTICLE II GENERAL DEVELOPMENT ISSUES

2.1 **Development Parcel Agreement.** The Master Agreement contemplated that the development of the Redevelopment Area would be accomplished through a series of sales, leases, joint ventures and/or other agreements such as this Agreement. No default by Master Developer under the Master Agreement shall constitute a default by Developer or any Owner under this Agreement unless such default is also a default by Developer or such Owner under the terms of this Agreement.

ARTICLE III DEVELOPMENT SCHEDULE, PROCESS AND COMPLETION

3.1 **Schedule of Performance.** City and Developer intend that the master-planning and development of the Property shall be achieved pursuant to, and in accordance with, the milestones set forth on, the Schedule of Performance. Developer and the City shall each use commercially reasonable efforts to ensure that the master planning and development of the Property occurs in accordance with the Schedule of Performance. If Developer or any Owner believes that any task or obligation to be performed pursuant to the Schedule of Performance cannot be performed by the date required therefor, then Developer or any Owner may request that the City Manager consent to an extension of any such date pursuant to the City Manager's authority granted pursuant to Section 7.14 below, provided that any such extension shall not exceed eighteen (18) months with respect to any specific task or obligation set forth in the Schedule of Performance without further approval of the City Council.

3.2 **Conceptual Site Plan.** Attached hereto as **Exhibit B** is a conceptual site plan (the "**Conceptual Site Plan**") prepared by Developer, which sets forth the scope of development for the entire Property and depicts the types of basic land uses, permissible range of the intensity and density of such uses, and a permissible range in the relative height, bulk and size of buildings and structures to be developed on the Property. The Conceptual Site Plan also depicts an area that Developer would like City to accept as public park or other public open space; City and Developer agree to work together to determine whether such a park or public open space would be beneficial for City and what terms and conditions would apply before City would ultimately agree to accept a conveyance or dedication of such a park or public open space. City anticipates that Developer would be required to complete any necessary environmental remediation on the park or open space before City would agree to accept a conveyance or dedication. If the parties reach mutual agreement on such terms, such terms shall be set forth in a separate written agreement.

3.3 **PAD.** The Conceptual Site Plan attached hereto as **Exhibit B** sets forth the current plan for development of the entire Property. The specific locations of the buildings, structures and uses, however, will be further defined in a PAD to be submitted by Developer for approval in accordance with normally applicable City submission requirements for such applications. By the date set forth in the Schedule of Performance, Developer shall submit to City the PAD application for the Property and, upon the City's approval of the PAD, the PAD shall govern and control the development of the Property over the Conceptual Site Plan. Notwithstanding anything contained in the foregoing, however, the City acknowledges that, while the Developer intends that the Project be developed in general conformance with the PAD in various Phases, that in order to make the Project economically viable and otherwise feasible, any Owner may request amendments to the PAD as it applies to any Phase owned by such Owner within the Project.

3.4 **Approvals.** City hereby agrees that, in connection with all approval requests relating to the development of the Property and the construction of any Improvements, no new, unusual or extraordinary plan or review requirements, conditions or stipulations will be imposed on Developer or any Owner.

3.5 **Representatives.** To further the cooperation of the parties in implementing this Agreement and to expedite decisions by the City relating to the Project, City agrees to designate a representative ("**City Representative**") of the City to act as a liaison between City and Developer and between the various departments of the City and Developer. The City Representative shall be available at all times to serve as such liaison, it being the intention of this section to provide Developer with one individual as City's principal representative with respect to the Project. Developer shall also designate representatives ("**Developer Representatives**") who shall serve as a liaison between Developer and the City. The initial City Representative shall be the Rio Salado Manager, currently Nancy Ryan, and the initial Developer Representative shall be Brad Wilde, or their respective designees.

ARTICLE IV IMPROVEMENT DISTRICT

4.1 **Creation of Improvement District.** City and Developer agree to consider the creation of one or more improvement districts (the "**Improvement District**") on or adjacent to the Property or the Redevelopment Area to finance the design and construction of on-site and off-site public infrastructure in accordance with Arizona law and pursuant to and in accordance with the terms and conditions of an ID Agreement in a form acceptable to the parties. As more particularly set forth in the ID Agreement, repayment of all bonds issued by the Improvement District for the purpose of paying the costs and expenses of construction of the Public Improvements described therein shall be paid by assessments established by the Improvement District and imposed against parcels within the Improvement District. Owners shall not be entitled to any delay in billing or payment of the Improvement District assessments. The parties contemplate creation of a public park or open space, as described in Section 3.2; City hereby notifies Owners that it will not accept responsibility for payment of any Improvement District assessments levied against the public park or open space, and that the City will require that such assessments be allocated to other parcels within the Improvement District or paid in full at the time of conveyance or dedication of the park or open space to City.

4.1.1 **Assignment of Reimbursement Rights.** Prior to formation of the Improvement District, Developer will incur certain costs to design and engineer the Public Improvements. Such costs ultimately will be reimbursed to Developer pursuant to the ID Agreement or otherwise (the "**Reimbursement Payment**"). Developer acknowledges that it is currently indebted to City for

certain unpaid assessments (plus interest thereon at the rate of 4.1% per annum) against Lots 2 and 6 of Playa Del Norte for Improvement District 179 (the "ID 179 Assessments"), and desires to authorize City to offset the Reimbursement Payment against the ID 179 Assessments owed by Developer. Developer hereby (a) grants, transfers and assigns to City all of its right, title and interest in and to all payments to be received by Developer pursuant to the ID Agreement, including without limitation the Reimbursement Payment, to secure Developer's obligation for payment of the ID 179 Assessments, together with interest thereon and all other sums payable in respect thereof; and (b) authorizes City to offset the Reimbursement Payment against the ID 179 Assessments owed by Developer without further notice to or authorization from Developer. If for any reason, the Improvement District is not formed within eighteen (18) months after the date this Agreement is executed, or if Developer conveys its interest in the Miravista Property before the ID 179 Assessments owed by Developer are paid in full, Developer and City shall reach a mutually acceptable alternate payment arrangement that provides for immediate commencement of payments to City, and if the Developer and City are unable to agree upon an alternative payment arrangement, City shall be entitled to immediately exercise its right to sell the real property against which the ID 179 Assessments were levied. Further, although the Developer anticipates that the Reimbursement Payment will equal or exceed the amount of the ID 179 Assessments owed by Developer, if the Reimbursement Payment is not sufficient to pay in full the ID 179 Assessments owed by Developer and other amounts payable in respect thereof, then Developer shall pay City the difference in cash within 90 days after City notifies Developer in writing of the amount of any such deficiency, and in the event that Developer fails to remit such amount within said 90 day period, then City shall be entitled to immediately exercise its right to sell the real property against which the ID 179 Assessments were levied.

The provisions of this Section 4.1.1 are personal to Developer and may not be assigned or delegated. If Developer transfers its interest in the Miravista Property or if there is a change in the persons who own and control the Developer, the ID 179 Assessments owed by Developer shall become immediately due and payable in full, and City shall have the right to exercise all available rights and remedies against the real property against which the ID 179 Assessments were levied. Nevertheless, City agrees not to initiate any enforcement action against the real property subject to the ID 179 Assessment liens unless Developer fails to comply with its obligations under this Section 4.1.1.

Developer represents and warrants to, and covenants with, City as follows: it has the authority to grant the foregoing security interest; it has not previously assigned or granted any security or other interest in the Reimbursement Payment; it shall keep the Reimbursement Payment free of all levies, liens, encumbrances and other security interests; it shall as appropriate, execute, deliver, file and/or record such instruments, documents, statements, notices or agreements, in such form and substance, as City may reasonably request, and take such action and obtain such certificates and documents, in accordance with all applicable laws, statutes and regulations as is necessary, to create, preserve, validate, perfect, evidence and/or continue City's security interest in the Reimbursement Payment, and/or to enable City to exercise or enforce its rights with respect to such security interest; it shall supply City with any information City may reasonably request with respect to the Reimbursement Payment and/or the security interest granted pursuant to this Section 4.1.1; and, it shall not enter into any security agreement that creates a security interest in any category of its personal property generally (as distinguished from any specific items thereof), nor sign or authorize the filing of a financing statement that describes the collateral generally by class rather than specifically, unless such security agreement or financing statement expressly excludes the Reimbursement Payment from the application thereof.

Developer specifically authorizes City to execute, deliver, file and/or record such security agreements, financing statements, instruments, and other documents, statements, notices or agreements, in such form and substance as City deems advisable, and take such actions in accordance with all applicable laws, as is necessary, to create, preserve, validate, perfect, evidence and/or continue City's security interest in the Reimbursement Payment, and/or to enable City to exercise or enforce its rights with respect thereto. Developer further authorizes City to from time to time, in its own name or in Developer's name and at Developer's expense, without notice or demand to Developer, and without affecting Developer's liability for the ID 179 Assessments: notify any obligor (including the Improvement District) to make payment to City; and demand, sue for, collect, or make any compromise or settlement with reference to the Reimbursement Payment, and any other sums payable on account thereof, as City in its sole discretion chooses.

4.2 **Dedication, Acceptance and Maintenance of Public Improvements.** When all or a portion of the Public Improvements are completed, then upon written request of Developer, the City shall, in accordance with all city, state, federal and other laws, requirements or policies, accept such Public Improvements. Upon acceptance, the Public Improvements shall become public facilities and property of the City and the City shall bear all risk of loss, damage or failure to such Public Improvements. Until acceptance by the City, Developer shall bear all risk of loss, damage, or failure to the Public Improvements.

4.3 **Determination by the City.** With regard to street and road improvements that constitute part of the Public Improvements, City and Developer shall determine whether to initiate and proceed with condemnation proceedings by separate resolution of the City Council after the City determines that eminent domain proceedings to obtain such rights-of-way are legally proper and appropriate under the terms of this Agreement and all applicable law. If City determines that eminent domain proceedings to obtain such rights-of-way are legally proper and appropriate and the City acquires such rights-of-way through its power of eminent domain, Developer shall be responsible to perform any environmental remediation which may be required by all applicable laws within such rights-of-way pursuant to the provisions set forth in Section 4.5.1 below.

4.4 **City Council Authorization.** Notwithstanding any provision of this Agreement to the contrary, the City shall have no obligation to exercise its power of eminent domain under this Article IV unless the City Council has passed a resolution authorizing the use of such power for the purposes set forth in, and subject to the terms of, this Agreement. Failure of the City Council to take such action shall not constitute a breach of this Agreement.

4.5 **Condemnation Costs and Expenses.** The intent of this Agreement is that all reasonable condemnation costs and expenses and all other costs and expenses of any condemnation shall be paid (or reimbursed to the City within sixty (60) days, if applicable) by Developer, without any cost to the City, except for any City employees' time or the City's general overhead expenses related to such transactions, which shall not be reimbursed. Without limiting the foregoing, the following shall apply:

4.5.1 **Costs and Expenses.** Developer shall pay all reasonable expenses incurred by the City, directly or indirectly, in connection with any condemnation proceedings initiated by the City pursuant to Section 4.3 above. Without limiting the generality of the foregoing, Developer shall pay all environmental, investigation and/or report costs, environmental remediation, title report, title policy and escrow fees, along with all direct and indirect costs, including attorneys' fees (for

litigation, negotiation, documentation or otherwise) and related costs; filing fees; service of process fees; interest on awards and other similar amounts; jury costs; costs for deposition transcripts and the preparation of exhibits; relocation costs and all other costs of every kind or nature relating to the City's acquisition of any portion of the Property by exercise of the power of eminent domain. To maintain some reasonable control over these costs, City and Developer agree where feasible to establish pre-approved budgets for each service for which the City normally establishes a budget. In situations where pre-approved budgets are not feasible, the City agrees to exercise reasonable control over the service provider to assure that costs are consistent with the market rate for that service. Notwithstanding the foregoing, Developer shall not be required to pay for any City employee's time or the City's general overhead expenses related to obtaining any Property by eminent domain or otherwise.

4.5.2 **Interest.** Developer shall be responsible for the payment of legal interest, if any imposed on awards and for all other obligations related to condemnation awards.

4.5.3 **City Control.** City shall control all matters relating to the eminent domain proceedings.

4.6 **Use of Private Attorney.** City shall have the right to select and employ outside counsel at Developer's expense to prosecute any condemnation proceeding filed pursuant to this Article IV. City shall obtain Developer's reasonable approval before the City makes its decision regarding retention of counsel.

ARTICLE V PROPERTY TAX ABATEMENT; WAIVER

5.1 **Incentives to Owners.** Neither Developer nor any Owner shall be entitled to any incentives other than those outlined below with respect to development of the Project, including without limitation, any such additional incentives described in the Master Agreement.

5.2 **Tax Abatement and Excise Tax Incentives.**

5.2.1 **Tax Abatement and Excise Tax.** City acknowledges that the increased costs of environmental remediation and of constructing the Improvements makes the development of the Property economically feasible only if City provides Owners with all statutorily-authorized property tax abatements, including, without limitation, all such abatements currently available pursuant to the provisions of A.R.S. §§ 42-6201 through 42-6209, inclusive. Therefore, with respect to each Phase of the Project which contains a use that qualifies for excise tax abatement under the provisions of A.R.S. §§ 42-6201 through 42 6209, City agrees to grant to the Owner thereof the statutorily-authorized government property lease excise tax abatement pursuant to the provisions of A.R.S. §§ 42-6201 through 42-6209 for the eight (8) year period allowed by statute, and shall apply the applicable government property lease excise tax rate during the remaining term of the lease applicable thereto as hereinafter set forth; provided, however, that during the eight (8) year abatement period, the Owner of such Phase shall pay to the City an annual "in-lieu" payment in the amount of the lesser of (a) that portion of the ad valorem property tax which would have been applicable to such Phase but for the abatement and which would have been payable to the Tempe Unified School District, or (b) such Phase's pro rata share of the amount of \$50,000.00, which pro rata share shall be determined by dividing the total gross land area of the Property (exclusive of any portion of the Property dedicated to the City for public right-of-way or other

public purposes, such as a park or open space) by the total gross land area of such Phase. In connection with such property tax abatements, the City hereby agrees that, at the request of any Owner the City shall accept a conveyance of land and conveyance of Improvements by deed substantially in the form attached hereto as **Exhibit D** and to lease-back all such land and Improvements to the Owner for a term not to exceed forty (40) years, which term shall commence upon the issuance of the certificate of occupancy for the Improvements which are the subject of the lease (the actual term of each lease shall be subject to mutual agreement by the City and Owner, and in connection with the discussion of the term, Developer shall provide such financial, economic and other information as City may reasonably request), and upon the terms and conditions set forth in a lease substantially in the form attached hereto as **Exhibit E**, which lease shall also contain the following additional conditions:

5.2.1.1 **Insurance Provisions for Lease.** Any lease entered with the City for the purpose of providing statutorily-authorized property tax abatements shall provide that during the term of the lease, the tenant shall, at tenant's expense, carry and maintain, for the mutual benefit of the City and tenant, commercial general liability insurance against claims for bodily injury, death or property damage occurring in, upon or about the premises, with limits of not less than \$5,000,000 (which may include umbrella coverage for any amount above \$1,000,000) combined single limit per occurrence for bodily injury and property damage, including coverages for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products and completed operations. All of tenant's policies of liability insurance shall name the City and all leasehold mortgagees as additional insured and shall contain no special imitations on the coverage, scope or protection afforded to the City, its officials, employees or volunteers. The tenant's policy of liability insurance shall be primary as respect to the City and any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City. Certificates with respect to all policies of insurance required to be carried by the tenant shall be delivered to the City Representative, and shall be in form and with insurers acceptable to the City which shall clearly evidence all insurance required and provide that such insurance shall not be cancelled, allowed to expire or be materially reduced in coverage.

5.2.1.1 **Indemnification Provision for Lease.** Any lease entered with the City for the purpose of providing statutorily-authorized property tax abatements shall provide that during the term of the lease, the tenant shall indemnify, protect, defend and hold harmless, the City, its council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense arising, directly or indirectly, in whole or in part, out of the exercise of the lease.

5.3 **Waiver of Certain Development Fees.** The parties acknowledge that the future development of multi-family housing on Lots 2 and 5 as shown on the Conceptual Site Plan may be economically feasible only by the commitment of the City to waive fees for all planning, engineering, and building safety processing, excluding water and sewer development fees and residential development taxes associated with development on those lots. City agrees to waive said fees so long as construction of Improvements on Lots 2 and 5 (or such other lots as are reserved for use as multi-family housing in the PAD, but not more than two (2) lots) commences within 36 months after the date this Agreement is signed.

ARTICLE VI
DEFAULT; REMEDIES; TERMINATION

6.1 **Events Constituting Default.** A party shall be deemed to be in default under this Agreement if such party breaches or otherwise fails to perform any obligation required to be performed by such party hereunder or in the Schedule of Performance, within any time period required for such performance, or if no time for performance is specified, then sixty (60) days after written notice from the non-defaulting party specifying in reasonable detail the nature of such failure; provided, however, if such breach or default cannot reasonably be cured within such sixty (60) day period, then the party shall be in default if it fails to commence the cure of such breach within the sixty (60) days and diligently pursue the same to completion within ninety (90) days thereafter. Absent written agreement to the contrary, if such default is not cured within the above-described period, this Agreement may be automatically terminated, at the sole and absolute discretion of the non-breaching party as to the breaching party, but not as to any other parties to this Agreement. A default under the Master Agreement shall not constitute a default under this Agreement by any party, unless there has also been a default by such party under the terms of this Agreement.

6.1.1 **Additional Owner Defaults.** In addition to the foregoing, an Owner shall be deemed in default hereunder if: (a) such Owner sells, assigns, conveys or alienates any portion of the Property owned by such Owner, or any part thereof, or shall be divested of title or any interest therein in any manner or way, whether voluntarily or involuntarily except as expressly permitted herein or otherwise approved by City; (b) any petition or application for a custodian, as defined by Title 11, United States Code, as amended from time to time (the "**Bankruptcy Code**"), or for any form of relief under any provision of the Bankruptcy Code or any other law pertaining to reorganization, insolvency or readjustment of debts is filed by or against such Owner, and such petition or application is not dismissed within ninety (90) days of such filing; (c) such Owner makes an assignment for the benefit of creditors, is not paying material debts as they become due, or is granted an order for relief under any chapter of the Bankruptcy Code; (d) a custodian, as defined by the Bankruptcy Code, takes charge of any portion of the Property then owned by such Owner; (e) the dissolution or termination of existence of such Owner at any time while Owner continues to have an interest in the Property; or (f) there is a material default or material breach of any representation, warranty or covenant, or there is a material false statement or material omission, by such Owner under this Agreement.

6.2 **Dispute Resolution.** If a dispute arises under this Agreement that the parties cannot resolve between themselves, there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to commercial property development. The cost of any such mediation shall be divided equally between the parties, or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation upon the conclusion of mediation.

6.3 **No Personal Liability.** No member, official or employee of the City shall be personally liable to any Owner, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to such Owner or any successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

6.4 **Owner's Remedies.** If the City is in default under this Agreement and fails to cure any such default within the time period required as set forth in Section 6.1 above, then any Owner (a "**Terminating Owner**") may terminate this Agreement as to the portion of the Property owned by such Owner only by written notice delivered to the City; provided, however, that any such termination shall not affect, and this Agreement shall continue in full force and effect with respect to, those parcels within the Property which are not owned by a Terminating Owner or upon which Improvements have been constructed or Construction has Commenced.

6.5 **City's Remedies.** If any Owner is in default under this Agreement and fails to cure such default within the time period required by Section 6.1 (a "**Defaulting Owner**"), then City shall have the right to terminate this Agreement immediately as to that portion of the Property owned by such Defaulting Owner only, by giving written notice thereof to the Defaulting Owner; provided, however, that any such termination shall not affect, and this Agreement shall continue in full force and effect with respect to, those parcels within the Project not owned by the Defaulting Owner or upon which Improvements have been constructed or substantial construction has commenced.

6.6 **Liability and Indemnification.** Each Owner hereby agrees to, and shall, unconditionally indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, volunteers and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense arising, directly or indirectly, in whole or in part, out of the performance of this Agreement by City or such Owner, or nonperformance of this Agreement by such Owner, except to the extent such damages are the result of the sole negligence or willful misconduct of the City.

6.7 **Effect of Event of Termination.** Upon the termination of this Agreement as the result of the default or breach of a Defaulting Owner, such Defaulting Owner shall have no further rights under this Agreement; provided, however, that any such termination shall not affect, and this Agreement shall continue in full force and effect with respect to, those parcels within the Project which are owned by the Owners or upon which Improvements have been constructed or substantial construction has commenced.

ARTICLE VII GENERAL PROVISIONS

7.1 **Cooperation.** City and Developer hereby acknowledge and agree that they shall cooperate in good faith with each other and use its commercial best efforts to pursue the economic development of the Property as contemplated by this Agreement. Unless another standard is specified in this Agreement, all consents and approvals provided for in this Agreement shall not be unreasonably denied, conditioned, or delayed.

7.2 **Time of Essence.** Time is of the essence of each and every provision of this Agreement.

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

7.4 **Insurance.** With respect to any Phase which is subject to a lease as described in Section 5.2.1 above, within ten (10) days after written request by the City, each Owner will provide the City with proof of payment of premiums and certificates of insurance showing that the Owner is carrying comprehensive general liability insurance in an amount not less than \$5,000,000. Such policies of insurance shall be placed with financially sound and reputable insurers, require the insurer to give at least thirty (30) days advance written notice of cancellation to the City, and will include the City as an additional insured on such policies.

7.5 **Notices.** All notices which shall or may be given pursuant to this Agreement shall be in writing and transmitted by: (i) personal delivery; or (ii) by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at the addresses set forth below, or at such other address as a party may designate in writing or (iii) by any express or overnight delivery service [e.g. Federal Express], delivery charges prepaid:

If to the City: City Manager
City of Tempe
31 East Fifth Street
Tempe, Arizona 85281
Telephone: (480) 350-8884
Facsimile: (480) 350-8996

With a copy to: City Attorney
City of Tempe
21 East Sixth Street, Suite 201
Tempe, Arizona 85281
Telephone: (480) 350-8227
Facsimile: (480) 350-8645

If to Miravista/Developer: Miravista Holdings, L.L.C.
502 South College, Suite 303
Tempe, Arizona 85281
Attn: Bradley D. Wilde and Roberta M. Barrett
Telephone: 602-359-8400
Facsimile: 480-449-9059

With a copy to: Gammage & Burnham
Two North Central Avenue, 18th Floor
Phoenix, Arizona 85004
Attn: Manjula Vaz, Esq.
Telephone: 602-256-0566
Facsimile: 602-256-4475

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

7.7 **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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

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

7.10 **Severability.** In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the extent that the material obligations and intent of this Agreement are not vitiated.

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

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

7.13 **Recordation of Agreement.** This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after its approval and execution by the City.

7.14 **City Manager's Power to Consent.** The City hereby acknowledges and agrees that any unnecessary delay hereunder would adversely affect an Owner and/or the development of the Property, and hereby authorizes and empowers the City Manager to consent to any and all requests of any Owner requiring the consent of the City hereunder without further action of the City Council, except for any actions requiring City Council approval as a matter of law, including, without limitation, any amendment or modification of this Agreement.

7.15 **Assignment.** Subject to the provisions of this Agreement, no Owner shall have the right to assign any portion or all of such Owner's rights under this Agreement, in whole or part, except in connection with the sale, transfer or conveyance of any portion of the Property owned by such Owner and so long as such Owner has provided written notice to the City of such sale, transfer or conveyance and the identity and notice address information for the transferee. No assignment shall relieve any Owner of its obligations hereunder, unless City otherwise agrees in writing. If required by City, any assignee or transferee shall submit to City a written agreement to be fully bound by the provisions hereof. Notwithstanding that this Agreement is being recorded in the Official Records of Maricopa County, it is intended that this Agreement shall not be an encumbrance upon the title of any person purchasing or owning any portion of the Property, and that the terms and conditions of this Agreement are not covenants running with the land and that no person is bound by (or entitled to) the burdens and benefits of this Agreement unless such burdens are expressly assumed by or such benefits are expressly assigned to such person.

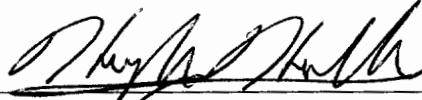
7.16 **Rights of Lenders.** The City is aware that financing for acquisition, development and/or construction of the Improvements may be provided, in whole or in part, from time to time, by one or more third parties (collectively "**Lender**") and that Lender may request a collateral assignment of this Agreement as part of the collateral for its loan to an Owner. City agrees that such collateral assignments are permissible without further consent on the part of City. If an Owner defaults under this Agreement, City shall provide notice of such Event of Default, at the same time notice is provided to such Owner, to any Lender who requests in writing that it be notified of such event and who provides City with an address to which notices are to be sent. If a Lender is permitted under the terms of its agreement with the Owner to cure a default and/or to assume such Owner's position with respect to this Agreement, City agrees to recognize such rights of Lender and to otherwise permit Lender to assume all of the rights and obligations of Owner under this Agreement. If City shall give any notice, demand, election or other communication required under this Agreement (collectively "**Notices**") to the Owner, the City shall concurrently give a copy of each such Notice to the Lender at the address designated by the Lender. Nothing contained in this Agreement shall be deemed to prohibit, restrict, or limit in any way the right of a Lender to take title to all or any portion of its collateral, pursuant to a foreclosure proceeding, trustee's sale, or deed in lieu of foreclosure. The City shall, at any time upon request by an Owner or its Lender, provide to any Lender an estoppel certificate, acknowledgement of collateral assignment, consent to collateral assignment, or other document evidencing that this Agreement is in full force and effect, that it has not been amended or modified (or, if appropriate, specifying such amendment or modification), and that no default by such Owner exists hereunder (or, if appropriate, specifying the nature and duration of any existing default) and certifying to such other matters reasonably requested by the Owner or its Lender. Upon request by a Lender, the City will enter into a separate assumption or similar agreement with such Lender consistent with the provisions of this paragraph.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the parties have executed this Development Parcel Agreement as of the date first set forth above.

CITY:

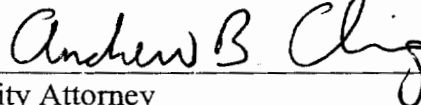
CITY OF TEMPE, an Arizona municipal corporation

By: 
Hugh L. Hallman, Mayor

ATTEST:

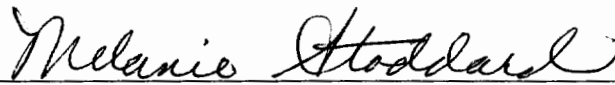

City Clerk

APPROVED AS TO FORM:


City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 2nd day of July, 2009, by Hugh L. Hallman, Mayor of the City of Tempe, who acknowledged that he/she signed the foregoing instrument on behalf of the City.


Notary Public

NOTARY SEAL:



Exhibit A
Legal Description of Property

Superior Surveying Services, Inc.

Professional Land Surveying ♦ Arizona ♦ California ♦ Nevada

21415 North 23rd Avenue ♦ Phoenix, Arizona 85027
Phone: (623)869-0223 ♦ Fax: (623)869-0726
info@ssincsz.com

Randy S. Delbridge, President
A. J. Wadsworth, Vice President
David S. Klein, Vice President

Job Number: 280808
Page 1 of 3

August 22, 2008
Revised: August 26, 2008

DESCRIPTION OF
TEMPE MARKETPLACE BUSINESS PARK

A portion of the Northeast quarter of Section 13, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at the City of Tempe brass cap in handhole marking the Center of said Section 13, from which a brass cap in handhole marking the East quarter corner of said Section 13 bears North 89 degrees 52 minutes 03 seconds East 2648.69 feet, said line is the South line of the Northeast quarter of said Section 13 and is the basis of bearings in this description;

THENCE North 02 degrees 30 minutes 48 seconds West 1362.84 feet along the West line of the Northeast quarter of said Section 13 to the Northerly most Northwest corner of Lot 7 TEMPE MARKETPLACE AMENDED, recorded in Book 969, page 20, Maricopa County Records, to the POINT OF BEGINNING;

THENCE continuing North 02 degrees 30 minutes 48 seconds West 681.00 feet to the Southerly right-of-way line of State Route 202L (Red Mountain Freeway), from which point an ADOT aluminum cap flush marking the North quarter corner of said Section 13 bears North 02 degrees 30 minutes 48 seconds West 681.84 feet, said point is also the Northeast corner of Lot 23, TEMPE MARKETPLACE AMENDED, recorded in Book 969, page 20, Maricopa County Records;

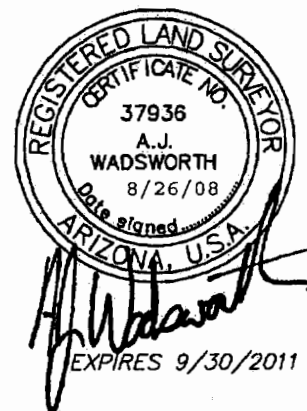
THENCE along said Southerly right-of-way line of State Route 202L (Red Mountain Freeway) the following five courses and distances:

THENCE North 84 degrees 16 minutes 18 seconds East 231.76 feet;

THENCE North 84 degrees 44 minutes 58 seconds East 639.52 feet;

THENCE South 84 degrees 23 minutes 37 seconds East 343.33 feet;

CONTINUED on Page 2 of 3...



Superior Surveying Services, Inc.

Professional Land Surveying ♦ Arizona ♦ California ♦ Nevada

21415 North 23rd Avenue ♦ Phoenix, Arizona 85027
Phone: (623)869-0223 ♦ Fax: (623)869-0726
info@ssincsz.com

Randy S. Delbridge, President
A. J. Wadsworth, Vice President
David S. Klein, Vice President

Job Number: 280808
Page 2 of 3

Revised: August 22, 2008
August 26, 2008

...CONTINUED from Page 1 of 3

THENCE South 69 degrees 17 minutes 19 seconds East 176.74 feet

THENCE South 11 degrees 37 minutes 27 seconds East 62.67 feet to the Northwest corner of Parcel No. 2, described in 2007-1181334, Maricopa County Records;

THENCE along the Easterly line of that property described in said 2007-1181334, the following seven courses and distances:

THENCE South 57 degrees 48 minutes 06 seconds East 330.87 feet;

THENCE South 07 degrees 03 minutes 35 seconds West 8.66 feet;

THENCE South 53 degrees 51 minutes 57 seconds East 12.25 feet;

THENCE North 59 degrees 12 minutes 16 seconds East 9.82 feet;

THENCE South 57 degrees 32 minutes 48 seconds East 18.82 feet;

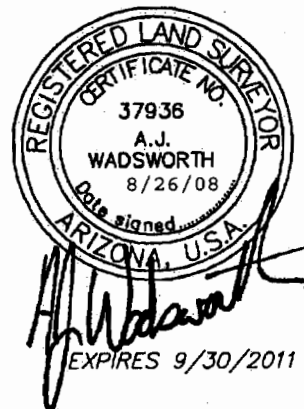
THENCE South 46 degrees 47 minutes 41 seconds East 206.10 feet;

THENCE South 33 degrees 04 minutes 30 seconds East 305.81 feet to the Northerly boundary of Parcel No. 2 described in 2007-0466715, Maricopa County Records;

THENCE South 86 degrees 26 minutes 39 seconds West 144.46 feet along said Northerly boundary of Parcel No. 2 to a line 825.00 feet West of and parallel with the East line of the Northeast quarter of said Section 13;

THENCE South 01 degree 40 minutes 52 seconds East 1281.93 feet along said parallel line to a line 77.00 feet North of and parallel with the South line of said Northeast quarter;

CONTINUED on Page 3 of 3...



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Randy S. Delbridge, President
A. J. Wadsworth, Vice President
David S. Klein, Vice President

Job Number: 280808
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August 22, 2008
Revised: August 26, 2008

...CONTINUED from Page 2 of 3

THENCE South 89 degrees 52 minutes 03 seconds West 165.06 feet along said parallel line to a line 990.00 feet West of and parallel with the East line of said Northeast quarter;

THENCE South 01 degrees 40 minutes 52 seconds East 37.01 feet along said parallel line to a line 40.00 feet North of and parallel with the South line of said Northeast quarter;

THENCE South 89 degrees 52 minutes 03 seconds West 380.06 feet along said parallel line;

THENCE North 00 degrees 15 minutes 16 seconds West 37.00 feet to a line 77.00 feet North of and parallel with the South line of said Northeast quarter;

THENCE South 89 degrees 52 minutes 03 seconds West 428.24 feet along said parallel line to the beginning of a non-tangent curve the center of which bears South 00 degrees 08 minutes 11 seconds East 2919.79 feet;

THENCE Westerly along the arc of said non-tangent curve through a central angle of 02 degrees 40 minutes 39 seconds an arc distance of 136.45 feet;

THENCE South 87 degrees 11 minutes 10 seconds West 219.93 feet to a line 495.00 feet East of and parallel with the West line of said Northeast quarter, and also the East line of Lot 7 of said TEMPE MARKETPLACE AMENDED;

THENCE North 02 degrees 30 minutes 48 seconds West 1298.41 feet along said parallel line to the North line of the Southwest quarter of the Northeast quarter of said Section 13;

THENCE South 89 degrees 58 minutes 02 seconds West 495.46 feet along said North line, and also the North line of said Lot 7 to the POINT OF BEGINNING.

COMPRISING 67.880 acres or 2,956,852 square feet more or less, subject to all easements of record.

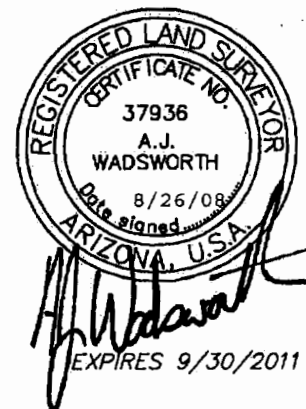


EXHIBIT B
Conceptual Site Plan

Original on file with the City Clerk.

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

Timeline to Perform Task from Execution of Agreement	Task/Obligation
6 months	Submit entitlement package including the PAD
24 months	Commence Environmental Clean-up and Geotechnical Work
36 months	Commence Construction of Improvements
52 months	Substantially complete construction of initial building improvements within any Phase of the Project pursuant to the approved PAD

EXHIBIT D

Deed and Bill of Sale for Improvements

WHEN RECORDED, RETURN TO:

City of Tempe Basket

DEED AND BILL OF SALE FOR IMPROVEMENTS

FOR THE CONSIDERATION OF TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the undersigned, _____, a(n) _____ ("**Grantor**"), does hereby convey to the CITY OF TEMPE, an Arizona municipal corporation ("**Grantee**"), all improvements constructed for and by Grantor which are located on that certain real property described on Exhibit A which is incorporated herein by this reference. Subject to current taxes, assessments, reservations in patents and all easements, rights-of-way, encumbrances, liens, covenants, conditions and restrictions as may appear of record, the undersigned does hereby warrant the title to such improvements against all persons whomsoever.

DATED this ____ day of _____, 200__.

_____, a(n) _____

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by _____, as _____ of _____, a(n) _____, for and on behalf of such _____.

Notary Public

My Commission Expires: _____

Exhibit E

WHEN RECORDED, RETURN TO:

City of Tempe Basket

LAND AND IMPROVEMENTS LEASE

THIS LAND AND IMPROVEMENTS LEASE (“**Lease**”) is made and entered into as of the _____ day of _____, 2009 by and between the **CITY OF TEMPE**, a municipal corporation (“**Landlord**”), and _____, a limited liability company (“**Tenant**”).

RECITALS

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

AGREEMENT

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

1. Quiet Enjoyment. Landlord covenants and agrees with Tenant that conditioned upon Tenant's paying the Total Rent herein provided and performing and

fulfilling all the covenants, agreements, conditions and provisions herein to be kept, observed or performed by Tenant, Tenant may at all times during the term hereof peaceably, quietly and exclusively have, hold and enjoy the Premises.

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

3. Rental. Tenant covenants to pay to Landlord as rental for the Premises the sum of \$10.00 per year on the Commencement Date and every anniversary thereof. Tenant shall have the right to prepay the 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.

4. Leasehold Mortgage of Premises.

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

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

5. TAXES; LEASE OBLIGATIONS.

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

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

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

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

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

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

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

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

9. Alterations. Subject to the applicable provisions of this Lease, Tenant shall have the right to construct additional improvements and to make subsequent alterations, additions or other changes to any improvements or fixtures existing from time to time, and the Premises shall constitute all such improvements as they exist from time to time. In connection with any action which Tenant may take with respect to Tenant's rights pursuant hereto, Landlord shall not be responsible for and Tenant shall pay all costs, expenses and liabilities arising out of or in any way connected with such improvements, alterations, additions or other changes made by Tenant, including without limitation materialmen's and 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. Tenant shall have the right at any time to demolish or substantially demolish improvements located upon the Premises. In making improvements and alterations, Tenant shall not be deemed Landlord's agent and shall hold Landlord harmless from any expense or damage Landlord may incur or suffer. During the term of this Lease, title to all improvements shall at all times be vested in Landlord.

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

execute and deliver (in recordable form where appropriate) all other instruments and perform all other acts reasonably necessary or appropriate to the development, construction, demolition, redevelopment or reconstruction of the Premises.

11. Insurance. During the term of this Lease, the Tenant shall, at Tenant's expense, maintain general public liability insurance against claims for personal injury, death or property damage occurring in, upon or about the Premises. The limitation of liability of such insurance during the first five years of the term shall not be less than \$5,000,000.00 combined single limit. The minimum policy limits shall be increased as of the fifth anniversary of the Commencement Date to an amount equal to \$5,000,000.00 multiplied by a fraction, the numerator of which is the Consumer Price Index--All Items--All Consumers--U.S. Cities Average--(1982 - 1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics (the "CPI") for the month three months prior to such fifth anniversary and the denominator of which is the CPI for the month during which the Commencement Date occurs. In the event the CPI is discontinued or substantially modified, Tenant shall substitute such alternative price index, published by the United States Government or other generally accepted source for such information, reconciled to the Commencement Date. 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). Tenant may self-insure the coverages required by this Section with the prior approval of Landlord, which will not be unreasonably withheld, and may maintain such reasonable deductibles and retention amounts as Tenant may determine.

12. Liability; Indemnity. Tenant covenants and agrees that Landlord is to be free from liability and claim for damages by reason of any injury to any person or persons, including Tenant, or property of any kind whatsoever and to whomsoever while in, upon or in any way connected with the Premises during the term of this Lease or any extension hereof, or any occupancy hereunder, Tenant hereby covenanting and agreeing to indemnify and save harmless Landlord from all liability, loss, costs and obligations on account of or arising out of any such injuries or losses, however occurring, unless caused by the sole and gross negligence or willful misconduct of Landlord, its agents, employees, or invitees. Landlord agrees that Tenant shall have the right to contest the validity of any and all such claims and defend, settle and compromise any and all such claims of any kind or character and by whomsoever claimed, in the name of Landlord, as Tenant may deem necessary, provided that the expenses thereof shall be paid by Tenant. The provisions of this Section shall survive the expiration or other termination of this Lease.

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

14. Condemnation.

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

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

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

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

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

15. Termination Option.

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

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

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

Landlord and Tenant agree to cooperate in all respects to ensure that the remaining unreleased portions of the Premises shall remain subject to this Lease and the Tax.

16. Assignment; Subletting.

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

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

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

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

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

17.3 Leasehold Mortgagee Default Protections. If any Leasehold Mortgagee shall give written notice to Landlord of its Leasehold Mortgage,

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

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

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

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

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

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

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

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

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

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

24.1 Protection of Subtenant. Landlord covenants that notwithstanding any default under or termination of this Lease or of Tenant's possessory rights, Landlord: (i) so long as a subtenant within the Premises complies with the terms and conditions of its sublease, shall not disturb the peaceful possession of the subtenant under its sublease, and in the event of a default by a subtenant, Landlord may only disturb the possession or other rights of the subtenant as provided in the tenant's sublease, (ii) shall recognize the continued existence of the sublease, (iii) shall accept the subtenant's attornment, as subtenant under the sublease, to Landlord, as landlord under the sublease, and (iv) shall be bound by the provisions of the sublease, including

all options, and shall execute documents as may be reasonably required by such subtenants to evidence these agreements. Notwithstanding anything to the contrary in this Lease, no act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender or modify this Lease or Tenant's right to possession shall be binding upon or effective as against any subtenant without its prior written consent.

25. New Lease.

25.1 Right to Lease. Landlord agrees that, in the event of termination of this Lease for any reason (including but not limited to any default by Tenant), Landlord, if requested by any Leasehold Mortgagee, will enter into a new lease of the Premises with the most senior Leasehold Mortgagee requesting a new lease, which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of the original term of this Lease, at the rent and upon the terms, covenants and conditions herein contained, provided:

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

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

25.3 Notwithstanding anything to the contrary expressed or implied in this Lease, any new lease made pursuant to this Section 25 shall have the same priority as this Lease with respect to any mortgage, deed of trust, or other

lien, charge, or encumbrance on the fee of the Premises, and any sublease under this Lease shall be a sublease under the new Lease and shall not be deemed to have been terminated by their termination of this Lease.

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

27. Possession. If any Leasehold Mortgagee shall demand a new lease as provided in Section 25, Landlord agrees, at the request of, on behalf of and at the expense of the Leasehold Mortgagee, upon a guaranty from it reasonably satisfactory to Landlord, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove the original Tenant from the Premises, but not any subtenants actually occupying the Premises or any part thereof.

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

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

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

31. Surrender, Reconveyance.

31.1 Reconveyance Upon Termination or Expiration. On the last day of the term of this Lease or upon any termination of this Lease, whether under Article 15 above or otherwise, title to the Premises (including all

improvements constituting a part thereof) shall automatically vest in Tenant at no cost or expense to Tenant other than as set forth in Section 33 below.

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

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

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

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

Tenant or the subtenant in the terms of such chattel mortgage or other similar documents, free and clear of any claim or lien of Landlord.

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

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

36. General Provisions.

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

36.2 Transfer or Encumbrance of Landlord's Interest. Landlord may not transfer or convey its interest in this Lease or in the Premises during the term of this Lease without the prior written consent of Tenant, which consent may be given or withheld in Tenant's sole and absolute discretion. In the event of permitted sale or conveyance by Landlord of Landlord's interest in the Premises, other than a transfer for security purposes only, Landlord shall be relieved, from and after the date specified in such notice of transfer, of all obligations and liabilities accruing thereafter on the part of the Landlord, provided that any funds in the hands of Landlord at the time of transfer in which Tenant has an interest, shall be delivered to the successor of Landlord. This Lease shall not be affected by any such sale and Tenant agrees to attorn to the purchaser or assignee provided all of Landlord's obligations hereunder are assumed in writing by the transferee. Landlord shall not grant or create mortgages, deeds of trust or other encumbrances of any kind against the

Premises or rights of Landlord hereunder, and, without limiting the generality of the foregoing, Landlord shall have no right or power to grant or create mortgages, deeds of trust or other encumbrances superior to this Lease without the consent of Tenant in its sole and absolute discretion. Any mortgage, deed of trust or other encumbrance granted or created by Landlord shall be subject to this Lease, all subleases and all their respective provisions including, without limitations, the options under this Lease and any subleases with respect to the purchase of the Premises.

36.3 Captions; Attachments; Defined Terms.

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

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

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

36.6 Binding Effect; Choice of Law. The parties hereto agree that all the provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each

separate paragraph hereof. All of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall be governed by the laws of the State of Arizona.

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

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

If to Landlord:

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

With a copy to:

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

If to Tenant:

With a copy to:

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

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

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

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

36.12 Leasehold Mortgagee Further Assurances. Landlord and Tenant shall cooperate in including in this Lease by suitable amendment from time to time any provision which may be reasonably requested by any proposed Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Lease, of allowing that Leasehold Mortgagee reasonable means to protect or preserve the lien of its Leasehold Mortgage upon the occurrence of a default under the terms of this Lease and of confirming the elimination of the ability of Tenant to modify, terminate or waive this Lease or any of its provisions without the prior written approval of the Leasehold Mortgagee. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the term or rent under this Lease nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

37. Development Agreement. Landlord and Tenant entered into that Development Agreement dated _____, C _____ (the "Development Agreement") pursuant to which Tenant agreed to certain terms and provisions relating to tax abatement, including payment of certain amounts in lieu of school taxes. All requirements of the Development Agreement are incorporated herein by this reference, such that if Tenant fails to pay such in lieu amounts, or to perform any other covenants in the Development Agreement, and does not cure the same within any grace or cure period specified in the Development Agreement, Landlord may elect to terminate this Lease and convey the Premises to Tenant, in addition to any other remedies available to Landlord against Tenant for such default by Tenant.

38. Enhanced Services District Assessments. Tenant acknowledges that the Property is located within an Enhanced Services District and that the Premises would otherwise be subject to an assessment that would normally be collected along with property taxes. In addition to all other amounts that Tenant is required to pay hereunder, Tenant shall pay to City all amounts that would have been assessed against the Premises by reason of its inclusion in the Enhanced Services District, semiannually within thirty (30) days after City submits written request for payment.

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

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

LANDLORD:

CITY OF TEMPE, a municipal corporation

By: _____
Name: _____
Title: _____

TENANT:

EXHIBIT "A"

Land

EXHIBIT "B"

WHEN RECORDED, RETURN TO:

MEMORANDUM OF LAND AND IMPROVEMENTS LEASE

THIS MEMORANDUM OF LAND AND IMPROVEMENTS LEASE ("Memorandum") is made and entered into as of the ____ day of _____, 200__, by and between the CITY OF TEMPE, an Arizona municipal corporation ("City"), and _____, a ____ company ("_____").

1. The City and _____ have entered into that certain Land and Improvements Lease, dated _____, 200__ ("Lease"), whereby the City leases to _____ that real property and improvements more particularly described in Exhibit "A" attached hereto and by this reference incorporated herein ("Property").

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

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

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

CITY:

CITY OF TEMPE, an Arizona municipal corporation

By: _____

Name: _____

Title: _____

TENANT:

STATE of)
) ss.
County of)

The foregoing instrument was acknowledged before me this ___ day of _____ 200__ by _____, _____ of CITY OF TEMPE, an Arizona municipal corporation.

Notary Public

My Commission Expires:

STATE of)
) ss.
County of)

The foregoing instrument was acknowledged before me this ___ day of _____, 200__ by _____, the _____ of _____, a _____.

Notary Public

My Commission Expires:
