

WHEN RECORDED, RETURN TO:

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

C2015_165-54-1-1--

DEVELOPMENT AGREEMENT

[C2015-165]

Ordinance No. O2015.32

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made as of the 30th day of July, 2015 (the “**Effective Date**”), between the **CITY OF TEMPE**, an Arizona municipal corporation (“**City**”), and **OPUS DEVELOPMENT COMPANY, L.L.C.**, a Delaware limited liability company (“**Developer**”).

RECITALS

A. Developer has entered into a contract to purchase approximately 3.22 acres of real property located on the north side of University Drive between Myrtle Avenue and Forest Avenue and legally described in *Exhibit A* attached hereto and incorporated herein by this reference (the “**Property**”). The Property is located in a downtown redevelopment area as described in A.R.S. §36-1471, *et seq.*

B. Developer desires to develop the Property into a mixed-use project consisting of (i) residential dwelling units, (ii) hotel rooms, and related service and meeting space, (iii) restaurant space, (iv) retail space, and (v) structured parking facilities, and generally described in *Exhibit C* (the “**Project**”).

C. City and Developer hereby acknowledge and agree that significant benefits will accrue to City from the development of the Project by Developer, including, without limitation, increased tax revenues, the creation of jobs in the City, and improved or enhanced economic welfare of the inhabitants of the City.

D. City hereby finds that upon execution of this Agreement, the conditions stated in Resolution 2010.76 will have been satisfied provided that the Government Property Lease is executed on or before May 20, 2020.

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

AGREEMENT

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

ARTICLE I **DEFINITIONS**

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

1.1 **“Certificate of Occupancy”** means either (a) a certificate of occupancy (final, temporary, shell, conditional, or otherwise) for any buildings or improvements constructed on the Property issued by the Community Development Department and City Public Works Department of the City of Tempe, or (b) a certificate of completion in the form of *Exhibit B* hereto issued by the City of Tempe Community Development Department certifying that a building or other improvement constructed on the Property has been substantially completed.

1.2 **“City”** means the City of Tempe, Arizona, an Arizona municipal corporation, and any successor public body or entity.

1.3 **“Developer”** means Opus Development Company, L.L.C., a Delaware limited liability company, and its successors and assigns permitted in accordance with Section 5.7 below.

1.4 **“Force Majeure Delay”** means a delay caused by fire, explosion or other casualty; earthquake, lightening, and other severe or unusual weather conditions for Tempe, AZ or other acts of God; acts of public enemies, war, terrorism, riot, insurrection; governmental regulations of the sale of materials and supplies or the transportation thereof; unusual delays in transportation; strikes, lock outs or boycotts directly affecting the work of construction; embargoes and shortages of material, energy, fuel or labor resulting directly from lack of market availability; governmental control or diversion, delays in approvals required for the Project; concealed conditions in the soil; action or inaction of governmental or quasi-governmental authorities (including any utility companies), including delays in performing any work on or about the Property that is a necessary precedent to construction of the Project; and other similar causes beyond Developer’s reasonable control, excluding financial difficulty or inability.

1.5 **“Improvements”** means all public and private improvements that may be constructed from time to time on the Property, including, without limitation, all structures, buildings, roads, driveways, parking areas, walls, landscaping and other improvements of any type or kind, or any other alteration built by Developer or City, as the case may be, pursuant to the terms of this Agreement.

1.6 **“PAD”** means a Planned Area Development for the Property approved by City, and any other Planned Area Development or amendments hereafter approved by City with

respect to the development of the Project or any Phase of the Project that sets forth the specific uses, densities, features and other development matters.

1.7 **“Parcel”** means a specific portion of the Property which shall be all or a portion of the Property owned by Developer, City or other public or private third parties not part of this Agreement.

1.8 **“Phase”** means each separate component or portion of the Project which is or may be developed by Developer pursuant to this Agreement. For example, a Phase may include all or a portion of the residential components of the Project, all or a portion of the retail components of the Project, all of the hotel component of the Project, and/or the Parking Garage (as hereinafter described).

1.9 **“Project”** means the mixed-use development of the Property described in Recital B.

1.10 **“Property”** means the real property described in Recital A.

1.11 **“Completion”** (or any variation such as “Complete”) means with respect to the Project or any component thereof, issuance of a Certificate of Occupancy therefor.

ARTICLE II DEVELOPMENT PLAN

2.1 **Duration of Development Agreement.** The term of this Agreement shall commence on the Effective Date and continue until the later of (a) May 20, 2020 unless sooner terminated pursuant to Section 3.2(a) below or (b) the date on which the True Up Payment has been paid in full; but in no event earlier than the expiration or termination of all Government Property Leases (defined in Section 3.8) executed prior to such date.

2.2 **General Cooperation.** City agrees to use its reasonable best efforts to assist Developer or its affiliates in the development of the Project, including any assistance with other governmental agencies as appropriate.

ARTICLE III DEVELOPMENT MATTERS

3.1 **Schedule of Performance.** City and Developer intend that the Project shall be developed pursuant to, and in accordance with, the milestones set forth on the “Schedule of Performance” attached hereto as *Exhibit D*. Developer shall use commercially reasonable efforts to develop the Project in accordance with the Schedule of Performance.

3.2 **Compliance with Schedule of Performance; Automatic Termination Extension.**

(a) **Compliance with Schedule of Performance.** Subject to Force Majeure Delays any extension exercised by Developer pursuant to Section 3.2(c), and any extensions

granted by City, if Developer fails to Complete the Project in accordance with the Schedule of Performance, then this Agreement shall terminate. No notice of such termination shall be required, as the passage of time without completion of the appointed task cannot be cured. Any termination of this Agreement pursuant to this Section, such shall not terminate any Government Property Leases executed by City and Developer prior to such termination. On any such termination, Developer shall have no further obligation to develop the Project pursuant to this Agreement. Developer is free at any time to request an extension of the dates set forth in the Schedule of Performance; however, City may grant or deny any such request in its unfettered discretion.

(b) **Force Majeure Extension.** Developer will promptly notify City after a Force Majeure Delay has occurred, and the Schedule of Performance will be extended for a period equivalent to the period of time the progress of the Project is delayed by the Force Majeure Delay.

(c) **Developer Extension.** So long as no then-current Developer Default is continuing, Developer shall also have the right to extend the time for performance of any item listed on the Schedule of Performance as hereafter provided. Developer may extend any single item (which shall operate to extend all subsequent items for the same period) listed on the Schedule of Performance once for a period not to exceed one hundred eighty (180) days by giving written notice to City not less than thirty (30) days before the then-scheduled performance date, and paying to City a nonrefundable extension fee of \$100,000.

3.3 Development Plan. Developer shall, at its sole cost and expense, develop the Project in general conformance with the description of the Project set forth in the PAD. City and Developer acknowledge that, while Developer intends to develop the Project in general conformance with the PAD, to make the Project economically viable and otherwise feasible, Developer may request amendments to the PAD. City shall process all submittals made by Developer in accordance with its normal review processes and requirements in connection with its approval of such submittals.

3.4 Signage. City and Developer hereby acknowledge and agree that signage for the Project is a material part of the distinctive character and nature of the Project and is otherwise essential to the successful development, marketing, and leasing of the Project. Therefore, the parties acknowledge and agree that appropriate signage will and should be an integral part of the Project and will be necessary to attract high quality tenants to the Project. City and Developer agree to coordinate their efforts and agree on appropriate signage for the Project. City agrees that it will consider approval of unique signage concepts which may be proposed by Developer for the Project in accordance with its normal process for such requests. City authorizes and empowers the Director of Community Development to consent to any request of Developer for sign approval that meet the intent of the Project and deviate from the Tempe Zoning and Development Code.

3.5 Permits, Licenses and Easements.

(a) Subject to Developer's material compliance with all terms, covenants and conditions of this Agreement, City agrees to issue to Developer or its designee and/or renew encroachment permits over those portions of University Drive, Myrtle Avenue, 7th Street, and

Forest Avenue contiguous to the Property for architectural elements, overhead awnings/shading, valet parking stations, porte cocheres, subterranean foundations, soil nails, vaults, lateral support systems and outdoor dining. Outdoor dining shall be associated with restaurants or food service providers operating from within the Project as set forth in the PAD, and subject to receipt by the restaurant or food service provider of all requisite licenses and permits required for operation of such business at the Project.

(b) Subject to Developer's material compliance with all terms, covenants and conditions of this Agreement, City agrees to grant to Developer or its contractor a temporary construction license allowing the operation of cranes or other equipment over, on and under over those portions of University Drive, Myrtle Avenue, 7th Street, and Forest Avenue contiguous to the Property in connection with the construction of the Project and such other temporary construction licenses as may be necessary in connection with construction of the Project.

(c) Subject to Developer's compliance with all terms, covenants and conditions of this Agreement and any applicable City ordinances, City agrees to grant to Developer shoring permits for construction of the Parking Garage.

(d) Any permits, licenses and easements granted pursuant to this Section will run with the title to the Property.

3.6 Development Impact Fees. Provided that Developer is in all material respects in compliance with this Agreement, City hereby agrees that pursuant to A.R.S. §9-463.05 any new or increased development fees adopted by City shall not be assessed against the Project.

3.7 Parking. As part of the development of the Project, Developer shall construct, maintain, and operate a parking structure containing approximately 1,040 vehicular parking spaces (the "**Parking Garage**"), which shall generally be consistent with the parking study for the Project. At least 227 parking spaces in the Parking Garage shall be made available as general public parking spaces (the "**General Public Spaces**") and shall otherwise satisfy the requirements of the PAD. The General Public Spaces shall be available on a first come, first served basis on an hourly, daily or other short-term fee basis. Prior to opening that portion of the Parking Garage that is accessed from Myrtle Avenue and that includes the General Public Spaces (the "**Public Garage**") to the public and before entering into any agreement with any third party to manage the Public Garage, Developer will request that the Downtown Tempe Authority ("**DTA**") submit a proposal to manage the Public Garage and if the DTA elects to do so and the terms of that proposal are acceptable to Developer, in its sole discretion, Developer will execute an agreement with the DTA to manage the Public Garage.

3.8 Government Property Leases.

(a) **Property Tax Abatements.** City hereby acknowledges and agrees that if the Project or any component thereof is Completed as contemplated in compliance with the Schedule of Performance (as it may be amended or extended) and Developer has otherwise satisfied its obligations, in all material respects, under this Agreement (taking into account all applicable cure periods, if any), then Developer shall be entitled to all statutorily-authorized property tax abatements available pursuant to the provisions of A.R.S. §§ 42-6201 through 42-6209,

inclusive, as in effect on May 20, 2010 which were reserved in Resolution 2010.76. Upon execution of this Agreement, the conditions stated in Section 2 of such Resolution shall have been satisfied.

(b) **Lease of Improvements.** Upon issuance of a Certificate of Occupancy for the Project or any component thereof, (i) each Improvement that has received a Certificate of Occupancy shall be conveyed to City by a special warranty deed in substantially the form of ***Exhibit E*** attached hereto, or a form otherwise mutually acceptable to City and Developer, and (ii) City shall lease back such Improvement (together with the underlying Parcel) to Developer or its designee pursuant to a separate Land and Improvements Lease substantially in the form of ***Exhibit F*** attached hereto, or a form otherwise mutually acceptable to City and Developer (each a “**Government Property Lease**”).

(c) **Lease Term.** The term of each Government Property Lease shall be for a period of eight (8) years from the date of issuance of a Certificate of Occupancy for the improvements constructed on the Property subject to the Government Property Lease and the conveyance of such Property and improvements to City.

(d) **Voluntary Contribution.** To assist the Tempe Union High School Foundation and the Tempe Impact Education Foundation (together, the “**Foundations**”) with their important educational missions, Developer agrees to make a voluntary contribution to the Foundations in the collective amount of \$25,000 (half to each Foundation) per year for four (4) years, commencing on the date of execution of the first Government Property Lease and continuing on each anniversary thereof until the aggregate of such payments equals \$100,000; provided that Developer may at any time elect to prepay such amounts, so long as the entire \$100,000 is paid. The Foundations are intended third party beneficiaries of the provision of this Section, and shall have the exclusive power to enforce such provisions during the term of this Agreement.

3.9 Utilities. City acknowledges that utility lines, irrigation lines and other facilities (“**Utilities**”) currently located within the rights-of-way surrounding the Project may need to be relocated and new Utilities may need to be installed to service the Project. City agrees to cooperate in good faith with Developer and the utility providers to facilitate the installation or relocation of Utilities for the Project; provided that any costs or expenses payable to such utility providers shall be borne by Developer.

3.10 Approvals. City hereby acknowledges that the development of the Project will occur over a span of a number of years and will require City’s ongoing participation in the review and approval of design review of various items, including but not limited to, plans, condominium plats, parcel splits, infrastructure plans, parking plans, building plans, special use permits, variances, building permits and other plans, permit applications and inspections, which are part of City’s current building and development requirements (the “**Approval Requests**”). City hereby agrees that, in connection with all Approval Requests relating to development of the Property and the construction of the Improvements, no new, unusual or extraordinary plan or review requirements, conditions or stipulations will be imposed on Developer.

3.11 Public Gathering Space Developer shall grant to City a non-exclusive perpetual license (the “**Plaza License**”) over certain portions of the Property generally depicted on *Exhibit G-1* (the “**Plaza Area**”) for use by the public. The Plaza License shall contain, without limitation, those material terms set forth in *Exhibit G-2*.

3.12 Meeting Space. City shall have the right to use the meeting space to be constructed on the 20th floor of “Residential Tower One”, which is planned to include approximately 2,400 square feet and a balcony of approximately 1,000 square feet (collectively, the “**Meeting Space**”) for up to a total of thirty (30) hours per year. Use of the Meeting Space shall be subject to availability as reasonably determined by the owner of Residential Tower One or the association formed to administer the same if the residential dwelling units are offered for sale, and City shall request usage of the Meeting Space at least six (6) weeks in advance. Use of the Meeting Space shall be limited to City, and City may not assign or delegate its right to use the Meeting Space to any other parties. There shall be no charge to City for use of the Meeting Space, but City shall arrange and pay for any food or beverage, audiovisual and other associated costs and services. City shall indemnify, defend and hold harmless the owner(s) of Residential Tower One and if applicable, the association for any loss, cost, damage or expense associated with its use of the Meeting Space. The Meeting Space may be relocated from time to time so long as City continues to have use of meeting space of a substantially comparable size in the Project.

3.13 True Up Payment. Developer hereby agrees to pay to City the sum of Three Million Four Hundred Forty-One Thousand Seven Hundred Forty-Six Dollars (\$3,441,746.00) (the “**True Up Payment**”), in equal annual installments of Two Hundred Twenty-Nine Thousand Four Hundred Forty-Nine and 73/100 Dollars (\$229,449.73) each, commencing on the first day of the first month following the third anniversary of the date of execution of the first Government Property Lease and continuing on each anniversary thereof until the 18th such anniversary, at which time any remaining unpaid portion of the True Up Payment shall be payable in full. At any time prior to payment in full of the True Up Payment, Developer may allocate the True Up Payment among the owner(s) of the various components of the Project, and following any such allocation and notice to the City thereof, the owner (and not Developer) shall be responsible for payment of the allocated portion of the True Up Payment. At any time prior to payment in full of the True Up Payment, Developer or any owner to whom all or a portion of the True Up Payment has been allocated shall have the right, but not the obligation, to prepay all or any portion of the unpaid True Up Payment based on the net present value of the unpaid True Up Payment or portion thereof based on a discount rate of five percent (5%). Any payments not made when due shall bear interest at the rate of five percent (5%) per annum, compounded daily, from the date due until paid in full. Any payments not made when due shall bear interest at the rate of five percent (5%) per annum, compounded quarterly, from the date due until paid in full.

3.14 Other Development Matters.

(a) **Condominium Plat**. City desires to promote home ownership in the downtown area where and when appropriate. Developer intends to develop that portion of the Project designated as residential dwelling units (collectively the “**Dwelling Units**”) with amenities and interior finishes that are consistent with amenities and interior finishes that are found in condominium projects. In order to facilitate the ability of successor owners of the

Dwelling Units to offer the individual Dwelling Units for sale to retail buyers if they later decide to do so, Developer shall prepare and process for approval a condominium plat designating each Dwelling Unit as a separate condominium unit, and following approval by the City, Developer shall record the same in the records of Maricopa County, Arizona. Although City encourages future owners to consider sales of the units at the appropriate time, neither Developer nor any successor shall be required to offer the individual Dwelling Units for sale to retail buyers, and nothing contained herein shall limit Developer or its successors from offering such Dwelling Units for rent.

(b) **Grocery Use.** Developer and City agree that a grocer is one of the potential occupants of a portion of the retail space in the Project. Developer has solicited, and intends to continue to solicit, proposals from grocers, and will consider any proposals it may receive from grocers and if any such proposals are acceptable to Developer (in its sole discretion) will attempt to negotiate a lease with such grocer. However, City acknowledges that (i) Developer cannot guaranty the inclusion of any particular tenants (including, but not limited to a grocer) in the Project and (ii) the terms of any lease, including a lease with a grocer, will be determined by, and must be acceptable to, Developer in its sole discretion. If Developer has not entered into a lease with a grocery operator on or before December 31, 2015, it shall have no further obligation to solicit or consider lease proposals from any grocer.

3.15 Representatives. To further the cooperation of the parties in implementing this Agreement and to expedite decisions by City relating to the Project, City agrees to designate a representative (“**City Representative**”) of City to act as a liaison between City and Developer and between the various departments of City and Developer. Developer shall also designate a representative (“**Developer Representative**”) who shall serve as a liaison between Developer and City. The initial City Representative shall be Donna Kennedy and the initial Developer Representative shall be Lawrence Pobuda.

ARTICLE IV DEFAULT; REMEDIES; TERMINATION

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

4.2 Additional Developer Defaults. In addition to the foregoing, it shall be a Default of this Agreement if: (a) 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 Developer or its respective assets or affairs, and such petition or application is not dismissed within ninety (90) days of such filing; (b) Developer makes an assignment for the benefit of creditors or is granted an order for relief under any chapter of the Bankruptcy Code; (c) a custodian, as defined by the

Bankruptcy Code, takes charge of the Property; (d) garnishment, attachment, levy or execution in an amount in excess of an amount equal to ten percent (10%) of its net worth is issued against Developer, and such issuance is not discharged or bonded against within ninety (90) days; (e) the dissolution or termination of existence of Developer unless its successor by transfer or operation of law is continuing the business of operating the Project; or (f) there is a material breach of any representation and warranty by Developer in this Agreement when made.

4.3 Developer's Remedies. If City is in Default under this Agreement (beyond any applicable cure period) and the parties are unable to resolve City's Default, Developer shall have the right to terminate this Agreement upon written notice to City. Developer shall also have the right to pursue all other legal and equitable remedies which Developer may have at law or in equity, including, without limitation, the right to seek specific performance, the right to seek and obtain damages, and the right to self-help; provided that City shall in no event be liable for punitive, incidental or consequential damages.

4.4 City's Remedies. If Developer is in Default under this Agreement (beyond any applicable cure period) and the parties are unable to resolve Developer's Default, then City shall have the right to terminate this Agreement immediately upon written notice to Developer and to pursue any other rights or remedies provided hereunder, at law or in equity; provided that Developer shall in no event be liable for punitive, incidental or consequential damages. No exercise by City of its remedies under this Agreement shall entitle City to exercise remedies under any Government Property Lease previously executed by Developer and City in the circumstance where Improvements have been constructed on the Property except to the extent there is a default under such Government Property Lease.

4.5 Effect of Event of Termination. Upon the termination of this Agreement as the result of the Default or breach by Developer (beyond any applicable cure period), Developer shall have no further rights to City-provided development incentives pursuant to this Agreement accruing from and after the termination of this Agreement. No termination of this Agreement shall, in and of itself, result in the termination of any Government Property Lease to be executed by Developer and City with respect to improvements and land as referenced in Section 3.8 in the circumstance where a building has been constructed on the Property subject to such lease.

ARTICLE V GENERAL PROVISIONS

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

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

5.3 Liability and Indemnification. Developer hereby agrees to indemnify, protect, defend and hold harmless 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 attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of Developer's performance or failure to perform its obligations under this Agreement unless resulting from the gross negligence or willful misconduct of City.

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

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

To Developer: Opus Development Company, LLC
Attn: Lawrence A. Pobuda
2425 E Camelback Rd, Suite 220
Phoenix, AZ 85016

With a copy to: Opus Holding, L.L.C.
Attn: Tom Hoben
10350 Bren Road West
Minnetonka, MN 55343

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

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

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

5.6 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.

5.7 Successors and Assigns; Restrictions on Assignment. This Agreement shall run with the land and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Notwithstanding anything contained in the foregoing to the contrary, unless otherwise approved by City, until Completion of construction of the Project or a component thereof, the right of Developer to assign its rights, duties and obligations under this Agreement without the approval of City shall be limited and restricted to the following:

(a) An assignment of the right of Developer to develop a specific component of the Project (such as the residential units, retail, or hotel) to a reputable and financially capable developer (or affiliate thereof) which has experience (directly or through an affiliate) in the financing, development and/or operation of such projects or to a user which will ultimately own such component (such as the owner/operator of a hotel);

(b) An assignment by Developer of its rights under this Agreement to a financially capable corporation, partnership, joint venture, limited liability company, trust or other legal entity in Developer or which an affiliate of Developer has an ownership interest; or

(c) A collateral assignment as security for one or more lenders in connection with Project financing.

Following Completion of construction of the Project or a component thereof, Developer may assign its rights, duties and obligations under this Agreement without the approval of City.

Following an assignment by Developer of any specific rights, obligations or duties under this Agreement and an assumption by the assignee of the same, Developer shall be released from such obligations and duties hereunder.

5.8 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.

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

5.10 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.

5.11 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.

5.12 Recitals, Schedules and Exhibits. All recitals above and schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

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

5.14 No Third Party Rights. No provision of this Agreement (except the Foundations may collectively enforce payment of the voluntary contribution payable under Section 3.8(d)) shall be construed to permit anyone other than Developer, City and their respective successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third party beneficiary or otherwise) on account of any nonperformance hereunder.

5.15 City Manager's Power to Consent. City authorizes and empowers the City Manager to consent to any and all requests of Developer requiring the consent of 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.

5.16 Rights of Lenders. City is aware that financing for acquisition, development and/or construction of the Property and Improvements may be provided, in whole or in part, from time to time, by one or more third parties (each a "**Lender**") and that each Lender may request a collateral assignment of this Agreement as part of the collateral for its loan(s) to Developer or any assignee (a "**Borrower**"). City agrees that such collateral assignments are permissible without further consent on the part of City. If a Lender is permitted, under the terms of its agreement with Borrower, to cure a Default by Borrower and/or to assume Borrower'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 Borrower under this Agreement. If City is notified in writing of any such collateral assignment and the identity and address of any such Lender, and City gives any notice, demand, election or other communication required under this Agreement (collectively called "**Notices**") to Developer, City shall concurrently give a copy of each such Notice to the Lender at the address designated by the Lender. Such copies of the Notices shall be given to the Lender pursuant to Section 5.5. No Notice given by City to a Borrower shall be binding upon or affect the Lender unless a copy of the Notice is given to the Lender pursuant to this Section 5.16. In the case of an assignment of the loan or change in address of the Lender, the assignee or Lender may change the address to which copies of Notices are to be sent by giving written notice to City. The Lender shall have the right for a period of thirty (30) days after the expiration of any grace

period afforded a Borrower (or such longer period as the Lender may reasonably require) to perform any term, covenant or condition and to remedy any uncured default by the Borrower, and City shall accept such performance with the same force and effect as if furnished by the Borrower and the Lender shall thereby and hereby be subrogated to the rights of City. Nothing contained in this Agreement shall be deemed to prohibit, restrict or limit in any way the right of the 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 (each a "foreclosure"), and following any such foreclosure, Lender will not have any obligation to Complete construction of the Project. City shall, within a reasonable time (but in no event sooner than 15 days) after receipt of a written request by a Borrower or 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 a Borrower exists hereunder (or, if appropriate, specifying the nature and duration of any existing Default) and certifying to such other matters reasonably requested by a Borrower or Lender. Upon request by a Lender, City will enter into a separate assumption or similar agreement with such Lender consistent with the provisions of this Section.

5.17 Cooperation. City and Developer hereby acknowledge and agree that they shall cooperate in good faith with each other and use best efforts to pursue the economic development of the Project 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.

5.18 Estoppels. City shall, within a reasonable time (but in no event sooner than 15 days) after receipt of a written request by Developer or any successor or assign, provide an estoppel certificate 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 Developer or any successor or assign exists hereunder (or, if appropriate, specifying the nature and duration of any existing Default) and certifying to such other matters reasonably requested by Developer or its successor or assign.

5.19 City's Authorization. City hereby represents and warrants to Developer that the execution and delivery of this Agreement has been duly authorized by all requisite city council action and as otherwise required under any and all applicable laws and ordinances.

5.20 Existing Development Agreement. City and Developer acknowledge that City and the prior owner of the Property entered into that certain Development Agreement dated June 28, 2007, and recorded October 3, 2007 as Instrument No. 2007-10887879, records of Maricopa County, Arizona, as amended by that certain First Amendment to Development Agreement dated December 11, 2008, and recorded December 18, 2008 as Instrument No. 2008-1067570, records of Maricopa County, Arizona (as amended, the "**Existing Development Agreement**"). City and Developer agree that this Agreement furthers the original purpose of the Existing Development Agreement and as such, supersedes and replaces in its entirety the Existing Development Agreement.

{Remainder of page intentionally left blank}

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on or as of the day and year first above written.

DEVELOPER:

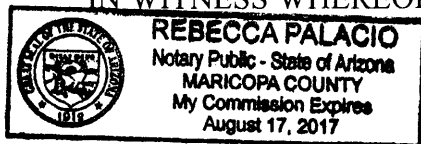
OPUS DEVELOPMENT COMPANY, L.L.C., a Delaware limited liability company

By: Lawrence A. Pokuda
Its: Senior Vice President

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 1 day of September, 2015, by Lawrence A. Pokuda, the Senior Vice President of OPUS DEVELOPMENT COMPANY, L.L.C., a Delaware limited liability company, for and on behalf of the company.

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



Rebecca Palacio
Notary Public

My commission expires:

August 17, 2017

C2015-165

CITY:

CITY OF TEMPE, an Arizona municipal corporation

By Mark W. Mitchell
Mark W. Mitchell, Mayor

ATTEST:

Bonnie M. King
City Clerk

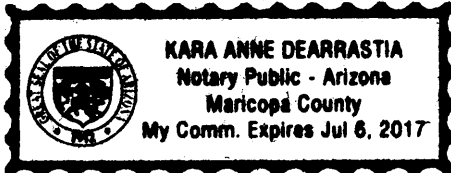
APPROVED AS TO FORM:

[Signature]
City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 13th day of August, 2015 before me, the undersigned officer, personally appeared Mark W. Mitchell, who acknowledged himself to be Mayor of THE CITY OF TEMPE, an Arizona municipal corporation, whom I know personally and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

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



Kara Anne Dearrastia
Notary Public

My commission expires:

July 6, 2017

CONSENT TO DEVELOPMENT AGREEMENT

The undersigned as the owner of the Property hereby consents to this Development Agreement and hereby executes the same for purposes of binding the Property.

MCR II, LLC, an Arizona limited liability company

By: Kevin M Burnett
Its: Manager

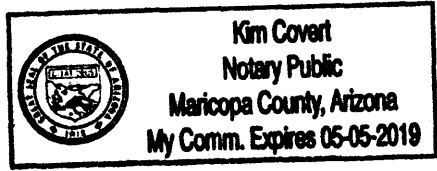
STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 11 day of September, 2015, by Kevin Burnett, the manager of **MCR II, LLC**, an Arizona limited liability company, for and on behalf of the company.

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

Kim Covert
Notary Public

My commission expires:
5/5/2019



**EXHIBIT A
PROPERTY**

(attached)

PARCEL NO. 1:

LOT 3, BIRCHETT TRACT, ACCORDING TO BOOK 27 OF MAPS, PAGE 9, RECORDS OF MARICOPA COUNTY, ARIZONA, AND THE NORTH 16 FEET OF 8TH STREET ABANDONED LYING SOUTH OF AND ADJACENT TO THE SOUTH LINE OF SAID LOT 3, AND BETWEEN THE SOUTHERLY PROLONGATION OF THE EAST AND WEST LINES THEREOF:

EXCEPT THE NORTH 35.00 FEET OF SAID LOT 3.

PARCEL NO. 2:

LOTS 1, 2 AND 4, BIRCHETT TRACT, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE MARICOPA COUNTY RECORDER IN BOOK 27 OF MAPS, PAGE 9, AND THE NORTH 16 FEET OF 8TH STREET ABANDONED LYING SOUTH OF AND ADJACENT TO THE SOUTH LINE OF LOTS 1 AND 2, AND BETWEEN THE SOUTHERLY PROLONGATION OF THE EAST LINE OF LOT 2 AND THE WEST LINE OF LOT 1.

PARCEL NO. 3:

LOTS 5 AND 6, OF BIRCHETT TRACT, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY, RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 27 OF MAPS, PAGE 9.

PARCEL NO. 4:

LOT 8 AND THE NORTH 35.00 FEET OF LOT 3, BIRCHETT TRACT, ACCORDING TO BOOK 27 OF MAPS, PAGE 9, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 5:

THAT PART OF BLOCK 14, TEMPE, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA IN BOOK 2 OF MAPS, PAGE 26, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE EAST LINE OF BLOCK 14, TEMPE, DISTANT THEREON SOUTH 75.00 FEET FROM THE NORTHEAST CORNER OF SAID BLOCK;

THENCE WEST AND PARALLEL WITH THE NORTH LINE OF SAID BLOCK, 50.00 FEET;

THENCE SOUTH AND PARALLEL TO THE EAST LINE OF SAID BLOCK, 100.00 FEET;
THENCE EAST AND PARALLEL TO THE NORTH LINE OF SAID BLOCK, 50.00 FEET
TO THE EAST LINE OF SAID BLOCK;
THENCE NORTH 100.00 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 6:

THAT PART OF BLOCK 14, TEMPE, ACCORDING TO THE PLAT OF RECORD IN THE
OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, IN BOOK
2 OF MAPS, PAGE 26, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID BLOCK 14;
THENCE WEST 50.00 FEET ALONG THE NORTH LINE OF SAID BLOCK;
THENCE SOUTH 75.00 FEET ALONG A LINE OF PARALLEL TO THE EAST LINE OF
SAID BLOCK;
THENCE EAST 50.00 FEET TO THE EAST LINE OF SAID BLOCK;
THENCE NORTH 75.00 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 7:

LOT 9, BIRCHETT TRACT, ACCORDING TO BOOK 27 OF MAPS, PAGE 9, RECORDS OF
MARICOPA COUNTY, ARIZONA.

PARCEL NO. 8:

THAT PORTION OF BLOCK 14, TEMPE, ACCORDING TO BOOK 2 OF MAPS, PAGE 26,
RECORDS OF MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH BOUNDARY LINE 150.00 FEET WEST OF
THE NORTHEAST CORNER OF SAID BLOCK 14;
THENCE SOUTH 175.00 FEET;
THENCE EAST 50.00 FEET;
THENCE NORTH 175.00 FEET TO THE NORTH BOUNDARY LINE OF SAID BLOCK 14;
THENCE WEST 50.00 FEET ALONG SAID NORTH BOUNDARY LINE TO THE POINT
OF BEGINNING;

EXCEPT THE SOUTH 72.00 FEET.

PARCEL NO. 9:

THE SOUTH 72.00 FEET OF THAT PORTION OF BLOCK 14, TEMPE, ACCORDING TO BOOK 2 OF MAPS, PAGE 26, RECORDS OF MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH BOUNDARY LINE 150.00 FEET WEST OF THE NORTHEAST CORNER OF SAID BLOCK 14;

THENCE SOUTH 175.00 FEET;

THENCE EAST 50.00 FEET;

THENCE NORTH 175.00 FEET TO THE NORTH BOUNDARY LINE OF SAID BLOCK 14;

THENCE WEST 50.00 FEET ALONG SAID NORTH BOUNDARY LINE TO THE POINT OF BEGINNING.

PARCEL NO. 10:

THAT PORTION OF BLOCK 14, TEMPE, ACCORDING TO BOOK 2 OF MAPS, PAGE 26, RECORDS OF MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH BOUNDARY LINE 50.00 FEET WEST OF THE NORTHEAST CORNER OF SAID BLOCK 14;

THENCE WEST 50.00 FEET;

THENCE SOUTH 175.00 FEET;

THENCE EAST 50.00 FEET;

THENCE NORTH 175.00 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 11:

ALL THAT PORTION OF BLOCK 14, WEST TEMPE, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA IN BOOK 2 OF MAPS, PAGE 79 AND BOOK 2 OF MAPS, PAGE 26, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID BLOCK 14;

THENCE WEST ALONG THE SOUTH LINE OF SAID BLOCK, A DISTANCE OF 91.50 FEET;

THENCE NORTH PARALLEL TO THE EAST LINE OF SAID BLOCK, A DISTANCE OF 175.00 FEET;

THENCE EAST 91.50 FEET, PARALLEL TO THE SOUTH LINE OF SAID BLOCK TO THE EAST LINE OF SAID BLOCK;

THENCE SOUTH ALONG THE EAST LINE OF SAID BLOCK, A DISTANCE OF 175.00 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 12:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 4, BLOCK 14, WEST TEMPE, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, IN BOOK 2 OF MAPS, PAGE 79 AND IN BOOK 2 OF MAPS, PAGE 26;

THENCE SOUTH ALONG THE PROLONGATIONS SOUTHERLY OF THE EAST LINE OF SAID BLOCK 14, A DISTANCE OF 16.00 FEET TO THE NORTH LINE OF EIGHTH STREET AS IT NOW EXISTS;

THENCE WESTERLY AND ALONG THE NORTH LINE OF SAID EIGHTH STREET, A DISTANCE OF 91.50 FEET;

THENCE NORTH 16.00 FEET;

THENCE EAST ALONG THE SOUTH LINE OF LOT 4, BLOCK 14, A DISTANCE OF 91.50 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 13:

THAT PART OF BLOCK 14, WEST TEMPE, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, IN BOOK 2 OF MAPS, PAGE 79 AND IN BOOK 2 OF MAPS, PAGE 26, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH BOUNDARY LINE OF SAID BLOCK AND 141.50 FEET WEST OF THE SOUTHEAST CORNER OF SAID BLOCK;

RUNNING THENCE NORTHERLY ON A LINE PARALLEL TO THE EAST BOUNDARY LINE OF SAID BLOCK, A DISTANCE OF 175.00 FEET;

THENCE EASTERLY ON A LINE PARALLEL TO THE SOUTH BOUNDARY LINE OF SAID BLOCK (AND 175.00 FEET DISTANT THEREFROM) A DISTANCE OF 50.00 FEET;

THENCE SOUTH ON A LINE PARALLEL TO THE EAST BOUNDARY LINE OF SAID BLOCK, A DISTANCE OF 175.00 FEET TO A POINT ON THE SOUTH BOUNDARY LINE OF SAID BLOCK AND 91.50 FEET WEST OF

THE SOUTHEAST CORNER OF SAID BLOCK;

THENCE WEST ALONG THE SOUTH BOUNDARY LINE OF SAID BLOCK TO THE POINT OF BEGINNING:

TOGETHER WITH THAT PARCEL OF LAND BEGINNING AT A POINT ON THE SOUTH LINE OF LOT 4, OF SAID BLOCK 14, SAID POINT BEING 91.50 FEET WEST OF THE SOUTHEAST CORNER OF SAID LOT 4;

THENCE SOUTHERLY A DISTANCE OF 16.00 FEET TO THE NORTH LINE OF EIGHTH STREET AS IT NOW EXISTS;

THENCE WEST A DISTANCE OF 50.00 FEET;

THENCE NORTH 16.00 FEET TO THE SOUTH LINE OF SAID LOT 4;

THENCE EAST 50.00 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 14:

PART OF BLOCK 14, WEST TEMPE, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, IN BOOK 2 OF MAPS, PAGE 79 AND IN BOOK 2 OF MAPS, PAGE 26, THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH BOUNDARY LINE OF SAID BLOCK 14, A DISTANCE OF 191.50 FEET WEST OF THE SOUTHEAST CORNER OF SAID BLOCK;

RUNNING THENCE NORTHERLY ON A STRAIGHT LINE PARALLEL TO THE EAST BOUNDARY OF SAID BLOCK, 175.00 FEET, MORE OR LESS, TO CENTER CORNER OF SAID BLOCK;

THENCE EASTERLY ON THE CENTER LINE OF SAID BLOCK, 50.00 FEET;

THENCE SOUTHERLY 175.00 FEET TO A POINT ON THE SOUTH BOUNDARY OF SAID BLOCK AND 141.50 FEET WEST OF THE SOUTHEAST CORNER THEREOF;

THENCE WESTERLY ON SAID SOUTH BOUNDARY OF SAID BLOCK, 50.00 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THAT PORTION OF ABANDONED 8TH STREET (NOW UNIVERSITY DRIVE), AS SHOWN ON RECORDED PLAT OF WEST TEMPE, ACCORDING TO BOOK 2 OF MAPS, PAGE 79, AND BOOK 2 OF MAPS, PAGE 26, RECORDS OF MARICOPA COUNTY, ARIZONA, LYING WITHIN THE NORTH 16.00 FEET OF THE SOUTH 66 FEET OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 1 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, BEING ADJACENT

TO THE SOUTH LINE OF AND LYING BETWEEN A SOUTHERLY EXTENSION OF THE EAST AND WEST LINE OF THAT PART OF BLOCK 14, DESCRIBED ABOVE.

PARCEL NO. 15:

LOT 7, BIRCHETT TRACT, A SUBDIVISION RECORDED IN BOOK 27 OF MAPS, PAGE 9, RECORDS OF MARICOPA COUNTY, ARIZONA.

FROM PARCELS 1 THROUGH 15 ABOVE EXCEPT TITLE TO ANY MINE OF GOLD, SILVER, CINNABAR, COPPER OR LEAD OR TO ANY VALID CLAIM OR POSSESSION HELD UNDER THE EXISTING LAWS OF CONGRESS.

EXHIBIT B
FORM OF CERTIFICATE OF COMPLETION
(attached)

EXHIBIT B

Certificate of Completion

When recorded, return to

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

CERTIFICATE OF COMPLETION

In accordance with the terms of the Development and Disposition Agreement dated _____, 2014, by and between the CITY OF TEMPE (CITY) and _____, and recorded _____ at Recorders No. _____, this Certificate of Completion is issued for the building located on the following described parcel of land:

Construction of improvements were initiated on or about _____, and were completed on or about _____, as evidenced by the Letter of Compliance attached as Exhibit A.

Dated: _____.

Respectfully,

Community Development Manager
City of Tempe, Arizona

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing Certificate of Completion, consisting of two (2) pages, was acknowledged before me this _____ day of _____, 2014, by _____ the Community Development Manager of the City of Tempe, an Arizona municipal corporation, and that in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

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

Notary Public

My Commission Expires:

EXHIBIT C
PROJECT DESCRIPTION

At least 440 residential dwelling units

At least 170 hotel rooms, and related service and meeting space

At least 25,000 square feet of retail space

At least 1,040 parking spaces and related parking facilities

EXHIBIT D
SCHEDULE OF PERFORMANCE

A grading permit shall have been issued for the Project on or before December 31, 2016

EXHIBIT E
FORM OF DEED

When recorded, return to:
City of Tempe Basket

EXEMPT PER A.R.S.
§11-1134A.3

SPECIAL WARRANTY DEED

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, _____, a _____ (“Grantor”) does hereby sell and convey to CITY OF TEMPE, an Arizona municipal corporation, the following described real property situated in Maricopa County, Arizona, together with all rights and privileges appurtenant thereto (“Property”):

See Exhibit A attached hereto and by this reference incorporated herein.

SUBJECT TO all taxes and assessments, reservations, any and all easements, rights-of-way, covenants, conditions, restrictions, liens and encumbrances of record or that would be shown by an accurate survey.

Grantor does warrant and agree to defend the title against its acts and none other.

DATED this ___ day of _____, 2015.

[Signature appears on the following page]

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, the _____ of _____, a[n] _____, for and on behalf of the _____.

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

Notary Public

My commission expires:

**EXHIBIT F
FORM OF LEASE**

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 _____, 2015 (the “**Effective Date**”) by and between the **CITY OF TEMPE**, a municipal corporation (“**Landlord**”), and _____, a _____ (“**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. §42-6201 et. seq. (the “**Tax**”). By Resolution No. _____, dated _____, Landlord abated the Tax upon the Premises for the period beginning upon the issuance of the certificate of occupancy for the Premises and ending eight (8) years thereafter, as provided in A.R.S. §42-6209 (A) (“**Abatement**”). But for the Abatement, Tenant would not have caused the Premises to be constructed.

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 (defined in Section 3) herein provided and performing and fulfilling, in all material respects, the covenants, agreements, conditions and provisions herein to be kept, observed or performed by Tenant (taking into account any applicable cure period), Tenant may at all times during the term hereof peaceably, quietly and exclusively have, hold and enjoy the Premises.

2. Term. The term of this Lease shall be for eight (8) years, commencing on the Effective Date and ending, at midnight on the 8th anniversary of the Effective Date, subject to earlier termination at Tenant's option, as provided herein.

3. Rental. Tenant covenants to pay to Landlord as rental for the Premises the sum of \$10.00 per year on the Effective Date and every anniversary thereof (the "**Total Rent**"). Tenant shall have the right to prepay the \$80.00 Total Rent for the entire term of this Lease. The consideration for this Lease includes, without limitation: Tenant's payment of the entire cost of construction of the improvements constituting the Premises, Tenant's performance, in all material respects, 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. Tenant, at its option and without prejudice to its right to terminate this Lease as provided herein, may prepay the Total Rent 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 Total Rent.

4. Leasehold Mortgage of Premises.

4.1 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, 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." In addition, if Landlord holds title to the Premises subject to the lien of a fee deed of trust executed by Tenant as trustor prior to the acquisition of the Premises by Landlord, then (i) such fee deed of trust shall be deemed to be a leasehold mortgage for the purposes of this Lease, (ii) the beneficiary under such fee deed of trust shall be deemed to be a leasehold mortgagee for the purposes of this Lease and shall be entitled to all of the rights and privileges of a leasehold mortgagee under the terms and provisions of this Lease, (iii) such fee deed of trust shall be deemed to be the most senior leasehold mortgage, and (iv) the beneficiary under such fee deed of trust shall be deemed to have satisfied the notice requirements under section 17.3.

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. Subject to the Abatement, which relieves Tenant's obligation to pay the Tax for the eight (8) year period following the issuance of the Certificate of Occupancy, 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."

5.2 Enhanced Services District Assessments. Tenant acknowledges that the Property is located within an Enhanced Services District and that the Premises are 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 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.

5.3 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 or provide a bond or other surety with respect to such tax 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 in default with respect to the payment of such taxes or assessments in accordance with the terms of this Lease.

5.4 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.

5.5 Allocation. All payments contemplated by this Section 5 shall be prorated for partial years at the Effective 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;

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

7.3 Maintenance, repair or restoration of the Premises;

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

8. Entry by Landlord. Landlord and Landlord's agents shall have the right at reasonable times and upon reasonable notice to enter upon the Premises for inspection, except that Landlord shall have no right to enter portions of any building or dwelling unit 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, in its sole and absolute discretion, and without the consent of Landlord, to construct additional improvements on the Premises, and to make subsequent alterations, additions or other changes to any improvements or fixtures on the Premises 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, in its sole and absolute discretion, and without the consent of Landlord, at any time to demolish or substantially demolish improvements located upon the Premises (provided that this Lease shall terminate if the Premises are so demolished). 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 (as defined in Section 17.1) shall have then occurred and be continuing, Landlord shall dedicate or initiate a request for dedication to public use of the improvements owned by Landlord within any roads, alleys or easements and convey any portion

so dedicated to the appropriate governmental authority, execute (or participate in a request for initiation by the appropriate commission or department of) petitions seeking annexation or change in zoning for all or a portion of the Premises, consent to the making and recording, or either, of any map, plat, condominium documents, or declaration of covenants, conditions and restrictions of or relating to the Premises or any part thereof, join in granting any easements on the Premises, and execute and deliver (in recordable form where appropriate) all other instruments and perform all other acts reasonably necessary or appropriate to the development, construction, demolition, redevelopment or reconstruction of the Premises.

11. Insurance. During the term of this Lease, the Tenant shall, at Tenant's expense, maintain general public liability insurance against claims for personal injury, death or property damage occurring in, upon or about the Premises. The limitation of liability of such insurance shall not be less than \$5,000,000.00 combined single limit. All of Tenant's policies of liability insurance shall name Landlord and all Leasehold Mortgagees as additional insureds, and, at the written request of Landlord, certificates with respect to all policies of insurance or copies thereof required to be carried by Tenant under this Section 11 shall be delivered to Landlord. Each policy shall contain an endorsement prohibiting cancellation or non-renewal without at least thirty (30) days prior notice to Landlord (ten (10) days for nonpayment), provided, however, that if Tenant's insurance carrier refuses to provide such an endorsement, Tenant shall notify Landlord of an notices received by Tenant relating to any potential event of cancellation or nonrenewal, and the failure to obtain such endorsement shall not be a default hereunder. Tenant may self-insure the coverages required by this Section with the prior approval of Landlord, which will not be unreasonably withheld, and may maintain such reasonable deductibles and retention amounts as Tenant may determine.

12. Liability; Indemnity. Except for any claims and liabilities which could have been asserted against Landlord if Landlord were not the owner of the Premises or if Landlord were not a party to this Lease, Tenant covenants and agrees that Landlord is to be free from liability and claim for damages by reason of any injury to any person or persons, including Tenant, or property of any kind whatsoever and to whomsoever while in, upon or in any way connected with the Premises during the term of this Lease or any extension hereof, or any occupancy hereunder, Tenant hereby covenanting and agreeing to indemnify and save harmless Landlord from all liability, loss, costs and obligations on account of or arising out of any such injuries or losses, however occurring, unless caused by the sole and gross negligence or willful misconduct of Landlord, its agents, employees, or invitees. 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 for a period of two years.

13. Fire and Other Casualty. In the event that all or any portion of any improvements or fixtures within the Premises shall be totally or partially destroyed or damaged by fire or other 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 solely 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 for any or no reason, Tenant or Tenant's successor by Foreclosure shall have the option ("**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, in each case, effective thirty (30) 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 twenty (20) days after the date of the notice.

15.2 Title Vesting in Tenant. Simultaneously with, and effective as of, any termination of this Lease, 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.

15.3 Leasehold Mortgagees and Tenant. If there are any Leasehold Mortgagees as defined in Section 4.1, Tenant may not as of such time 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.

16. Assignment; Subletting.

16.1 Transfer by Tenant. At any time and from time to time Tenant shall have the right (in its sole discretion) by written assignment to assign this Lease and Tenant's leasehold interest or to sublease all of or any part of the Premises to any person or entity 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 by Tenant to

pay any 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 shall have all rights available at law, in equity or as permitted by this Lease; provided, however, that Landlord shall have the right to terminate this Lease only with respect to an Event of Default for failure of Tenant to procure and maintain insurance as required under Section 11 of this Lease. Any such right to terminate shall be exercised by Landlord, subject to the notice and cure provisions of Section 17.1, through the delivery of written notice to Tenant. Notwithstanding the foregoing or any provision of this Lease to the contrary, Landlord hereby waives any right to seek consequential, punitive, exemplary or special damages for a breach of this Lease.

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.

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

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 or by overnight delivery, 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 or when received if sent by overnight mail. 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 thirty (30) days after the expiration of any grace period afforded Tenant to perform any term, covenant, or condition under this Lease and to remedy any Event of Default by Tenant hereunder or such longer period as the Leasehold Mortgagee may reasonably require 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.

25. Protection of Subtenant. Landlord covenants that notwithstanding any Event of 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.

26. New Lease.

26.1 Right to Lease. Landlord agrees that, in the event of termination of this Lease for any reason (including but not limited to any Event of 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.

26.2 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.

26.3 Notwithstanding anything to the contrary expressed or implied in this Lease, any new lease made pursuant to this Section 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.

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

26.5 Possession. If any Leasehold Mortgagee shall demand a new lease as provided in this Section, 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.

26.6 Grace Period. Unless and until Landlord has received notice from each Leasehold Mortgagee that the Leasehold Mortgagee elects not to demand a new lease as provided in this Section, 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.

27. 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.

28. 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.

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

30. Surrender, Reconveyance.

30.1 Reconveyance Upon Termination or Expiration. On the last day of the term of this Lease or upon any termination of this Lease, whether under Sections 15 or 17 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 32 below.

30.2 Reconveyance Documents. Without limiting the foregoing, Landlord upon request shall execute and deliver to Tenant: (i) a special warranty deed reconveying all of Landlord's right title and interest in the Premises (including all improvements constituting a part thereof) 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 (including all improvements constituting a part thereof) in all respects in Tenant.

31. Title and Warranties. Notwithstanding anything to the contrary in this Section, Landlord shall convey the Premises to Tenant 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.

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

33. 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.

34. 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.

35. General Provisions.

35.1 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.

35.2 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 the 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.

35.3 Captions; Attachments; Defined Terms.

(a) The captions of the sections of this 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.

35.4 Entire Agreement. This Lease and the Development Agreement between Landlord and Opus Development Company, L.L.C. pursuant to which this Lease was executed, along with any addenda, exhibits and attachments hereto or thereto, constitutes the entire agreement between Landlord and Tenant relative to the Premises and this Lease, the Development Agreement 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 and the Development Agreement, except as set forth in any addenda hereto or thereto.

35.5 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.

35.6 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.

35.7 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***.

35.8 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, or by overnight mail, 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: Opus Development Company, LLC
 Attn: Lawrence A. Pobuda
 2425 E Camelback Rd, Suite 220
 Phoenix, AZ 85016

With a copy to: Opus Holding, L.L.C.
 Attn: Tom Hoben
 10350 Bren Road West
 Minnetonka, MN 55343

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, or the date received if sent by overnight

mail, as the case may be.

35.9 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.

35.10 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.

35.11 Counterparts. This Lease may be executed in multiple counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

[Signatures appear on following pages]

EXHIBIT A

Land

EXHIBIT B
of Land and Improvements Lease

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 _____, 2015, by and between the CITY OF TEMPE, an Arizona municipal corporation (“**City**”), and _____, a _____ (“**Tenant**”).

1. The City and Tenant have entered into that certain Land and Improvements Lease, dated _____, 2015 (“**Lease**”), whereby the City leases to Tenant that real property and improvements more particularly described in *Exhibit “A”* attached hereto and by this reference incorporated herein (“**Property**”).

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

3. This Memorandum is not a complete summary of the Lease. The provisions of this Memorandum shall not be used in interpreting the Lease. In the event of any conflict between the terms and provisions of this Memorandum and the Lease, the terms and provisions of the Lease shall govern and control. This Memorandum may be executed in multiple counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

[Signatures appear on following pages]

TENANT:

By: _____

Name: _____

Title: _____

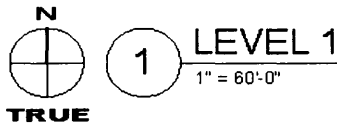
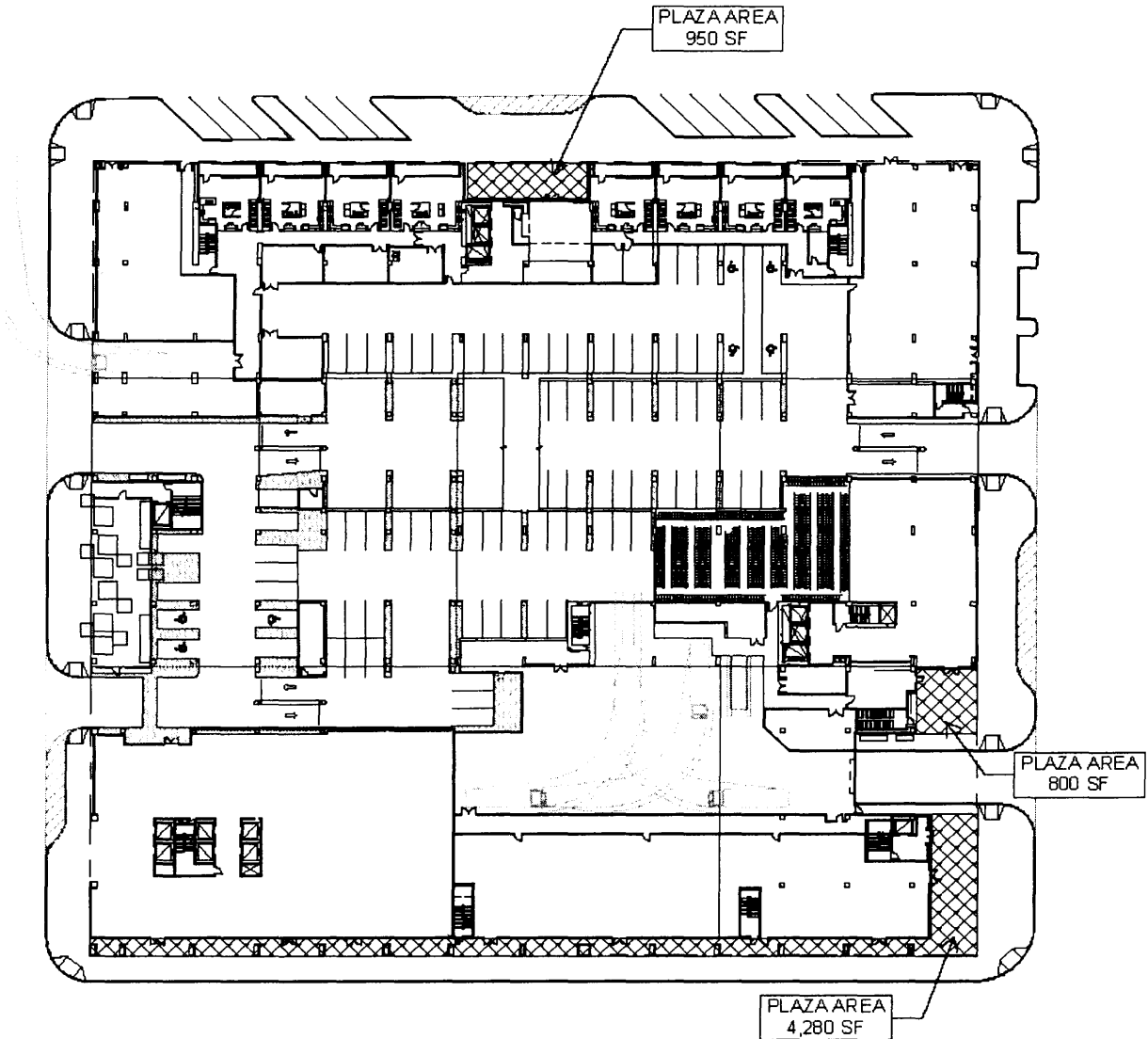
STATE OF _____)
)ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of
_____, 2015 by _____ the
_____ of _____, a _____, on
behalf of the _____.

Notary Public

My Commission Expires:

**EXHIBIT G-1
DEPICTION OF PLAZA AREA**



| | | | | |
|--|------------------------------------------------------------------------------------|------------------|----------------------|--------------|
| | OPUS AE Group, L.L.C. 10350 Brent Road, Suite 1 Minneapolis, Minnesota 55343 | PROJECT NAME | SHEET: 1 of 1 SHEETS | |
| | | 7th ST MIXED USE | DATE | EXHIBIT |
| | | DESIGN NUMBER | 07/21/15 | AREA |
| | | | | REF SHEET #: |

EXHIBIT G-2
FORM OF PLAZA LICENSE

Following provisions to be included in the Plaza License:

- Developer shall at its sole cost and expense, design and construct the Plaza Area in accordance with the approved PAD.
- Developer or a successor owner or an association formed for the purpose of administering all or a portion of the Project (the “Plaza Administrator”) shall maintain the Plaza Area.
- The Plaza Administrator shall have the right to adopt reasonable rules and regulations related to the use of the Plaza Area.