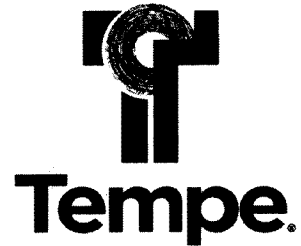


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sarabiam



**City of Tempe**  
**Contract No. C2000-63E3**  
**Third Amendment to Lease**

THIRD AMENDMENT TO LEASE BY AND BETWEEN THE CITY OF TEMPE, AN ARIZONA MUNICIPAL CORPORATION, AND COUSINS FUND II PHOENIX II, LLC, A DELAWARE LIMITED LIABILITY COMPANY

**THIRD AMENDMENT TO LEASE****[C2000-63E3]**

**THIS THIRD AMENDMENT TO LEASE** (the “Third Amendment”), dated for reference purposes as of the 28 day of June, 2018, is by and between the **CITY OF TEMPE**, an Arizona municipal corporation (“City or Landlord”) and **COUSINS FUND II PHOENIX II, LLC**, a Delaware limited liability company (“Tenant”).

**RECITALS**

**A.** Tenant, formerly known as PKY Fund II Phoenix II, LLC, is a party to the Lease (as hereinafter defined), as the successor owner to and Hayden Ferry Lakeside, LLC.

**B.** Landlord and Hayden Ferry Lakeside, LLC were parties to that certain Lease [c2000-63E] dated April 26, 2007 (the “Original Lease”). The Original Lease was amended by a First Amendment to Lease [C2000-63E1] dated as of August 22, 2013 (the “First Amendment”), and a Second Amendment to Lease [C2000-63E2] dated as of April 14, 2016 (the “Second Amendment”). The First Amendment and Second Amendment were entered into between Landlord and PKY Fund II Phoenix II, LLC, who acquired Hayden Ferry Lakeside, LLC’s interest in the Original Lease. The Original Lease, the First Amendment and the Second Amendment are referred to herein collectively as, the “Lease”.

**C.** Pursuant to the Lease Landlord leases to Tenant the land and all improvements thereon owned by Landlord as described in Exhibit “A” attached thereto (the “Premises”).

**D.** Tenant or its affiliates owns the parcel adjacent to the Premises on which has been constructed a parking garage (the “Parking Garage”), which contains 2,489 parking spaces. Pursuant to the Second Amendment, Tenant agreed to construct certain improvements to the Parking Garage. Consistent with the Second Amendment, Tenant added 252 parking spaces to the Parking Garage.

**E.** Landlord and Tenant now desire to revise the Lease in certain respects as more fully set forth below.

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. **Incorporation of Recitals/Capitalized Terms.** The Recitals set forth above are deemed to be true and accurate in all respects and are hereby incorporated into this Third Amendment by this reference. Capitalized terms used in this Third Amendment shall have the same meanings as ascribed to them as in the Lease unless otherwise expressly defined in this Third Amendment. In the event of any conflict between the terms of the Lease and the terms of this Third Amendment, the terms of this Third Amendment shall govern and control.

2. **Term.** The Lease is currently scheduled to expire on January 31, 2019. The Second Amendment stated that if the conditions set forth in Section 4 thereof were satisfied on or before 5:00 p.m. on November 1, 2018 (the "Construction Deadline"), then the Term of the Lease would be extended for an additional two years until January 31, 2021, subject to earlier termination at Tenant's option, as more specifically set forth in the Lease (the "**Extended Term**"). The parties hereby confirm their intent with respect to the extension of the Lease, provided that the conditions to be satisfied shall be those set forth in Section 4 of this Third Amendment, which conditions are substituted in the place and stead of the conditions set forth in Section 4 of the Second Amendment.

3. **Rental.** Section 3 of the Second Amendment is hereby deleted in its entirety. If the Term of the Lease is extended pursuant to Section 2 above, no rent shall be payable during the Extended Term.

4. **Condition Precedent to Lease Extension.** The Lease term shall only be extended pursuant to Section 2 of this Third Amendment if, prior to the Construction Deadline, Tenant has entered into a Reimbursement Agreement in the form attached hereto as Exhibit "B" (the "Reimbursement Agreement") with Landlord where Tenant agrees to contribute Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000) and where Landlord has substantially completed construction on the land more particularly identified on Exhibit "C" hereto (the "Land") for the addition of a right turn lane with such ancillary improvements as are required by the City and as are consistent with City's requirements for similar streets and turn lanes, to include construction of necessary signal, sidewalk reconstruction and relocation of utilities (collectively, the "Improvements"). For purposes of this Section 4, the Improvements will be deemed to have been substantially completed on the date that any required City inspections have been obtained, subject to the completion of minor punch-list items. Tenant agrees to construct the Improvements in accordance with Title 34, Arizona Revised Statutes and to provide a budget for the construction of the Improvements as part of the requirements of the Reimbursement Agreement. If the budget reflects construction costs above the Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000) that Tenant agrees to contribute through the Reimbursement Agreement, City agrees to contribute up to Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000), provided that City approves the budget and all terms of the Reimbursement Agreement have been met. Upon completion of construction, Tenant shall dedicate the Land and completed Improvements to City for public roadway purposes by deed or other appropriate means of conveyance satisfactory to City. Tenant shall undertake the foregoing at its sole cost and expense, and in accordance with the terms of this Third Amendment. Construction and dedication of the Improvements shall be in lieu of the requirements originally set forth in Section 4 of the Second Amendment, and such conditions are acknowledged to be of no further force or effect.

Should all of the foregoing requirements not be met in full by the Construction Deadline, then the Lease shall expire on January 31, 2019 as presently scheduled.

Tenant shall provide a legal description for that portion of the Land on which the Improvements will be constructed, if less than all of the Land, and the dedication shall be free of all taxes and other liens, easements and other matters that would negatively impact or conflict with its use as a public roadway. In this regard, Tenant shall pay prior to such dedication, all taxes for the year in which the conveyance is made, as well as all assessments, and other liens, none of which shall be paid by City. Tenant shall provide City with a current title report for the Land and

shall work with City to remove any matters to which City objects. The dedication may be accomplished by revision of the plat for the Land or by separate deed. If requested by City, Tenant also shall provide an as-built survey on completion of construction.

Tenant shall design, install and construct the Improvements, in accordance with normal City standards and in accordance with Title 34, Arizona Revised Statutes. Tenant shall obtain approval of the final design from City prior to construction.

All related reviews and approvals shall be conducted in accordance with City's normal processes for same. Nothing herein shall preclude City from the reasonable exercise of its normal review processes and other governmental functions within its police powers.

The Improvements shall be warranted against defects in accordance with City's usual and customary requirements, and such warranties shall be assigned to City concurrently with the dedication.

5. **Brokers.** Landlord and Tenant warrant and represent to each other that there are no claims for brokerage commissions or finder's fees in connection with this Third Amendment. Landlord and Tenant shall indemnify each other against and hold the other harmless for, from and against all liabilities arising from any such claims, including attorneys' fees incurred by the non-breaching party in connection therewith.

6. **Incorporation of Prior Agreements.** This Third Amendment, including all Exhibits, contains the entire understanding of the parties hereto with respect to the subject matter hereof, and no prior or other written or oral agreement or undertaking pertaining to any such matter shall be effective for any purpose.

7. **Modification of Third Amendment and Lease.** This Third Amendment and Lease may not be amended or modified, nor may any right or obligation hereunder be waived orally, and no such amendment or modification shall be effective for any purpose unless it is in writing and signed by the party against whom enforcement thereof is sought.

8. **Interpretation.** This Third Amendment shall be construed reasonably to carry out its intent without presumption against or in favor of either party. The parties acknowledge that both parties have caused this Third Amendment to be reviewed by legal counsel of their choice. No negotiations concerning or modifications made to prior drafts of this Third Amendment shall be construed in any manner to limit, reduce or impair the rights, remedies or obligations of the parties under this Third Amendment or to restrict or expand the meaning of any provisions of this Third Amendment. If any provision hereof shall be declared invalid by any court or in any administrative proceedings, then the provisions of this Third Amendment shall be construed in such manner so as to preserve the validity hereof and the substance of the transactions herein contemplated to the extent possible. The Section headings are provided for purposes of convenience of reference only and are not intended to limit, define the scope of or aid in interpretation of any of the provisions hereof.

9. **Full Force and Effect; Counterparts.** The Lease shall remain in full force and effect in accordance with its original terms and provisions, except as expressly modified by the

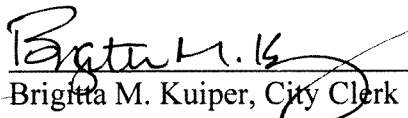
terms of this Third Amendment. This Third Amendment shall be governed by Arizona law and shall be binding on the parties hereto and their respective successors and assigns. This Third Amendment may be executed by the parties hereto in one or more counterparts. All counterparts shall be valid and binding on the party or parties executing them and all counterparts shall constitute one and the same document for all purposes. Each party hereto represents and warrants to the other that this Third Amendment has been duly authorized, executed and delivered by or on behalf of such party.

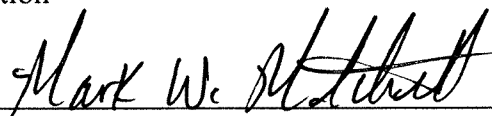
**IN WITNESS WHEREOF**, the parties have executed this Third Amendment to Lease to be effective as of the date set forth above.

“LANDLORD”

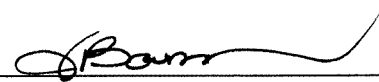
ATTEST:

**THE CITY OF TEMPE**, an Arizona municipal corporation

  
Brighita M. Kuiper, City Clerk

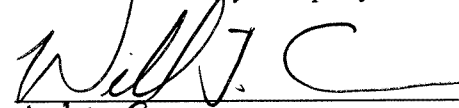
By:   
Mark W. Mitchell, Mayor

APPROVED AS TO FORM:

  
Judith R. Baumann, City Attorney

“TENANT”

**COUSINS FUND II PHOENIX II, LLC**, a Delaware limited liability company

By:   
Name: Will Craig  
Its: VP & Director

C2000-63E3

EXHIBIT "A"LEGAL DESCRIPTION OF 60 EAST RIO SALADO PARKWAY

## PARCEL NO. 1:

LOT 1 OF LOTS 1 AND 2 OF HAYDEN FERRY LAKESIDE WEST, ACCORDING TO BOOK 975 OF MAPS, PAGE 16, RECORDS OF MARICOPA COUNTY, ARIZONA; EXCEPT ALL MINERALS AND MINERAL RIGHTS, INTERESTS, ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS WELL AS METALLIC OR OTHER SOLID MINERALS IN AND UNDER SAID PROPERTY RESERVED TO THE SOUTHERN PACIFIC TRANSPORTATION COMPANY IN DEED RECORDED IN DOCUMENT NO. 88-393309.

## PARCEL NO. 2:

ALL RIGHT, TITLE AND INTEREST IN AND TO THOSE CERTAIN NON-EXCLUSIVE EASEMENTS FOR INGRESS, EGRESS AND PARKING AS CREATED PURSUANT TO THE MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, DEVELOPMENT STANDARDS AND EASEMENTS FOR HAYDEN FERRY LAKESIDE, DATED AUGUST 30, 2001, RECORDED SEPTEMBER 05, 2001 IN DOCUMENT NO. 2001-818269.

## PARCEL NO. 3:

ALL RIGHT, TITLE AND INTEREST IN AND TO THOSE CERTAIN NON-EXCLUSIVE EASEMENTS FOR INGRESS, EGRESS AND PARKING AS CREATED PURSUANT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, DEVELOPMENT STANDARDS AND EASEMENTS FOR HAYDEN FERRY LAKESIDE WEST, DATED AUGUST 30, 2001, RECORDED SEPTEMBER 17, 2001 IN DOCUMENT NO. 2001-851975.

## PARCEL NO. 4:

NON-EXCLUSIVE EASEMENTS AS SET FORTH IN AGREEMENT REGARDING PARCEL P1 AND PARCEL B3 RECORDED MARCH 18, 2010 AS 2010-0228763 OF OFFICIAL RECORDS.

## PARCEL NO. 5:

NON-EXCLUSIVE EASEMENTS AS SET FORTH IN AGREEMENT REGARDING PARCEL B2 AND PARCEL B3 RECORDED APRIL 11, 2008 AS 2008-0323290 OF OFFICIAL RECORDS.

## PARCEL NO. 6:

NON-EXCLUSIVE EASEMENTS AS SET FORTH IN EASEMENT AGREEMENT RECORDED JUNE 27, 2001 AS 2001-0564595 OF OFFICIAL RECORDS.

EXHIBIT "B"

REIMBURSEMENT AGREEMENT

WHEN RECORDED RETURN TO:

City of Tempe

**Exhibit "B" to C2000-63E3**

**REIMBURSEMENT AGREEMENT**

THIS REIMBURSEMENT AGREEMENT (the "**Agreement**") is made this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between COUSINS FUND II PHOENIX II, LLC, a Delaware limited liability company ("**Tenant or Cousins**"), and THE CITY OF TEMPE, a municipal corporation organized under the laws of the State of Arizona (the "**City or Landlord**").

**RECITALS**

A Tenant, formerly known as PKY Fund II Phoenix II, LLC, is a party to the Lease (as defined herein) as the successor owner to Hayden Ferry Lakeside, LLC.

B Landlord and Hayden Ferry Lakeside, LLC were parties to that certain Lease [c2000-63E] dated April 26, 2007 (the "Original Lease"). The Original Lease was amended by a First Amendment to Lease [C2000-63E1] dated as of August 22, 2013 (the "First Amendment"), and a Second Amendment to Lease [C2000-63E2] dated as of April 14, 2016 (the "Second Amendment"). The First Amendment and the Second Amendment were entered into between Landlord and PKY Fund II Phoenix II, LLC, who acquired Hayden Ferry Lakeside, LLC's interest in the Original Lease. The Original Lease, the First Amendment and the Second Amendment are referred to herein collectively as, the "Lease".

C Landlord and Tenant have revised the Lease in certain respects, as more fully described in the Third Amendment to Lease of which this Agreement is an integral component.

D Cousins is pursuing the addition of a right turn lane with such ancillary improvements as are required by the City and as are consistent with City's requirements for similar streets and turn lanes, to include construction of necessary signal, sidewalk reconstruction and relocation of utilities (collectively, the "Improvements"), the approximate location of which is as indicated on Exhibit "B", which Improvements will also benefit the City. In exchange for Cousins' construction of the Improvements, the City has agreed to reimburse Cousins for the costs of such Improvements, pursuant to the terms and conditions set forth herein.

E Cousins and the City wish to enter into this Agreement to memorialize the City's agreement to reimburse Cousins for the costs and expenses of the Improvements pursuant to the terms and conditions set forth below.

NOW THEREFORE, the parties agree as follows:



## AGREEMENT

A. Improvements. The Lease term shall only be extended if prior to the Construction Deadline (as said term is defined in Section 2 of the Second Amendment to the Lease), Tenant has entered into this Reimbursement Agreement with Landlord. Upon completion of construction of the Improvements, Tenant shall dedicate the Land and completed Improvements to City for public roadway purposes by deed or other appropriate means of conveyance satisfactory to City. Subject to the terms of this Agreement (including the City's participation obligation), Tenant shall undertake the foregoing at its sole cost and expense. Construction and dedication of the Improvements shall be in lieu of the requirements originally set forth in Section 4 of the Second Amendment, and such conditions are therefore acknowledged to be of no further force or effect.

Should all of the foregoing actions not occur by the Construction Deadline, then the Lease shall expire on January 31, 2019 as presently scheduled.

B. Covenants. Cousins hereby covenants and agrees that Cousins shall contract for and cause the Improvements to be completed in accordance with a budget, plans and specifications therefor, all of which have been or will be approved by the City and by a general contractor approved by the City. Cousins must construct the Improvements in accordance with these and all other applicable laws, including but not limited to Title 34, Arizona Revised Statutes.

C. Reimbursement. The City and Cousins have endeavored to reach a mutually satisfactory agreement concerning the timing and cost of the Improvements as described herein. Therefore, in connection therewith, the City and Cousins have agreed that the City will pay up to Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000) above the Tenant's contribution of Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000) towards the costs and expenses of the Improvements which are reasonably incurred by Cousins ("City Reimbursement") provided that Cousins complies with all terms of this Agreement. The City Reimbursement shall include all reasonable costs, expenses, fees and charges incurred and actually paid by Cousins to contractors, engineers, surveyors, governmental agencies, construction managers, and other third parties for materials, labor, design, engineering, surveying, site excavation and preparation, payment and performance bonds, and other costs and expenses reasonably necessary for the Improvements, but excluding any general conditions and fees paid to Cousins' general contractor. All Improvements costs shall be segregated from other costs incurred by Cousins, and Cousins shall retain all invoices and other evidence of payment and make the same available for review by the City. Cousins shall not request any reimbursement or payment for costs which are not solely allocable to the Improvements, and the City shall have the right to review and audit Cousins' records and accounts to verify that all expenditures have been accurately allocated and that the Project was properly procured pursuant to the requirements of Section B of this Agreement. The City Reimbursement shall be made in multiple disbursements in accordance with the City's normal practices for payment for construction costs upon submission of such reasonable evidence and completion of work and lien waivers as the City may reasonably require. Notwithstanding the foregoing, Cousins and City agree that the City Reimbursement shall not exceed Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000) and that all requests for reimbursement by Cousins must be received and approved by the City on or before November 1, 2018. Cousins and City agree that construction of the Improvements must be completed to the City's reasonable

satisfaction on or before 5:00 p.m. on November 1, 2018 before City has any obligations to reimburse Cousins pursuant to this Agreement.

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

E. Governing Law. This Agreement shall be governed by, construed and enforced under the laws of the State of Arizona.

F. Notices. Notices will be in writing and will be given by personal delivery, certified mail, return receipt requested, or via a nationally reputable overnight delivery service (such as Federal Express). Notices will be delivered or addressed to the applicable party at the addresses set forth below or at such other address or number as a party may designate in writing:

To Cousins: Cousins Fund II Phoenix II, LLC  
c/o Cousins Properties  
3344 Peachtree Road NE, Suite 1800  
Atlanta, GA 30326  
Attn: Corporate Secretary

With a copy to: Cousins Fund II Phoenix II, LLC  
c/o Cousins Properties  
60 East Rio Salado Parkway, Suite 502  
Tempe, AZ 85281  
Attn: Senior Property Manager

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

With a copy to: City of Tempe  
31 East 5th Street  
Tempe, Arizona 85281  
Attention: City Attorney's Office

The date notice is deemed to have been given, received and become effective will be (i) the date on which the notice is delivered or refused, if notice is given by personal delivery or certified mail; or (ii) the date of actual receipt.

G. 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.

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

I. 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.

J. 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.

K. Amendment. This Agreement may only be amended by an instrument in writing executed by all the parties.

L. Benefit and Binding Effect. This Agreement and all provisions hereunder shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns. In the event of assignment of this Agreement by Cousins, provided that the assignee has provided the City with its name, address and designated representative, and further provided that the assignee has assumed the rights, liabilities and obligations of Cousins under this Agreement pursuant to a written instrument (a true and correct copy of which shall be provided to the City), then Cousins shall be released from any obligations or liabilities arising under this Agreement based upon events occurring after the effective date of the assignment.

M. Termination; Release. Upon the City reimbursing Cousins for the City Reimbursement in full, this Agreement shall automatically terminate and be of no further force or effect, and the parties hereto agree to mutually execute and record a release of this Agreement.

[Signatures on Following Pages]

[Signature Page to Reimbursement Agreement]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in the manner and by the individuals herein indicated.

**CITY:**

CITY OF TEMPE, a municipal corporation

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

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA )

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public

My Commission Expires:

[Continuation Signature Page to Reimbursement Agreement]

**COUSINS:**

**COUSINS FUND II PHOENIX II, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
William Creyer  
Vice President & Director

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA )

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2018 by William Creyer, the Vice President & Director of **COUSINS FUND II PHOENIX II, LLC**, a Delaware limited liability company, for and on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public

My Commission Expires:

**Exhibit A**

**The Land**

Hayden Ferry Lakeside West Lots 1 and 2.

**Exhibit B**

**Right Turn Lane**

Exhibit B, entitled "Right Turn Lane", has been removed for recording. A true and correct copy is on file with, and can be obtained from, the Tempe City Clerk, 31 East Fifth Street, Tempe, AZ 85281.



EXHIBIT "C"

LEGAL DESCRIPTION OF THE LAND

Hayden Ferry Lakeside West Lots 1 and 2.