

WHEN RECORDED RETURN TO:

C2019_297-38-1-1--
navarrom

City of Tempe Basket

DEVELOPMENT PARCEL AGREEMENT
(Lot 2 of Playa Six Subdivision)
C2019-297

THIS DEVELOPMENT PARCEL AGREEMENT (this "**Agreement**") is entered into this 17th day of December, 2019, by and between the CITY OF TEMPE, an Arizona municipal corporation ("**City**"), and 979 PLAYA DEL NORTE, LLC, an Arizona limited liability company ("**Developer**").

RECITALS

A. Developer is the owner of that certain real property within the municipal boundaries of the City and legally described in *Exhibit "A"* attached hereto (the "**Office Parcel**").

B. Developer intends to develop and construct an office project on the Office Parcel (the "**Office Project**"), subject to the terms and conditions set forth in this Agreement.

C. City and Triyar Hospitality Tempe, L.L.C., an Arizona limited liability company ("**Triyar**"), entered into that certain Restated Development and Disposition Agreement dated August 21, 2003 [**C2001-206C**] and recorded as Instrument No. 2003-1331774 in the Official Records of Maricopa County, Arizona, as amended by that First Addendum to Restated Development and Disposition Agreement dated June 10, 2004 [**C2001-206D**] recorded as Instrument No. 2004-0730293 in the Official Records of Maricopa County, Arizona (collectively, the "**Master Development Agreement**").

D. In accordance with and as contemplated in the Master Development Agreement, City and Triyar entered into that certain Development Parcel Agreement Parcel No. 6 dated September 19, 2007 and recorded in the Official Records of the Maricopa County Recorder at Instrument No. 2007-1168127 (the "**Prior Parcel Development Agreement**") with respect to the real property described therein, which real property was subsequently subdivided into the Office Parcel and other real property.

E. This Agreement (i) is subordinate to the Master Development Agreement; (ii) supersedes and replaces the Prior Development Parcel Agreement in its entirety, but solely with respect to the Office Parcel; and (iii) is a development agreement within the meaning of A.R.S. Section 9-500.05 and shall be construed as such.

AGREEMENT

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

ARTICLE I DEFINITIONS

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

1.1 **"Certificate of Completion."** The term "Certificate of Completion" shall mean a final written acceptance of the completed and inspected Office Project issued by the City Development Services Department and the City Public Works Department.

1.2 **"Developer."** The term "Developer" shall mean and refer to 979 Playa Del Norte, LLC and any successor-in-interest or assignee of 979 Playa Del Norte, LLC who has assumed the responsibilities of the Developer under this Agreement.

1.3 **"Effective Date."** The term "Effective Date" means the date on which this Agreement has been fully executed by the City and Developer, which will be thirty (30) days after approval by the City Council, and which date shall be inserted in the introductory paragraph above prior to the recording of this Agreement.

1.4 **"Improvement District."** The term "Improvement District" shall mean and refer to City of Tempe Improvement District No. 179.

1.5 **"Improvements."** The term "Improvements" means any and all improvements that may be constructed within the Office Parcel or as part of the Office Project, including without limitation, all structures, infrastructure, utilities, buildings, roads, driveways, parking areas, walls, landscaping and other improvements of any type or kind, or any other alteration of the natural terrain to be built by the Developer.

1.6 **"Master Development Agreement."** The term "Master Development Agreement" means that certain Restated Development and Disposition Agreement dated August 21, 2003 [C2001-206C] and recorded as Instrument No. 2003-1331774 in the Official Records of Maricopa County, Arizona, as amended by that First Addendum to Restated Development and Disposition Agreement dated June 10, 2004 [C2001-206D] recorded as Instrument No. 2004-0730293 in the Official Records of Maricopa County, Arizona.

1.7 **"Office Parcel."** The term "Office Parcel" means and refers to that parcel of real property more particularly described in *Exhibit "A"* attached hereto and incorporated herein by this reference.

1.8 **"Office Project."** The term "Office Project" means and refers to the project planned by the Developer on and within the Office Parcel in general conformance with the conceptual site plan attached hereto as *Exhibit "B."*

1.9 **"Offsite Stormwater Retention Area."** The term "Offsite Stormwater Retention Area" shall mean that Offsite Stormwater Retention Area depicted on *Exhibit "C"* attached hereto and incorporated herein by this reference.

1.10 **"Schedule of Performance."** The term "Schedule of Performance" means the schedule of performance attached hereto as *Exhibit "D"* and incorporated herein by this reference.

ARTICLE II GENERAL DEVELOPMENT ISSUES

2.1 **Duration of Agreement.** The term of this Agreement shall commence on the Effective Date hereof and shall be in effect until the sooner of (1) sixty (60) months; or (2) the date a Certificate of Completion for the Office Project pursuant to the Schedule of Performance is issued. If Developer requires additional time to obtain the Certificate of Completion, an additional twelve (12) months can be added to the term of the Agreement if Developer pays one hundred thousand dollars (\$100,000) payable to the City of Tempe prior to the date that is sixty (60) months after the Effective Date.

2.2 **Maintenance of Offsite Stormwater Retention Area.** Developer shall be responsible for an 11.536% share of all costs incurred by the City in connection with the maintenance of the Offsite Stormwater Retention Area improvements which were financed by the Improvement District.

2.3 **Interim Annual Rio Salado Town Lake Operations and Maintenance Assessments for Stormwater Retention Area, CDF Parcel No. 55.** The Developer shall be responsible for 0.9359% of the total Interim Annual Rio Salado Town Lake Operations and Maintenance Assessments for the Offsite Stormwater Retention Area.

ARTICLE III DEVELOPMENT SCHEDULE, PROCESS AND COMPLETION

3.1 **Schedule of Performance.** The Developer shall complete construction of the Office Project on the Office Parcel pursuant to the Schedule of Performance. Notwithstanding any provision in the Agreement to the contrary, this Agreement will automatically terminate if Developer fails to obtain the Certificate of Completion pursuant to the timeline set forth in the Schedule of Performance, subject to Developer's right to extend as set forth in **Section 2.1.**

3.2 **Conceptual Site Plan.** Attached hereto as *Exhibit "B"* is a conceptual site plan of the Office Project (the "**Conceptual Site Plan**") prepared by Developer. The Office Project shall be developed in general conformance with the Conceptual Site Plan. Any amendments and changes to the Conceptual Site Plan require approval in writing from the Economic Development Department prior to Developer's submission.

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

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

3.5 **Certificate of Completion.** Promptly after final completion of construction of the Office Project on the Office Parcel in general conformance with the Conceptual Site Plan, the City shall furnish to the Developer a Certificate of Completion certifying that the construction of the Office Project has been completed. Upon issuance of the Certificate of Completion, the Developer may record the Certificate of Completion in the Office of the Maricopa County, Arizona Recorder. If the City refuses or fails to provide the Certificate of Completion, the City shall, within five (5) days after written request by the Developer, issue a written statement indicating in reasonable detail why the Certificate of Completion was not issued and what measures or acts the City requires of the Developer before the City will issue the Certificate of Completion.

ARTICLE IV IMPROVEMENT DISTRICT OBLIGATIONS

The Improvement District was formed to finance the construction of certain public infrastructure. All bonds issued by the Improvement District for the purpose of paying the costs and expenses of construction of the improvements described therein shall be paid for assessments established by the Improvement District and imposed against parcels within the Improvement District. Developer hereby acknowledges that the Office Parcel is located within the Improvement District and agrees to fully pay its proportionate share of the allocated assessments. In connection therewith, the Developer shall be responsible for 8.7% of the Improvement District assessment imposed by the City against all Playa del Norte parcels within the Improvement District. The imposition of the Improvement District assessment against the Office Parcel, however, shall be delayed until a Certificate of Completion is issued by the City for the Office Project and may then be paid either in one (1) installment in full, or amortized over a period of fifteen (15) years at 4.10% interest rate, at Developer's election.

ARTICLE V PROPERTY TAX ABATEMENT; ASSESSMENTS

5.1 Government Property Lease Excise Tax.

(a) Following issuance of the Certificate of Completion, the Office Parcel and the Office Project will be subject to the Government Property Lease Excise Tax as provided for under A.R.S. §42-6201 through 6209. The parties hereby confirm that (i) the Office Parcel is located in a single central business district within the municipal boundaries of the City; (ii) the Office Parcel is located entirely within a slum or blighted area that is established pursuant to A.R.S. Title 36, Chapter 12, Article 3; and (iii) the Improvements to be constructed by Developer in accordance with this Agreement will result in an increase in property value of at least one hundred percent. Accordingly, Developer shall be entitled to all statutorily-authorized property tax abatements available pursuant to A.R.S. §42-6209. In connection with the foregoing, the City hereby agrees to accept, subject to the terms and provisions of this Agreement and approval by the City of the condition of title pursuant to a title report provided by Developer to the City and upon the issuance of the Certificate of Completion for the Office Project, the conveyance of the Office Parcel from Developer and to lease back all of the Office Parcel and the Office Project to the Developer for a term of eight (8) years from the date of issuance of the Certificate of Completion pursuant to the terms and conditions of that Land and Improvements Lease substantially in the form attached hereto as *Exhibit "E"* (the "**Lease**"). During the term of the Lease the Office Project shall be taxed at the applicable Government Property Lease Excise Tax rate as provided in A.R.S. §42-6201 through 6209, subject, however, to an abatement of such Government Property Lease Excise Tax for the eight (8) year term of the Lease pursuant to the provisions of A.R.S. §42-6209. During the term of the Lease, City may not approve an amendment to change the use of the Office Parcel during the period of abatement unless the requirements of A.R.S. §42-6209(C)(3) have been satisfied.

(b) As set forth in the Lease, upon commencement of the Lease, and to assist the Tempe Union High School Foundation and the Tempe Impact Education Foundation (together, the "**Foundations**") with their important educational missions, Developer shall make a one-time voluntary contribution to the Foundations in the amount of \$50,000.00 (\$25,000.00 to each Foundation).

(c) City hereby confirms that the requirements of A.R.S. §42-6209(C)(1) and (2) have been satisfied prior to the Effective Date.

5.2 Insurance Provisions for Lease. The Lease shall provide that during the term of the Lease, the tenant shall, at tenant's expense, carry and maintain, for the mutual benefit of the City and tenant, commercial general liability insurance against claims for bodily injury, death or property damage occurring in, upon or about the premises, with limits of not less than \$5,000,000 (which may include umbrella coverage for any amount above \$1,000,000) combined single limit per occurrence for bodily injury and property damage, including coverages for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products and completed operations. All of tenant's policies of liability insurance shall name the City and all leasehold mortgagees as additional insured and shall contain no special imitations on the coverage, scope or protection afforded to the City, its officials, employees or volunteers. The tenant's policy of liability insurance shall be primary as respect to the City and

any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City. Certificates with respect to all policies of insurance required to be carried by the tenant shall be delivered to the City Representative, and shall be in form and with insurers acceptable to the City which shall clearly evidence all insurance required and provide that such insurance shall not be cancelled, allowed to expire or be materially reduced in coverage.

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

5.4 **Reallocation of Rio Salado Enhanced Services Capital Assessments.** The initial Rio Salado Enhanced Services Capital Assessments described in the Master Development Agreement and applicable to the Office Parcel (the "**Capital Assessment**") is hereby agreed to be \$302,188.32 as of July 1, 2007, subject to annual increases of the Consumer Price Index for the Phoenix Metropolitan Area as determined by city staff per annum effective July 1 of each calendar year from and after July 1, 2007, until the full amount of the Capital Assessment is paid. The initial Capital Assessment for the Office Parcel represents 0.7077% of the total Capital Assessment allocable to all of the properties subject to such assessment. The Capital Assessment shall commence to be payable by Developer upon the issuance by the City of a Certificate of Completion with respect to the Office Project and may then be paid either in one (1) installment in full, or amortized over a period of twenty-five (25) years at 3.64% interest rate, at Developer's election.

5.5 **Reallocation of Rio Salado Enhanced Operations and Maintenance Assessments.** The Rio Salado Enhanced Services Operations and Maintenance Assessments described in the Master Development Agreement and applicable to the Office Parcel is hereby agreed to be 0.9359% of the total Operations and Maintenance Assessments imposed upon the real property subject thereto. The Operation and Maintenance Assessments payable by the Developer shall commence upon the issuance by the City of a Certificate of Completion with respect to the Office Project.

5.6 **Payment of Operations and Maintenance Assessments on Offsite Stormwater Retention Area.** The percentage of the Operations and Maintenance Assessment on the Offsite Stormwater Retention Area allocable to the Office Parcel is hereby agreed to be 11.536% of the total Operation and Maintenance Assessments imposed upon all Playa del Norte parcels. The Operation and Maintenance Assessments payable by the Developer shall commence upon the issuance by the City of a Certificate of Completion with respect to the Office Project.

ARTICLE VI DISPUTE RESOLUTION; REMEDIES; TERMINATION

6.1 **Dispute Resolution.** If a dispute arises under this Agreement that the parties cannot resolve between themselves, there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to commercial property development. The cost of any such mediation shall be divided equally between the parties, or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation upon the conclusion of mediation. Notwithstanding the foregoing, if Developer does not comply with the Schedule of Performance by timely receipt by Developer of a Certificate of Completion, this Agreement automatically terminates without any further action by the parties.

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

6.3 **Effect of Event of Termination.** Upon the termination of this Agreement as the result of the default or breach of Developer, Developer shall have no further rights under this Agreement.

ARTICLE VII GENERAL PROVISIONS

7.1 **Liability and Indemnification.** The Developer shall unconditionally indemnify, protect, defend and hold harmless the City, its council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and clean-up actions of any kind, all costs and expenses incurred in connection therewith, including without limitation, reasonable attorneys' fees and costs for defense arising, directly or indirectly, in whole or in part, out of the performance of this Agreement by Developer.

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

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

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

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

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

If to Developer: 979 Playa Del Norte, LLC
c/o Irgens Partners, LLC
833 East Michigan Street, Suite 400
Milwaukee, Wisconsin 53202
Attn: CEO/Manager
Telephone: (414) 443-0700

With a copy to: Gammage & Burnham
Two North Central Avenue, 15th Floor
Phoenix, Arizona 85004
Attn: Manjula Vaz, Esq.
Telephone: 602-256-0566
Facsimile: 602-256-4475

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

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

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

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

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

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

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

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

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

7.14 **Rights of Lenders.** The City is aware that financing for acquisition, development and/or construction of the Improvements may be provided, in whole or in part, from time to time, by one or more third parties (collectively "Lender") and that Lender may request a collateral assignment of this Agreement as part of the collateral for its loan to Developer. City agrees that such collateral assignments are permissible without further consent on the part of City. If Developer defaults under this Agreement, City shall provide notice of such Event of Default, at the same time notice is provided to Developer, to any Lender who requests in writing that it be notified of such event and who provides City with an address to which notices are to be sent. If a Lender is permitted under the terms of its agreement with the Developer to cure a default and/or to assume Developer'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 Developer under this Agreement. If City shall give any notice, demand, election or other communication required under this Agreement (collectively "Notices") to the Developer, the City shall concurrently give a copy of each such Notice to the Lender at the address designated by the Lender. Nothing contained in this Agreement shall be deemed to prohibit, restrict, or limit in any way the

right of a Lender to take title to all or any portion of its collateral, pursuant to a foreclosure proceeding, trustee's sale, or deed in lieu of foreclosure. The City shall, at any time upon request by Developer or its Lender, provide to any Lender an estoppel certificate, acknowledgement of collateral assignment, consent to collateral assignment, or other document evidencing that this Agreement is in full force and effect, that it has not been amended or modified (or, if appropriate, specifying such amendment or modification), and that no default by Developer exists hereunder (or, if appropriate, specifying the nature and duration of any existing default) and certifying to such other matters reasonably requested by the Developer or its Lender. Upon request by a Lender, the City will enter into a separate assumption or similar agreement with such Lender consistent with the provisions of this paragraph.

7.15 **Prior Development Agreement.** For the avoidance of doubt, execution of this Agreement by the City and Developer shall constitute the termination (if not previously terminated in accordance with the terms thereof) of the following, solely with respect to the Office Parcel: (1) Development Parcel Agreement dated as of September 19, 2007 and recorded on October 29, 2007 as Instrument No. 2007-1168127 in the Official Records of Maricopa County, Arizona; and (2) Partial Assignment of Development Parcel Agreement Lot 2 of Playa Six Subdivision dated as of February 6, 2008 and recorded on February 6, 2008 as Instrument No. 2008-0107015 in the Official Records of Maricopa County, Arizona.

7.16 **Apprenticeships.** To the extent permitted by state law, Developer agrees to use its commercially reasonable efforts to register and utilize apprenticeship and highly skilled worker programs that meet federal and state standards in the undertaking of the duties and obligations contemplated herein. Developer acknowledges and agrees that it will comply with applicable federal and state law with regard to the use of apprenticeship and highly skilled worker programs, and that its contractors and/or subcontractors shall agree to provide high quality training for the production of skilled, competent workers for this Project. For the purposes of this Section, the City and Developer agree that the preferred method of demonstrating the use of skilled, competent workers is participation in a registered apprenticeship program that has graduated journeymen three of the last five years.

SIGNATURE PAGES FOLLOW

C2019-297

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

CITY:

CITY OF TEMPE, an Arizona municipal corporation

By: Mark W. Mitchell
Mark Mitchell, Mayor

ATTEST:

Carla R. Reece
City Clerk

APPROVED AS TO FORM:

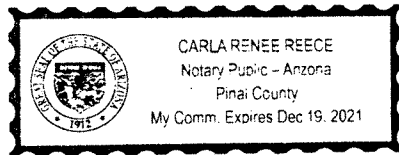
[Signature]
City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 20th day of December, 2019, by MARK MITCHELL, Mayor of the City of Tempe, who acknowledged that he/she signed the foregoing instrument on behalf of the City.

Carla Renee Reece
Notary Public

NOTARY SEAL:



DEVELOPER:

979 PLAYA DEL NORTE, LLC

By: IDP 979 Playa Del Norte Holdings, LLC, its Manager

By: Irgens Partners, LLC, its Manager

By: *Duane H. Nelde*
Name: DUANE H. NELDE
Title: EXECUTIVE V.P., REAL ESTATE FINANCE

STATE OF WISCONSIN)
) ss.
County of AMNIAWACKEE)

The foregoing instrument was acknowledged before me this 18th day of November, 2019, by Duane H. Nelde, the EVP, Real Estate Finance of IRGENS PARTNERS, LLC, Manager of IDP 979 Playa Del Norte Holdings, LLC, Manager of 979 PLAYA DEL NORTE, LLC, who acknowledged that he/she signed the foregoing instrument on behalf of said company.

[Signature]
Notary Public

NOTARY SEAL:

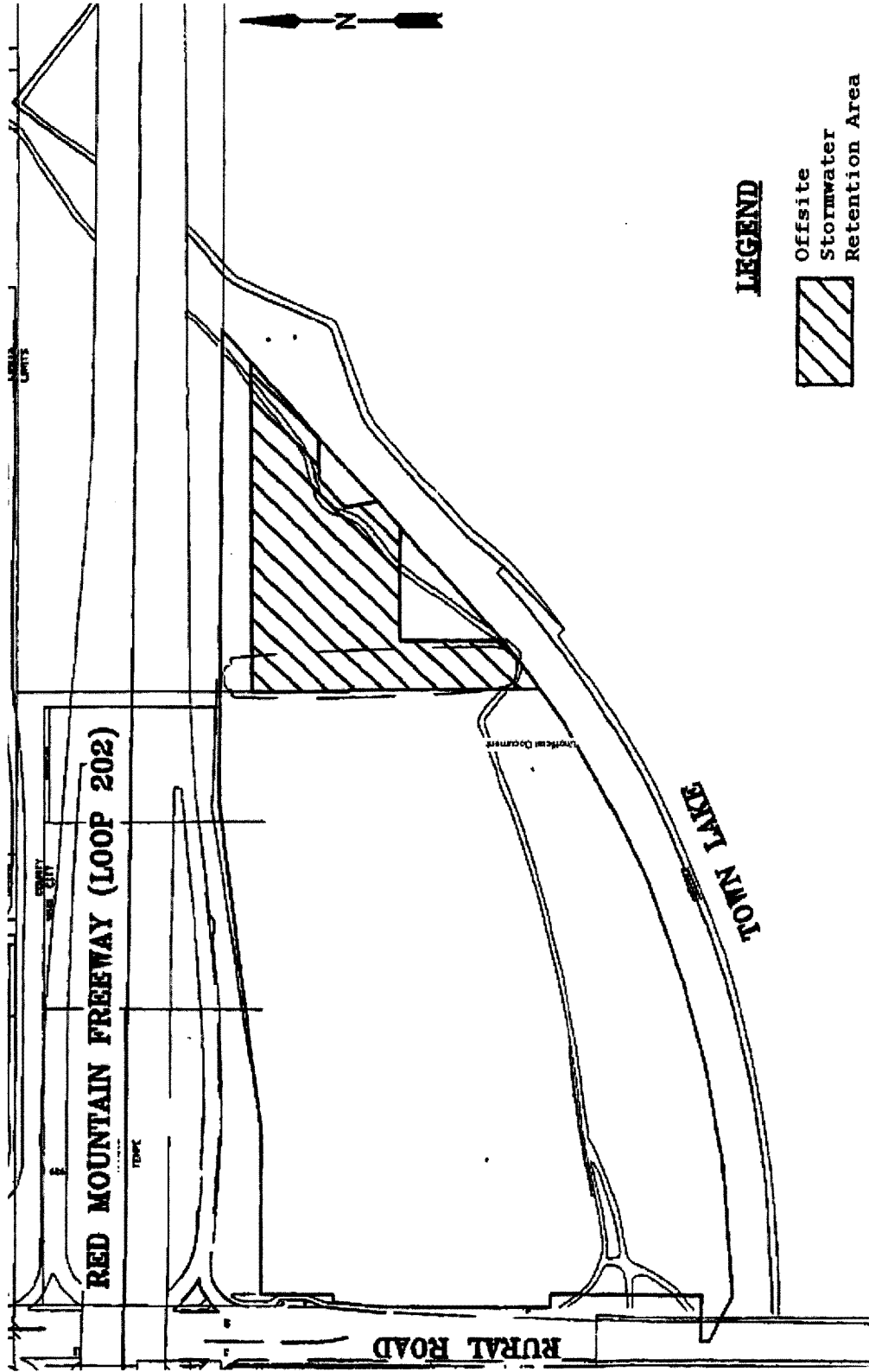


EXHIBIT A
Legal Description of Office Parcel

Lot 2, of the Final Plat of Playa Six Subdivision, as recorded in Book 962 of Maps, Page 27, records of Maricopa County, Arizona.

EXHIBIT B
Conceptual Site Plan

EXHIBIT C
OFFSITE STORMWATER RETENTION AREA
(Attached.)



LEGEND


-  Offsite Stormwater Retention Area

EXHIBIT D
SCHEDULE OF PERFORMANCE

Timeline to Perform Task from Effective Date	Task/Obligation
6 months	Obtain Development Plan Approval
60 months	Obtain Certificate of Completion from City

EXHIBIT E**WHEN RECORDED, RETURN TO:**

City of Tempe Basket

LAND AND IMPROVEMENTS LEASE

THIS LAND AND IMPROVEMENTS LEASE (“**Lease**”) is made and entered into as of the _____ day of _____, 20__ by and between the **CITY OF TEMPE**, a municipal corporation (“**Landlord**”), and 979 PLAYA DEL NORTE, LLC, an Arizona limited liability company (“**Tenant**”).

RECITALS

- A. Landlord has title of record to the real property as described in *Exhibit A* hereto (the “**Land**”), together with all rights and privileges appurtenant thereto and all improvements and future additions thereto or alterations thereof (collectively, the “**Premises**”).
- B. The Premises are located in a single central business district in a redevelopment area established pursuant to Title 36, Chapter 12, Article 3 of Arizona Revised Statutes (A.R.S. §§36-1471 et seq.). Tenant’s construction of the Premises resulted in an increase in property value of at least one hundred percent.
- C. The Premises will be subject to the Government Property Lease Excise Tax as provided for under A.R.S. §42-6203(B) (the “**Tax**”). The Tax shall be payable for the period beginning upon the date of the issuance of the certificate of occupancy for the Premises (“**Commencement Date**”), and ending eight (8) years thereafter.

AGREEMENT

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

1. Quiet Enjoyment. Landlord covenants and agrees with Tenant that conditioned upon Tenant’s paying the Total Rent herein provided and performing and fulfilling all the covenants, agreements, conditions and provisions herein to be kept, observed or performed by Tenant, Tenant may at all times during the term hereof peaceably, quietly and exclusively have, hold and enjoy the Premises.

2. Term. The term of this Lease shall be for eight (8) years, commencing on the Commencement Date and ending at midnight on the eighth (8th) anniversary of the Commencement Date, subject to earlier termination at Tenant's option, as provided herein. Landlord and Tenant acknowledge and agree that the certificate of occupancy for the Premises was issued on _____.

3. Rental; Annual In-Lieu Payment.

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

3.2 In addition to the rent payable by Tenant pursuant to *Section 3.1* above, on the Commencement Date, and to assist the Tempe Union High School Foundation and the Tempe Impact Education Foundation (together, the "**Foundations**") with their important educational missions, Tenant shall make a one-time voluntary contribution to the Foundations in the amount of \$50,000.00 (\$25,000.00 to each Foundation). The Foundations are intended third-party beneficiaries of this provision of the Lease and shall have the exclusive power to enforce this provision during the term of this Lease.

4. Leasehold Mortgage of Premises.

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

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

5. Taxes; Lease Obligations.

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

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

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

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

5.5 Government Property Lease Excise Tax. As required under A.R.S. §42-6206, Tenant is hereby notified of its potential tax liability under the Government Property Lease Excise Tax provisions of A.R.S. §42-6201, *et seq.* Failure of Tenant to pay the tax after notice and an opportunity to cure is an Event of Default that could result in the termination of Tenant's interest in this Lease and of its right to occupy the Premises.

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 on the Premises without consent of the occupant or as provided by law.

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

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

11. Insurance. During the term of this Lease, the Tenant shall, at Tenant's expense, maintain general public liability insurance against claims for personal injury, death or property damage occurring in, upon or about the Premises. The limitation of liability of such insurance shall not be less than \$5,000,000 (which may include umbrella coverage for any amount above \$1,000,000) combined single limit per occurrence for bodily injury and property damage, including coverages for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products and completed operations. The minimum policy limits shall be increased whenever deemed appropriate by Landlord's Risk Management to adequately reflect current market conditions. 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) if such endorsement is available on commercially reasonable terms. Tenant may self-insure the coverages required by this Section with the prior approval of Landlord, which will not be unreasonably withheld, and may maintain such reasonable deductibles and retention amounts as Tenant may determine.

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

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

such proceeds, whether or not Tenant rebuilds or repairs the improvements or fixtures, subject to the applicable provisions of this Lease and of any Leasehold Mortgage.

14. Condemnation.

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

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

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

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

15. Termination Option.

15.1 Grant of Option. In the event changes in applicable law nullify, remove, or vitiate the economic benefit to Tenant provided by this Lease or if any person or entity succeeds to Tenant's interest hereunder by foreclosure sale, trustee's sale, or deed

in lieu of foreclosure (collectively, "Foreclosure"), or if Tenant, in its sole and absolute discretion, so elects, Tenant or Tenant's successor by Foreclosure shall have the option, exercisable by written notice to Landlord, to terminate this Lease as to the entire Premises or as to such portions of the Premises as Tenant may specify effective sixty days after the date of the notice. Upon default under the Leasehold Mortgage (after giving effect to all applicable notice and cure rights), Tenant or Leasehold Mortgagee shall have the option, exercisable by written notice to Landlord, to terminate this Lease effective sixty (60) days after the date of the notice. Simultaneously with, and effective as of such termination, title to the Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant and Landlord shall comply with the obligations under Article 31.

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

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

16. Assignment; Subletting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

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

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

25. New Lease.

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

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

further remedy any other conditions which Tenant under the Lease was obligated to perform under its terms, to the extent the same are reasonably susceptible of being cured by the Leasehold Mortgagee.

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

25.3 Notwithstanding anything to the contrary expressed or implied in this Lease, any new lease made pursuant to this Section 25 shall have the same priority as this Lease with respect to any mortgage, deed of trust, or other lien, charge, or encumbrance on the fee of the Premises, and any sublease under this Lease shall be a sublease under the new Lease and shall not be deemed to have been terminated by their termination of this Lease.

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

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

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

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

30. No Merger. In no event shall the leasehold interest, estate or rights of Tenant hereunder, or of any Leasehold Mortgagee, merge with any interest, estate or rights of Landlord in or to the Premises. Such leasehold interest, estate and rights of Tenant hereunder, and of any Leasehold Mortgagee, shall be deemed to be separate and distinct

from Landlord's interest, estate and rights in or to the Premises, notwithstanding that any such interests, estates or rights shall at any time be held by or vested in the same person, corporation or other entity.

31. Surrender, Reconveyance.

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

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

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

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

34. Trade Fixtures, Machinery and Equipment. Landlord agrees that all trade fixtures, machinery, equipment, furniture or other personal property of whatever kind and nature kept or installed on the Premises by Tenant or Tenant's subtenants may be removed by Tenant or Tenant's subtenants, or their agents and employees, in their discretion, at any time and from time to time during the entire term or upon the expiration of this Lease. Tenant agrees that in the event of damage to the Premises due to such removal it will repair or restore the same. Upon request of Tenant or Tenant's assignees or any subtenant, Landlord shall execute and deliver any consent or waiver forms submitted by any vendors, Landlords, chattel mortgagees or holders or owners of any trade fixtures, machinery, equipment, furniture or other personal property of any kind and description kept or installed on the Premises by any subtenant setting forth the fact that Landlord waives, in favor of

such vendor, Landlord, chattel mortgagee or any holder or owner, any lien, claim, interest or other right therein superior to that of such vendor, Landlord, chattel mortgagee, owner or holder. Landlord shall further acknowledge that property covered by such consent or waiver forms is personal property and is not to become a part of the realty no matter how affixed thereto and that such property may be removed from the Premises by the vendor, Landlord, chattel mortgagee, owner or holder at any time upon default by the Tenant or the subtenant in the terms of such chattel mortgage or other similar documents, free and clear of any claim or lien of Landlord.

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

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

36. General Provisions.

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

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

Landlord's obligations hereunder are assumed in writing by the transferee. Landlord shall not grant or create mortgages, deeds of trust or other encumbrances of any kind against the Premises or rights of Landlord hereunder, and, without limiting the generality of the foregoing, Landlord shall have no right or power to grant or create mortgages, deeds of trust or other encumbrances superior to this Lease without the consent of Tenant in its sole and absolute discretion. Any mortgage, deed of trust or other encumbrance granted or created by Landlord shall be subject to this Lease, all subleases and all their respective provisions including, without limitations, the options under this Lease and any subleases with respect to the purchase of the Premises.

36.3 Captions; Attachments; Defined Terms.

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

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

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

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

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

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

If to Landlord:

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

With a copy to:

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

If to Tenant:

979 Playa Del Norte, LLC
c/o Irgens Partners, LLC
833 East Michigan Street, Suite 400
Milwaukee, Wisconsin 52303
Attn: CEO/Manager

With a copy to:

Gammage & Burnham, P.L.C.
Two North Central Avenue, 15th Floor
Phoenix, Arizona 85004
Attn: Manjula Vaz

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

36.9 Waiver. No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is

claimed, and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition.

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

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

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

37. 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.

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

ATTEST:

LANDLORD:

By: _____
City Clerk

CITY OF TEMPE, a municipal corporation

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____

City Attorney

TENANT:

979 PLAYA DEL NORTE, LLC

By: IDP 979 Playa Del Norte Holdings, LLC,
its Manager

By: Irgens Partners, LLC, its Manager

By: _____
Name: _____
Title: _____

EXHIBIT "A"

Land

Lot 2, of the Final Plat of Playa Six Subdivision, as recorded in Book 962 of Maps, Page 27, records of Maricopa County, Arizona.

EXHIBIT "B"**WHEN RECORDED, RETURN TO:****MEMORANDUM OF LAND AND IMPROVEMENTS LEASE**

THIS MEMORANDUM OF LAND AND IMPROVEMENTS LEASE ("Memorandum") is made and entered into as of the ___ day of _____, 20__, 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 _____, 20__ ("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.

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

[insert signature block for Tenant]

STATE of)
) ss.
County of)

The foregoing instrument was acknowledged before me this ___ day of _____ 20__ by _____, _____ of CITY OF TEMPE, an Arizona municipal corporation.

Notary Public

My Commission Expires:

STATE of)
) ss.
County of)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__ by _____

Notary Public

My Commission Expires:
