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When recorded, return to:

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

C2016-114
DEVELOPMENT AND DISPOSITION AGREEMENT
(FLOUR MILL)

THIS DEVELOPMENT AND DISPOSITION AGREEMENT (“**Agreement**”) is entered into as of the 27th day of June, 2016 (the “**Effective Date**”), by and between the CITY OF TEMPE, an Arizona municipal corporation (“**City**”), and ICONIC MILL, LLC, an Arizona limited liability company (“**Developer**”).

RECITALS

A. In furtherance of its desire to promote development of approximately five acres of City-owned land at the southeast corner of Rio Salado Parkway and Mill Avenue, which land contains the historic Hayden Flour Mill and associated grain silos (the “**Property**”), City issued Request for Qualification No. 15-003.

B. Developer was chosen as the successful respondent for the development of the Property by a review committee and was selected by City under Resolution No. 2014.157 to enter into exclusive negotiations for the purposes of entering into a development agreement for the lease/purchase and development of the Property.

C. The Property is subject to certain restrictions and limitations on use and development.

D. City and Developer hereby acknowledge and agree that significant benefits will accrue to City from the development of the Property by Developer, including, without limitation, increased tax revenues, and the creation of jobs in the City, and that the development of the Property in accordance with the Conceptual Development Plan (hereafter defined), will otherwise improve or enhance the economic welfare of the inhabitants of the City.

E. City hereby acknowledges that the Hayden Flour Mill was originally constructed in 1918; and that the current Government Property Lease Excise Tax Rate for structures and buildings of this age is \$0 as set forth in A.R.S. §42-6203(A)(2)(e.)

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

AGREEMENT

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

ARTICLE 1 DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

1.1 “Agreement” means this Development and Disposition Agreement, together with all Exhibits and Schedules referred to herein, all as may be amended from time to time in accordance with the terms and conditions hereof.

1.2 “Approved Exceptions” means those matters approved by Developer pursuant to the process described in **Section 3.2.2** hereof.

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

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

1.5 “City Council” means the Tempe City Council.

1.6 “Conceptual Development Plan” means Developer’s plan for the development of the Property, a reduced copy of which is attached hereto as **Exhibit E** and incorporated herein by this reference, as amended from time to time in accordance with this Agreement..

1.7 “Default” is defined in **Section 7.1**.

1.8 “Developer” means Iconic Mill, LLC, an Arizona limited liability company, its permitted successors and assigns.

1.9 “Developer Default” means a Default by Developer.

1.10 “Escrow Agent” and “Title Company” means First American Title Insurance Company, Attn: Tricia Rogers, progers@firstam.com, 30 North LaSalle Street, Suite 2700, Chicago, IL 60602, Direct: 312-917-7255, Fax: 866-744-2404.

1.11 “Force Majeure Event” is defined in **Section 8.15**.

1.12 “Historic Designation” means listing all portions of the Property not already subject to historic overlay zoning as a result of inclusion in the current Tempe (Hayden) Butte Tempe Historic Property Register listing. The Tempe Historic Property Register listing process is to commence immediately following the execution of this Agreement.

1.13 “Hotel Tract” means that portion of the Property depicted on **Exhibit A-3** attached hereto and incorporated herein.

1.14 “Lease Execution Date” means the date any Master Lease is executed.

1.15 “Mill Tract” means that portion of the Property depicted on **Exhibit A-1** attached hereto and incorporated herein.

1.16 “Master Lease” means one or more ground leases to be executed by City and Developer, in substantially the form of **Exhibit F** attached hereto, as described in **Section 3.1** hereof.

1.17 “Memorandum of Lease” means a Memorandum of Lease to be executed and acknowledged by City and Developer concurrently with the execution of each Master Lease.

1.18 “Multipurpose Tract” means that portion of the Property depicted on **Exhibit A-2** attached hereto and incorporated herein.

1.19 “PAD” means the most current Planned Area Development from time to time approved by City, if any, with respect to the development of the Property or any portion thereof, and which sets forth the specific uses, densities, features, and other development matters applicable to the Property or any portion thereof.

1.20 “Parcel” means any separate parcel of land within the Property created pursuant to one or more Subdivision Plats or lot splits approved by the City in accordance with its standard approval procedure governing such matters.

1.21 “Parcel Development Agreement” means a separate and subordinate agreement between the City and Developer or other person setting forth specific terms and conditions for development and/or use of a particular Parcel or Tract.

1.22 “Phase” means each separate component or portion of the Project which is or may be developed by Developer pursuant to this Agreement, as more particularly described herein.

1.23 “Project” means the mixed-use project Developer intends to construct on the Property, to be constructed in three Phases, generally consisting of (i) approximately 8,500 square feet of restaurant, event or retail space and 20,000 square feet of office space, together with requisite parking accommodations on the Mill Tract (Phase I); (ii) the infrastructure to

support a multipurpose venue, including landscaping, utilities and other infrastructure depicted on the Site Plan (as hereafter defined) (Phase II); and (iii) a boutique hotel containing not less than 100 room keys, 8,500 square feet of retail space, and other amenities on the Hotel and Silo Tracts, or such other City approved uses (Phase III) (provided that if Developer does not proceed with Phase III, Developer will maintain the Silo Tract in its present condition in a manner acceptable to City), all as more particularly described in the Conceptual Development Plan and as subject to modification based on the conditions contained in **Section 4.1**. Each Phase will include associated parking requirements for the constructed improvements.

1.24 “Property” means the Hotel Tract, Mill Tract, Multipurpose Tract, the Rail Tract and the Silo Tract as defined in this Agreement and as depicted on the Site Plan and **Exhibits A-1, A-2, and A-3**, respectively.

1.25 “Rail Tract” means that portion of the Mill Tract designated as the Rail Tract on **Exhibit A-1**.

1.26 “Schedule of Performance” means the schedule of performance attached hereto as **Exhibit C**, as the same may change from time to time.

1.27 “Silo Tract” means that portion of the Hotel Tract depicted on **Exhibit A-3** attached hereto and incorporated herein; provided that if the Hotel Tract Master Lease is terminated the Silo Tract shall be deemed to be part of the Mill Tract.

1.28 “Site Plan” means the Site Plan for the Property attached hereto as **Exhibit B**.

1.29 “Subdivision Plat” means the creation or reconfiguration of one or more Parcels comprising some or all of the Property as submitted by Developer and approved by City. Each Subdivision Plat shall substantially conform to the Conceptual Development Plan.

1.30 “Tract” means the Hotel Tract, Mill Tract, Silo Tract, or the Multipurpose Tract, as the case may be.

ARTICLE 2 PRELIMINARY MATTERS

2.1 Incorporation of Recitals. The Recitals are true and correct and are incorporated herein by reference.

2.2 Duration of Development Agreement. The term of this Agreement (the “**Term**”) shall commence on the Effective Date and continue through December 31, 2035, unless sooner terminated as provided herein.

2.3 General Cooperation. City and Developer acknowledge and agree that they shall cooperate in good faith with each other and use their respective good-faith and commercially reasonable efforts to pursue development of the Property in accordance with the Conceptual Development Plan and otherwise as contemplated by this Agreement. City agrees to use its reasonable best efforts to assist Developer in obtaining all approvals required by state, federal,

county or other governmental authorities in order to develop the Property in accordance with the Conceptual Development Plan and the Schedule of Performance. To further the commitment of City and Developer to cooperate in the implementation of this Agreement, City shall designate and appoint a representative to act as liaison between the City and its various departments and Developer shall designate and appoint a representative to act on its behalf under this Agreement. The initial representative for the City (“**City Representative**”) shall be Alex Smith, and the initial representative for Developer (“**Developer Representative**”) shall be David L. Baum and Talia A. Lissner. Both the City Representative and the Developer Representative shall be available at reasonable times to discuss and review the performance of the City and Developer under this Agreement and the development of the Property. A party may change its Representative at any time by giving notice to the other party as provided in **Section 8.5**.

2.4 Condition of Property. Except as specifically stated in this Agreement, City makes no representation or warranty as to the condition of the Property. The Property shall be leased to Developer in its “AS IS” condition, subject only to the Approved Exceptions. Notwithstanding anything contained herein to the contrary, City and Developer acknowledge that portions of the Property may require mitigation of existing adverse soil and environmental conditions resulting from previous uses of the Property.

ARTICLE 3 LEASE AND DUE DILIGENCE INVESTIGATION

3.1 Master Lease. To facilitate commencement of the Project and master planning of the Property, City and Developer shall execute one or more Master Leases with respect to each Parcel or Tract within the Project within forty-five (45) days after written request from the Developer, but in all events, not later than the date that the Developer obtains any building permit with respect to any improvements to be constructed on such Parcel or Tract. Developer shall not have the right to commence construction of any improvements on any Parcel within the Project unless and until the Master Lease with respect thereto has been executed by City and the Developer. Each Master Lease shall be in substantially the form attached hereto as **Exhibit F**, and together, shall collectively cover all of the Property, and each shall have a term of 99 years. Each Master Lease shall contain such early termination provisions as are appropriate, but at a minimum shall provide for termination if the Developer fails to comply with the Schedule of Performance, and shall further provide as follows: (i) the Mill Tract Master Lease shall provide for automatic removal of the Rail Tract from the leased premises if **the Rail Tract** is not developed within five (5) years after the completion of the Mill, and (ii) the Hotel Tract Master Lease shall provide that it terminates automatically if Developer has not obtained a Certificate of Occupancy for the hotel or other City approved use on or before January 1, 2024.

3.1.1 Rent. During the term of each Master Lease, Developer shall pay to City annual rent (the “**Rent**”) in the amounts set forth on **Exhibit C-1** hereto, with such increases and other changes to the Rent as are specified in the Master Lease.

3.2 Due Diligence; Access Rights. Except as specifically set forth in this Agreement, the Property and all improvements thereon shall be leased in their existing “AS IS,” “WHERE IS” condition subject only to Approved Exceptions.

3.2.1 Survey; Investigation. Until 5:00 p.m. (Phoenix, Arizona time) on the 60th day following the Effective Date (the “**Feasibility Period**”), Developer shall have the right to, at its sole cost and expense, survey and examine the Property and any improvements thereon, including, but not limited to, the physical condition of the Property and any improvements, the availability of access, water, sewer and other utilities and services on the Property and the costs of securing same, the existence of hazardous or toxic substances or pollutants, and the zoning and applicable governmental regulations, statutes and ordinances pertaining to the Property, at any time, with any persons whom it shall designate, including without limitation of the foregoing, appraisers, contractors, engineers and soil testing personnel; and to assess the potential impact on the Project of the currently pending litigation involving the Property (City of Tempe v. Tempe Flour Mill, L.L.C., Tempe Flour Mill Investments, LLC, Maricopa County Superior Court Case No. CV2013-014770). If Developer promptly (and in any event within 30 days after the Effective Date) orders any report or study for the Property, but does not receive the final report or study prior to the expiration of the Feasibility Period, it may extend the Feasibility Period for an additional thirty (30) days by giving City not less than ten (10) day’s written notice prior to expiration of the Feasibility Date. On Developer’s execution of a right of entry agreement in form and substance satisfactory to City, City shall permit access to the Property to Developer and any persons designated by Developer, and City shall afford them the opportunity to conduct, prepare and perform any surveys, appraisals, and any noninvasive topographical, environmental, traffic, feasibility and other engineering tests, studies, and reports upon the Property that Developer deems necessary or appropriate. Upon completion of all such tests, studies and reports, and in the event Developer does not proceed to enter into the Master Lease, Developer shall fill all holes produced by it and restore the Property to its condition existing prior to any tests or inspections. Developer shall indemnify, protect, defend and hold City harmless from all claims, costs, fees or liability of any kind arising out of the acts of Developer or Developer’s agents pursuant to this Section; except that Developer shall have no liability for discovery of pre-existing conditions (e.g. Developer shall not be responsible for remediating environmental contamination discovered, but not caused or exacerbated, by Developer).

3.2.2 Status of Title. Within ten (10) days after the Effective Date, Developer shall cause Escrow Agent to issue a current commitment for title insurance (the “**Title Commitment**”) for the Property disclosing all matters of record which relate to the title to the Property, and a legible copy of each of the instruments and documents referred to in the Title Commitment. During the Feasibility Period, Developer may object in writing to any matter disclosed by the Title Commitment. If Developer fails to object during the Feasibility Period, the condition of title to the Property shall be deemed approved (except to matters of record which arise after the Feasibility Period which are not caused by Developer or its actions). City shall not be obligated to cure any objection, however, City agrees to notify Developer in writing whether it will or will not attempt to remove the objections within ten (10) days after receipt of the written objections. The parties acknowledge that their inability to satisfactorily resolve any title objections may impair the future development of the Property.

3.2.3 Reports. Within ten (10) business days after the Effective Date, City shall deliver to Developer copies of all relevant surveys, reports, or studies (collectively “**Reports**”), in City’s possession on the Effective Date, pertaining to the Property or the development thereof, including but not limited to all Reports pertaining to drainage, soil, flood, hazardous or toxic substances or pollutants, archaeological or environmental conditions, or power or transmission

lines on or adjacent to the Property, as well as all topographical surveys. Any such Reports not in City's possession concurrently with the execution hereof but which come into City's possession during the Term of this Agreement shall be delivered to Developer promptly after receipt. If this Agreement is terminated for any reason, Developer shall return the Reports to City. On written request, City shall provide Developer with access to any and all data and information as City may have pertaining to the Property which is not otherwise confidential or privileged materials or any City Attorney files. Developer agrees that it shall not attempt to assert any liability against the City by reason of the City's having furnished any data or information pursuant to the terms of this Agreement or by reason of any such data or information becoming or proving to have been incorrect or inaccurate in any respect.

3.3 Conveyances As Is. Prior to execution of the Master Lease, Developer shall have made its own examination, inspection and investigation of the potential impact of the pending litigation affecting the Property, and the condition of the Property (including, without limitation, the personal property contained therein, the subsurface thereof, all soil, environmental, engineering and other conditions which may affect construction thereon and/or the development thereof) as it deems necessary or appropriate. Except as provided in this Agreement, Developer is entering into this Agreement and the Master Lease based upon the results of such inspections and investigations and not in reliance on any statements, representations, or agreements of City not contained in this Agreement and the Master Lease. Developer acknowledges and agrees that it is acquiring the leasehold interest in the Property in an "AS IS" and "WHERE IS" condition, with all faults, except that the property shall be delivered vacant, and except for the representations, warranties and covenants of City as stated in this Agreement and that City shall not be responsible or liable to Developer for any conditions affecting the Property, except for the express representations, covenants and warranties of City set forth in this Agreement. Other than with respect to claims arising from City's breach of this Agreement, and except for claims arising as a result of the acts of City or its Council members, officers, employees, representatives and agents which affect the condition of or title to the Property, Developer or anyone claiming by, through or under Developer, hereby fully releases City, its Council members, officers, employees, representatives and agents from any and all claims that it may now have or hereafter acquire against the indemnified parties, for any cost, loss, liability, damage, expense, demand, action or cause of action arising from or related to the condition of the Property. Developer further acknowledges and agrees that this release shall be given full force and effect according to each of its expressed terms and provisions, including, but not limited to, those relating to unknown and unsuspected claims, damages and causes of action.

Developer shall not dispose of or remove from the Property any equipment or other improvements thereon, and agrees that if at any time, Developer desires that any equipment presently located on the Property be removed, it shall provide City with written notice of such desire. City shall have sixty (60) days after receipt of the written notice in which to remove the equipment, at City's sole cost and expense.

ARTICLE 4 MASTER PLANNING; THIRD PARTY APPROVALS

4.1 Conceptual Development Plan. The Conceptual Development Plan attached hereto as **Exhibit E** sets forth Developer's current plan for development of the Property. City

hereby approves the Conceptual Development Plan. The parties acknowledge that the Conceptual Development Plan initially attached to this Agreement reflects the parties' general intent regarding development of the Property, and that as Developer finalizes its plans and in the event it determines any parts of the Conceptual Development Plan are not feasible or otherwise require modification, the Conceptual Development Plan may be amended from time to time subject to approval of the City, which approval will not be unreasonably withheld, conditioned or delayed as long as the revised Conceptual Development Plan does not differ materially from that contained herein. If at any time after the Effective Date of this Agreement, the Developer determines that it is not economically or otherwise feasible for the Phase III hotel to be a part of the Project, Developer agrees to promptly advise the City in writing of such determination and Developer agrees to promptly proceed with the balance of the Project, including moving to promptly complete the Public Amenities as described in **Schedule 5.10** before their previously provided completion dates.

4.2 New Plat. If Developer so desires, it may have prepared at its sole cost and expense, a revised plat of the Property dividing it into not less than three (3) Parcels (one for each Tract), but not more than five (5) Parcels (which could include separate Parcels for the Silo and Rail Tract), similar to those depicted on **Exhibit A-1, A-2, and A-3** hereto. The revised plat shall be recorded at Developer's sole cost and expense concurrently with the execution of the first Master Lease.

ARTICLE 5 DEVELOPMENT PROCESSES; REMEDIATION

5.1 Parcel Development Agreements. City and Developer hereby acknowledge that the development of the Property in accordance with the Conceptual Development Plan might be accomplished by Developer through assignments, subleases, joint ventures and/or other dispositions to or arrangements with other experienced investors in or developers of real property. In connection therewith, it is anticipated and contemplated by City and Developer that such persons might desire to become parties to this Agreement or to enter into separate and subordinate Parcel Development Agreements with City and/or Developer. City and Developer hereby agree that any and all Parcel Development Agreements entered into by City with any such developer, investor or Developer shall be subordinate in all respects to the terms and conditions of this Agreement, and in the event of any conflict or discrepancy between the provisions of any such Parcel Development Agreement and the terms and conditions of this Agreement, this Agreement shall govern and control.

5.2 Schedule of Performance; Extensions. City and Developer intend that the planning and development of the Property shall be achieved pursuant to the Conceptual Development Plan and Schedule of Performance. From time to time following the Effective Date, however, Developer and City may, by mutual written agreement, refine and revise the Conceptual Development Plan and Schedule of Performance as may be necessary to accommodate any factors, events or occurrences which may necessitate such refinement or revision. Developer and City shall each use commercially reasonable efforts to enable development of the Property to occur in accordance with the Conceptual Development Plan and

Schedule of Performance. So long as no Developer Default has occurred and remains uncured, Developer shall have the right to extend the time for performance of any item listed on the Schedule of Performance as hereafter provided. Developer may extend any item listed on the Schedule of Performance once for a period not to exceed six (6) months by giving written notice to City not less than forty-five (45) days before the then-scheduled performance date. Developer may extend any item listed on the Schedule of Performance (whether or not a prior extension has been obtained) for an additional period not to exceed one (1) year, by giving written notice to City not less than forty-five (45) days before the then-scheduled performance date and paying to City a nonrefundable extension fee of \$100,000. The foregoing extension rights may only be exercised once; not once for each item on the Schedule of Performance, but only once for one item only.

5.3 PAD. As required by the Schedule of Performance, Developer shall submit to City a PAD for the Property in accordance with normally applicable City submission requirements for such applications. The PAD shall be in sufficient form to comply with applicable City requirements and shall include a list of proposed standards and other authorizations required to develop the Property, and which may include future phases of the Project. City agrees to provide such authorizations and consents as may be required to enable Developer to submit the PAD. Upon City's approval of the PAD, the PAD shall govern and control the development of the Property over the Conceptual Development Plan and may be submitted to the City for modification from time to time as allowed in the City of Tempe Zoning and Development Code. The parties acknowledge that the Multipurpose Tract is not currently zoned to permit live music, and if such uses are desired the Multipurpose Tract will require rezoning.

5.4 Site Mitigation.

5.4.1 Environmental Remediation. Developer acknowledges that development of the Property in accordance with the Conceptual Development Plan might require investigation, characterization, and/or remediation of certain environmental conditions affecting the Property in accordance with applicable federal, state or local environmental and health or safety laws, regulations or rules, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. Section 2601, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A. Section 1251, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. Section 300f, et seq.; the Clean Air Act, 42 U.S.C.A. Section 7401, et seq.; Title 49 of Arizona Revised Statutes; any successor to the foregoing, and any judicial or administrative statement of general or specific applicability. Developer shall be permitted to perform or allow City to perform such work during the Term of this Agreement, and if Developer elects to undertake such work, it shall do so with reasonable diligence in accordance with a schedule that is mutually satisfactory to City and Developer, and shall add such additional time on a day for day basis to the Schedule of Performance as may be required for such work.

5.4.2 Government Approvals. Developer shall be responsible for securing all governmental approvals required in connection with work performed under **Section 5.4.1**. The City shall assist Developer in such efforts, at Developer's sole cost and expense.

5.4.3 Reporting. Developer shall provide City on an ongoing basis with copies of all final test results or data and all final work plans, reports, and other documents obtained by Developer in the course of performing remediation work under **Section 5.4.1**, whether or not submitted to the Arizona Department of Environmental Quality (“ADEQ”). Upon City’s written request, Developer shall furnish such information as City reasonably requests concerning the status of the investigation, characterization or remediation of environmental conditions affecting the Property.

5.5 Off-Site Improvements. Developer shall be responsible for construction and installation of any off-site improvements required for development of the Property. City and Developer hereby acknowledge and agree that development of the Property pursuant to the Conceptual Development Plan does not require any installation or construction of, or contribution to, additional off-site public infrastructure improvements. However, in the event that Developer takes any action with respect to the Property which is not in substantial conformance with the Conceptual Development Plan and that would require additional off-site improvements, such off-site improvements shall be the responsibility of Developer.

5.6 Signage. City and Developer acknowledge and agree that a distinctive characteristic of the Project is the location as the entrance to the Downtown District. Temporary event signage in the form of banners, flags or similar may be necessary to promote the vibrancy desired. While not a requirement, due to the historic nature of the Property, City and Developer acknowledge and agree that Developer will make reasonable efforts where appropriate to recreate signage similar to current and past building signage to the extent reasonable and feasible and not inconsistent with an adaptive reuse of the Mill Building and Silos. City and Developer hereby acknowledge that the distinctive location of the Project, and its redevelopment to a mixed-use office, retail, and commercial Project present a unique opportunity to enhance the visibility and high-profile nature of the Project. As a result, the parties acknowledge and agree that appropriate signage will and should be an integral part of the Project and will be necessary to the success of the Project. City and Developer agree to coordinate their efforts and agree on appropriate signage for the Project. City authorizes and empowers the Director of Community Development to consent to any additional request of the Developer for sign approval that meet the intent of the Project and deviate from Tempe Zoning code. However, all such signage must be presented and approved through the City’s normal review process.

5.7 Archaeological Remediation. The City has provided Developer with a three-volume archaeological report conducted by Archaeological Consulting Services, LTD which documents various existing archaeological features located on the site. In addition, the report identified four items that were unable to be completed until construction activities were commenced. These activities include (a) the Steel Silo Concrete Pad, (b) East Side Mill Building, (c) Tail Race Feature and (d) Subterranean Rooms—North Side of Mill Building. Prior to the issuance of a building permit, Developer shall provide City with a detailed archeological plan, prepared by a qualified person or firm, to ascertain the presence, and to review and assess the impact, of any archaeological artifacts or human remains that may exist upon or otherwise impact or affect the items listed above. If any such artifacts or remains are required by applicable law to be removed, relocated, preserved or otherwise remediated to permit development of the Property as contemplated by this Agreement, then Developer shall diligently undertake to satisfy all such legal obligations, at no cost or expense to City. Such archeological

remediation shall have a day for day delay impact on the Schedule of Performance unless Developer and the City otherwise agree in writing.

5.8 Parking Requirements. As part of the Project, City and Developer will agree on a shared parking model for calculating required parking for each Phase of the Project, that will operate to reduce the total number of parking spaces that would normally be required for the Project considering the type and nature of the improvements to be constructed. Such model may include use of the parking spaces not owned by Developer and will require additional licenses or agreements as may be necessary.

5.9 Conservation Easement. City and Developer hereby acknowledge and agree that a material part of the consideration to City for execution of this Agreement is Developer's agreement to preserve the Hayden Flour Mill and Hayden Silos in their current locations on the Property and to incorporate the Hayden Flour Mill and Hayden Silos into or as part of the Project. If, however, at any time after the date of this Agreement, the Developer determines that it is not economically or otherwise feasible to incorporate the Hayden Silos into and as part of the Project, then, in that event, the Developer shall be responsible for preserving and maintaining Hayden Silos in their current location. The Developer hereby agrees to preserve the Hayden Flour Mill and Hayden Silos in their current locations on the Property and, after the expiration of the historic tax credit period required for the financing of the Project, acknowledges that City will thereafter record a Declaration of Conservation Easement in substantially the form attached hereto as **Exhibit D** covering: (a) the façade of the Flour Mill Building, (b) the façade of the Silos, (c) the airspace above the Flour Mill Building and Silos, and (d) Developer's creation of exhibits, open to the public, demonstrating the ancient and historic context of the site. Until the Conservation Easement is recorded, Developer shall not alter the Hayden Flour Mill or the Hayden Silos in any way without City's prior written approval, which may be granted or withheld in City's unfettered discretion.

5.10 Public Amenities. Developer shall construct the Public Amenities described in **Schedule 5.10** hereto.

5.11 Public Transit Facilities. Developer hereby agrees that it shall not impede the development and implementation of public transit facilities as such facilities may be desired by the City within the Property to serve the needs of the general public and that, subject to the infrastructure needs and requirements of the Improvements to be constructed within the Property as contemplated by the Conceptual Development Plan, the Developer shall cooperate in good faith with the City in connection with the location of any public transit facilities and public rights of way within the Property and the integration of such facilities and rights of way with Improvements constructed or planned to be constructed thereon.

5.12 Tempe and National Registers. Developer shall use good faith efforts, at Developer's sole cost and expense, to cause the listing of the Property on both the Tempe and National Registers of historic places. Prior to the Property's formal listing in the Tempe Historic Property Register, Developer agrees to voluntarily subject any planned changes to the Property for review by the Tempe Historic Preservation Office and Tempe Historic Preservation Commission.

ARTICLE 6
PROPERTY TAX ASSESSMENTS

6.1 Government Property Lease. City hereby acknowledges and agrees that if the Project is completed as contemplated in compliance with the Schedule of Performance (as it may be amended or extended) and Developer has otherwise satisfied its obligations, in all material respects, under this Agreement (taking into account all applicable cure periods, if any), then Developer shall be entitled to all statutorily-authorized property tax abatements and rates available pursuant to the provisions of A.R.S. §§ 42-6201 through 42-6210, inclusive, as in effect on May 20, 2010 which were reserved in Resolution 2010.76. Upon execution of this Agreement, the conditions stated in Section 2 of such Resolution shall have been satisfied. If Developer has performed its development obligations hereunder under this Agreement, then City and Developer shall take such actions as are necessary to facilitate property tax abatements on government property improvements for which a certificate of occupancy has been issued, including without limitation, entering a lease substantially in the form attached hereto as **Exhibit G** (each a “GPLET Lease”). Alternatively, City and Developer may agree to include the requisite provisions in the Master Lease.

6.1.1 Voluntary Contribution. To assist the Tempe Union High School Foundation and the Tempe Impact Education Foundation (together, the “Foundations”) with their important educational missions, Developer agrees to make a voluntary contribution to the Foundations in the amount of \$100,000.00 (half to each foundation), in four (4) installments of \$25,000 each (half to each foundation) payable on the date of issuance of the first Certificate of Occupancy issued for any Improvements constructed on the Property as part of the Project and on each subsequent anniversary of such date until paid in full. The Foundations are an intended third party beneficiary of this provision of the Agreement, and shall have the exclusive power to enforce this provision during the term of this Agreement.

6.2 Successor Financing Incentive Programs. City hereby acknowledges that if development of the Property or any Parcel or Tract therein is economically feasible only as a result of the availability of financing incentives, such as statutorily authorized property tax abatement programs currently available under Arizona law, and, for any reason, any such programs are amended, modified, repealed, or rescinded such that the full benefits thereof as currently provided on the date of the execution of this Agreement are no longer in effect, then, in that event, the City will use its best efforts to provide alternative development incentives and to cooperate with Developer with respect to any other available tax abatement programs or other public financing mechanisms provided for under Arizona law or otherwise available in order to obtain essentially the same economic benefits for the Property as are currently provided under existing law. Said incentives or tax abatement programs shall be limited so that they result in no greater cost to the City or to the Developer.

ARTICLE 7
DEFAULT; REMEDIES; TERMINATION

7.1 Default. It shall be a “**Default**” hereunder if either party fails to perform any of its obligations hereunder and such failure continues for a period of thirty (30) days after written notice from the non-defaulting party specifying in reasonable detail the nature of the failure;

provided that if the nature of such failure to perform is such that it cannot reasonably be cured within the thirty-day period, no Default shall be deemed to exist if the defaulting party commences a cure within that thirty-day period and diligently and expeditiously pursues such cure to completion.

7.1.1 Developer Defaults. In addition to the foregoing, it shall be a Default by Developer hereunder if (a) Developer sells, assigns, conveys, or alienates the Property, or any part thereof, or any interest therein, or shall be divested of title or any interest therein in any manner or way, whether voluntarily or involuntarily other than in accordance with this Agreement or the Master Lease; (b) any petition or application for a custodian, as defined by Title 11, United States Code, as amended from time to time (the “**Bankruptcy Code**”) or for any form of relief under any provision of the Bankruptcy Code or any other law pertaining to reorganization, insolvency or readjustment of debts is filed by or against Developer, their respective assets or affairs, and such petition or application is not dismissed within ninety (90) days of such filing; (c) Developer makes an assignment for the benefit of creditors, is not paying material debts as they become due, or is granted an order for relief under any chapter of the Bankruptcy Code; (d) garnishment, attachment, levy or execution in an amount in excess of an amount equal to ten percent (10%) of its net worth is issued against any of the property or effects of Developer, or any partnership of which Developer is a partner, and such issuance is not bonded against within ninety (90) days; (e) the dissolution or termination of existence of Developer unless its successor by transfer or operation of law is continuing the business of operating the Project; or (f) there is a material breach of any representation or warranty, or there is a material false statement or material omission, by Developer under any other document forming part of the transaction in respect of which this Agreement is made, including without limitation the Master Leases.

7.2 Developer’s Remedies. If City is in Default under this Agreement and the parties do not resolve the City’s Default, Developer shall have the right to terminate this Agreement upon written notice to City. Developer shall have the right to pursue all other legal and equitable remedies which Developer may have at law or in equity, including, without limitation, the right to seek specific performance, the right to seek and obtain actual damages and the right to self-help.

7.3 City’s Remedies. If Developer is in Default under this Agreement and the parties do not resolve the Developer’s Default, then the City shall have the right to terminate this Agreement immediately upon written notice to Developer and to recover actual damages sustained by the City to the extent directly caused by the Developer Default.

7.4 Limitation. Neither party shall be entitled to pursue an award of incidental, consequential, punitive, special, speculative or similar damages in the event of a Default by the other party, and each party hereby waives the right to pursue an award of such damages.

7.5 Assignments on Termination. If this Agreement is terminated for any reason other than a Default by the City, Developer shall assign to City, as is and with no representations or warranties, all non-proprietary, third party reports, studies, and tests performed on Developer’s behalf with regard to the environmental or physical condition of the Property,

topographical surveys, “as-built” drawings, engineering drawings, plans and specifications for utilities or roadways, and approvals received from any governmental agency.

7.6 Cross-Termination. In the event of Default by the Developer that results in the termination of this Agreement, the Master Leases shall terminate upon termination of this Agreement.

ARTICLE 8 GENERAL PROVISIONS

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

8.2 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 its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

8.3 Liability and Indemnification. Developer hereby agrees to 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 Developer’s performance or failure to perform its obligations under this Agreement, including any third party claims relating to environmental conditions on the Property caused by Developer. Notwithstanding the foregoing, Developer shall not be prevented from seeking contribution or indemnification from City in connection with any claim, litigation or proceeding brought against Developer by a third party, including any governmental entity, for events occurring on the Property prior to execution of the Master Lease.

8.4 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. Developer represents and warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

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

To Developer: Iconic Mill, LLC
1030 W. Chicago Ave. Suite 300
Chicago, IL 60642
Attn: David L. Baum

With a copy to: Manjula Vaz
Gammage & Burnham
Two North Central, Suite 1500
Phoenix, AZ 85004

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

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

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

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

8.7 Successors and Assigns. This Agreement shall run with the land and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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

8.9 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 fullest extent permitted by law, provided that the overall intent of the parties is not materially vitiated by such severability.

8.10 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous

agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

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

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

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

8.14 City Manager's Power to Consent. The City 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.

8.15 Force Majeure. If Developer shall be delayed or prevented from the performance of any of its obligations under this Agreement by reason of (a) acts of God, (b) strikes, (c) work stoppages, (d) unavailability of or delay in receiving labor or materials, (e) defaults by contractors or subcontractors, (f) unusually severe weather conditions for Tempe, Arizona, (g) governmental moratoria on issuing building permits or other approvals required for compliance with deadlines set forth in this Agreement, (h) other wrongful delays caused by the City or other governmental authority, including delays in granting necessary approvals, (i) fire or other casualty, or (j) other cause without fault and beyond the reasonable control of Developer (financial inability and market conditions excepted) (each, a "**Force Majeure Event**"), and if such Force Majeure Event (x) is not caused by the acts or omissions of Developer, and (y) is the proximate cause of Developer's inability to perform, then timely performance of such obligation shall be excused for the period of the delay and the period for the performance of any such obligation shall be extended for a period equivalent to the period of such delay, provided that if any Force Majeure Event occurs, Developer must give written notice to City within thirty (30) days of the date Developer learns of the occurrence of the Force Majeure Event.


8.16 Assignment. Upon prior written notice to City, Developer may assign its interest in this Agreement, in whole or in part, to any entity that controls, is controlled by or is under common control with Developer. Neither Developer nor any permitted assignee of Developer may otherwise assign its interest in this Agreement without the prior written consent of City, which consent may be reasonably withheld by City.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and attested to by the City Clerk, and Developer has executed the same on or as of the day and year first above written.

ATTEST:

"CITY"




Brigitta M. Kuiper, City Clerk

THE CITY OF TEMPE, an Arizona municipal corporation

APPROVED AS TO FORM:



Judi Baumann, City Attorney


By: 

Mark W. Mitchell, Mayor

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

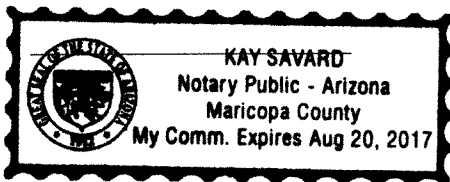
The foregoing Development and Disposition Agreement was acknowledged before me this 27th day of June, 2016, by Mark W. Mitchell, Mayor of THE CITY OF TEMPE, an Arizona municipal corporation, and that in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

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



Notary Public

My Commission Expires:



C2016-114

"DEVELOPER"

ICONIC MILL, LLC
an Arizona limited liability company

By: *David Baum*
Name: DAVID L. BAUM
Title: manager

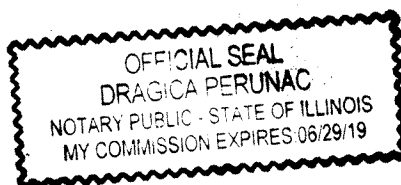
STATE OF ILLINOIS)
~~ARIZONA~~)
 COOK) ss.
COUNTY OF MARICOPA)

The foregoing Development and Disposition Agreement was acknowledged before me this 21st day of JUNE, 2016, by DAVID BAUM the MANAGER of ICONIC MILL, LLC, and that in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

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

Dragica Perunac
Notary Public

My Commission Expires:
6-29-2019



LIST OF EXHIBITS AND SCHEDULES

Exhibit A

A-1Mill Tract and Rail Tract

A-2Multipurpose Tract

A-3Hotel Tract and Silo Tract

Exhibit B.....Site Plan

Exhibit C..... Schedule of Performance

Exhibit C-1.....Rent Schedule

Exhibit D.....Conservation Easement Forms

Exhibit E..... Conceptual Development Plan

Exhibit F Form of Master Lease

Exhibit G..... GPLET Lease Form

Exhibit H.....Certificate of Completion

Schedule 5.10.....List of Public Amenities

C2016-114

Exhibit "A-1", entitled "Mill Tract and Rail Tract", 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.

C2016-114

Exhibit "A-2", entitled "Multipurpose Tract", 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.

C2016-114

Exhibit "A-3", entitled "Hotel Tract and Silo Tract", 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 B

Site Plan

C2016-114

Exhibit "B", entitled "Site Plan", 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
Schedule of Performance

1. Obtain approval of PAD and other Project related entitlements on or before March 31, 2017.
2. Submit complete application for building permit for Mill building on or before January 31, 2018.
3. Obtain Certificate of Occupancy for restoration tenant improvements to Mill building on or before January 31, 2019
4. Obtain Certificate of Occupancy for or complete Public Amenities (other than the Conservation Easements) on or before January 31, 2019.
5. Record Conservation Easements on or before January 31, 2027.

EXHIBIT C-1
Rent Schedule

Each of the Mill Tract Master Lease and the Hotel Tract Master Lease shall provide for annual rent in the amount of \$10,000, payable annually in advance and commencing on the respective Lease Execution Date of each such Master Lease and continuing on each anniversary of such date during the term of such Master Lease, plus:

1. In the case of the Mill Tract, the sum of \$40,000 per year minus the amount of any government property improvement lease excise tax imposed under A.R.S. §§ 42-6201 et seq. (and/or any successor tax programs) during years 9 through 99 (adjusted for increases in the consumer price index) (the "Mill Building Additional Rent"), plus percentage rent of
 - a. Commencing on the 4th anniversary of the date of issuance of the Certificate of Occupancy for the tenant improvements for the Mill and continuing through the 10th anniversary thereof, an amount equal to 1.5% of gross rent
 - b. Commencing on the 11th anniversary of the Certificate of Occupancy for the tenant improvements for the Mill and continuing until expiration thereof, an amount equal to 3.0% of the gross rent.
 - c. For purposes hereof, "gross rent" means net rent plus any percentage rent paid to Developer

2. In the case of the Hotel Tract, percentage rent of
 - a. Commencing on the 4th anniversary of the Certificate of Occupancy for the Hotel and continuing through the 10th anniversary thereof, an amount equal to 0.50% of gross room revenue and food and beverage revenue received by any hotel operated on the Hotel Tract,
 - b. Commencing on the 11th anniversary of the Certificate of Occupancy for the Hotel and continuing until expiration of the Hotel Tract Master Lease, an amount equal to 1.00% of gross room revenue and food and beverage revenue received by any hotel operated on the Hotel Tract.

- Notwithstanding the foregoing, in the event that between the 3rd anniversary and the 4th anniversary of the Certificate of Occupancy of the Hotel Tract Master Lease, the Developer determines in its good faith judgment that the Hotel is not performing at a level that can support the proposed percentage rent structure above, Developer and the City agree to negotiate and work together in good faith to revise the foregoing rent structure.*

3. In the case of the Multipurpose Tract, percentage rent of
 - a. Commencing on the 4th anniversary of the Certificate of Occupancy and continuing through the 10th anniversary thereof, an amount equal to 0.5% of gross rent and other revenues received by Developer from operation of the Multipurpose Tract;
 - b. Commencing on the 11th anniversary of the Certificate of Occupancy and continuing through the expiration of the Multipurpose Tract Master Lease, an amount equal to 1.00% of gross rent and other revenues received by Developer from operation of the Multipurpose Tract.

EXHIBIT D
Conservation Easement Forms

Form of Façade Conservation Easement

WHEN RECORDED, RETURN TO:

City of Tempe Basket

DECLARATION OF CONSERVATION EASEMENT (FAÇADE)
AND AGREEMENT

THIS DECLARATION OF CONSERVATION EASEMENT (FAÇADE) AND AGREEMENT (the “Easement”) is made as of the _____ day of _____, 2016, by the City of Tempe, a municipal corporation organized and existing under the laws of the State of Arizona, (the “City”).

RECITALS

A. The City is authorized under Arizona’s Uniform Conservation Act, Arizona Revised Statutes, Sections 33-271 through 276, inclusive (collectively, as and if amended, the “Act”) to accept conservation easements for conservation purposes or to preserve the historical, architectural, archeological or cultural aspects of real property.

B. The City is a municipal corporation whose responsibilities include the protection of the public interest in preserving architecturally significant structures within the City of Tempe.

C. The City is the owner in fee simple of approximately five acres of land at the southeast corner of Rio Salado Parkway and Mill Avenue (the “Project Property”), which land contains the historic Hayden Flour Mill and associated grain silos (the “Structures”), which is leased to Iconic Mill, LLC, an Arizona limited liability company (“Developer”).

D. The Developer and the City recognize the historical, cultural or architectural value and significance of the Structures and have the common purpose of conserving and preserving the aforesaid value and significance of the Structures on the Project Property.

E. In order to effectuate the obligations of the Developer under that certain Development Agreement dated as of _____, 2016, the Developer has agreed to allow City to declare and record a conservation easement on the Structures. As lessee of the Project Property, City requires that Developer join in this Easement to acknowledge its ongoing obligations with regard to the maintenance and preservation of the Structures.

AGREEMENT

NOW, THEREFORE, City, under the terms of this Declaration, intends, declares, acknowledges, and covenants for itself, its successors and assigns that the warranties, covenants, obligations, and duties set forth herein, are covenants running with the Project Property for the term stated herein and declares as follows:

1. Declaration of Easement: The City hereby submits the Project Property to a “conservation easement,” as defined under the Act, in perpetuity, in and to the Structures as depicted in *Exhibit B* and which covenants contained herein contribute to the public purpose of conserving and preserving the Structures and accomplishing the other objectives set forth herein.

2. Developer’s Covenants: In furtherance of the conservation easement herein granted, the Developer hereby covenants and agrees with the City as follows:

2.1 Documentation of the Exterior Condition of the Structures. For the purpose of this easement, the exterior facades shall be depicted in an original set of photographs dated thirty (30) days following the execution of this Easement, (collectively, the “Photographs”) and filed in the Office of the City of Tempe Historic Preservation Officer, or designated successor. The exterior condition and appearance of the Structures as depicted in the Photographs (collectively, the “Present Structure”) is deemed to describe their external nature as of the date thereof.

2.2 Preservation and Maintenance of the Structures. Effective immediately, the Developer will preserve the Present Structure in its current location. The Developer will, at all times, maintain each of the Structures in a good and sound state of repair so as to prevent the deterioration of the Structures or any portion thereof. Subject to the casualty provisions of Paragraph 4 below, this obligation to maintain shall require replacement, repair and reconstruction within a reasonable time whenever necessary to have the external nature of the facades of the Structures at all times appear to be the same as the Present Structure, or as redeveloped and reconstructed in the event Developer redevelops or reconstructs all or any portion of the Structures as contemplated by Section 2.3 below.

2.3 Redevelopment of Project Property. Notwithstanding the Developer’s immediate preservation and maintenance obligations as stated in Section 2.2 above, Developer and the City acknowledge and agree that Developer may, in its sole and absolute discretion, and pursuant to properly approved Planned Area Development (“PAD”) Applications, modify all or part of the Structures.

2.4 Maintenance of the Structural Elements. The Developer will maintain and repair the Structures as is required to ensure the structural soundness and the safety of the Structures.

2.5 Inspection. In order to periodically observe the Structures, representatives of the City shall have the right to enter the Property to inspect the exterior. This inspection will be made at a time mutually agreed upon by the Developer and the City.

2.6 Conveyance and Assignment. The City may convey, transfer and assign this Easement to a similar local, state or national organization whose purposes are to promote historic preservation, and which is a “qualified organization” under Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, provided that any conveyance or assignment requires that the conservation purposes for which this Easement was granted will continue to be carried out. No such conveyance shall be deemed to impose any greater obligations on the Developer or any limitations on the Developer’s discretion and rights than is expressly stated in this Conservation Easement.

2.7 Insurance. The Developer, at its sole cost and expense, shall at all times (a) keep the Structures insured at their replacement cost value on an “all risk” basis to ensure complete restoration of the Structures in the event of loss or physical damage. Said property coverage policy shall contain provisions which ensure that the face amount of the policy is periodically adjusted for inflation, and the Developer shall provide a Certificate of Insurance to the City which contains reference to such provision; and (b) carry and maintain liability insurance in an amount reasonably satisfactory to the City to protect against injury to visitors or other persons on the property, and to provide a Certificate of Insurance to the City evidencing such insurance, and naming the City as an additional insured on the policy.

2.8 Visual Access. The Developer agrees not to substantially obstruct the opportunity of the general public to view the exterior architectural/archaeological features and exhibits of the ancient and historic context of the Property from publicly accessible areas such as public streets or public use easements.

3. Warranties and Representations of the Developer. The Developer hereby represents and warrants to the City as follows:

3.1 Information Furnished, True and Correct. All information given to the City by the Developer in connection with the creation of this Easement, including all information contained in this Easement, is true, correct and complete to the best of Developer’s knowledge, information and belief.

3.2 Legal, Valid and Binding. This Easement is in all respects, legal, valid and binding upon the Developer and enforceable in accordance with its terms.

3.3 No Impairment of Conservation Easement. The Developer, for himself, his heirs, personal representatives, and assigns, has not reserved, and to his knowledge, no other person or entity has reserved, any rights, the exercise of which may impair the conservation easement created herein.

4. Application of Insurance Proceeds. Subject to the insurance proceeds requirements of any recorded Deed of Trust or Mortgage applicable to the Property, in the event of damage or destruction of any of the Structures resulting from casualty, the Developer agrees to apply all available insurance proceeds and donations to the repair and reconstruction of the damaged Structures. In the event the City determines, in its reasonable discretion, after

reviewing all bona fide cost estimates in light of all available insurance proceeds and other monies available for such repair and reconstruction, that the damage to the Structures is of such magnitude and extent that repair and reconstruction of the damage would not be possible or practical, then the Developer may elect not to repair or reconstruct the damaged Structures. Notwithstanding the foregoing, in the event the City notifies the Developer in writing that the City has determined that repair and reconstruction of the damaged Structures is impossible or impractical and that the damaged Structures presents an imminent hazard to public safety, the Developer will at his sole cost and expense raze the damaged Structures and remove all debris, slabs and any other portions and parts of the damaged structures within the time period required by the City to protect the health, safety and welfare of the public, unless the Developer has commenced and is diligently pursuing repair or reconstruction of the damaged Structures. Upon razing of the damaged portion of the Structures, the City shall release any interest it has in the insurance proceeds for the damaged Structures. Nothing in this paragraph is intended to supersede or impair the rights to insurance proceeds of a lienholder pursuant to a recorded Deed of Trust or Mortgage applicable to the Property.

5. Indemnification. The Developer covenants that he shall pay, protect, indemnify, hold harmless and defend the City at the Developer's sole cost and expense from any and all liabilities, claims, attorneys' fees, judgments or expenses asserted against the City, its mayor, city council members, employees, agents or independent contractors, resulting from actions or claims of any nature arising out of the breach of this Easement by Developer.

6. Default/Remedy. In the event the Developer (a) fails to perform any obligation of the Developer set forth herein, or otherwise comply with any stipulation or restriction set forth herein, or (b) any representation or warranty of the Developer set forth herein, is determined by the City to have been materially untrue when made, in addition to any remedies now or hereafter provided by law and in equity, the City or its designee, following prior written notice to the Developer, may (i) institute suit(s) to enjoin such violation by ex parte, temporary, preliminary or permanent injunction, including prohibitory and or mandatory injunctive relief, and to require the restoration of the Property to the condition and appearance required under this Easement or (ii) enter upon the Property, correct any such violation, and hold the Developer responsible for the cost thereof, and such cost until repaid shall constitute a lien on the Property, or (iii) revoke the City's acceptance of this Easement by seeking judicial extinguishment in a court of competent jurisdiction on the grounds that the Developer's default renders impossible or impractical the continued use of the Property for conservation purposes as defined under the Act. In the event the Developer violates any of its obligations under this Easement, the Developer shall reimburse all reasonable court costs and attorneys' fees.

7. Waiver. The exercise by the City or its designee of any remedy hereunder shall not have the effect of waiving or limiting any other remedy and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

8. Effect and Interpretation. The following provisions shall govern the effectiveness and duration of this Easement:

8.1 Interpretation. Any rule of strict construction designed to limit the breadth of restriction on alienation or use of property shall not apply in the construction or interpretation of this Easement, and this Easement shall be interpreted broadly to affect the transfer of rights and restrictions on use herein contained.

8.2 Invalidity of the Act. This Easement is made pursuant to the Act as the same now exists or may hereafter be amended, but the invalidity of such Act or any part thereof, or the passage of any subsequent amendment thereto, shall not affect the validity and enforceability of this Easement according to its terms, it being the intent of the parties hereto to agree and to bind themselves, their successors, heirs and assigns, as applicable, during the Term hereof, whether this Easement be enforceable by reason of any statute, common law or private agreement either in existence now or at any time subsequent thereto.

8.3 Violation of Law. Nothing contained herein shall be interpreted to authorize or permit the Developer to violate any ordinance or regulation relating to building materials, construction methods or use, and the Developer agrees to comply with all applicable laws, including, without limitation, all building codes, zoning laws and all other laws related to the maintenance and demolition of historic property. In the event of any conflict between any such laws and the terms hereof, the Developer promptly shall notify the City of such conflict and shall cooperate with the City and the appropriate authorities to accommodate the purposes of both this Easement and such ordinance or regulation.

8.4 Amendments and Modifications. For purposes of furthering the preservation of the Structures and the other Property and the other purposes of this Easement, and to meet changing conditions, the Developer and the City are free to amend jointly the terms of this Easement in writing without notice to any party; provided, however, that no such amendment shall limit the terms or interfere with the conservation purposes of this Easement. Such amendment shall become effective upon recording the same among the land records of Maricopa County, Arizona, in the office of the County Recorder.

8.5 Recitals. The above Recitals are incorporated herein by this reference.

8.6 Time of the Essence. Time is of the essence in the performance of each and every term and condition of this Easement by the Developer.

8.7 Feminine and Masculine. For purposes of this Easement, the feminine shall include the masculine and the masculine shall include the feminine.

IN WITNESS WHEREOF, the Developer and the City executed this Easement on the date first above written, which Easement shall be effective immediately upon such execution.

“Developer”

By _____

Name _____

Title _____

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014 by _____ the _____ of _____

Notary Public

Notary Seal:

ATTEST:

CITY OF TEMPE, an Arizona municipal corporation

City Clerk

By _____
Mayor

APPROVED AS TO FORM:

City Attorney

STATE OF ARIZONA)
) ss
County of Maricopa)

On this ____ day of _____, 2016 before me, the undersigned officer, personally appeared Mark W. Mitchell, who acknowledged himself to be Mayor of the City of Tempe, an Arizona Municipal corporation, and he, in such capacity, being authorized so to do, executed the forgoing instrument for the purposes therein contained on behalf of that entity.

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

Notary Public

Notary Seal:

Exhibit A
Of the
Conservation Easement
“Project Property”

(Legal Description of the Project Property)

Exhibit B
Of the
Conservation Easement

Form of Airspace Conservation Easement

WHEN RECORDED, RETURN TO:

City of Tempe Basket

DECLARATION OF CONSERVATION EASEMENT (AIRSPACE)
AND AGREEMENT

THIS DECLARATION OF CONSERVATION EASEMENT (Airspace) AND AGREEMENT (the "Easement") is made as of the _____ day of _____, 2014, by the City of Tempe, a municipal corporation organized and existing under the laws of the State of Arizona (the "City").

RECITALS

A. The City is authorized under Arizona's Uniform Conservation Act, Arizona Revised Statutes, Sections 33-271 through 276, inclusive (collectively, as and if amended, the "Act") to accept conservation easements for conservation purposes or to preserve the historical, architectural, archeological or cultural aspects of real property.

B. The City is a municipal corporation whose responsibilities include the protection of the public interest in preserving architecturally significant structures within the City of Tempe.

C. The City is the owner in fee simple of approximately five acres of land at the southeast corner of Rio Salado Parkway and Mill Avenue (the "Project Property"), which land contains the historic Hayden Flour Mill and associated grain silos (the "Structures"), which is leased to Iconic Mill, LLC, an Arizona limited liability company ("Developer").

D. The Developer and the City recognize the historical, cultural or architectural value and significance of the Structures and have the common purpose of conserving and preserving the aforesaid value and significance of the Structures on the Project Property.

E. To effectuate the obligations of the Developer under that certain Development Agreement dated as of _____, 2016 (the "Development Agreement"), the Developer has agreed to allow City to declare and record a conservation easement on the Structures. As lessee of the Project Property, City requires that Developer join in this Easement to acknowledge its ongoing obligations with regard to the maintenance and preservation of the airspace above the Structures.

AGREEMENT

NOW, THEREFORE, City, under the terms of this Declaration, intends, declares, acknowledges, and covenants for itself, its successors and assigns that the warranties, covenants, obligations, and duties set forth herein, are covenants running with the Project Property for the term stated herein and declares as follows:

1. Declaration of Easement: The City hereby submits the Project Property to a “conservation easement,” as defined under the Act, in perpetuity, in and to the airspace above Structures as depicted in *Exhibit B*, measured from the top of any existing structure constituting the Structures and extending upward to the plane of the Earth’s atmosphere (the “Airspace”), and which covenants contained herein contribute to the public purpose of conserving and preserving the Structures and accomplishing the other objectives set forth herein.

2. Developer’s Covenants: In furtherance of the conservation easement herein created, the Developer hereby covenants and agrees with the City as follows:

2.1 The Airspace shall remain open and free of any development except as shown on the PAD (as defined in the Development Agreement).

2.2 Inspection. In order to periodically observe the Structures, representatives of the City shall have the right to enter the Property to inspect the exterior. This inspection will be made at a time mutually agreed upon by the Developer and the City.

2.3 Conveyance and Assignment. The City may convey, transfer and assign this Easement to a similar local, state or national organization whose purposes are to promote historic preservation, and which is a “qualified organization” under Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, provided that any conveyance or assignment requires that the conservation purposes for which this Easement was created will continue to be carried out. No such conveyance shall be deemed to impose any greater obligations on the Developer or any limitations on the Developer’s discretion and rights than is expressly stated in this Conservation Easement.

3. Warranties and Representations of the Developer. The Developer hereby represents and warrants to the City as follows:

3.1 Information Furnished, True and Correct. All information given to the City by the Developer in connection with the creation of this Easement, is true, correct and complete to the best of Developer’s knowledge, information and belief.

3.2 Legal, Valid and Binding. This Easement is in all respects, legal, valid and binding upon the Developer and enforceable in accordance with its terms.

3.3 No Impairment of Conservation Easement. The Developer, for himself, his heirs, personal representatives, and assigns, has not reserved, and to his knowledge, no other person or entity has reserved, any rights, the exercise of which may impair the conservation

easement granted herein.

4. Application of Insurance Proceeds. Subject to the insurance proceeds requirements of any recorded Deed of Trust or Mortgage applicable to the Property, in the event of damage or destruction of any of the Structures resulting from casualty, the Developer agrees to apply all available insurance proceeds and donations to the repair and reconstruction of the damaged Structures. In the event the City determines, in its reasonable discretion, after reviewing all bona fide cost estimates in light of all available insurance proceeds and other monies available for such repair and reconstruction, that the damage to the Structures is of such magnitude and extent that repair and reconstruction of the damage would not be possible or practical, then the Developer may elect not to repair or reconstruct the damaged Structures. Notwithstanding the foregoing, in the event the City notifies the Developer in writing that the City has determined that repair and reconstruction of the damaged Structures is impossible or impractical and that the damaged Structures presents an imminent hazard to public safety, the Developer will at his sole cost and expense raze the damaged Structures and remove all debris, slabs and any other portions and parts of the damaged structures within the time period required by the City to protect the health, safety and welfare of the public, unless the Developer has commenced and is diligently pursuing repair or reconstruction of the damaged Structures. Upon razing of the damaged portion of the Structures, the City shall release any interest it has in the insurance proceeds for the damaged Structures. Nothing in this paragraph is intended to supersede or impair the rights to insurance proceeds of a lienholder pursuant to a recorded Deed of Trust or Mortgage applicable to the Property.

5. Indemnification. The Developer covenants that he shall pay, protect, indemnify, hold harmless and defend the City at the Developer's sole cost and expense from any and all liabilities, claims, attorneys' fees, judgments or expenses asserted against the City, its mayor, city council members, employees, agents or independent contractors, resulting from actions or claims of any nature arising out of the breach of this Easement by Developer.

6. Default/Remedy. In the event the Developer (a) fails to perform any obligation of the Developer set forth herein, or otherwise comply with any stipulation or restriction set forth herein, or (b) any representation or warranty of the Developer set forth herein, is determined by the City to have been materially untrue when made, in addition to any remedies now or hereafter provided by law and in equity, the City or its designee, following prior written notice to the Developer, may (x) institute suit(s) to enjoin such violation by ex parte, temporary, preliminary or permanent injunction, including prohibitory and or mandatory injunctive relief, and to require the restoration of the Property to the condition and appearance required under this Easement or (y) enter upon the Property, correct any such violation, and hold the Developer responsible for the cost thereof, and such cost until repaid shall constitute a lien on the Property, or (z) revoke the City's acceptance of this Easement by seeking judicial extinguishment in a court of competent jurisdiction on the grounds that the Developer's default renders impossible or impractical the continued use of the Property for conservation purposes as defined under the Act. In the event the Developer violates any of its obligations under this Easement, the Developer shall reimburse all reasonable court costs and attorneys' fees.

7. Waiver. The exercise by the City or its designee of any remedy hereunder shall not have the effect of waiving or limiting any other remedy and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

8. Effect and Interpretation. The following provisions shall govern the effectiveness and duration of this Easement:

8.1 Interpretation. Any rule of strict construction designed to limit the breadth of restriction on alienation or use of property shall not apply in the construction or interpretation of this Easement, and this Easement shall be interpreted broadly to affect the transfer of rights and restrictions on use herein contained.

8.2 Invalidity of the Act. This Easement is made pursuant to the Act as the same now exists or may hereafter be amended, but the invalidity of such Act or any part thereof, or the passage of any subsequent amendment thereto, shall not affect the validity and enforceability of this Easement according to its terms, it being the intent of the parties hereto to agree and to bind themselves, their successors, heirs and assigns, as applicable, during the Term hereof, whether this Easement be enforceable by reason of any statute, common law or private agreement either in existence now or at any time subsequent thereto.

8.3 Violation of Law. Nothing contained herein shall be interpreted to authorize or permit the Developer to violate any ordinance or regulation relating to building materials, construction methods or use, and the Developer agrees to comply with all applicable laws, including, without limitation, all building codes, zoning laws and all other laws related to the maintenance and demolition of historic property. In the event of any conflict between any such laws and the terms hereof, the Developer promptly shall notify the City of such conflict and shall cooperate with the City and the appropriate authorities to accommodate the purposes of both this Easement and such ordinance or regulation.

8.4 Amendments and Modifications. For purposes of furthering the preservation of The Structures, the Structures and the other Property and the other purposes of this Easement, and to meet changing conditions, the Developer and the City are free to amend jointly the terms of this Easement in writing without notice to any party; provided, however, that no such amendment shall limit the terms or interfere with the conservation purposes of this Easement. Such amendment shall become effective upon recording the same among the land records of Maricopa County, Arizona, in the office of the County Recorder.

8.5 Recitals. The above Recitals are incorporated herein by this reference.

8.6 Time of the Essence. Time is of the essence in the performance of each and every term and condition of this Easement by the Developer.

8.7 Feminine and Masculine. For purposes of this Easement, the feminine shall include the masculine and the masculine shall include the feminine.

IN WITNESS WHEREOF, the Developer and the City executed this Easement on the date first above written, which Easement shall be effective immediately upon such execution.

“Developer”

By _____

Name _____

Title _____

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014 by _____ the _____ of _____

Notary Public

Notary Seal:

ATTEST:

CITY OF TEMPE, an Arizona municipal corporation

City Clerk

By _____
Mark W. Mitchell, Mayor

APPROVED AS TO FORM:

City Attorney

STATE OF ARIZONA)
) ss
County of Maricopa)

On this ____ day of _____, 2014 before me, the undersigned officer, personally appeared Mark W. Mitchell, who acknowledged himself to be Mayor of the City of Tempe, an Arizona municipal corporation, and he, in such capacity, being authorized so to do, executed the forgoing instrument for the purposes therein contained on behalf of that entity.

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

Notary Public

Notary Seal:

Exhibit A
Of the
Airspace Conservation Easement
“Project Property”

(Legal Description)

Exhibit B
Of the
Airspace Conservation Easement

“Mill Buildings and Silos”

EXHIBIT E
Conceptual Development Plan

<u>Phase I</u>	Approximately 8,500 square feet of restaurant, event or retail space and 20,000 square feet of office space, together with requisite parking accommodations on the Mill Tract.
<u>Phase II</u>	The infrastructure to support a multipurpose venue, including landscaping, utilities and other infrastructure depicted on the Site Plan.
<u>Phase III</u>	A boutique hotel containing not less than 100 room keys, 8,500 square feet of retail space, and other amenities on the Hotel and Silo Tracts, or such other City approved uses.

EXHIBIT F
Master Lease

MASTER LEASE

This Master Lease (“Lease”) is made and entered into as of _____, 201_ (the “Commencement Date”), between the CITY OF TEMPE, an Arizona municipal corporation (“Landlord”), and ICONIC MILL, LLC, an Arizona limited liability company (“Tenant”), in accordance with Section 3.1 of that certain Development and Disposition Agreement (c2016-_____) dated _____, 2016 (the “Development Agreement”).

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 **Definitions.** The following terms shall have the meanings set forth below when used in this Lease, unless the context in which they appear clearly indicates otherwise. Other capitalized terms not separately defined in this Lease shall have the meanings ascribed to them in the Development Agreement.

1.1.1 “**Award**” means all compensation, sums or anything of value awarded, paid, or received for a Total, Substantial or Partial Taking, whether pursuant to judgment, agreement, or otherwise.

1.1.2 “**Development Agreement**” is defined in the preamble to this Lease.

1.1.3 “**Hazardous Substances**” means any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive or corrosive, including petroleum, PCBs, mold, asbestos, materials known to cause cancer or reproductive problems and all other materials, substances and/or wastes, which are or later become regulated by any local governmental authority, the State or the United States, including substances defined as “hazardous substances,” “hazardous materials,” “toxic substances” or “hazardous wastes” in any Hazardous Substance Laws.

1.1.4 “**Hazardous Substance Laws**” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; all corresponding and related Arizona and local statutes, ordinances and regulations, including any dealing with underground storage tanks; and in any other environmental law, regulation, or ordinance now existing or later enacted.

1.1.5 “**Improvements**” means all improvements located on the Premises from time to time and all permanent attachments thereto.

1.1.6 “**Lease**” means this Master Lease, its attachments, exhibits and other writings incorporated by reference, or any modifications thereof agreed to in writing by Landlord and Tenant.

1.1.7 “**Notice of Intended Taking**” means any notice which a reasonably prudent person would interpret as expressing a governmental agency’s existing intention of Taking (as distinguished from a mere preliminary inquiry or proposal), including service of a condemnation summons and complaint on a Party. The notice is considered to have been received when a Party receives from the condemning agency or entity a notice of intent to take, in writing, containing a description or map reasonably defining the extent of the Taking.

1.1.8 “**Party**” or “**Parties**” means either Landlord or Tenant or both as the context requires.

1.1.9 “**Partial Taking**” means any Taking that is not either a Total Taking or a Substantial Taking.

1.1.10 “**Person**” means a person or persons or entity or entities or any combination of persons and entities.

1.1.11 “**Premises**” or “**Property**” means the Mill Tract, the Music Venue Tract and the Silo Tract, as defined in the Development Agreement.

1.1.12 “**Rent**” means the monetary sums payable by Tenant to Landlord under this Lease for the right to use and possess the Premises.

1.1.13 “**Substantial Taking**” means the Taking of so much of the Premises (or any part thereof) that the remainder of the Property could not, in the reasonable judgment of Landlord and Tenant be used by Tenant for the purposes stated in Section 6.1 hereof.

1.1.14 “**Taking**” means taking or damaging, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation, in avoidance of an exercise of eminent domain, or while condemnation proceedings are pending. Taking shall be considered to take place as of the later of: (a) the date actual physical possession is taken by the condemning authority; or (b) the date on which the right to compensation and damages accrues under applicable law.

1.1.15 “**Tenant**” means Iconic Mill, LLC, an Arizona limited liability company,

and its permitted successors and assigns.

1.1.16 “**Term**” means unless otherwise indicated by the context, the period of time between the Commencement Date and Termination Date.

1.1.17 “**Termination Date**” the date on which the Term of this Lease expires unless earlier terminated as provided herein.

1.1.18 “**Total Taking**” means any Taking of the fee title to all the Premises.

ARTICLE 2 BASIC TERMS

2.1 **Lease.** Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord, for the Term, at the Rent, and on all the other terms and conditions contained in this Lease.

2.2 **Condition of Property.** Except as expressly contained in this Lease or in the Development Agreement, Tenant leases the Premises in “AS IS” and “WHERE IS” condition. Except as expressly contained in this Lease or in the Development Agreement, Landlord makes no representations or warranties of any nature, express or implied, concerning the Premises, including without limitation any representation or warranty concerning: (a) the suitability of the Premises for Tenant’s intended use, or (b) the physical condition of the Premises.

2.3 **Tenant’s Investigation.** Tenant acknowledges that it is solely responsible for investigating the suitability of the Premises in accordance with the Development Agreement.

2.4 **Term.** The Term of this Lease shall commence on the Commencement Date and continue for a period of Ninety Nine (99) Years, unless sooner terminated pursuant to any provision of this Lease or the Development Agreement.

2.5 **Rent.** Tenant shall pay to Landlord rent in the applicable amount(s) and per the payment schedule as provided in Exhibit A.

2.6 **Net Lease.** Except as otherwise set forth in the Development Agreement, this Lease is a net lease, and the Parties intend that Landlord shall receive Rent free and clear of any imposition, tax, lien, charge, obligation or expense of any nature whatsoever relating to the use or operation of the Property, all of which Tenant shall pay and/or discharge without any right of offset or abatement whatsoever.

2.7 **Past Due Rent.** If Tenant fails to pay Rent or any other sum owed under this Lease within 30 days after Tenant receives written notice from Landlord that such amount is due and payable, such unpaid amount shall bear interest from the due date thereof to the date of payment at the Default Rate, and such interest shall be collectable as additional Rent. As used in this Lease, “**Default Rate**” means an annual rate of interest equal to 10% per annum, compounded daily.

**ARTICLE 3
TAXES AND ASSESSMENTS**

3.1 **Taxes and Assessments.** Subject to Section 3.2 below, Tenant shall pay directly to the appropriate taxing authority or otherwise discharge, prior to delinquency, all taxes, assessments, impositions, fees, levies and charges or surcharges, whether general or special, ordinary or extraordinary, foreseen or unforeseen (including “in-lieu” taxes), which are directly or indirectly levied, charged, assessed or imposed on or against the Property during the Term, or which shall or may be or become a lien on this Lease or any part of the Property or any personal property situated thereon and all fees and assessments for governmental service(s) to the Premises, including service payments in lieu of taxes, together with any and all interest or other penalties on any of the foregoing. As used herein, “taxes” shall mean and include any and all taxes: (A) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy of the Property or any portion thereof, including any sales, use or service tax imposed as a result thereof, (B) upon or measured by Tenant’s gross receipts or payroll or the value of Tenant’s equipment, furniture, fixtures, and other personal property of Tenant or leasehold improvements, alterations or additions located in the Property; or (C) upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises. Tenant shall indemnify, defend and hold Landlord and the Property harmless from and against all liability, cost and expense for all such taxes, assessments, impositions, fees, levies and charges, and all such interest or other penalties, and from any sale or other proceeding to enforce payment of such items.

3.2 **No Proration of Taxes.** Landlord is not subject to payment of taxes as provided in **Section 3.1**, therefore, Tenant shall pay all such taxes imposed in the tax year which includes the Commencement Date or Termination Date, as applicable.

3.3 **Contest.**

3.3.1 **Right to Contest.** Tenant shall have the right to contest the validity or amount of any tax, assessment, levy, imposition or other charge required to be paid by Tenant pursuant to this **Article 3**. Tenant shall promptly notify Landlord of any such contest, and Tenant’s legal basis therefor. Tenant may withhold or defer payment of any such obligation, or pay such obligation under protest, but shall defend, indemnify, protect and hold harmless Landlord and the Property from any lien which might result from such contest. Prior to undertaking any such contest in the event that Tenant has not paid the tax, Tenant, at Landlord’s request, shall post a bond or other security acceptable to Landlord.

3.3.2 **Landlord Participation.** Landlord shall not be required to join in any proceeding or contest brought by Tenant unless the law requires that the proceeding or contest be brought by or in the name of Landlord or the owner of the Premises, in which case Landlord’s participation shall be at Tenant’s cost and expense. Tenant shall immediately pay or discharge any tax, assessments, levy, imposition or other charge, together with all costs, charges, interest and penalties incidental thereto, determined to be due by any as a result of any proceeding or contest.

3.3.3 **Delivery.** Landlord shall promptly deliver to Tenant all invoices, bills, statements, notices and other instruments relating to the payment of taxes relating to the Property that Landlord may receive from any taxing authority. No failure by Landlord to deliver any such invoices, bills, statements or notices shall relieve Tenant of its responsibility to pay the same.

ARTICLE 4 UTILITIES; OCCUPANCY EXPENSES

4.1 **Tenant's Obligations.** Tenant shall pay all occupancy expenses associated with the Premises of whatever kind or nature, including without limitation all charges for gas, heat, light, power, sewage, water and other utilities or services in connection with the Premises. On Tenant's written request, Landlord will join with Tenant in any application required for obtaining or continuing any utility service. Tenant shall defend, indemnify and hold Landlord and the Premises harmless from any loss, cost, expense, liability, lien, or the like associated with any utility or service charge unless caused by the acts or omissions of Landlord. If Tenant does not pay any utility or service charge when due, Landlord may do so, and any amount so paid by Landlord shall immediately become due to Landlord from Tenant as additional Rent, together with interest thereon at the Default Rate.

4.2 **Interruption of Service.** Tenant shall not be entitled to terminate this Lease because of any failure or interruption of any utility service supplied to the Property. Landlord shall not be liable to Tenant for any damages resulting from any such failure not caused, or any interruption not requested, by Landlord.

ARTICLE 5 USE

5.1 **Use.** Unless otherwise approved in advance in writing by Landlord (which approval may be given or withheld in Landlord's reasonable discretion) or pursuant to any Parcel Development Agreement entered into pursuant to Section 6.1 of the Development Agreement, the Property shall be used by Tenant solely for the purpose of enabling Tenant to perform investigations and other activities contemplated by the Development Agreement and other ancillary uses, including construction staging, temporary parking and performance of site mitigation, conducting surveys, appraisals, and hydrological, topographical, environmental, traffic, feasibility and other engineering tests and studies upon the Property, performing limited remediation of those areas of the Property approved in advance by City, and constructing certain improvements approved in advance by City, as well as primarily, the subleasing the Premises to retail and office users, all as provided further in Section 10 hereof, developing a music and event venue, and developing a hotel site, and such uses incidental to such primary uses, as well as all such uses permitted under applicable zoning laws. All such activities shall be conducted at Tenant's sole cost and expense but subject to the terms and conditions of the Development Agreement.

5.2 **Compliance with Law and Encumbrances.** Tenant shall comply with (a) all laws, ordinances, rules, orders, regulations and requirements of any legal, governmental or military board, body or commission relating to, affecting or controlling the construction,

maintenance, condition, protection, occupancy or use of the Premises, or any activity thereon or on any adjoining sidewalk or street and (b) all covenants, agreements, restrictions and encumbrances now or hereafter applicable to the Property. Tenant shall obtain or cause to be obtained at its expense, all permits, approvals and authorizations required by Tenant's activities on the Property, and without limitation shall prepare and submit to Landlord for its review and approval, such documents as Landlord may require with respect to such activities, including without limitation, grading and drainage reports, and dust control and safety plans.

5.3 **Land Use Restrictions.** Without Landlord's prior written consent (which consent may be granted or withheld in Landlord's reasonable discretion), Tenant may not enter into agreements restricting the use of, or granting easements over, the Premises except as permitted in the Development Agreement or any Parcel Development Agreement. Tenant may obtain zoning and other changes in accordance with the Development Agreement.

5.4 **Waste; Nuisance.** Tenant shall not commit, and shall not allow any other Person to commit, any waste, damage, disfigurement or injury to the Property except as provided in the Development Agreement. Tenant shall not cause or maintain, and shall not allow any other Person to cause or maintain, a nuisance on the Property.

5.5 **Security.** Tenant shall have the sole responsibility of providing security for the Property, the Persons and property located thereon or therein.

5.6 **Hazardous Substances.**

5.6.1 **Environmental Compliance.** Tenant shall at all times reasonably comply with applicable environmental laws affecting the Premises as to conditions arising out of Tenant's use and occupancy of the Premises. To the extent pre-existing environmental matters are discovered after due diligence (as addressed in the Development Agreement), and then only to the extent remediation is required by applicable laws, the City will determine the level of remediation it will undertake, if any, under applicable laws, and the City shall remediate such matters in the City's discretion at its sole cost and expense. Notwithstanding the foregoing, the parties acknowledge that the City is not agreeing to indemnify, defend or hold the Tenant harmless from any environmental claims arising hereunder.

5.6.2 **Notices.** If at any time Tenant or Landlord shall become aware, or have reasonable cause to believe, that any actionable level of Hazardous Substance has been released or has otherwise come to be located on or beneath the Premises, such party shall immediately upon discovering the release or the presence or suspected presence of the Hazardous Substance, give written notice of that condition to the other party. In addition, the party first learning of the release or presence of an actionable level of Hazardous Substance on or beneath the Premises, shall immediately notify the other party in writing of: (a) any enforcement, cleanup, removal, or other governmental or regulatory action instituted, completed, or threatened pursuant to any environmental laws; (b) any claim made or threatened by any person against Landlord, Tenant or the Premises arising out of or resulting from any actionable level of Hazardous Substances; and (c) any reports made to any local, state, or federal environmental agency arising out of or in connection with any actionable level of Hazardous Substance.

5.7 **Approval of Signs.** Tenant shall have the right to post or display any signs on the Premises in accordance with the Development Agreement.

ARTICLE 6 IMPROVEMENTS

6.1 **Construction.** Except as permitted herein or in the Development Agreement, Tenant shall not commence any construction (or other activity on the Premises that could give rise to mechanic's lien rights under applicable law, such as the delivery of building materials to the Premises, the commencement of work, etc.), without first obtaining Landlord's written consent, which consent may be granted or withheld in Landlord's unfettered discretion, and which may be subject to any conditions deemed appropriate by Landlord, including without limitation, approval of Tenant's general contractor and/or construction manager; review and approval of preliminary project schematics, elevations, conceptual drawings, and other materials; review and approval of preliminary construction plans and specifications, including grading and drainage, soil, utilities, sewer and service connections, off-site improvements, locations of ingress and egress to and from public thoroughfares, curbs, gutters, on-site street improvements including street lighting and landscaping, pedestrian circulation and building elevations, all in sufficient detail to enable Landlord to make an informed judgment about the improvements; and evidence of financing and insurance.

In its capacity as Landlord under this Lease, the City does not have privity of contract with sub-tenants. While the Tenant may not alter the Premises, as aforesaid, tenant improvements to be constructed by sub-tenants do not require Landlord's approval under this Lease; however, such tenant improvements remain subject to the normal approval process imposed by the City of Tempe in its capacity as the governmental body having jurisdiction over building and life safety.

ARTICLE 7 MAINTENANCE; REPAIR; ALTERATION; RECONSTRUCTION

7.1 **No Obligation of Landlord.** Landlord shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or to the Property, or any part thereof, unless due to damage directly caused by Landlord during the Term.

7.2 **Tenant's Duty to Maintain.** Throughout the Term, Tenant shall, at Tenant's sole cost and expense, maintain the Premises in its existing condition and repair, ordinary wear and tear and any construction or site mitigation contemplated in the Development Agreement excepted, and in accordance with all applicable laws, ordinances, orders and regulations of all federal, state, county, municipal and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus and officials, as well as all insurance underwriting boards or insurance inspection bureaus having or claiming jurisdiction, and all insurance companies insuring all or any part of the Property. If Tenant fails to comply with this Section, Landlord shall have the right to enter the Property to cure Tenant's default as set forth in **Article 13**, and Tenant shall pay to Landlord all of Landlord's expenses in connection with such work on demand with interest thereon at the Default Rate.

7.3 **Damage or Destruction.** If the Property or any portion thereof shall be damaged by fire or other casualty during the Term, Tenant shall have the option to terminate this Lease.

7.4 **No Abatement.** Tenant shall not be entitled to any abatement, offset or reduction in Rent, or to terminate this Lease as a result of any deprivation, impairment or limitation of use resulting from any casualty or any construction work contemplated in the Development Agreement.

ARTICLE 8 OWNERSHIP OF IMPROVEMENTS

8.1 **Ownership.** All Improvements placed on the Premises by Tenant permitted by this Lease and remaining at the Termination Date shall, without compensation to Tenant, become Landlord's property free and clear of all claims of Tenant or any third party. Any personal property of Tenant that remains on the Property after the Termination Date shall be deemed abandoned and, at Landlord's election, may be retained by Landlord as Landlord's property, disposed of by Landlord, without accountability, in such manner as Landlord sees fit (including having the same stored at the risk and expense of Tenant), or required by Landlord's written notice to Tenant to be removed by Tenant. The foregoing shall be without prejudice to any election given Landlord by law or hereunder as to such property.

8.2 **Right to Remove Personal Property.** At the Termination Date, Tenant shall have the right to remove any or all personal property other than the dirt placed on the Premises by Tenant, provided all resultant injuries to the Property are completely remedied and Tenant complies with Landlord's reasonable requirements respecting any required restoration.

ARTICLE 9 ASSIGNMENT; SUBLETTING

9.1 **Assignments or Subleases.** Upon prior written notice to Landlord, Tenant may sell, assign, sublease, encumber, pledge, or transfer its leasehold interest in the Property, or any portion thereof, to any Affiliate, as defined below.

9.1.1 **Subleases:** Subject to the provisions of **Section 9.1.3** hereof, Tenant shall have the right to enter into subleases with a term that extends beyond the Term hereof only with Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided that Landlord's consent shall not be required for any sublet of the Mill Building or the Hotel Tract which has a term that does not extend beyond the Term hereof (it being agreed that the Mill Building will be subleased to retail and office operators by Tenant).

9.1.2 **Assignments:** Landlord's consent shall not be required for an assignment in accordance with Section 15(l) of this Lease. If Tenant desires to assign this Lease or sublet all or any portion of the Premises and the same requires Landlord approval, Tenant shall give written notice to Landlord setting forth the terms of the proposed assignment or subletting, except that

with respect to an assignment or subletting to an Affiliate, Tenant shall only be required to notify Landlord in writing of such assignment or subletting and Landlord's consent shall not be required.

Notwithstanding any assignment or subletting, Tenant shall not be released from and shall be responsible for the performance of all of Tenant's obligations under this Lease. Landlord's consent to a sublease requiring approval from Landlord will not be unreasonably withheld or delayed to the extent that the proposed tenant intends to use the Property only for a use permitted under this Lease and does not require signage or parking rights in violation of this Lease or the Development Agreement.

9.1.3 Notwithstanding the fact that any subleases executed by Tenant shall be subject and subordinate to this Lease, Landlord agrees that upon termination of this Lease (other than because of a casualty or condemnation) for as long as the subtenant is not in default, beyond any applicable notice and cure period, in the payment of rent or other amounts due under the sublease, or in the performance of any of the terms, covenants and conditions of the sublease on subtenant's part to be performed, the sublease shall not be terminated and the subtenant's rights and interests under the sublease, shall not be disturbed by Landlord and Landlord will recognize the sublease as a direct lease with Landlord. Landlord agrees, upon Tenant's request, to enter into a non-disturbance and recognition agreement with each such subtenant providing for the foregoing. However, the foregoing non-disturbance and recognition obligation shall be applicable only to the extent the sublease contains the following provisions (unless otherwise waived in writing by Landlord before the sublease is executed):

(i) Immediately upon termination of the interest of Tenant under this Lease, the subtenant shall attorn to Landlord under the sublease (thereby agreeing to recognize Landlord as its landlord and to pay to Landlord all rents and other amounts from time to time coming due under the sublease), the attornment to be effective and self operative, without the execution of any other instruments;

(ii) Notwithstanding anything in this Lease or the sublease to the contrary Landlord shall not in any event be (a) liable for any act, omission or default of Tenant; (b) subject to any claims, abatements, offsets, counterclaims or defenses that subtenant may have against Tenant; (c) bound by any rent, additional rent or other charges that subtenant may have paid for more than the then current month to Tenant; (d) bound by any amendment, modification, of the sublease to the extent Landlord had the right to initially approve the sublease under the terms of this Lease; (e) liable for any security or other deposit except to the extent actually received and held by Landlord; (f) liable for any covenant or agreement to undertake or complete demolition, construction or installation of improvements on the Premises or any part thereof; (g) liable for any payment to subtenant of any sums, or granting to subtenant of any credit, with respect to the cost of preparing, furnishing or moving in to the Building or any part thereof; (h) liable for any obligation of Tenant under the sublease which shall have accrued prior to

the date this Lease terminates; or (i) liable for any representation or warranty given or made by Tenant, including without limitation, any representation or warranty with respect to the condition of the Premises, construction, zoning, compliance with laws or building codes, or title, or any indemnity, hold harmless or defense obligation with respect thereto; and

(iii) Landlord shall have no personal liability, directly or indirectly, under or in connection with any sublease.

9.1.4 For purposes hereof, the term “Affiliates” means any person or entity that controls, is controlled by or is under common control with Tenant. A person or entity shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another person or entity, whether through ownership or voting securities, by contract or otherwise.

9.2 **Assignment by Landlord.** Landlord has agreed in the Development Agreement and further agrees in this Lease, not to sell or assign all or part of its interest in the Premises, including its interest in this Lease, during the Term.

ARTICLE 10 INSURANCE

10.1 **Cooperation.** In the event of loss or damage, Landlord shall cooperate fully with Tenant in securing the optimal recovery from the insurer(s).

10.2 **Public Liability Insurance.** Throughout the Term, Tenant shall purchase and maintain, for the mutual benefit of Landlord and Tenant, commercial general or comprehensive general public liability insurance against claims and liability for personal injury, death or property damage arising from the use, occupancy, misuse or condition of the Property or adjoining areas or ways, providing protection of at least Five Million Dollars combined single limit each occurrence for bodily injury or death and property damage resulting from any one accident or occurrence, or such greater amount as may, in Landlord’s reasonable judgment, reflects then prevailing industry standards for comparable properties (provided, however, that Landlord shall not be entitled to require Tenant to increase the amount of such insurance more frequently than every five years).

10.3 **Other Insurance; Additional Coverage.** At any time during the Term, Tenant may procure and maintain any insurance not required by this Lease, but all such insurance shall be subject to all provisions hereof pertaining to insurance and shall be for the mutual benefit of Landlord and Tenant. At the request of Landlord, Tenant shall obtain such additional insurance coverage or policies as may be reasonably necessary to provide coverage for the Property consistent with coverage generally recommended for similar property in the geographic area in

which the Property is located. All such additional insurance policies shall conform to the requirements of this Lease.

10.4 **Policy Form, Content, Insurer.** All insurance policies therefor required by express provisions hereof shall be carried only in insurance companies licensed to do business in the State of Arizona, and otherwise reasonably acceptable to Landlord. All such policies shall name Landlord as an additional insured. Each such policy shall be non-assessable and shall contain language to the effect that (a) any loss shall be payable notwithstanding any act or negligence of Landlord that might otherwise result in the forfeiture of the insurance, (b) the insurer waives the right of subrogation against Landlord and against Landlord's agents and representatives, (c) the policy is primary and noncontributing with any insurance that may be carried by Landlord, and (d) the policy cannot be canceled or materially changed except after thirty (30) days' notice by the insurer to Landlord.

10.5 **Delivery of Policies.** Before the Commencement Date, Tenant shall furnish Landlord with copies of all policies of insurance required hereunder, or with certificates evidencing such insurance, together with proof of payment of the premium. Any such policies or certificates shall comply with the requirements of this **Section 10.5**. At least ten (10) days prior to the expiration of each policy required hereunder, Tenant shall deliver to Landlord copies of or certificates for the renewal of such policy, together with proof of payment of the premium for such renewal policy.

10.6 **Blanket Insurance.** If it is acceptable to Landlord, Tenant may provide any insurance required by this Lease by blanket insurance coverage; provided that Landlord is named as an additional insured and the coverage afforded Landlord will not be reduced or diminished by reason of such blanket insurance coverage.

10.7 **Failure to Maintain Insurance.** If Tenant fails to procure or maintain any insurance required hereunder, Landlord shall have the right, at Landlord's election and without any notice to Tenant, to procure and maintain such insurance on Tenant's account. Landlord shall give Tenant prompt written notice of the payment of premiums, stating the amounts paid and the names of the insurer or insurers. Any sums paid by Landlord hereunder shall be immediately due and payable as Rent, together with interest thereon at the Default Rate from the date of payment by Landlord to the date such sums are reimbursed by Tenant to Landlord.

ARTICLE 11 CONDEMNATION

11.1 **Notice.** The Party receiving a notice of one or more of the following notices shall promptly notify the other Party of the receipt, content and date of such notice: (a) Notice of Intended Taking; (b) service of any legal process relating to condemnation of the Premises; (c) notice in connection with any proceedings or negotiations with respect to such condemnation; and (d) notice of intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of condemnation.

11.2 **Representation.** Landlord and Tenant shall each have the right to represent its respective interest in each condemnation proceeding or negotiation and to make full proof of claims. No agreement, settlement, sale or transfer to or with the condemning authority shall be made without the consent of Landlord. Landlord and Tenant shall each execute and deliver to the other any instruments that may be required to effect or facilitate the provisions of this Lease relating to condemnation.

11.3 **Termination of Lease on Total or Substantial Taking.** In the event of a Total Taking or a Substantial Taking, this Lease shall terminate on the date of such Taking.

11.4 **Determination of Substantial Taking.** If a Taking is not a Total Taking, Tenant shall elect to treat such Taking as a Substantial Taking (Twenty Five Percent (25%) or more of the gross square footage of the Premises) or a Partial Taking (Less than Twenty Five Percent (25%) of the gross square footage of the Premises) by notice to Landlord within 60 days after Tenant receives the applicable Notice of Taking. If Tenant elects to treat the Taking as a Partial Taking, or fails to deliver any notice, the Taking shall be deemed a Partial Taking. If Tenant elects to treat the Taking as a Substantial Taking, Landlord may dispute Tenant's election by delivery of notice to Tenant to such effect within ten days following receipt of Tenant's notice. If Tenant elects to treat such Taking as a Substantial Taking, and Landlord does not dispute Tenant's election, the Taking shall be deemed a Substantial Taking.

11.5 **Landlord Entitled to Entire Award for Total or Substantial Taking.** The entire Award payable as a result of a Total or Substantial Taking shall be allocated between Landlord and Tenant in accordance with their respective interests in the Premises.

11.6 **Partial Taking.** On a Partial Taking, this Lease shall remain in full force and effect covering the remainder of the Premises. On a Partial Taking, Landlord and Tenant shall be entitled to the Award for such Taking in accordance with their respective interests in the Premises.

11.7 **Temporary Takings.** In the event of any Taking of the temporary use of all or any part or parts of the Premises for a period of less than 60 days and such period does not extend beyond the expiration date of the Term, neither the Term nor the Rent shall be reduced or affected in any way, and Tenant shall be entitled to any Award for the use or estate taken, except that portion which Tenant shall pay to Landlord for any expenses or disbursements reasonably and necessarily incurred or paid by or on behalf of Landlord for or in connection with the proceedings. If any such Taking is for a period of more than 60 days or extends beyond the expiration date of the Term, the Taking shall be treated under the foregoing provisions for Total, Substantial and Partial Takings.

ARTICLE 12 DEFAULT; REMEDIES

12.1 **Tenant's Default.** Each of the events described in the following subsections of this Section 12.1 shall be a material default by Tenant and a breach of this Lease.

(a) The abandonment of the Premises by Tenant if in Landlord's reasonable opinion such abandonment causes a failure to satisfy its other obligations under this Lease or, in Landlord's reasonable opinion, exposes the Landlord to an unreasonable risk of liability on account of the Premises. Termination under this Section shall not relieve Tenant from the payment of any sum then due to Landlord or from any claim for damages previously accrued or then accruing against Tenant.

(b) The failure by Tenant to make any payment of Rent or any other payment required to be made by Tenant hereunder within thirty (30) days after Landlord notifies Tenant in writing that such payment is past due.

(c) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than described in Subsection (b) above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant, provided, however, that if Tenant commences cure within such thirty (30) day period, the cure time shall be extended to the time reasonably required for completion with reasonable diligence.

(d) The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition to be adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Lessee within sixty (60) days; or the attachment, execution, or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within sixty (60) days.

(e) Tenant's default under the Development Agreement that is not cured within any period provided for curing such default pursuant to the Development Agreement.

12.2 **Landlord's Right to Cure Tenant's Default.** After expiration of the applicable time for curing any default, or before the expiration of the cure period in the event of emergency, Landlord, at its option, may elect to cure any Tenant default under this Lease, and any amount so paid and the reasonable cost of any such cure, plus interest on such sums at the Default Rate from the date of payment of expenditure by Landlord, shall be deemed to be additional Rent immediately payable by Tenant to Landlord upon demand. No such payment or performance by Landlord shall constitute a waiver of default or of any remedy for default or render Landlord liable for any loss or damage resulting from any such payment or performance. Landlord, or Landlord's authorized representative, may enter the Property for such purpose and take all such action as may be necessary therefor and such entry shall not constitute or be deemed to be an eviction of Tenant.

12.3 **Landlord's Remedies.** If any default by Tenant shall continue uncured after notice of default and beyond the cure period permitted by this Lease, Landlord shall have the following as its sole remedy:

(a) **Termination**. Landlord may at its election terminate this Lease by giving Tenant notice of termination. On the giving of the notice, all Tenant's rights in the Premises shall terminate. Promptly after the receipt of notice of termination, Tenant shall surrender and vacate the Premises and Landlord may re-enter and take possession of the Premises. Landlord shall have no right to terminate this Lease if the option granted to Tenant in the Development Agreement remains in effect.

12.4 **Tenant's Personal Property**. After any default by Tenant and subject to any leasehold lender's rights, Landlord may, at its election, use Tenant's personal property without compensation and without liability for use or damage, or store such personal property for the account and at the cost of Tenant. The election of one remedy for any one item shall not foreclose an election of any other remedy for another item or for the same item at a later time.

12.5 **Recovery of Rent**. Landlord shall be entitled at its election to each component of Rent or to any combination of components for any period after default and before termination plus interest at the Default Rate from the due date of each component.

12.6 **Landlord's Default**. Landlord shall not be considered to be in default under this Lease unless Tenant has given notice specifying the default and Landlord has failed for 60 days to cure the default, if it is curable within that time period, or to institute and diligently pursue reasonable corrective or ameliorative acts for defaults not so curable within the 60 day period.

12.7 **Provisions Applicable to Both Parties**

12.7.1 **Unavoidable Delays**. Except as to the obligations imposed by this Lease for the payment of Rent, any interference or delay in the performance of any obligation caused by strikes, lockouts, labor disputes, acts of public enemies of the United States of America or the State, riots, insurrection, civil commotion, inability to obtain required materials or reasonable substitutes therefor, governmental restrictions, governmental controls, governmental regulations or other cause beyond Landlord's or Tenant's control, as applicable ("**Unavoidable Delay**") or any Force Majeure Event (as defined in the Development Agreement) shall excuse non-performance of such obligation for a period equal to the length of such Unavoidable Delay or Force Majeure Event.

12.7.2 **Waiver**. No waiver of any default by either Party shall constitute a waiver of any other breach or default by such Party, whether of the same or any other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by either Party shall give the other any contractual right by custom, estoppel, or otherwise. No waiver of any condition, covenant, requirement or the like set forth herein by either Party shall be deemed a waiver thereafter of the same or any other provision hereof.

ARTICLE 13 INDEMNITY

13.1 **Landlord's Non-Liability**. Landlord shall not be liable for any loss, damage, injury (including death), liability, cost, expense, claim, demand or cause of action of any kind or character to any person or property arising from, related to or caused by (a) construction, maintenance or use of the Premises including any such loss, damage, injury, liability, cost,

expense, claim, demand or cause of action arising from, related to or caused by (1) any use of the Premises or any part thereof, (2) any defect of soils which arises after the Term commences, or in the preparation of soils or in the design and accomplishment of grading, (3) the presence or existence of any Hazardous Substances in, on or around the Property which arises after the Term commences, (4) any act or omission of Tenant, or of any of its agents, representatives, contractors, employees, servants, customers, licensees or invitees, (5) any accident on the Property or any fire or other casualty thereon, (6) Tenant's failure to maintain the Property in safe condition, (7) any accident off the Property caused by acts or occurrences on the Property, (8) any act or failure to act by Landlord in enforcing this Lease, or in reviewing, approving, disapproving, consenting to or joining in any plans, specifications, layout, design, application, permit, map or dedication relating to the use or development of the Property, (9) any violation or alleged violation by Tenant or of any of its agents, representatives, contractors, employees, servants, customers, licensees or invitees, of any law now or hereafter enacted, (10) any slope failure or subsurface geologic or groundwater condition on or adjacent to the Premises, (11) any work of design, construction, engineering or other work with respect to the Property provided or performed by or for Landlord either before or after the Commencement Date, or (12) any other cause whatsoever in connection with Tenant's use of the Property or Tenant's performance under this Lease, or (b) the breach by Tenant of any of its obligations under this Lease (collectively "**Claims**").

Landlord agrees that Tenant shall have the right to contest the validity of any and all such Claims and defend, settle and compromise any and all such claims of any kind or character and by whomsoever claimed, in the name of Landlord, as Tenant may deem necessary, provided that the expenses thereof shall be paid by Tenant. The provisions of this Section shall survive the expiration or other termination of this Lease for a period of six (6) years.

13.2 **Indemnification of Landlord.** Tenant shall indemnify, defend and hold Landlord and its Council members, officers, directors, employees, agents, volunteers and representatives harmless from any and all liability, loss, damage, cost, expense, claim, demand or cause of action of any kind or character, including court costs and attorneys' fees, resulting from Tenant's operation and maintenance of the Property after the Commencement Date and from any and all injuries suffered by Tenant or of any of its agents, representatives, contractors, employees, servants, customers, licensees or invitees as a result of or in connection with Tenant's inspection, investigation or audit of the Premises before the Commencement Date.

Landlord shall notify Tenant within a reasonable length of time after discovery of any Claim. Tenant, at Tenant's expense, shall defend Landlord against any such Claim and shall engage counsel satisfactory to Landlord to prosecute Landlord's defense of such Claim.

If Tenant fails or refuses to defend Landlord or engage counsel satisfactory to Landlord within ten days after Tenant's receipt of notice of any Claim, Landlord may defend such claim seek and recover its actual damages from Tenant.

13.3 **Limitation of Indemnification Obligations.** Sections 13.1 and 13.2 above shall not apply to any claim by Tenant against Landlord or to any claim resulting from the gross negligence or willful misconduct of Landlord or its employees. Notwithstanding the foregoing, Tenant shall not be prevented from seeking contribution or indemnification from Landlord in

connection with any claim, litigation or proceeding brought against Tenant by a third party, including any governmental entity, for events occurring on the Property prior to execution of the this Lease.

ARTICLE 14 LEASEHOLD MORTGAGES

14.1 **Leasehold Mortgages.** Tenant and every successor and assign of Tenant is hereby given the right by Landlord in addition to any other rights herein granted, subject to Landlord's prior written consent, to mortgage its interests in this Lease, or any part or parts thereof, and any sublease(s) under one or more leasehold mortgage(s) (each, a "Leasehold Mortgage"), and assign this Lease, or any part or parts thereof, and any sublease(s) as collateral security for such Leasehold Mortgage(s), upon the condition that all rights acquired under such Leasehold Mortgage(s) shall, except as otherwise specifically provided herein, be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights and interests of Landlord herein, none of which covenants, conditions and restrictions set forth in this Lease is or shall be waived by Landlord by reason of the right given so to mortgage such interest in this Lease, except as expressly provided herein. Notwithstanding the foregoing, Tenant shall not create or permit to exist any lien, mortgage, or charge on, pledge of, or conditional sale or other title retention agreement with respect to, or encumbrance of any kind on Landlord's interest in Landlord's estate and/or interest in the Demised Premises and/or this Lease. If Tenant shall mortgage this leasehold, or any part or parts thereof, and if the holder(s) of such Leasehold Mortgage(s) (each, a "Leasehold Mortgagee") shall, within thirty (30) days of its execution, send to Landlord a true copy thereof, together with written notice specifying the name and address of the Leasehold Mortgagee and the pertinent recording date with respect to such Leasehold Mortgage(s), Landlord agrees that so long as any such Leasehold Mortgage(s) shall remain unsatisfied of record or until written notice of satisfaction is given by the applicable Leasehold Mortgagee(s) to Landlord, the following provisions shall apply:

(a) There shall be no cancellation, surrender or modification of this Lease by joint action of Landlord and Tenant without the prior consent in writing of the Leasehold Mortgagee(s);

(b) Landlord shall, upon serving Tenant with any notice of default, simultaneously serve a copy of such notice upon the Leasehold Mortgagee(s). The Leasehold Mortgagee(s) shall thereupon have the right to remedy or cause to be remedied the defaults complained of, and Landlord shall accept such performance by or at the instigation of such Leasehold Mortgagee(s) as if the same had been done by Tenant. If Tenant does not cure within the applicable cure period under this Lease, Landlord shall notify Leasehold Mortgagee(s) if it intends to terminate this Lease and Leasehold Mortgagee(s) shall, after receiving such notice, have forty-five (45) days from the date of service of notice of termination upon such Leasehold Mortgagee(s) to notify Landlord of its desire to nullify such notice and shall have paid to Landlord all Rent and other payments herein provided for, and then in default, and shall have complied or shall commence the work of complying with all of the other requirements of this Lease, except as provided in Section (g) hereof, if any are then in default, and shall prosecute the same to completion with reasonable diligence (not to exceed ninety (90) days unless such default cannot reasonably be cured within said ninety (90) day period or possession of the Demised

Premises is required for such cure), then in such event Landlord shall not be entitled to terminate this Lease and any notice of termination theretofore given shall be void and of no effect;

(c) If Landlord shall elect to terminate this Lease by reason of any default of Tenant, the Leasehold Mortgagee(s) shall not only have the right to nullify any notice of termination by curing such default, as aforesaid, provided that such Leasehold Mortgagee(s) shall cure or cause to be cured any then existing money defaults and meanwhile pay Rent and comply with and perform all of the other terms, conditions and provisions of this Lease on Tenant's part to be complied with and performed, other than past non-monetary defaults, and provided further that the Leasehold Mortgagee(s) shall forthwith take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage(s) or otherwise and shall prosecute the same to completion with all due diligence.

(d) Subject to the terms of Section (b) and (c) above, the Leasehold Mortgagee, or its successors, assignees, or any purchaser at a foreclosure sale (each a "Purchaser") shall have the unrestricted right to acquire Tenant's interest under the Lease by foreclosure, assignment or transfer in lieu of foreclosure or otherwise, and such acquisition shall not require Landlord's consent or be deemed a default under the Lease. Upon Landlord's receipt from Leasehold Mortgagee of written notice of such an acquisition sent to Landlord at the address set forth below (or to any other address given by Landlord in writing to Leasehold Mortgagee), Landlord shall permit the Purchaser to enter into possession of the Property and to hold the same and exercise and enjoy all of the rights, privileges and benefits of Tenant under the Lease (without any representations or warranties of the validity of such rights), and such acquisition shall constitute an assumption by the Purchaser of Tenant's obligations under the Lease, provided, however, that the Purchaser shall not be liable for Tenant's obligations under the Lease until it shall become the owner of the Lease, either by foreclosure or assignment in lieu thereof or otherwise, and then only during the period of time it is the owner of said Lease; provided, however, that, as a condition to the right of the Purchaser to acquire Tenant's leasehold estate as aforesaid, Purchaser shall promptly upon acquiring the leasehold estate, cure all of the defaults of Tenant under the Lease which are outstanding as of the date of such acquisition of the leasehold estate, except as provided in Section (c) above and (g) below;

(e) Landlord agrees that the name of the Leasehold Mortgagee(s) may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant hereunder on condition that the insurance proceeds are to be applied in the manner specified in this Lease and that the Leasehold Mortgagee(s) or collateral document shall so provide;

(f) Landlord agrees that in the event of termination of this Lease by reason of any default by Tenant (other than a monetary default which Leasehold Mortgagee does not cure) that Landlord will enter into a new lease of the Demised Premises with the Leasehold Mortgagee or its nominee(s) for the remainder of the term effective as of the date of such termination, with the same Rent and upon the terms and, provisions, covenants and agreements as herein contained and subject only to the same conditions of title as this Lease is subject to on the date of the execution hereof, and to the rights, if any, of any parties then in possession of any part of the Demised Premises, provided:

(i) Said Leasehold Mortgagee(s) or its nominee shall make written request upon Landlord for such new lease within forty-five (45) days after Leasehold Mortgagee receives notice of such termination and such written request is accompanied by payment to Landlord of sums then due to Landlord under this Lease;

(ii) Said Leasehold Mortgagee(s) or its nominee(s) shall pay to Landlord at the time of the execution and delivery of said new lease, any and all sums which would at the time of the execution and delivery thereof, be due pursuant to this Lease but for such termination, and in addition thereto, any expenses, including reasonable attorneys' fees, to which Landlord shall have been subjected by reason of such default;

(iii) Said Leasehold Mortgagee(s) or its nominee(s) shall perform and observe all covenants herein contained on Tenant's part to be performed and shall further remedy any other conditions which Tenant under the terminated lease was obligated to perform under the terms of this Lease; and upon execution and delivery of such new lease, any subleases which may have theretofore been assigned and transferred by Tenant to Landlord, as security under this Lease, shall thereupon be deemed to be held by Landlord as security for the performance of all of the obligations of Tenant under the new lease;

(iv) Landlord shall not warrant possession of the Demised Premises to tenant under the new lease;

(v) Such new lease shall be expressly made subject to the rights, if any, of Tenant under this Lease as terminated; and

(vi) Tenant under such new lease shall have the same right, title and interest in and to the Building and Improvements on the Demised Premises as Tenant had under this Lease as terminated;

(g) Nothing herein contained shall require the Leasehold Mortgagee(s) or its nominee(s) to cure any default of Tenant referred to in the Lease or any other nonmonetary default which are not otherwise curable by Leasehold Mortgagee due to the nature of the default;

(h) Without City's prior written consent, Developer shall not (a) obtain any financing to be secured by a lien on or security interest in this Lease or the Property, or (b) allow any encumbrance or lien to be created on or attached to this Lease or the Property, whether by voluntary act of the Developer or otherwise. The City shall not unreasonably withhold its consent to any such financing or encumbrance if Developer submits to City an affidavit from Developer and its lender that (i) all funds advanced will be used solely and absolutely for the development and improvement of the Property and for no other purpose whatsoever, (ii) the amount of such financing does not exceed 75% of the greater of (a) the Purchase Price for the Property, if within the first five (5) years of this Lease, or if not, then established by an appraisal performed at Developer's cost by an independent qualified appraiser with not less than 10 years of experience valuing similar properties

in the City of Tempe, or (b) the cost to complete the improvements, and (iii) the loan documents provide that City will not be required to perform any obligation of Developer other than making regularly-scheduled principal and interest payments on that portion of the financing allocable to the Property.

(i) The proceeds from any insurance policies or arising from a condemnation are to be held by any Leasehold Mortgagee(s) and distributed pursuant to the provisions of this Lease, but the Leasehold Mortgagee(s) may reserve its rights to apply to the mortgage debt all, or any part, of Tenant's share of such proceeds not required for restoration pursuant to such Leasehold Mortgagee(s);

(k) The Leasehold Mortgagee(s) shall be given notice of any litigation or arbitration proceedings by the parties hereto, and shall have the right to intervene therein and be made a party to such proceedings, and the parties hereto do hereby consent to such intervention. In the event that the Leasehold Mortgagee(s) shall not elect to intervene or become a party to such proceedings, the Leasehold Mortgagee(s) shall receive notice of, and a copy of any award or decision made in said arbitration proceedings.

ARTICLE 15 GENERAL PROVISIONS

15.1 **Trial Without Jury.** Landlord and Tenant each acknowledge that it has had the advice of counsel of its choice with respect to its rights to trial by jury under the Constitutions of the United States and the State of Arizona. Each party expressly and knowingly waives and releases all such rights to trial by jury in any action, proceeding, or counterclaim brought by either party against the other on any matters arising out of or in any way connected with this lease, tenant's use or occupancy of the premises, and/or any claim for injury or damage.

15.2 **Estoppel Certificate.** Within 30 days after receipt of written request therefor from the other Party, Tenant or Landlord, as the case may be, shall execute, acknowledge and deliver to the requesting Party and/or its lender a statement (a) 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), (b) stating the date to which Rent and other charges are paid in advance, if any, and (c) acknowledging that there are not, to the certifying Party's knowledge, any uncured defaults on the part of the other Party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied on by any auditor of either Party, or by any prospective purchaser of the Property.

A Party's failure to deliver such statement within such time shall result in the conclusive presumption that (a) this Lease is in full force and effect, without modification except as may be represented by the requesting Party, and (b) there are no uncured defaults in the requesting Party's performance.

15.3 **Interpretation.** When the context requires, any gender includes all others, the singular number includes the plural, and vice-versa. Captions are inserted for convenience of

reference and do not describe or limit the scope or intent of this Lease. Any recitals above, and any exhibits or schedules referred to and/or attached hereto, are incorporated by reference into this Lease. “**Including**” means including without limitation. No waiver, amendment or discharge of this Lease shall be valid unless it is in writing and signed by the Party to be obligated. If any provision of this Lease is held by a court to be invalid or unenforceable, the other provisions shall remain in effect. No inference or presumption shall be drawn if a Party or its attorney prepared and/or drafted this Lease; it shall be conclusively presumed that the Parties participated equally in its preparation and/or drafting.

15.4 **Notices.** Unless otherwise provided in this Lease or by law, all notices required or permitted by this Lease or by law to be served on or delivered to a Party shall be in writing and deemed duly served, delivered and received when personally delivered or delivered by a recognized overnight courier service to the Party to whom directed, or instead, three business days after deposit in the U.S. mail, certified or registered, return receipt requested, first-class postage prepaid, addressed as indicated below. A Party may change this address by giving written notice of the change to the other Party. Confirmed fax transmission to a fax machine specified in such a notice shall constitute personal delivery, if followed by hard copy sent by mail or such overnight courier service within one day. The Parties’ addresses for this purpose are:

To Tenant: Iconic Mill, LLC
1030 W. Chicago Ave. Suite 300
Chicago, Illinois 60642
Attn: David L. Baum

With a copy to: Baum Development, LLC
1030 W. Chicago Ave. Suite 300
Chicago, Illinois 60642
Attn: Legal Department

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

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

15.5 **Holdover.** If Tenant, with Landlord’s consent, remains in possession of the Property or any part of it after the expiration of the Term, such occupancy shall be a tenancy from month-to-month on all provisions of this Lease pertaining to Tenant’s obligations. If Tenant fails to surrender said Premises on expiration of this Lease despite Landlord’s demand to do so, Tenant shall indemnify, defend and hold harmless Landlord from all loss or liability,

including any claims made by any succeeding lessee, based on or resulting from Tenant's failure to surrender, and Landlord shall be entitled to the benefit of all laws respecting summary recovery of possession. Any occupancy by Tenant after the Termination Date without Landlord's concurrence shall be at 120% of the then current market rental rate for the Property.

15.6 **Attorneys' Fees.** In the event either Landlord or Tenant brings any suit or other proceeding with respect to the subject matter or enforcement of this Lease, the prevailing Party (as determined by the court, agency or other authority before which such suit or proceeding is commenced) shall, in addition to such other relief as may be awarded, be entitled to recover attorneys' fees, expenses and costs of investigation as actually incurred (including without limitation court costs, expert witness fees, costs and expenses of investigation, and all attorneys' fees, costs and expenses in any such suit or proceeding).

15.7 **Landlord's Access.** Landlord and its agents shall have the right after reasonable prior notice to Tenant to enter the Property at reasonable times for the purpose of inspecting the Property, except that Landlord shall have no right to enter portions of the Property which are subject to a sublease or license agreement without the prior written consent of the occupant and the sublessee or licensee, or as otherwise provided by law.

15.8 **Quiet Enjoyment.** Tenant, upon paying the Rent and all other sums and charges to be paid by it as herein provided, and observing and keeping all covenants, warranties, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Demised Premises during the term of this Lease, without hindrance or molestation by anyone claiming by through or under Landlord.

15.9 **Merger.** If both Landlord's and Tenant's estates in the Premises have both become vested in the same owner, this Lease shall nevertheless not be destroyed by application of a doctrine of merger unless agreed in writing by Landlord and Tenant.

15.10 **Governing Law; Forum.** THIS LEASE SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF ARIZONA (WITHOUT REGARD OF PRINCIPLES OR CONFLICTS OF LAW) AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. FOR ALL PURPOSES OF THIS LEASE, IN ANY PROCEEDING INVOLVING THIS LEASE, THE PROPER PLACE OF TRIAL OR HEARING SHALL BE PHOENIX, ARIZONA, AND THE PARTIES IRREVOCABLY SUBMIT TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS IN MARICOPA COUNTY.

15.11 **Quiet Possession.** On Tenant's paying all Rent and observing and performing all the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Property free from any interference by any Party claiming by, through or under Landlord during the entire Term hereof, subject to all provisions of this Lease and the Development Agreement.

15.12 **Authority.** The individuals executing this Lease on behalf of either Party represent and warrant to the other Party that they are fully authorized and legally capable of

executing, delivering and performing under this Lease on behalf of such Party and that such execution is binding on all persons holding an interest in the Property.

15.13 **Entire Agreement; Further Documentation.** This Lease, together with any exhibits hereto and any other documents necessary to effectuate the terms of this Lease, contains the entire understanding of the undersigned with respect to the transactions contemplated hereby and contains all of the terms and conditions thereof and supersedes all prior understandings relating to the subject matter hereof.

15.14 **No Joint Venture.** This Lease shall not in any manner be construed as creating a joint venture or partnership, and each Party shall be solely responsible for all actions it takes and expenses it incurs in carrying out its obligations under this Lease.

15.15 **Memorandum of Lease.** The Parties may execute and acknowledge, in a manner suitable for recording, a Memorandum of Lease in a mutually acceptable form, and thereafter such Memorandum of Lease may be recorded by either Party.

15.16 **Execution of This and Other Writings.** The Parties have signed below voluntarily after having been advised by their counsel of all provisions hereof, and, in signing below, they are not relying on any inducements, promises and representations made by or on behalf of the other except as contained in this Lease. This Lease may be executed in counterparts, each of which shall be deemed an original. An executed counterpart of this Lease transmitted by fax shall be equally as effective as a manually executed counterpart. Each Party shall take all reasonable steps, and execute, acknowledge and deliver all further instruments necessary or expedient to implement this Lease.

LANDLORD AND TENANT HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH PROVISION OF IT AND, BY EXECUTING THIS LEASE, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, ITS PROVISIONS ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LANDLORD AND TENANT WITH RESPECT TO THE PROPERTY.

15.17 **Survival of Obligations.** The indemnity obligations of Tenant set forth herein shall survive the expiration or earlier termination of this Lease, as to matters arising prior to such expiration or earlier termination.

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IN WITNESS WHEREOF, the City, as Landlord, has caused this Master Lease to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested to by the City Clerk and the Tenant has executed and sealed the same on or as of this _____ day of _____, 2016.

ATTEST:

LANDLORD:

City Clerk

THE CITY OF TEMPE, an Arizona municipal corporation

APPROVED AS TO FORM:

By: _____
Mark W. Mitchell, Mayor

City Attorney

STATE OF ARIZONA)
)ss.
County of MARICOPA)

The foregoing Memorandum of Lease was acknowledged before me this _____ day of August, 2016, by Mark W. Mitchell, Mayor of THE CITY OF TEMPE, an Arizona municipal corporation, and that in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

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

Notary Public

My Commission Expires:

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

TENANT:

By: _____
Name: _____
Title: _____

STATE OF ARIZONA)
)ss.
County of MARICOPA)

The foregoing Master Lease was acknowledged before me this ___ day of _____,
2016, by _____, the _____ of _____, on
behalf of that entity.

Notary Public

My Commission Expires:

EXHIBIT A
RENT

(INSERT APPLICABLE LANGUAGE PER EXHIBIT C-1 OF DDA FOR RENT TERMS)

EXHIBIT G
GPLET Lease

WHEN RECORDED, RETURN TO:

City of Tempe Basket

LAND AND IMPROVEMENTS LEASE

THIS LAND AND IMPROVEMENTS LEASE (“Lease”) is made and entered into as of the _____ day of _____, 201____ (the “Effective Date”) by and between the CITY OF TEMPE, a municipal corporation (“Landlord”), and _____, a (“Tenant”).

RECITALS

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

AGREEMENT

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

1. **Quiet Enjoyment.** Landlord covenants and agrees with Tenant that conditioned upon Tenant’s paying the Total Rent (defined in Section 3) herein provided and performing and fulfilling, in all material respects, the covenants, agreements, conditions and provisions herein to be kept, observed or performed by Tenant (taking into

account any applicable cure period), Tenant may at all times during the term hereof peaceably, quietly and exclusively have, hold and enjoy the Premises.

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

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

4. Leasehold Mortgage of Premises.

4.1 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, collateral assignment or otherwise. Any such security interest shall be referred to herein as a "Leasehold Mortgage," and the holder of a Leasehold Mortgage shall be referred to herein as a "Leasehold Mortgagee." In addition, if landlord holds title to the premises subject to the lien of a fee deed of trust executed by tenant as trustor prior to the acquisition of the premises by landlord, then (i) such fee deed of trust shall be deemed to be a leasehold mortgage for the purposes of this lease, (ii) the beneficiary under such fee deed of trust shall be deemed to be a leasehold mortgagee for the purposes of this lease and shall be entitled to all of the rights and privileges of a leasehold mortgagee under the terms and provisions of this lease, (iii) such fee deed of trust shall be deemed to be the most senior leasehold mortgage, and (iv) the beneficiary under such fee deed of trust shall be deemed to have satisfied the notice requirements under section 17.2.

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.”

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

5.2 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 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 Effective Date and at the end of the Lease term.

6. Use. Subject to the applicable provisions of this Lease and A.R.S. §42-6201(2), the Premises may be used and occupied by Tenant for any lawful purpose, including without limitation the sale of alcoholic beverages, subject to Tenant obtaining

all required permits, licenses, and approvals from the Arizona Department of Liquor Licenses and Control.

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

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

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

7.3 Maintenance, repair or restoration of the Premises;

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

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

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

10. Easements, Dedications and Other Matters. At the request of Tenant, and provided that no Event of Default (as defined in Section 17.1) shall have then occurred and be continuing, Landlord shall dedicate or initiate a request for dedication to public

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

11. Insurance. During the term of this Lease, the Tenant shall, at Tenant's expense, maintain general public liability insurance against claims for personal injury, death or property damage occurring in, upon or about the Premises. The limitation of liability of such insurance shall not be less than \$5,000,000.00 combined single limit. 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). 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 portion of any improvements or fixtures within the Premises shall be totally or partially destroyed or damaged by fire or other casualty, then, at Tenant's election, either: (i) this Lease shall continue in full force and effect, and, subject to the applicable provisions of this Lease,

Tenant, at Tenant's sole cost and expense, may, but shall not be obligated to, rebuild or repair the same; or (ii) this Lease shall terminate with respect to all of the Premises or to such portions of the Premises as Tenant may elect. Landlord and Tenant agree that the provisions of A.R.S. § 33-343 shall not apply to this Lease. In the event that, subject to the applicable provisions of this Lease, Tenant elects to repair or rebuild the improvements, any such repair or rebuilding shall be performed at the sole cost and expense of Tenant. If there are insurance proceeds resulting from such damage or destruction, Tenant shall be solely entitled to such proceeds, whether or not Tenant rebuilds or repairs the improvements or fixtures, subject to the applicable provisions of this Lease and of any Leasehold Mortgage.

14. Condemnation.

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

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

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

14.4 Notice of Condemnation. In the event any action is filed to condemn the Premises or Tenant's leasehold estate or any part thereof by any public or quasi-public authority under the power of eminent domain or in the event that an action is filed to acquire the temporary use of the Premises or Tenant's leasehold estate or any part thereto, or in the event that action is threatened or any public or quasi-public authority communicates to Landlord or Tenant its desire to acquire the temporary use thereof, by a voluntary

conveyance or transfer in lieu of condemnation, either Landlord or Tenant shall give prompt notice thereof to the other and to any Leasehold Mortgagee. Landlord, Tenant and each Leasehold Mortgagee shall each have the right, at its own cost and expense, to represent its respective interest in each proceeding, negotiation or settlement with respect to any taking or threatened taking. No agreement, settlement, conveyance or transfer to or with the condemning authority affecting Tenant's leasehold interest shall be made without the consent of Tenant and each Leasehold Mortgagee.

15. Termination Option.

15.1 Grant of Option. In the event changes in applicable law nullify, remove, or vitiate the economic benefit to Tenant provided by this Lease, or if any person or entity succeeds to Tenant's interest hereunder by foreclosure sale, trustee's sale, or deed in lieu of foreclosure (collectively, "Foreclosure"), or if Tenant, in its sole and absolute discretion, so elects for any or no reason, Tenant or Tenant's successor by Foreclosure shall have the option ("Option"), exercisable by written notice to Landlord, to terminate this Lease as to the entire Premises or as to such portions of the Premises as Tenant may specify, in each case, effective thirty (30) days after the date of the notice. Upon default under the Leasehold Mortgage (after giving effect to all applicable notice and cure rights), Tenant or Leasehold Mortgagee shall have the option, exercisable by written notice to Landlord, to terminate this Lease effective twenty (20) days after the date of the notice.

15.2 Title Vesting in Tenant. Simultaneously with, and effective as of, any termination of this Lease, title to the Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant and Landlord shall comply with the obligations under Article 31.

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

16. Assignment; Subletting.

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

16.2 Liability. Each assignee, other than any residential subtenant, hereby assumes all of the obligations of Tenant under this Lease (but

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

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

17.1 Default. The failure by Tenant to observe and perform any material provision of this Lease to be observed or performed by Tenant, or a failure by Tenant to pay any Tax when due, where such failure continues for sixty (60) 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 sixty (60) 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 during the continuance thereof, 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 or by overnight delivery, and shall be deemed given seventy-two (72) hours after the time such copy is deposited in a United States Post Office with postage charges prepaid, addressed to the Leasehold Mortgagee or when received if sent by overnight mail. No Notice given by Landlord to Tenant shall be binding upon or affect Tenant or the Leasehold Mortgagee unless a copy of the Notice shall be given to the Leasehold Mortgagee pursuant to this Section. In the case of an assignment of the Leasehold Mortgage or change in address of the Leasehold Mortgagee, the assignee or Leasehold Mortgagee, by written notice to Landlord, may change the address to which such copies of Notices are to be sent.

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

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

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

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

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

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

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

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 Event of Default by Tenant), Landlord, if requested by any Leasehold Mortgagee, will enter into a new lease of the Premises with the most senior Leasehold Mortgagee requesting a new lease, which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of

the original term of this Lease, at the rent and upon the terms, covenants and conditions herein contained, provided:

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

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

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

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

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.

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

36.3 Captions; Attachments; Defined Terms.

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

36.4. Entire Agreement. This Lease and the Development Agreement between Landlord and Tenant, along with any addenda, exhibits and attachments hereto or thereto, constitutes the entire agreement between Landlord and Tenant relative to the Premises and this Lease, the Development Agreement and the addenda, exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by the party to be bound thereby. Landlord and Tenant agree hereby that all prior or

contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing of the Premises are merged in or revoked by this Lease and the Development Agreement, except as set forth in any addenda hereto or thereto.

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, or by overnight mail, as follows:

If to Landlord:

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

With a copy to:

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

If to Tenant:

With a copy to: Manjula Vaz

Gammage & Burnham
 Two North Central, Suite 1500
 Phoenix, AZ 85004

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

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 Premises after the expiration of the term hereof without the consent of Landlord, such tenancy shall be from month to month on the same terms and conditions as are set forth herein.

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

APPROVED AS TO FORM:

City Attorney

CITY OF TEMPE, a municipal corporation

By: _____

Name: _____

Title: _____

TENANT:

By: _____
Name _____
Title _____

STATE OF ARIZONA)
)
COUNTY OF MARICOPA) ss

The foregoing instrument was acknowledged before me this ____ day of _____, 2016.

Notary Public

My Commission Expires:

EXHIBIT A
of Land and Improvements Lease
Land

**EXHIBIT B
of Land and Improvements Lease**

WHEN RECORDED, RETURN TO:

MEMORANDUM OF LAND AND IMPROVEMENTS LEASE

THIS MEMORANDUM OF LAND AND IMPROVEMENTS LEASE ("Memorandum") is made and entered into as of the ____ day of _____, 201__, 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 _____, 201__ ("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 _____ 200__ by _____ of CITY OF TEMPE, an Arizona municipal corporation.

Notary Public

My Commission Expires:

STATE of)
) ss.
County of)

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

Notary Public

My Commission Expires:

EXHIBIT H
Certificate of Completion

When recorded, return to

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

CERTIFICATE OF COMPLETION

In accordance with the terms of the Development and Disposition Agreement dated _____, 2015, by and between the CITY OF TEMPE (CITY) and _____, and recorded _____ at Recorders No. _____, this Certificate of Completion is issued for the building located on the following described parcel of land:

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

Dated: _____.

Respectfully,

Community Development Manager
City of Tempe, Arizona

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing Certificate of Completion, consisting of two (2) pages, was acknowledged before me this _____ day of _____, 2015, by _____ the Community Development Manager of the City of Tempe, an Arizona municipal corporation, and that in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

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

Notary Public

My Commission Expires:

Schedule 5.10
The Public Amenities

“Public Amenities” consist of all of the following items:

- (a) Path and Trailhead at the base of Hayden Butte to be constructed with a Second Street alignment as part of the Project and available for general public use to Hayden Butte Preserve, open to the general public (subject to applicable COT rules and regulations regarding access to the Preserve).
- (b) Code compliant pedestrian path and amenities from Mill Avenue to the Trailhead including rights of public access, including public sidewalks and trails, to Hayden Butte, as constructed and installed as part of the Project.
- (c) Sidewalk improvements and traffic control improvements within COT rights-of-way adjacent to the project, as necessary.
- (d) Permanent Exhibits and Installations demonstrating the ancient and historic context of the site and remaining structures. Such Exhibits and Installations shall either be open to the public for interaction or visibly available by the public.
- (e) A Conservation Easement over the Mill and Silos as more fully described in Section 6.9, and adaptive reuse of the Mill and Silos in accordance with COT and SHPO guidance – ensuring historic structures are repurposed in a manner consistent with community and historic preservation standards.
- (f) The construction of the infrastructure for a multipurpose venue, portions of which shall be programmed for and open to public events on or before January 31, 2019, with final construction of the multipurpose venue to be coordinated and completed in conjunction with Phase III of the Project of the Project on or before February 28, 2021