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#11
OCT 25 2012

MEMORANDUM Downtown Redevelopment - Council Memo No. DT13-002

DATE: OCTOBER 5, 2012

TO: MAYOR AND COUNCIL

THRU: RICH DLUGAS, CITY MANAGER *RD*
 PATRICK MCDERMOTT, ASSISTANT CITY MANAGER *PM*
 CHRISTINE MACKAY, ECONOMIC DEVELOPMENT DIRECTOR *CM*

FROM: TERI KILLGORE, DOWNTOWN REDEVELOPMENT MANAGER *TK*

SUBJECT: APPROVAL OF RESOLUTION NO. 4647 AUTHORIZING AMENDMENT NO.1 TO
 THE SAN MARCOS COMMONS PHASE II DEVELOPMENT AGREEMENT.

RECOMMENDATION: Authorize Resolution No. 4647 to amend the San Marcos Commons Phase II Development Agreement with Amendment No.1.

BACKGROUND/DISCUSSION: On May 27, 2010, Council authorized staff to negotiate and execute the San Marcos Commons Phase II Development Agreement and related leases through Resolution No. 4422. The agreement and related leases were executed and recorded in January 2011. The Development Agreement called for vertical construction to commence effective September 1, 2011.

Due to economic conditions, the developer, Desert Viking, was unable to affect this. In order to allow the developer to bring the project to fruition, Council would need to authorize an 18 month extension to the Development Agreement from the day of Council approval. Additionally three new milestones would be created so that the new date for vertical construction is met. The proposed new milestones, agreed to by the developer, are all measured from the date of Council approval and not to exceed the months outlined below:

- | | |
|---|-----------|
| (1) PDP Submittal | 9 months |
| (2) PDP Approval by Planning and Zoning and Council | 13 months |
| (3) Construction Drawings Submitted | 17 months |

All other deal terms are to remain the same.

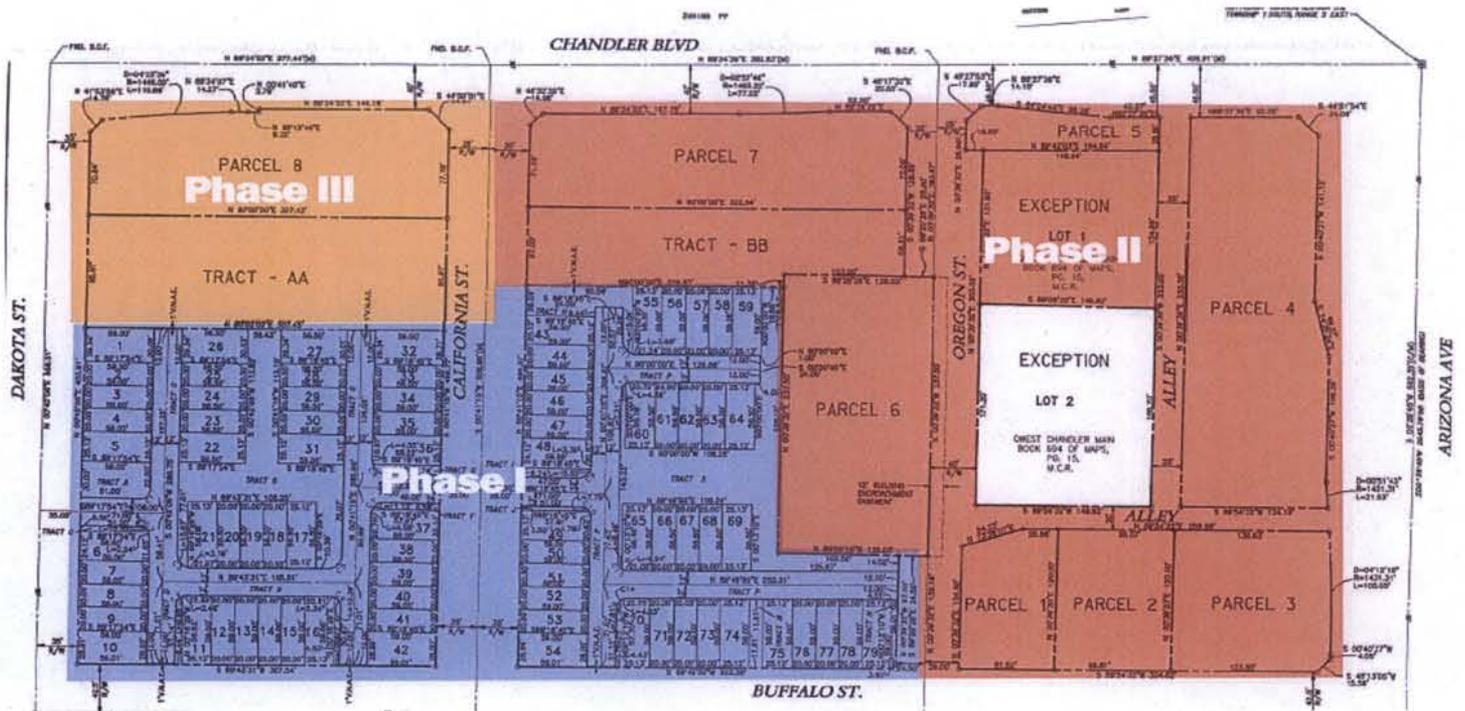
The developer has assured Staff that they will move expeditiously to finalizing a site plan, signing tenants, securing financing and beginning construction. Completion of this project represents a key element of the Downtown Redevelopment strategy and the implementation of the South Arizona Avenue Corridor Area Plan.

FINANCIAL IMPLICATIONS: No additional funding is requested at this time. All City project expenses have been encumbered in prior years and are held in the CIP.

PROPOSED MOTION: Move to approve Resolution No. 4647 authorizing Amendment No.1 to the San Marcos Commons Phase II Development Agreement.

Attachments:
Exhibit A – San Marcos Commons Phases Map
Resolution No. 4647

SMC PHASES MAP



RESOLUTION NO. 4647

A RESOLUTION OF THE CITY OF CHANDLER, ARIZONA, APPROVING AMENDMENT #1 TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF CHANDLER AND SMC II, L.L.C., FOR PHASE II OF THE SAN MARCOS COMMONS PROJECT.

WHEREAS, the City of Chandler approved, in Resolution No. 4422, a development agreement with SMC II, L.L.C., an Arizona limited liability company, for redevelopment of a portion of its historic downtown business district generally located at the southwest corner of Arizona Avenue and Chandler Boulevard and more specifically identified as Parcels 1, 3 through 7, Tract BB, and Exception Lot 1, all as shown on the Final Plat for San Marcos Commons, recorded with the Maricopa County Recorder at Book 865, Page 180, as a project known as "San Marcos Commons, Phase II" (the Project); and

WHEREAS, the City and SMC II, L.L.C. have determined that it is in their mutual best interests to approve Amendment #1 to the Development Agreement;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Maricopa County, Arizona, as follows:

1. Section 1. Council hereby approves the terms and conditions of Amendment #1 to the Development Agreement with SMC II, L.L.C. relating to the Project.
2. Section 2. Council authorizes the execution of Amendment #1 to the Development Agreement for the Project.

PASSED AND ADOPTED by the Mayor and City Council of the City of Chandler, Arizona, this 25th day of October, 2012.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4647 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the 25th day of October, 2012, and that a quorum was present thereat.

CITY CLERK

APPROVED AS TO FORM:

KB

CITY ATTORNEY

When Recorded, Mail to:

**Amendment #1 to the
San Marcos Commons, Phase II
Development Agreement**

I. INTRODUCTION

On or about January 1, 2011, the City of Chandler, an Arizona municipal corporation and SMC II, L.L.C., an Arizona limited liability company, entered into the Development Agreement for Phase II of the San Marcos Commons project (“Development Agreement”). The Development Agreement was recorded in the office of the Maricopa County Recorder’s office as Document 201100490635.

II. RECITALS

WHEREAS, the Parties have determined it is in their best interests to amend the Development Agreement and are doing so without duress or coercion in this Amendment #1 to the Development Agreement (“Amendment #1”); and

WHEREAS, the Parties affirm that there has been sufficient consideration exchanged between the Parties for the modifications to the Development Agreement; and

WHEREAS, the Parties are re-affirming all conditions and terms that are not explicitly modified by this Amendment #1.

III. MODIFICATIONS

A. Subsection 2.1 of the Development Agreement is hereby deleted in its entirety and replaced with the following:

2.1 Development Plan.

2.1.1 PAD and PDP. Development of the Property shall be in accordance with the existing PAD and proposed PDP, which shall set forth the basic land uses, densities and intensities for development of the Property.

2.1.2 Approval of PDP. The parties acknowledge that it is the intention of the parties that the PDP for the entirety of Phase II, including all of the development stages referred to in Recital F, will be approved by the City following the execution of this Development Agreement by the City but no later than November 30, 2013. The Developer agrees that it must submit the Phase II PDP to the City no later

than the July 31, 2013 in order for the City to be able to process the Phase II PDP and consider it for approval before November 30, 2013. The parties acknowledge and agree that Developer's obligations hereunder are expressly conditioned upon the final City approval of the Phase II PDP in form acceptable to both Parties and subject only to stipulations acceptable to Developer.. If the City does not approve the Phase II PDP in a form acceptable to Developer, then Developer shall have the right to terminate this Development Agreement by written notice to the City delivered within forty-five (45) days after the approval date of the Phase II PDP and the Parties shall have no further obligations to each other. Developer's option to terminate this Development Agreement for its lack of agreement with the stipulations placed on the approval of the Phase II PDP shall also serve as termination of any of the Leases, as set forth in Exhibits C, D, and E, that may have been signed prior to such termination.

2.1.3 No Further City Council Action Required. The City agrees that once this Agreement has been approved by the City Attorney and executed by the Mayor of the City of Chandler, and the PDP for all of Phase II and the final plat for Phase II have been approved by the City, then no further action by the City Council shall be required for Developer to develop Phase II in accordance with the PAD and the PDP and this Development Agreement.

2.1.4 Cooperation in the Implementation of the PAD and PDP. Developer and the City shall work together using reasonable efforts throughout the development stages to resolve any City comments regarding implementation of the PAD and PDP. Subject to Section 5 and to Applicable Laws, the City and Developer will cooperate reasonably in processing the approval or issuance of any permits, plans, specifications, plats or other development approvals requested by Developer in connection with development of the Property.

2.1.5 Construction Plans. Developer shall submit its final construction drawings for the public improvements and construction required under Lease 1 and Lease 2 to the City for approval on or before March 31, 2014.

B. Subsection 4.1(c) of the Development Agreement is hereby deleted in its entirety and replaced with the following:

(c) Parcels 1, 5 and 7 Lease. On or before March 1, 2016, and provided that Developer is not in default of any of its obligations under this Agreement, Lease 1 or Lease 2, the City and Developer shall enter into a lease for Parcels 1, 5 and 7 ("Lease 3") which shall be substantially in the form attached hereto as Exhibit E and by this reference incorporated herein.

C. Exhibit C of the Development Agreement is hereby deleted in its entirety and replaced with the attached Exhibit C, which is attached to this Amendment #1 and incorporated by this reference. Additionally, Section 13.A(1) of Lease 1 (Exhibit C) is deleted in its entirety and replaced with the following:

13. **Construction And Operation Of Project.**

A. Project. Tenant shall construct the Garage and all appurtenant improvements on the Property and the Public Tract.

(1) Commencement of vertical construction of all structures

required under this Lease and Lease 1 (evidenced by framing above foundation slabs) shall occur no later than May 1, 2014.

D. Exhibit D of the Development Agreement is hereby deleted in its entirety and replaced with the attached Exhibit D, which is attached to this Amendment #1 and incorporated by this reference. Additionally, Section 13.A(1) of Lease 2 (Exhibit D) is deleted in its entirety and replaced with the following:

13. **Construction And Operation Of Project.**

A. Project. Tenant shall construct the Shops and all appurtenant improvements on the Property and the Public Tract.

(1) Commencement of vertical construction of all structures required under this Lease and Lease 1 (evidenced by framing above foundation slabs) shall occur no later than May 1, 2014.

E. Exhibit E of the Development Agreement is hereby deleted in its entirety and replaced with the attached Exhibit E, which is attached to this Amendment #1 and incorporated by this reference.

IV. GENERAL PROVISIONS

A. The effective date of this Amendment #1 (Amendment #1 Effective Date) or any other duly processed amendment shall be the date on which the last representative for the parties executed the amendment.

B. Upon amendment of the Development Agreement, by this Amendment #1 or any other subsequent amendment, references to "Development Agreement" shall mean the Development Agreement as amended by this or any subsequent amendment(s).

C. If, after the Amendment #1 Effective Date or the effective date of any other subsequent amendment(s), the Parties find it necessary to refer to the Development Agreement in its original, unamended form, they shall refer to it as the "Original Development Agreement." When the Parties mean to refer to any specific amendment to the Development Agreement as if it were unmodified by any subsequent amendments, the parties shall refer to it by the number of the amendment as well as its effective date.

IN WITNESS WHEREOF, we have executed this Amendment #1 on the dates below written and hereby swear and affirm that we are duly authorized in accordance with law to

execute this Amendment #1.

CHANDLER

City of Chandler, an Arizona municipal corporation

By: _____

Jay Tibshraeny, MAYOR

Date: _____, 2012

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

KB

CITY ATTORNEY

DEVELOPER

SMC II, L.L.C., an Arizona limited liability company

By: _____

Niels E. Kreipke, Manager

Date: October 18, 2012

By: _____

Michael W. Hogarty, Manager

Date: October 18, 2012

STATE OF ARIZONA)
)ss,
County of Maricopa)

Acknowledgment of
Niels E. Kreipke

The foregoing instrument was acknowledged before me this ___ day of October, 2012, by Niels E. Kreipke, as Manager of SMC II, L.L.C., an Arizona limited liability company, on behalf of the company.

NOTARY PUBLIC

My commission expires:

STATE OF ARIZONA)
)ss,
County of Maricopa)

Acknowledgment of
Michael W. Hogarty

The foregoing instrument was acknowledged before me this ___ day of October, 2012, by Michael W. Hogarty, as Manager of SMC II, L.L.C., an Arizona limited liability company, on behalf of the company.

NOTARY PUBLIC

My commission expires:

STATE OF

)

Acknowledgment of

) ss

Mayor Tibshraeny

County of Maricopa

)

The foregoing instrument was acknowledged before me this __ day of _____, 2012, by Jay Tibshraeny, Mayor of the City of Chandler.

Notary Public

My Commission expires:

GOVERNMENT PROPERTY IMPROVEMENTS LEASE
San Marcos Commons – Parcel 6

1. **Date.** The date of this Lease (the "Lease") is January 14, 2011.

2. **Parties.** The parties to this lease are as follows:
 - A. **Landlord:**

City of Chandler
City Manager
P.O. Box 4008, MS 605
Chandler, Arizona 85244-4008

 - B. **Tenant:**

SMC II, L.L.C., an Arizona limited liability company
c/o Niels E. Kreipke or Michael W. Hogarty
101 West Commonwealth Avenue
Chandler, Arizona 85225

 - C. **Parties.** Landlord and Tenant may be referred to in this Lease individually as a "Party" or collectively as the "Parties."

3. **Recitals.** As background to this Lease, the Parties agree, acknowledge and recite as follows, each of which shall be deemed a material term and provision of this Lease:
 - A. Pursuant to a "Development Agreement -- San Marcos Commons, Phase II," dated as of the date of this Lease (the "Development Agreement"), Tenant has agreed to perform certain acts as more fully set forth in the Development Agreement.

 - B. Pursuant to the Development Agreement, Landlord has agreed to enter into a lease with Tenant for the Property (as defined below).

 - C. It is intended by Landlord and Tenant that this Lease be subject to the provisions of A.R.S. Section 42-6201 et seq.

 - D. Landlord is a "Government Lessor" as defined in A.R.S. Section 42-6010.

 - E. The improvements presently existing, or to be constructed, on the Property are (or will be) Government Property Improvements as defined in A.R.S. Section 42-6201.

4. **Lease of the Premises.**

A. **Premises.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon and in consideration of the terms and conditions contained herein, the surface and subsurface rights on and above that certain parcel of real property, and any and all improvements presently existing thereon, within the portion of the redevelopment area generally located in the City of Chandler, County of Maricopa, State of Arizona, shown or designated as Parcel 6 of San Marcos Commons all as more particularly described in Exhibit A (legal description) and as depicted on Exhibit B (parcel map) attached hereto, which real property may be referred to in this Lease as the "Property" and which Property, together with the improvements presently situated on the Property, or to be constructed on the Property by Tenant in accordance with the terms and provisions of this Lease, is or may be referred to as the "Premises"; subject, however, to:

(1) All covenants, restrictions, easements, agreements, and reservations of record, including the Parking Declaration (as defined below).

(2) Present and future building restrictions and regulations, zoning laws, ordinances, resolutions and regulations of the municipality in which the land lies and all present and future ordinances, laws, regulations and orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction.

(3) The condition and state of repair of the Premises as the same may be on the Commencement Date.

B. **Public Tract.** Although this Lease imposes certain obligations on Tenant with respect to maintenance of, and insurance covering bodily injury and property damage occurring on the Public Tract, the Public Tract is not included within the Premises.

C. **Term.** The term of this Lease ("Term") shall commence on the date of execution of this Lease ("Commencement Date"), and shall expire at 12:00 midnight on the last day of the Rental Period, unless this Lease is sooner terminated as hereinafter provided.

5. **Definitions.**

For the purposes of this Lease, the following words shall have the definition and meaning set forth in this Lease:

(a) "Additional Payments" means as defined in Section 7(A).

(b) "Administrative Fee" means as defined in Section 11(D).

(c) "Affiliate" means, with respect to Tenant (including all entities that have an ownership interest in Tenant), any person or legal entity that is controlled by Tenant, that controls Tenant or that is under common control with Tenant, whether direct or indirect, and whether through

ownership of voting securities, by control or otherwise. For purposes of this definition, "control" shall be conclusively presumed in the case of direct or indirect ownership of fifty percent (50%) or more of outstanding interests in terms of value or voting power of Tenant.

- (d) "Applicable Laws" means as defined in Section 12(A).
- (e) "Certificate of Occupancy" means as defined in Section 13(A)(6).
- (f) "City's Maximum Contribution" means as defined in Section 13(A)(2).
- (g) "Commencement Date" means as defined in Section 4(B).
- (h) "Depository" means an Institutional Lender holding a Permitted Mortgage or, if there be none, a bank or trust company having its principal office in Maricopa County selected by Tenant with a net worth of not less than \$50 million.
- (i) "Development Agreement" means that Development Agreement dated as of the date of this Lease, between the City and Tenant, as Tenant, as described in Recital 3(A).
- (j) "Enforced Delay" means as defined in Section 32.
- (k) "Event of Default" means as defined in Section 21(A).
- (l) "Garage" shall mean a 540-space parking space garage structure to be constructed by Tenant on the Property in accordance with the plans and specifications approved by Landlord. The above-ground portion of the Garage shall consist of five (5) stories above grade, with the top of the parking screen wall not to exceed fifty (50) feet, and with accent towers not to exceed fifty-six (56) feet.
- (m) "Impositions" means as defined in Section 7(A).
- (n) "Institutional Lender" means any savings bank, bank or trust company, savings and loan association, insurance company, mortgage banker, mortgage broker, finance company, college or university, governmental pension or retirement funds or systems, any pension retirement funds or systems of which any of the foregoing shall be trustee, provided the same be organized under the laws of the United States or of any State thereof, or a Real Estate Investment Trust as defined in Section 856 of the Internal Revenue Code of 1986 as amended.
- (o) "Landlord" means the City of Chandler, Arizona, a municipal corporation.
- (p) "Lease 2" means that certain Lease dated concurrently with this Lease, between the City, as Landlord, and Tenant, as Tenant, for Parcels 3 and 4.

(q) "Lease 2 Improvements" means the improvements required to be constructed upon Parcels 3 and 4 by Tenant pursuant to Lease 2.

(r) "Lease 3" means that certain Lease proposed to be executed by and between the City, as Landlord, and Tenant, as Tenant, for Parcels 1, 5, and 7.

(s) "Lease 3 Improvements" means the improvements required to be constructed on Parcels 1, 5 and 7.

(t) "Leases" means this Lease, Lease 2 and Lease 3.

(u) "Mortgagee" means the holder, trustee, or beneficiary of any Permitted Mortgage.

(v) "Option Period" means as defined in Section 33(B).

(w) "Parcel 1," "Parcel 3," "Parcel 4," "Parcel 5," "Parcel 6" and "Parcel 7" mean the parcels so designated on Exhibit B.

(x) "Parcels" means all or any combination of Parcel 1, Parcel 3, Parcel 4, Parcel 5, Parcel 6 and Parcel 7.

(y) "Parking Declaration" means as described in Section 13(C)(1).

(z) "Permitted Mortgage" means any mortgage or deed of trust not held by a Related Party (unless such Related Party is approved by Landlord) that constitutes a lien upon this Lease, the leasehold estate hereby created, or all (or any portion of) Tenant's interest in the Project, and which complies with the requirements of Section 20.

(aa) "Permitted Mortgagee" means the beneficiary, secured party or mortgagee under any Permitted Mortgage, and its successors and assigns and purchasers at any foreclosure sale.

(bb) "Phase I Developer" means Desert Viking DV Town Homes LLC, an Arizona limited liability company, an Affiliate of Tenant.

(cc) "Phase I Development Agreement" means that certain development agreement between the City and Phase I Developer.

(dd) "Phase II" means all of the development and construction contemplated for all of the Parcels in and under the Development Agreement.

(ee) "Premises" means as defined in Section 4(A) and described in Exhibits A and B.

(ff) "Project" means the construction of the Garage and all appurtenant improvements, including any improvements on the Public Tract shown on the approved plans and specifications.

(gg) "Property" means as defined in Section 4(A).

(hh) "Public Tract" means the area platted as Oregon Street on the plat recorded in the Official Records of Maricopa County, Arizona, in Book 865 of Maps, Page 18, whether or not such area is actually used for public right-of-way or other public purposes.

(ii) "Purchase Option" means as defined in Section 33(A).

(jj) "Rental Period" means the period beginning on the Commencement Date and ending on the earlier of September 1, 2037, or twenty-five (25) years from the first day of the month following the date of issuance of the Certificate of Occupancy (or comparable instrument) for the Garage and Lease 2 Improvements.

(kk) "Second Notice" means as defined in Section 21(B).

(ll) "Tenant" means the Tenant named herein and its permitted successors and assigns.

(mm) "Term" means as defined in Section 4(C).

(nn) "Transfer" means as defined in Section 20(B)(6).

(oo) "Work" means as defined in Section 17(A).

6. **Rent.**

A. **Net Rent.**

(1) **Base and Adjustments.** Tenant shall pay to Landlord, in collected funds and at the addresses specified or furnished pursuant to Section 24, during the term of this Lease a net annual rental ("Net Rent") in the amount of Five Thousand and no/100 Dollars (\$5,000.00).

(2) **Annual Installments.** All payments of annual Net Rent shall be made in annual installments in advance, without notice, on the first day of the month following the date of issuance of the Certificate of Occupancy for the improvements to be constructed pursuant to Section 10 of this Lease.

(3) **Additional to Other Payments.** Net Rent shall be in addition to all of the other payments to be made by Tenant as hereinafter provided.

B. **Rent Absolutely Net.** It is the purpose and intent of the Landlord and Tenant that Net Rent payable hereunder shall be absolutely net to Landlord so that this Lease shall yield to Landlord the Net Rent herein specified, free of any charges, assessments, Impositions, or deductions of any kind charged, assessed, or imposed on or against the Premises and without abatement, deduction or

set-off by the Tenant, and Landlord shall not be expected or required to pay any such charge, assessment or Imposition or be under any obligation or liability hereunder except as herein expressly set forth, and that all costs expenses, and obligations of any kind relating to the maintenance and operation of the Premises, including all construction, alterations, repairs, reconstruction, and replacements as hereinafter provided, which may arise or become due during the term hereof shall be paid by Tenant, and Landlord shall be indemnified and saved harmless by Tenant from and against such costs, expenses, and obligations in accordance with Section 16.

D. Non-Subordination. Landlord's interest in this Lease, as the same may be modified, amended or renewed, shall not be subject or subordinate to (a) any mortgage now or hereafter placed upon Tenant's interest in this Lease, or (b) any other liens or encumbrances hereafter affecting Tenant's interest in this Lease.

E. No Release of Obligations. Except for either a mutual release and waiver of rights and liabilities arising under this Lease or to the extent expressly provided in this Lease, no happening, event, occurrence, or situation during the Rental Period, whether foreseen or unforeseen, and however extraordinary (including, without limitation, Tenant's failure, refusal, or inability for any reason to construct the Garage) shall permit the Tenant to quit or surrender the Premises or this Lease nor shall it relieve the Tenant of its liability to pay the Net Rent and Additional Payments and other charges under this Lease, nor shall it relieve the Tenant of any of its other obligations under this Lease.

7. Additional Payments.

A. "Additional Payments" Defined. Tenant shall pay as Additional Payments during the Term hereof, without notice and without abatement, deduction or setoff, before any fine, penalty, interest, or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, all sums, impositions, costs, expenses and other payments and all taxes (including personal property taxes and taxes on rents, leases or occupancy, if any, and government property improvement lease excise tax), assessments, special assessments, enhanced municipal services district assessments, water and sewer rents, rates and charges, charges for public utilities, excises, levies, licenses, and permit fees, any expenses incurred by Landlord on behalf of Tenant pursuant to this Lease (including the Administrative Fee provided for herein), and other governmental or quasi-governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which, at any time during the Term hereof may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or with respect to, or become a lien on, the Premises or any part thereof, or any appurtenances thereto, any use or occupation of the Premises, or such franchises as may be appurtenant to the use of the Premises (all of which are sometimes herein referred to collectively as "Impositions" and individually as "Imposition") provided, however, that:

(1) if, by law, any Imposition may at the option of the Tenant be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same (and any accrued interest on the unpaid balance of such

Imposition) in installments and in such event, shall pay such installments as they become due during the Term hereof before any fine, penalty, further interest or cost may be added thereto; and

(2) any Imposition (including Impositions which have been converted into installment payments by Tenant, as referred to in subparagraph (A) above) relating to a fiscal period of the taxing authority, a part of which period is included within the Term hereof and a part of which is included in the period of time after the expiration of the Term hereof shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or become a lien upon the Premises, or shall become payable, during the Term hereof) be adjusted between Landlord and Tenant as of the expiration of the Term hereof, so that Tenant shall pay that portion of such Imposition attributable to the tenancy period and Landlord shall pay the remainder thereof.

B. Payments. Tenant shall pay to Landlord, with and in addition to the monthly rental payments, all taxes imposed by any governmental unit on the rentals received by Landlord pursuant to the terms of this Lease. Tenant shall pay all other impositions directly to the taxing authority or authorities.

C. Contest. Tenant, if it shall so desire, and at its sole cost and expense, may contest the validity or amount of any Imposition, in which event, Tenant may defer the payment thereof during the pendency of such contest; provided, that upon request by Landlord at any time after the same shall have become due, Tenant shall deposit with the Landlord any amount sufficient to pay such contested item together with the interest and penalties thereon (as reasonably estimated by Landlord), which amount shall be applied to the payment of such item when the amount thereof shall be finally fixed and determined. Nothing herein contained, however, shall be so construed as to allow such item to remain unpaid for a length of time that permits the Premises or any part thereof, or the lien thereon created by such Imposition to be sold for the nonpayment of the same. If the amount so deposited shall exceed the amount of such payment, the excess shall be paid to Tenant or, in case there shall be any deficiency, the amount of such deficiency shall be promptly paid by Tenant to Landlord together with all interest, penalties or other charges accruing thereon. At any time that the Tenant hereunder is an Institutional Lender, the requirements for deposits set forth in this Section shall be waived by Landlord.

D. Assessment Reduction. Tenant if it shall so desire, and its sole cost and expense, may endeavor at any time to obtain a lowering of an imposition or assessment upon the Premises for the purpose of reducing the amount thereof. However, in such event, Landlord will not be required to cooperate with Tenant and may in fact oppose such endeavor. Tenant shall be authorized to collect any refund payable as a result of any proceeding Tenant may institute for that purpose and any such refund shall be the property of Tenant to the extent to which it may be based on a payment made by Tenant.

E. Hold Harmless. Landlord shall not be required to join in any action or proceeding referred to in Sections 7(C) or 7(D) (unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event any such action or proceeding may be taken by Tenant in the name of the Landlord only with Landlord's prior written consent). Tenant hereby

agrees to indemnify, defend, pay and hold Landlord harmless for, from and against any and all costs, expenses, claims, loss or damage by reason of, in connection with, on account of, growing out of or resulting from, any such action or proceeding.

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

8. **Insurance.**

A. Tenant Obligation to Insure. Tenant shall procure and maintain for the entire Rental Period of this Lease, at Tenant's own cost and expense, insurance against casualty to or loss of the Premises and against claims for bodily injury or property damage which may arise from or in connection with this Lease by the Tenant, its agents, subtenants, employees, contractors, licensees or invitees in accordance with the insurance requirements set forth in Exhibit C attached hereto. Such obligation shall expressly include bodily injury or property damage occurring on the Public Tract. Notwithstanding the foregoing, in the event of casualty to the Garage (whether or not such casualty is insured or fully insured with respect to the cost of restoration), Tenant shall repair, restore or rebuild the Garage to its pre-casualty condition providing the required number of parking spaces (and appurtenant amenities) for the benefit of the City as described in Section 13(C).

B. Failure to Maintain Insurance. If Tenant fails or refuses to provide a copy of the renewal insurance certificates, together with evidence of payment of premiums therefor, or otherwise fails or refuses to procure or maintain insurance as required by this Lease, Landlord shall have the right, at Landlord's election, and without notice, to procure and maintain such insurance. The premiums paid by Landlord shall be due and payable from Tenant to Landlord on the first day of the month following the date on which the premiums were paid. Landlord shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer(s) and insured(s). The lapse or cancellation of any policy of insurance required herein, in whole or in part for the benefit of Landlord, shall be an event of default. No cure of such default can be accomplished unless a new or renewed policy is issued which specifically provides the required coverage to the Landlord for any liability arising during the lapsed or previously uncovered period.

9. **Surrender.**

A. Surrender. Unless Tenant has purchased the Premises pursuant to the Purchase Option set forth in Section 33, upon the expiration of the term of this Lease or on the sooner termination thereof, Tenant shall peaceably and quietly leave, surrender, and yield up to the Landlord all of the Premises broom-clean and free of occupants, and shall repair all damage to the Premises caused by or resulting from the removal of any removable property of Tenant, normal wear and tear excepted. Any property of Tenant or any subtenant which shall remain in the Building after the expiration of the Term hereof or sooner termination thereof shall be deemed to have been abandoned,

and may either be retained by Landlord as its property or disposed of in such manner as Landlord may see fit. If such property or any part thereof shall be sold, Landlord shall receive and retain the proceeds of such sale. Tenant shall be liable to Landlord for any and all costs of removal and the repair of any and all damages caused thereby in excess of any proceeds received by Landlord from any sale of Tenant's property pursuant to this provision.

B. Waste. Tenant shall not commit or suffer to be committed any waste or impairment of the Premises.

C. Soil and Buildings Tests. Within the three (3) months immediately preceding the expiration of this Lease or within (2) two months of any earlier termination of the Lease (unless Tenant has purchased the Premises pursuant to the Purchase Option set forth in Section 33), Tenant shall deliver to Landlord a soil and building conditions report prepared in compliance with current ASTM standards by an independent qualified engineer, licensed by the State of Arizona, stating that the Premises are free of any hazardous materials as they are hereinafter defined or identified by either the United States Environmental Protection Agency or similar State agency as such. If any hazardous materials are identified, Tenant is fully personally liable for removing the hazard and leaving the Premises in a hazard free condition, except to the extent present on Premises prior to the Commencement Date or as a result of any act or omission of Landlord, its employees, agents, or contractors.

D. Failure to Correct Hazardous Conditions or Obtain Tests. Should Tenant fail to deliver to Landlord the report required by Section 9(C), Landlord may cause a report to be prepared to like effect and Tenant shall be liable to Landlord for one hundred thirty percent (130%) of the cost of said report. Should the report provided by either Landlord or Tenant state that the Premises cannot be used or leased in a hazard free condition, Tenant promptly shall cause the hazardous condition to be fully corrected at Tenant's expense, except to the extent present on Premises prior to the Commencement Date or as a result of any act or omission of Landlord, its employees, agents, or contractors. This shall not be construed as an extension of an expired or terminated lease but solely as damages to Landlord due to Tenant's activities which prevent Landlord from re-leasing the Premises. Tenant, following such lease expiration or termination, shall be allowed access to the Premises only to the extent necessary to remove or otherwise correct any hazard and shall conduct no gainful business activity whatsoever at said Premises.

E. Survival of Provisions. The provisions of this Section 9 shall survive the expiration or any termination of this Lease.

10. Landlord's Performance For Tenant. If Tenant shall fail to pay any Imposition or make any other payment required to be made under this Lease or shall default in the performance of any other covenant, agreement, term, provision, limitation, or condition herein contained, following any applicable notice required by Section 21, Landlord, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default for the account and at the expense of Tenant. Bills for any expense required by Landlord in connection therewith, and bills for all such expenses and disbursements of every kind and nature whatsoever,

including reasonable attorney's or administrative fees, involved in collection or endeavoring to collect the rent or Additional Payments or any part thereof, or enforcing or endeavoring to enforce any right against Tenant, under or in connection with this Lease, or pursuant to law, including (without being limited to) any such cost, expense, and disbursements involved in instituting and prosecuting summary proceedings, as well as bills for any property, material, labor, or services provided furnished, or rendered, or caused to be furnished or rendered, by Landlord to Tenant, with respect to the Premises and other equipment and construction work done for the account of the Tenant together with interest at the rate of ten percent (10%) per annum compounded monthly from the respective dates of the Landlord's making of each such payment or incurring of each such cost or expense, may be sent by Landlord to Tenant monthly, or immediately, at Landlord's option, and shall be due and payable in accordance with the terms of said bills and if not paid when due the amount thereof shall immediately become due and payable as Additional Payments.

11. **Uses And Maintenance.**

A. **Absence of Warranties.** Tenant has leased the Premises after a full and complete examination thereof, as well as the title thereto and knowledge of its present uses and nonuses. Tenant accepts the same in the condition or state in which they now are without any representation or warranty, express or implied in fact or by law, by Landlord and without recourse to Landlord, as to the title thereto, the nature, condition, or usability thereof or the use or uses to which the Premises or any part thereof may be put. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Premises or to provide any off-site improvements, such as utilities or paving, or other forms of access to the Premises, other than what may already exist on the Commencement Date, as well as those services and facilities normally provided to other similar commercial properties throughout the Term hereof. Tenant hereby assumes the full and sole responsibility for the condition, construction, operation, repair, demolition, replacement, maintenance, and management of the Premises, including but not limited to the performance of all burdens running with the Land.

B. **Permitted Uses.** The Premises are the subject of a recorded Parking Declaration that expressly restricts the use and operation of the Premises as a parking garage only, all as more fully set forth in the Parking Declaration. In no event shall the Premises or any part thereof be used for any purpose prohibited by this Lease. Regardless of the uses which would otherwise be allowed pursuant to the zoning classification or other ordinances which may be applicable to the Premises at any time during the Rental Period, the uses set forth in Exhibit D are expressly prohibited. Moreover, any permitted use which involves the handling, production and/or storage of Hazardous Materials on the Premises shall be subject to all applicable federal, state and local laws rules and regulations.

C. **Maintenance, Repairs, Indemnity.** Tenant shall take good care of the Premises, make all repairs thereto (including replacements, if repairs are impossible or inadequate), interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Premises, the sidewalks, curbs, drives and landscaping (including all landscaping in adjacent public rights-of-way) and the Public Tract in first-class order, repair, and condition in accordance with City of Chandler standards and this Lease, whichever is more stringent.

Tenant shall also keep the sidewalks and gutters in front of the Premises free and clear from rubbish and shall not obstruct the same or allow the same to be obstructed in any manner. Tenant shall indemnify Landlord and save it harmless from any and all claims or demands, upon or arising out of any accident, injury, or damage to any person or property occurring in or upon the Premises or any part thereof, or upon the sidewalks about the Premises, or upon the Public Tract however caused, and shall keep the Premises free and clear of any and all mechanics' liens or other similar liens or charges incidental to work done or material supplied in or about the Premises, except claims arising from the acts of Landlord.

D. Performance by Landlord. In the event Tenant fails to maintain and repair the Premises or the Public Tract in the condition required by Section 11(C) hereof, Landlord may, upon fourteen (14) days' written notice to Tenant with respect to failures of Tenant that are not emergencies, or twenty-four (24) hours' notice to Tenant with respect to failures of Tenant that are reasonably determined by Landlord to be emergencies, but without being under any obligation to do so and without thereby waiving any default, may perform or have performed any and all such work as it, in its sole and absolute discretion, deems necessary to maintain or restore the Premises and the Public Tract to their required condition. Any and all work performed by or for Landlord pursuant to this Section 11(D), shall be deemed to have been undertaken for and at the expense of Tenant. All cost incurred by Landlord in undertaking such work shall, along with an administrative fee equaling twenty percent (20%) of such costs and expenses ("Administrative Fee"), be subject to the provisions of Section 7(A) of this Lease.

E. Alterations. Except as provided in Section 10 or Section 13 hereof or with the prior written consent of Landlord, Tenant shall not erect any structures, make any improvements, or do any other construction work on the Premises or the Public Tract or alter, modify, or make additions, improvements, or repairs to or replacements of any structure, now existing or built at any time during the Term hereof, or install any fixtures (other than trade fixtures removable without injury to the Premises) which would (i) affect the structural integrity of the Garage or (ii) affect or modify the exterior or design of the Garage or (iii) interfere with or affect utility systems on the Premises (other than heating, ventilating, and air conditioning systems installed by Tenant) or (iv) require filing of plans with, or other approval by, the City of Chandler. In the event any such construction, improvement, alteration, modification, addition, repair, or replacement is made without such approval, then, upon reasonable notice so to do, the Tenant will remove the same, or, at the option of the Landlord, cause the same to be changed to the satisfaction of the Landlord. In case of any failure on the part of Tenant to comply with such notice, the Landlord may effect the removal or change, and the Tenant shall pay the costs thereof to the Landlord on demand and such costs and expenses shall be subject to the provisions of Section 7(A) of this Lease.

12. Compliance.

A. Tenant Obligations. Tenant shall assume and perform any and all obligations of Landlord under any covenants, easements, and agreements affecting the title to the Premises and shall diligently comply with, at its own expense during the Term hereof, all present and future laws, acts, rules, requirements, orders, directions, ordinances, and/or regulations, ordinary or extraordinary,

foreseen or unforeseen, concerning the Premises or any part thereof, or the use thereof, or the public rights-of-way adjacent thereto, or the Public Tract or the use thereof, of any federal, state, municipal, or other public department, bureau, officer, or authority, or other body having similar functions (“Applicable Laws”), or of any liability, fire, or other insurance company having policies outstanding with respect to the Premises, whether or not such laws, acts, rules, requirements, orders, directions, ordinances and/or regulations require the making of structural alterations or the use or application of portions of the Premises for compliance therewith or interfere with the use and enjoyment of the Premises, the intention of the parties being with respect thereto that Tenant during the Term hereby granted, shall discharge and perform all the obligations of Landlord, as well as all obligations of Tenant, arising as aforesaid, and save Landlord harmless therefrom, so that at all times the rental of the Premises shall be net to the Landlord without deduction or expenses on account of any such law, act, rule, requirement, order direction, ordinance and/or regulation whatever it may be; provided, however, that Tenant may, in good faith (and wherever necessary, in the name of, but without expense to and with the prior written permission of, Landlord), contest the validity of any such law, act, rule, requirement, order, direction, ordinance and/or regulation and, pending the determination of such contest, may postpone compliance therewith, except that Tenant shall not so postpone compliance therewith, as to subject Landlord to the risk of any fine or penalty or to prosecute for a crime, or to cause the Premises or any part thereof to be condemned or to be vacated.

B. Certificate of Occupancy. Tenant shall obtain any certificate of occupancy with respect to the Premises which may at any time be required by any governmental agency having jurisdiction thereof.

13. **Construction And Operation Of Project.**

A. Project. Tenant shall construct the Garage and all appurtenant improvements on the Property and the Public Tract.

(1) Commencement of vertical construction of all structures required under this Lease and Lease 2 (evidenced by framing above foundation slabs) shall occur no later than September 1, 2012.

(2) As long as Tenant is not in default of any of its obligations under the Development Agreement or this Lease, Landlord shall contribute to Tenant as its portion of the cost of construction of the Garage (the “City’s Maximum Contribution”) the lesser of (i) \$7,725,000.00, or (ii) 75% of the actual approved cost of construction if the approved cost of construction is less than \$10,300,000.00. Tenant shall be responsible for all costs of construction of the Garage in excess of the City’s Maximum Contribution.

(a) Landlord shall not commence making payments of the City’s Maximum Contribution until (i) Tenant has demonstrated the expenditure of at least \$2,575,000.00 toward the Garage for items listed on the approved budget (or 25% of the approved construction budget if less than \$10,300,000.00), and (ii) Tenant has demonstrated committed construction financing for the Lease 2 Improvements and construction of the Lease 2 Improvements has

commenced. Landlord shall have fifteen (15) days from Landlord's receipt of evidence of Tenant's required expenditures in order to review and confirm Tenant's required expenditures.

(b) Landlord shall make its payments of the City's Maximum Contribution upon satisfaction of a completion schedule and approved draw requests from Tenant, approved by Tenant's lender, and including lien waivers for all work for which payment is sought.

(c) In the event of an uncured default by Tenant under either Lease 1 and Lease 2, the City can withhold any payments not yet made and can undertake its remedies under such Leases, including termination.

(3) The Garage and any improvements required with respect to the Public Tract shall be constructed in accordance with plans and specifications approved by Landlord in its reasonable discretion, and the Garage further shall be constructed in accordance with the previously approved construction budget attached to this Lease as Exhibit E. Tenant will also obtain the approval of the final plans and specifications by any and all federal, state, municipal and other governmental authorities, offices and departments having jurisdiction in the matter and provide conformed copies of executed approvals to Landlord. The execution of this Lease by Landlord does not, and shall not be deemed to, constitute approval by the City of Chandler of such plans and specifications.

(a) Tenant shall be permitted to shift amounts among line items in the approved construction budget, as long as the City's Maximum Contribution is not exceeded.

(b) Tenant's fee shall not exceed \$225,000.00, of which Landlord's contribution shall not exceed \$150,000.00.

(c) Tenant will pay all standard development fees required in connection with all construction included in Phase II, but will be credited for all previously paid impact fees.

(4) Tenant will construct all improvements in a good, careful, proper, and workmanlike manner in accordance with (a) the approved plans and specifications; (b) all provisions of law and any and all permits and authority required by ordinance, code, law, or public regulations or by any authority at any time having jurisdiction over the Premises; and (c) the requirements of any public or quasi-public body having similar jurisdiction.

(i) Tenant will comply with all applicable public bidding requirements in connection with the construction of the Garage; provided, however, to the extent permitted by Applicable Laws, Tenant shall not be obligated to accept the low bid and may reject any and all bids.

(ii) Landlord will be an additional insured on all liability insurance policies maintained by Tenant and its contractor(s) during construction of all improvements on the Parcels.

(5) Construction of all improvements shall be diligently prosecuted to completion.

(6) Completion of construction of the Project and of the Lease 2 Improvements (evidenced by issuance of certificates of completion or occupancy or similar approvals issued by the City of Chandler certifying compliance with all applicable building codes and indicating the Improvements are in a condition suitable for occupancy, each a "Certificate of Occupancy") shall be no later than September 1, 2013.

(7) In addition to the foregoing, and prior to the City's having any obligation to issue a Certificate of Occupancy for the Garage, Tenant shall have demonstrated, to Landlord's reasonable satisfaction, that Tenant (or Phase I Developer, as applicable) has completed all improvements (including but not limited to curbs, driveways, sidewalks, parking lots and landscaping) that were not previously completed as part of the plans approved by the City in connection with the Phase I Development Agreement. These required improvements are as described and/or depicted in Exhibit H to this Lease, which is attached hereto and incorporated herein for all purposes.

B. The Garage shall be named the "City of Chandler San Marcos Commons Garage." No change in the name of the Garage will be permitted without Landlord's consent.

C. In partial consideration for the City's Maximum Contribution, Landlord shall have the right (the "Parking Rights") to use parking spaces in the Garage in perpetuity as follows:

165 spaces – permanently and exclusively public, 24 hours per day, located on the 1st (ground) floor and first lower floor, as depicted on Exhibit F, and

The balance of the Garage, or 375 spaces – available for public parking from 4 p.m. – 3 a.m. on weekdays, all day on weekends, and all day on holidays.

(1) The Parking Rights, and other matters relating to the use and operation of the Garage, have been reserved and set forth in a form of "Parking Declaration" that has been recorded by Landlord against the Premises prior to the execution and delivery of this Lease by Landlord and Tenant, and Tenant is taking the Premises subject in all respects to the Parking Declaration.

(2) Tenant (and its successors and assigns) will be required to continuously operate the Garage. The conditions and standards of such operation and maintenance shall be set forth in the instrument that conveys or reserves the Parking Rights to Landlord. Tenant (and its successors and assigns) will operate and maintain all undedicated portions of the Garage and surrounding drive, walk and landscaped areas (including the Public Tract) at its sole cost and expense.

D. Ownership of Buildings and Improvements.

(1) During Term. Prior to receipt of a Certificate of Occupancy, title to all buildings and improvements constructed on the Premises by Tenant pursuant to this Lease shall be in the Tenant.

(2) Upon Completion. Following issuance of a Certificate of Occupancy and thereafter, title to all buildings and improvements constructed on the Premises by Tenant pursuant to this Lease, together with any improvements or other infrastructure constructed on the Public Tract, shall be automatically vested in the Landlord without further act, notice or instrument required (the "Accretion"), subject to this Lease; and the use and occupancy of the improvements shall be subject to all terms and conditions of this Lease. There shall be no increase in the rental payment owing to Landlord as a result of the Accretion.

(3) Ownership at Termination. Unless Tenant has purchased the Premises pursuant to the Purchase Option set forth in Section 33, on the expiration or sooner termination of this Lease, title to all buildings and improvements, which constitute or are a part of the Premises, exclusive of trade fixtures and personal property of Lessee and subtenants, shall (without the payment of compensation to Tenant or others) remain in Landlord free and clear of all claims and encumbrances on such buildings and improvements by Tenant, and anyone claiming under or through Tenant. Any piping, wells, pumps, tanks or other equipment installed on the Premises by Tenant shall be left in a structurally sound, nonleaking condition so as not to become the source of any future environmental contamination or hazard. Upon request, Tenant shall quitclaim to Landlord its possessory interest in the buildings and improvements. Tenant shall indemnify, defend, pay and hold Landlord harmless for, from and against any and all liability and loss which may arise from the assertion of any claims and any encumbrances on such buildings and improvements; provided, however, such duty to indemnify and hold harmless shall not apply to any claims or encumbrances which are attributable to the acts or conduct of the Landlord. Additionally, Tenant shall assign to Landlord, and Landlord shall be entitled to the benefit of, any licenses, warranties or guarantees applicable to equipment, systems, fixtures or personal property conveyed or otherwise transferred to, or for the benefit of, Landlord under this Lease. The foregoing notwithstanding, Tenant shall not quitclaim its possessory interest in the aforementioned buildings and equipment to Landlord until such buildings and equipment have been inspected by Landlord and they have been determined not to present a potential environmental hazard. This provision shall survive the expiration or earlier termination of this Lease.

(4) Tenant's Management and Operating Covenant. Following issuance of the Certificate of Occupancy and continuing during the remainder of the Term, Tenant shall prudently manage and operate (or cause to be managed and operate) the Garage and will properly maintain all improvements and the Premises in good condition and repair, reasonable wear and tear excepted.

14. **Impairment Of Landlord's Title.**

A. No Liens. Tenant shall not create, or suffer to be created or to remain, and shall promptly discharge any mechanic's, laborer's, or materialman's lien which might be or become a lien, encumbrance, or charge upon the Premises or any part thereof or the income therefrom and Tenant

will not suffer any other matter or thing arising out of Tenant's use and occupancy of the Premises whereby the estate, rights, and interests of Landlord in the Premises or any part thereof might be impaired.

B. **Discharge.** If any mechanic's, laborer's, or materialman's lien shall at any time be filed against the Premises or any part thereof, Tenant, within thirty (30) days after notice of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise. Tenant shall notify Landlord in writing of its action to either satisfy or contest the lien and, if contested, of the matter's status on a monthly basis until concluded. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by Landlord and costs and expenses incurred by Landlord in connection therewith, shall constitute an Additional Payment payable by Tenant and shall be paid by Tenant to Landlord on demand.

C. **No Implied Consent.** Nothing contained in this Lease shall be deemed or construed in any way as constituting Landlord's expressed or implied authorization, consent or request to any contractor, subcontractor, laborer or materialman, architect, or consultant, for the construction or demolition of any improvement, the performance of any labor or services or the furnishing of any materials for any improvements, alterations to or repair of the Premises or any part thereof.

D. **No Agency Intended.** The parties acknowledge that Tenant is entitled to construct the Garage. In connection therewith, the parties agree that Tenant is not the agent of Landlord for the construction, alteration or repair of any improvement Tenant may construct upon the Premises, the same being done at the sole expense of Tenant.

E. **Public Tract.** Tenant shall not grant (or purport to grant) to any subtenant, licensee, invitee or other person, any right or interest in or to any portion of the Public Tract.

15. **Inspection.** Landlord shall have the right to enter upon the Premises, or any part thereof, for the purpose of ascertaining their condition or whether Tenant is observing and performing the obligations assumed by it under this Lease, all without hindrance or molestation from Tenant, provided that (absent an emergency) such entry does not interfere with Tenant's business operations and provided that Landlord shall give Tenant at least twenty (20) days written notice prior to any inspection of any building interior. This twenty (20) days notice provision shall not be construed to prohibit or delay any entry by Landlord in its capacity as a municipality exercising its police power or in its criminal law enforcement capacity, nor to any entry authorized by any writ or warrant issued by any Court, nor to any entry authorized by any health or welfare statute, code, ordinance, rule or regulation.

16. **Indemnification of Landlord.**

A. Indemnification. Tenant shall indemnify, defend, pay and hold Landlord harmless for, from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including property damage, personal injury and wrongful death and further including, without limitation, architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against Landlord by reason of any of the following occurring during the term unless caused by the Landlord, its agents or employees or a failure to act by the Landlord, its agents or employees when a duty to act is present:

(1) construction of any improvements constituting the Project or any other work or thing done in, on or about the Premises or any part thereof by Tenant or its agents;

(2) any use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or the Public Tract or any nuisance made or suffered thereon or any failure by Tenant to keep the Premises or improvements or any part thereof, in a safe condition;

(3) any acts of the Tenant or any subtenant or any of its or their respective agents, contractors, servants, employees, licensees or invitees;

(4) any fire, accident, injury (including death) or damage to any person or property occurring in, on or about the Premises or the Public Tract or any part thereof;

(5) any failure on the part of Tenant to pay rent or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with and the exercise by Landlord of any remedy provided in this Lease with respect thereto;

(6) any lien or claim which may be alleged to have arisen against or on the Premises or improvements or any part thereof or any of the assets of, or funds appropriated to, Landlord or any liability which may be asserted against Landlord with respect thereto to the extent arising, in each such case, out of the acts of Tenant, its contractors, agents, sublessees;

(7) any failure on the part of Tenant to keep, observe, comply with and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the subleases or other contracts and agreements affecting the Premises or the Public Tract or any part thereof, on Tenant's part to be kept, observed or performed;

(8) any transaction relating to or arising out of the execution of this Lease or other contracts and agreements affecting the Premises or the Public Tract, the Garage or any part thereof or any activities performed by any party, person or entity which are required by the terms of this Lease or such other contracts and agreements;

(9) any tax, including any tax attributable to the execution, delivery or recording of this Lease, with respect to events occurring during the term of this Lease.

B. Tenant will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises and improvements at the sole risk of Tenant and indemnify, defend, pay and hold Landlord harmless for, from and against any and all loss or damage thereto by any cause whatsoever.

C. The obligations of Tenant under this Section shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Premises and the Public Tract.

D. If any claim, action or proceeding is made or brought against Landlord by reason of any event to which reference is made in this Section, then, upon demand by Landlord, Tenant, at its sole cost and expense, shall resist or defend such claim, action or proceeding in Landlord's name, if necessary, by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys as Landlord shall approve, which approval shall not be unreasonably withheld or delayed; provided however that nothing in this Lease shall prevent or prohibit Landlord from assisting in its own defense at its sole cost and expense and with attorneys of its choosing. If, in Landlord's reasonable discretion, Tenant fails timely and diligently to undertake such defense, then Landlord may engage its own attorneys to defend it, and Tenant shall pay on demand the reasonable fees and disbursements of such attorneys.

The provisions of this Section 16 shall survive the expiration or earlier termination of this Lease.

17. **Damage Or Destruction.**

A. Tenant Repair and Restoration. If, at any time during the Term, the Premises or the Public Tract or any part thereof shall be damaged or destroyed by fire or other occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant, at its sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, shall proceed with reasonable diligence to repair, alter, restore, replace, or rebuild the same as nearly as possible to its value, condition, and character immediately prior to such damage or destruction. Such repair, alteration, restoration, replacement, or rebuilding, including such changes and alterations as aforementioned and including temporary repairs for the protection of other property pending the completion of any thereof, are sometimes referred to in this Section as the "Work." Anything herein to the contrary notwithstanding, Tenant shall immediately secure the Premises and undertake temporary repairs and work necessary to protect the public and to protect the Premises from further damage.

B. Payment of Insurance Proceeds. All insurance proceeds on account of such damage or destruction under the policies of insurance provided for in Section 5, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof (herein sometimes referred to as the "insurance proceeds") shall be paid to the Depositary and held in an interest bearing account. All

insurance proceeds shall be applied by the Depository to the payment of the cost of the Work to the extent such insurance proceeds shall be sufficient for the purpose, and shall be paid out to or for the account of Tenant from time to time as such Work progresses. The Depository shall make such payments or disbursements upon the written request by Tenant when accompanied by the following:

(1) Certificate of Costs. A certificate dated not more than fifteen (15) days prior to such request, signed by Tenant (by an officer, if Tenant be a corporation) and by an architect in charge of the Work who shall be selected by Tenant setting forth that:

(a) The sum then requested either has been paid by Tenant or is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the Work, giving a brief description of the services and materials and the several amounts so paid or due and stating that no part thereof has been made the basis of any previous or then pending request or has been paid out of any insurance proceeds received by Tenant, and that the sum requested does not exceed the value of the services and materials described in the certificate. If sums are sought by way of reimbursement the request shall be accompanied by a lien release; if sums are sought for payment in the first instance a lien release shall be submitted to the Depository within seven (7) day of disbursement by the Depository; and,

(b) Except for the amount stated in such certificate to be due as aforesaid, there is no outstanding indebtedness known to the persons signing such certificate after due inquiry which might become the basis of a vendor, mechanic, or materialman or similar lien upon such Work, the Premises or Tenant's leasehold interest, or any part thereof, and

(2) Sums Paid to Tenant. Upon compliance with the foregoing provisions of this Section, the Depository, out of the insurance proceeds, shall pay or cause to be paid to Tenant or to the persons named in the certificate the respective amounts stated therein to have been paid by Tenant or to be due to them, as the case may be. Upon receipt by the Depository of a lien release from every contractor and subcontractor working on the Garage and such other evidence satisfactory to it of the character required by Section 17(B)(2) that the Work is complete and paid for in full and that there are no liens of the character referred to therein, and if Tenant is not then in default, the Depository shall pay to Tenant any remaining balance of said insurance proceeds.

(3) Deficiency. If the insurance proceeds received by the Depository shall not be sufficient to pay the entire cost of the Work, Tenant shall supply the amount of any such deficiency. Under no circumstances shall Landlord be obligated to make any payment, reimbursement, or contribution towards the cost of the Work.

C. Failure to Commence Repairs. If the Work shall not have been commenced within one hundred and eighty (180) days after the date of the damage or destruction, or if such Work after commencement shall not proceed expeditiously or is not completed within 18 months after commencement, Landlord may terminate this Lease pursuant to Section 18. On such termination the insurance proceeds received by the Depository shall be paid to Landlord to be used in the

reconstruction or restoration of the Project, and any remaining proceeds shall be paid over by Landlord to the Tenant, but subject to the rights of any Permitted Mortgagee as herein set forth.

D. Cure by Mortgagee. If, within thirty (30) days from receipt by a Permitted Mortgagee of Landlord's notice of any default of Tenant, the holder of the Permitted Mortgage moves, either itself or through a receiver, to take possession of the Premises and begins or continues the Work, and if, with respect to any default by Tenant under this Lease, the right of Landlord to terminate this Lease shall not have accrued, then the Depository shall pay over to the holder of such Permitted Mortgage, or to the receiver, as the case may be, the proceeds of insurance pursuant to Section 17(B) upon receipt from the holder of such Permitted Mortgage or such receiver of the certificates of the character required from Tenant under Section 17(B)(1), provided that such proceeds be used to complete the Work promptly and expeditiously.

E. Lease Obligations Continue. In no event shall Tenant be entitled to any abatement, allowance, reduction, or suspension of rent because part or all of the Premises shall be untenable owing to the partial or total destruction thereof. No such damage or destruction shall affect in any way the obligation of Tenant to pay the rent, Additional Payments, and other charges herein reserved or required to be paid, nor release Tenant of or from obligations imposed upon Tenant hereunder.

18. Condemnation.

A. Total, Substantial, or Unusable Remainder. If at any time during the term of this Lease, title to the whole or substantially all of the Premises shall be taken in condemnation proceedings or by any right of eminent domain or by agreement in lieu of such proceedings, this Lease shall terminate and expire on the date possession is transferred to the condemning authority and the Net Rent and Additional Payments reserved shall be apportioned and paid to the date of such taking. All compensation paid by the condemning authority in the case of any condemnation (total or partial) shall be the sole property of Tenant free and clear of any right, title, claim or interest of Landlord.

B. Partial Taking--Lease Continues. In the event of any taking of less than the whole or substantially all of the Premises, neither Rental Period of this Lease shall not be reduced or affected in any way. In such a case, the Net Rent payable for that part of the balance of the Term hereof occurring prior to the termination or expiration of the Lease, shall be based on the ratio of the remaining square footage of leased Land to the square footage of the land prior to the condemnation.

C. Rights of Participation. Tenant shall have the sole right, at its own expense, to appear in and defend any condemnation proceeding and participate in any and all hearings, trials, and appeals therein. Landlord shall, at the request of Tenant, shall execute a Disclaimer of Interest in the condemnation action evidencing the fact that Landlord has no interest in the proceeds of the condemnation.

D. Notice of Proceeding. In the event Landlord or Tenant shall receive notice of any proposed or pending condemnation proceedings affecting the Premises, the party receiving such notice shall promptly notify the other party of the receipt and contents thereof.

- E. Relocation Benefits. Tenant shall also retain any federal, state or local relocation benefits or assistance provided in connection with any condemnation or prospective condemnation action.

19. **[Reserved]**

20. **Encumbrances and Assignments**.

A. Tenant may encumber its leasehold interests to obtain construction and permanent financing for the Garage and appurtenant improvements (a "Permitted Mortgage"), subject to the following:

(1) Tenant may encumber its interest in this Lease and the Premises only if (i) Tenant is not then in default of any of its obligations under the Development Agreement; (ii) Tenant's Affiliate has completed all of the Phase 1 Improvements in accordance with the Phase 1 Development Agreement; and (iii) Tenant has a commitment in form reasonably acceptable to Landlord for construction financing for the Garage and Lease 2 Improvements from a recognized institutional lender (and has demonstrated such committed financing to Landlord). There may be only one Permitted Mortgage in existence with respect to this Lease at any time, and junior liens or encumbrances of any kind are prohibited. The holder of a Permitted Mortgage shall be a "Permitted Mortgagee."

(2) A Permitted Mortgage encumbering this Lease and the Premises may only be in favor of a lender for the improvements to be constructed on Parcels 6, 3 and 4; provided, however, Tenant may obtain two leasehold financing commitments, one for the Garage and another for the Lease 2 Improvements, each of which is conditioned upon the financing of the improvements required to be completed pursuant to the other lease.

(3) With respect to such leasehold financing, Landlord will agree to a form of commercially standard non-disturbance and recognition agreement with Tenant's Lender as well as other reasonable, non-material modifications to the applicable Lease requested by a recognized institutional lender.

(4) Leasehold financing will further be subject to a suitable intercreditor agreement between Tenant's lender and Landlord dealing with such issues as completion of construction of the Garage and the Lease 2 Improvements, and the operation of the Garage, in the event of a default by Tenant. The intercreditor agreement will address conditions for removing any cross-default provisions and any repurchase restrictions imposed by this Lease upon completion of a foreclosure of the lender's interest.

(5) A Permitted Mortgage cannot secure obligations other than costs and expenses in connection with the construction of the applicable improvements and the projects contemplated by the mortgaged lease together with parking allocations and/or commitments for the subtenants of such improvements.

(6) A Permitted Mortgage shall cover no interest in the real property other than Tenant's interest in the Premises and the subleases;

(7) Tenant or the holder of a Permitted Mortgage shall promptly deliver to Landlord in the manner herein provided for the giving of notice to Landlord, a true copy of the Permitted Mortgage(s), of any assignment thereof, and of the satisfaction thereof; and

(8) For the purpose of this Section 20, the making of a Permitted Mortgage shall not be deemed to constitute an assignment or transfer of this Lease, nor shall any holder of a Permitted Mortgage, as such, be deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such holder of a Permitted Mortgage, as such, to assume the performance of any of the terms, covenants, or conditions on the part of Tenant to be performed hereunder; but the purchaser at any sale of this Lease in any proceedings for the foreclosure of any Permitted Mortgage, or the assignee or transferee of this Lease under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Mortgage, shall be deemed to be an assignee or transferee within the meaning of this Section and shall be deemed to have assumed the performance of all the terms, covenants, and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment.

B. An assignment of this Lease to another entity (a "Transfer") is permitted only as follows:

(1) During construction, and for the first four (4) years from the issuance of the certificate of occupancy (or comparable instrument) for the applicable improvements, no Transfer is permitted. Notwithstanding the foregoing, the City may approve a Transfer during this period in its sole, absolute and unfettered discretion.

(2) For the next four years thereafter, any Transfer will require the City's approval in its reasonable commercial discretion.

(3) If Tenant does Transfer this Lease during the first eight (8) year period, an exit fee shall be paid to the City in the amount of Four Hundred Thousand Dollars (\$400,000.00).

(4) Following year 8, no exit fee will be charged; and the only limitations on a Transfer are that the Transfer is to an assignee (i) that assumes all the terms, conditions and obligations of this Lease, and (ii) with experience in the operation, management and maintenance of a parking garage comparable to the Garage.

(5) Notwithstanding the foregoing, any of these requirements can be waived in the City's sole and absolute discretion.

(a) A "Transfer" shall be a transfer, assignment or conveyance of Tenant's interest in this Lease, or of any member's or manager's interest in Tenant or in Desert Viking Properties, LLC, to an individual other than Niels E. Kreipke and/or Michael W. Hogarty, or to an entity in which Niels E. Kreipke or Michael W. Hogarty (individually or collectively) does not maintain both (i) a 25% percent entity interest, and (ii) effective and exclusive daily management and control of such entity for a period of at least three (3) years following such Transfer.

(6) The restriction on Transfer shall not limit the granting of easements or permits reasonably necessary or customary in the normal course of development, prohibit normal tenant leasing activity, restrict typical or customary financing activity, or the prohibit the opportunity to replace equity investors other than Tenant (provided that such replacement does not constitute a Transfer as defined in Section 20(B)(6)). Further, a Transfer shall not include the foreclosure by the beneficiary of a leasehold deed of trust, of its beneficial interest in the applicable lease; provided, however, that such beneficiary shall be an unaffiliated third-party lender acting in good faith.

(7) Rent From Assignee. If this Lease is assigned, whether or not in violation of the provisions hereof, Landlord may and hereby is empowered to collect rent from the assignee. In such event, Landlord may apply the net amount received by it to Net Rent and Additional Payments, and no such collection shall be deemed a waiver of the covenant herein against assignment, or an acceptance of the assignee or subtenant as a Tenant under this Lease, or a release of Tenant from the further performance of the covenants herein contained on the part of Tenant. Nothing herein contained shall be deemed to prohibit Tenant from assigning its interest in this Lease or its interest as sublessor in any subleases to the holder of any Permitted Mortgage as further security for the indebtedness outstanding under such Mortgage.

(8) Continuing Liability. The making of any assignment in whole or in part, shall not operate to relieve Tenant from its obligations under this Lease and, notwithstanding any such assignment, except as otherwise provided in this Section, Tenant shall remain liable for the payment of all Net Rent and Additional Payments and for the due performance of all the covenants, agreements, terms, and provisions of this Lease to the full end of the Term hereof, whether or not there shall have been any prior termination of this lease by summary proceedings or otherwise.

(9) Assignee Bound. Every assignee, whether as assignee or as successor in interest of any assignee of Tenant herein named or as assignee of the holder of any Permitted Mortgage, or as successor in interest of any assignee, including any purchaser of the Lease under a foreclosure of any Permitted Mortgage, shall immediately be and become and remain liable for the payment of Net Rent and Additional Payments, and for the due performance of all the covenants, agreements, terms, and provisions hereof on Tenant's part to be performed to the end of the Term hereof, and every provision of this Lease applicable to Tenant shall apply to and bind every such assignee and purchaser with the same force and effect as though such assignee or purchaser were the Tenant named in this Lease. No transfer to such assignee or to such purchaser shall be binding upon

Landlord unless such assignee or purchaser shall deliver to the Landlord a recordable instrument which contains a covenant of assumption by said assignee or purchaser to such effect, but the failure or refusal of such assignee or purchaser to deliver such instrument shall not release or discharge such assignee or purchaser from its obligations and liability as above set forth.

(10) Consent Limited. Any consent by Landlord herein contained or hereafter given to any act of assignment, shall be held to apply only to the specific transaction hereby or thereby approved. Such consent shall not be construed as a waiver of the duty of Tenant, or its successors or assigns, to obtain Landlord's consent to any other or subsequent assignment, or as a modification or limitation of the right of Landlord with respect to the foregoing covenant by Tenant.

(11) Notice of Transfer. Tenant shall deliver written notice of (i) any Transfer, or (ii) any transfer, conveyance or assignment of Tenant's rights in this Lease that is not a Transfer, within three (3) business days following the completion of such transaction, together with a true and complete copy of the instrument (or instruments) effecting such Transfer or other conveyance.

21. **Default By Tenant**.

A. Events of Default. The happening of any one of the following events (each, an "Event of Default") shall be considered a material breach and default by Tenant under this Lease:

(1) Monetary Default. If default shall be made in the due and punctual payment of any Net Rent or Additional Payments within thirty (30) days after written notice thereof to Tenant; or

(2) Non-Monetary Default. If default shall be made by Tenant in the performance of or compliance with any of the covenants, agreements, terms, limitations, or conditions hereof other than those referred to in the foregoing subsection (A), and such default shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant (provided, that if Tenant proceeds with due diligence during such thirty (30) day period to substantially cure such default and is unable by reason of the nature of the work involved, to cure the same within the required thirty (30) days, its time to do so shall be extended by the time reasonably necessary to cure the same; or

(3) Bankruptcy, Voluntary. If Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall take the benefit of any relevant legislation that may be in force for bankrupt or insolvent debtors or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state, or other statute, law or regulation, or if Tenant shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties, or shall make any general assignment for the benefit of creditors; or

(4) Bankruptcy, Involuntary. If a petition shall be filed against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation, and shall remain undismissed or unstayed for ninety (90) days, or if any trustee, receiver or liquidator of Tenant, or of all or substantial part of its properties, shall be appointed without the consent or acquiescence of Tenant and such appointment shall remain unvacated and unstayed for ninety (90) days; or

(5) Insurance, Lapse or Termination. Notwithstanding the provisions of paragraph B, above, the lapse or cancellation of any policy of insurance required herein, in whole or in part for the benefit of Landlord, shall be an event of default. No cure of such default can be accomplished unless a new or renewed policy is issued which specifically provides the required coverage to the Landlord for any liability arising during the lapsed or previously uncovered period.

B. Notice and Termination. Upon the occurrence of one or more of the events listed in Section 21(A) the Landlord at any time thereafter, but not after such default is cured, may give written notice ("Second Notice") to Tenant and any permitted mortgagee specifying such Event(s) of Default and stating that this Lease and the term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least thirty (30) days after the giving of such Second Notice, and upon the date specified in such Second Notice, subject to the Event of Default having been cured or remedied on or prior to the date set forth in the Second Notice, this Lease and the term hereby demised and all rights of Tenant under this Lease shall expire and terminate as though such date were the date originally set forth herein for the termination hereof.

C. Tenant Liability Continues. No such expiration or termination of this Lease shall relieve Tenant of its liability and obligations under this Lease, and such liability and obligations shall survive any such expiration or termination. In the event of any such expiration or termination, whether or not the Premises or any part thereof shall have been relet, Tenant shall pay to Landlord the Net Rent and Additional Payments required to be paid by Tenant up to the time of such expiration or termination of this Lease, and thereafter Tenant, until the end of what would have been the Term of this Lease in the absence of such expiration or termination, shall be liable to Landlord for, and shall pay to Landlord, as and for the liquidated and agreed current damages for Tenant's default:

The equivalent of the amount of the Net Rent and Additional Payments which would be payable hereunder by Tenant if this Lease were still in effect, less the net proceeds of any reletting effected pursuant to the provisions of Section 18.3 after deducting all Landlord's expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, reasonable attorney's fees, alteration costs, and expenses of preparation for such reletting, which shall be due and payable to Landlord on the days on which the Net Rent and Additional Payments would have been payable under this Lease if this Lease were still in effect.

D. No Implied Waivers. No failure by Landlord to insist upon the strict performance of any covenant, agreement, term or condition hereof or to exercise any right or remedy consequent upon a breach hereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or

condition. No covenant, agreement, term or condition hereof to be performed or complied with by Landlord or Tenant, and no breach thereof, shall be waived, altered or modified, except by a written instrument executed by the party to be charged therewith. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term, limitation and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach hereof.

E. Remedies Cumulative. In the event of any breach by Tenant of any of the covenants, agreements, terms or conditions hereof, Landlord, in addition to any and all other rights, shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise for such breach as though reentry, summary proceedings, and other remedies were not provided for in this Lease. In the event of Tenant's failure to pay Net Rent or Additional Payments on the date when due, Tenant shall pay Landlord interest on any such overdue payments and associated late charges at the rate of two percent (2%) per month, but in no event an amount greater than permitted by law, but this shall in no way limit any claim for damages for Landlord for any breach or default by Tenant.

F. Late Charge. In the event that any payment required to be made by Tenant to Landlord under the terms of this Lease is not received within ten (10) days after the due date thereof, a late charge shall become immediately due and payable as an Additional Payment in an amount equal to two and one-half percent (2.5%) of the late payment.

G. Specific Performance. If a default is not commenced to be cured within thirty (30) calendar days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, Landlord may, at its option, thereafter (but not before) commence an action for specific performance of the terms of this Lease pertaining to such default.

22. Default By Landlord.

A. Limitations of Landlord's Liability. The term "Landlord," as used herein, so far as Landlord's covenants and agreements hereunder are concerned, shall be limited to mean and include only the owner or owners of the fee title to the Premises or those having the right of immediate possession in a pending condemnation action at the time in question. In the event of any conveyance of such title, and regardless of whether the grantee is financially responsible or solvent and notwithstanding that the grantor may be a stockholder, officer or director of a corporate grantee, Landlord herein named and each subsequent grantor shall be automatically relieved, from and after the date of such conveyance, of all personal liability as respects the performance of any of Landlord's covenants and agreements thereafter to be performed, and such grantee shall be bound by all such covenants and agreements; it being intended that Landlord's covenants and agreements shall be binding on Landlord, its successors and assigns, only during and in respect of their successive periods of ownership.

B. Remedies. In the event of any breach by Landlord of any of the covenants, agreements, terms, or conditions hereof, Tenant, in addition to any and all other rights, shall be

entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise for such breach.

23. **Unenforceable Terms.** If any term or provision hereof or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision hereof shall be valid and be enforced to the fullest extent permitted by law.

24. **Notices.** Any notice, request, demand, statement, or consent herein required or permitted to be given by either party to the other hereunder, shall be in writing signed by or on behalf of the party giving the notice and addressed to the other at the address as set forth below:

Landlord

City of Chandler
City Manager
P. O. Box 4008, MS 605
Chandler, Arizona 85244-4008

and

City of Chandler
City Attorney's Office
P.O. Box 4008, MS 602
Chandler, Arizona 85244-4008

Tenant

SMC II, L.L.C.
c/o Niels E. Kreipke or Michael W. Hogarty
101 West Commonwealth Avenue
Chandler, Arizona 85225

and

R. Neil Irwin, Esq.
Bryan Cave
2 North Central Avenue
Phoenix, Arizona 85004

Each party may by notice in writing change its address for the purpose of this Lease, which address shall thereafter be used in place of the former address. Each notice, demand, request, or communication which shall be mailed to any of the aforesaid shall be deemed sufficiently given, served, or sent for all purposes hereunder (i) two business days after it shall be mailed by United States registered or certified mail, postage prepaid and return receipt requested, in any post office or branch post office regularly maintained by the United States Postal Service, (ii) upon personal delivery, or (iii) one business day after deposit with any recognized commercial air courier or express

service. Any communication made by e-mail or similar method shall not constitute notice pursuant to this Lease.

25. **Condition of Premises.** Tenant represents that the Premises, the title to the Premises, parking, drive and walk areas adjoining the Premises (including but not limited to the Public Tract), the environmental condition of the Premises any subsurface conditions thereof, and the present uses and nonuses thereof, have been examined by Tenant and that Tenant accepts the same in the condition or state in which they or any of them may be on the date of the execution of this Lease, without representation or warranty, express or implied in fact or by law, by Landlord and without recourse to Landlord, as to the nature, condition, or usability thereof or the use or uses to which the Premises or any part thereof may be put.

26. **Quiet Enjoyment.**

A. **Quiet Enjoyment.** Subject to all of the conditions, terms, and provisions contained in this Lease, Landlord covenants that Tenant, upon paying the Net Rent, and additional payments and observing and keeping all terms, covenants, agreements, limitations, and conditions hereof on its part to be kept, shall quietly have and enjoy the Premises during the term hereof, without hindrance or molestation by Landlord.

B. **Construction Activities.** Tenant acknowledges and understands that construction activities will be undertaken by Landlord from time to time in connection with periodic renovations to or redevelopment of the adjacent arena property owned by Landlord and Tenant is proceeding with its development of the Garage with the understanding that such activities will generate a certain amount of noise or temporary inconveniences.

27. **Estoppel Certificates.** Landlord or Tenant may request, a certificate evidencing whether or not

A. The Lease is in full force and effect along with the amount and current status of the Net Rent and Additional Payments due hereunder;

B. The Lease has been modified or amended in any respect or describing such modifications or amendments, if any; and

C. There are any existing defaults thereunder, to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any.

Such certificate shall be returned to the requesting party not later than twenty (20) days following receipt of the request. The failure of the receiving party to return the certificate within the specified period shall be deemed an acknowledgement of the correctness of the matters set forth in the certificate.

28. **Consents.**

A. Parties and Notice. Whenever the consent or approval of a party to this Lease is required or reasonably requested under this Lease, if they fail to notify the other party in writing within thirty (30) days (except where a different period is otherwise specified herein for the giving of such consent or approval) after the giving of a written request therefor in the manner specified herein for the giving of notice, it shall be concluded that such consent or approval has been given.

B. No Unreasonable Withholding. Wherever in this Lease the consent or approval of either party is required, such consent or approval shall not be unreasonably withheld nor delayed, except where otherwise specifically provided.

29. Limitation of Landlord's Liability. Landlord shall not be responsible or liable for any damage or injury to any property, fixtures, merchandise, or decorations or to any person or persons at any time on the Premises from steam, gas, electricity, water, rain, or any other source whether the same may leak into, issue or flow from any part of the Building or from pipes or plumbing work of the same, or from any other place or quarter; nor shall Landlord be in any way responsible or liable in case of any accident or injury including death to any of Tenant's employees, agents, subtenants, or to any person or persons in or about the Premises or the streets, sidewalks or vaults adjacent thereto; and Tenant agrees that it will not hold Landlord in any way responsible or liable therefore unless caused by Landlord. Landlord shall not be liable for interference with light or incorporeal hereditaments caused by anybody or the operation of or for any governmental authority in the construction of any public or quasi-public work and Landlord shall not be liable for any latent or any other defects in the Premises.

30. Miscellaneous.

A. Tax Incentives. The Property is located in a "slum" or "blighted" area designated for redevelopment within a single central business district. It is further acknowledged by Landlord that the improvements to be made to the Property pursuant to this Lease will result in an increase in its value of at least one hundred percent (100%) from the date of Tenant's possession of the Property pursuant to this Lease to the date of Landlord's issuance to the Tenant of a Certificate of Occupancy for the Garage. Accordingly, it is the intent of the parties that, pursuant to the provisions of A.R.S. Section 42-6209 or any applicable substitute legislation which may hereafter be enacted, Tenant shall not be required to pay any government property lease excise tax upon the Garage for the eight (8) year period commencing with the issuance of a Certificate of Occupancy for the Garage.

B. City's Right of Cancellation. All parties hereto acknowledge that this agreement is subject to cancellation by the City of Chandler pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

C. Choice of Law. This Lease shall be construed and enforced in accordance with the laws of the State of Arizona.

D. Memorandum. Landlord and Tenant agree that at the request of either, each will execute a short form memorandum of this Lease in a form satisfactory for recording in the Office of the County Recorder, Maricopa County, Arizona.

E. Entire Agreement. This Lease with its schedules and annexes contains the entire agreement between Landlord and Tenant and any executory agreement hereafter made between Landlord and Tenant shall be ineffective to change, modify, waive, release, discharge, terminate, or effect an abandonment of this Lease, in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, waiver, release, discharge, termination, or the effect of the abandonment is sought.

F. Captions. The captions of Sections in this Lease are inserted only as a convenience and for reference and they in no way define, limit, or describe the scope of this Lease or the intent of any provision thereof. References to Section numbers are to those in this Lease unless otherwise noted.

G. Execution and Delivery. This Lease shall bind Tenant upon its execution thereof. Landlord shall be bound only after it executes and delivers the Lease to Tenant.

H. Singular and Plural, Gender. If two or more persons, firms, corporations, or other entities constitute either the Landlord or the Tenant, the word "Landlord" or the word "Tenant" shall be construed as if it reads "Landlords" or "Tenants," and the pronouns "it," "he," and "him" appearing herein shall be construed to be the singular or plural, masculine, feminine, or neuter gender as the context in which it is used shall require.

I. Multiple Parties. If at any time Landlord, Tenant, or any Permitted Mortgagee (Landlord, Tenant or any such mortgagee being in this Section referred to as a "party") is other than one individual, partnership, firm, corporation, or other entity, the act of, or notice, demand, request, or other communication from or to, or payment of refund from or to, or signature of, or any one of the individuals, partnerships, firms, corporations, or other entities then constituting such party with respect to such party's estate or interest in the Premises or this Lease shall bind all of them as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed, unless all of them theretofore have executed and acknowledged in recordable form and given a notice (which has not theretofore been revoked by notice given by all of them) designating not more than three individuals, partnerships, firms, corporations, or other entities as the agent or agents for all of them. If such a notice of designation has theretofore been given, then, until it is revoked by notice given by all of them, the act of, or notice, demand, request or other communication from or to, or payment or refund from or to, or signature of, the agent or agents so designated with respect to such party's estate or interest in the Premises or this Lease shall bind all of the individuals, partnerships, firms, corporations, or other entities then constituting such party as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed.

J. Exhibits and Incorporation. The following exhibits, which are attached hereto or are in the possession of the Landlord and Tenant, are incorporated herein by reference as though fully set forth:

Exhibit "A"	Legal Description
Exhibit "B"	Parcel Map
Exhibit "C"	Required Insurance
Exhibit "D"	Prohibited Uses
Exhibit "E"	Approved Construction Budget
Exhibit "F"	Depiction of City exclusive and permanent parking spaces
Exhibit "G"	Form of Special Warranty Deed
Exhibit "H"	Phase I Outstanding Public Improvements

K. Immigration Reform and Control Act of 1986 (IRCA). Tenant understands and acknowledges the applicability of the IRCA to it and agrees to comply with the IRCA for all activities undertaken under this lease and agrees to permit Landlord to inspect its personnel records to verify such compliance.

31. Equal Employment Opportunity. Tenant shall comply with all ordinances and other requirements of the City of Chandler relating to nondiscrimination and equal employment opportunity. In performing under this contract, Tenant shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age, sexual orientation or disability, nor otherwise commit an unfair employment practice. Tenant will take affirmative action to insure that applicants are employed, and that employees are dealt with during employment, without regard to their race, color, religion, gender, national origin, age, sexual orientation or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Tenant further agrees that this clause will be incorporated in all subcontracts entered into with suppliers of materials or services, and all labor organization furnishing skilled, unskilled and union labor, or who may perform such labor or services in connection with this contract.

32. Enforced Delay; Extension of Time of Performance. Whether stated or not, all periods of time in this Lease are subject to this Section 32 and the grace and cure periods in Section 21. Neither Landlord nor Tenant, as the case may be, shall be considered in Default of its obligations under this Lease in the event of an enforced delay due to causes beyond its control and without its fault, without its failure to comply with Applicable Laws, or without its negligence (an "**Enforced Delay**"), including but not limited to: (1) acts of God, acts of public enemy, acts of the federal, state or local government, and acts of Third Parties, including Tenant's contractors, subcontractors, suppliers, and persons or entities with whom or which Tenant has a contractual relationship, if the act or omission of such Third Party resulting in the delay was beyond the reasonable control of Tenant; and (2) litigation concerning the validity and enforceability of this Lease or relating to transactions contemplated by this Lease (including the effect of petitions for initiative or referendum), fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, and unusually severe weather. In no

event will Enforced Delay include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants or purchasers of portions of the Project, nor from the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Tenant in connection with the Project, it being agreed that Tenant will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any Enforced Delay, the time or times for performance of the obligations of the Party claiming Enforced Delay shall be extended for the period of the Enforced Delay; provided that the Party seeking the benefit of the provisions of this Section 32 shall, within thirty (30) days after such Party knows or reasonably could have known of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay. Notwithstanding the foregoing, no period of Enforced Delay shall exceed one hundred and eighty (180) days, although Landlord shall not unreasonably withhold its consent to one or more thirty (30) day extensions upon prior written notice to Landlord received not less than ten (10) days prior to the expiration of the initial period of Enforced Delay, or subsequently permitted extension (as applicable), and setting forth in reasonable detail the reason that Tenant believes such extension should be granted.

33. **Option To Purchase Property.**

A. **Option to Purchase.** Landlord hereby grants to Tenant the exclusive option to purchase the Property ("Purchase Option") according to the terms and conditions hereinafter set forth.

B. **Exercise of Option.** The Purchase Option granted herein shall become effective and Tenant shall have the right to exercise the Purchase Option hereunder at any time after the Commencement Date ("Option Period"), provided that Tenant's right to exercise the Purchase Option shall be conditioned upon Tenant not being in default under this Lease or under any other lease or subsidiary agreement between Landlord and Tenant regarding or relating to the Premises. The Purchase Option granted herein may be exercised by Tenant at any time during the Option Period by Tenant delivering written notice of exercise to Landlord.

C. If Tenant is not then in default of any of the Leases, Tenant can purchase all (but only all) of the Parcels at any time prior to lease termination for a total purchase price of \$2,500,000.00, net to the City, but the purchase option can be exercised by Tenant only if all construction has been completed on the Garage and the Lease 2 and Lease 3 Parcels. In the event a lender forecloses on any particular leasehold interest, then the lender or its successor shall be given the right to purchase Parcel 6 for \$500,000.00, subject to the Parking Rights.

D. Except in connection with financing, there will be limitations on a subsequent Transfer of the Parcels after exercise of the Purchase Option by Tenant, which limitations shall be included in a deed restriction included in the conveyance to Tenant. If Tenant exercises its Purchase Option and acquires fee title to all of the Parcels, and thereafter Transfers any of the Parcels before the end of what would have been year eight (8) of the Leases, then the City shall receive an exit fee in the amount of:

Parcel 6 -- \$ 130,000.00
Parcel 3 -- \$ 210,000.00
Parcel 4 -- \$ 210,000.00
Parcel 1 -- \$ 210,000.00
Parcel 5 -- \$ 120,000.00
Parcel 7 -- \$ 120,000.00
Total \$1,000,000.00

E. Notwithstanding the foregoing, Tenant may not exercise its Purchase Option during construction and for the first four (4) years from the issuance of the Certificate of Occupancy for the improvements on the applicable Parcel, although the City may permit a Transfer during such time in its sole, absolute and unfettered discretion. For the next four (4) years thereafter, any Transfer will require the City's approval in its reasonable commercial discretion.

F. If an exit fee has been received by the City in connection with an earlier Transfer of a lease, the exit fee required upon resale of the applicable parcels will be waived or prorated, as applicable.

G. Conveyance of Premises.

(1) Form of Conveyance. Landlord and Tenant agree to perform all acts necessary for conveyance in sufficient time for the property interest to be conveyed ninety (90) days after delivery to Landlord of Tenant's notice of exercise or on the last day of the Rental Period, whichever first occurs. Landlord's entire interest in the Premises shall be conveyed by Special Warranty Deed in the form of Exhibit G. All expenses in connection with conveyance of the Premises to Tenant including, but not limited to, title insurance, recordation and notary fees and all other closing costs, shall be paid by Tenant. Possession shall be delivered to Tenant concurrently with the conveyance of title.

(2) Parking Declaration. The conveyance of the Property shall be subject to the Parking Declaration.

34. Compliance With Environmental Laws.

A. Definitions.

(1) "Environmental Laws. Those laws promulgated for the protection of human health or the environment, including but not limited to the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Section 300f *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*; the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Arizona Environmental Quality Act, Title 49 of the Arizona Revised Statutes; the Occupational Safety and Health Act of 1970, as amended, 84 Stat.

1590, 29 U.S.C. Section 651-678; Maricopa County Air Pollution Control Regulations; Title 41, Article 4, Archaeological Discovery, Arizona Revised Statutes; regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, county, state or federal government) now in effect or hereinafter enacted that deal with Regulated Substances and the regulation or protection of human health and the environment, including but not limited to the ambient air, ground water, surface water, and land use, including substrata soils.

(2) "Regulated Substances:"

(a) Any substance identified or listed as a hazardous substance, pollutant, hazardous material, or petroleum in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 *et seq.*, and in the regulations promulgated thereto; and Underground Storage Tanks, U.S.C. Section 6991 to 6991i.

(b) Any substance identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or as a special or solid waste in the Arizona Environmental Quality Act, A.R.S. Section 49-201 *et seq.*; including, but not limited to, the Water Quality Assurance Revolving Fund Act, A.R.S. Section 49-281 *et seq.*; the Solid Waste Management Act, A.R.S. Section 49-701 *et seq.*; the Underground Storage Tank Regulation Act, A.R.S. Section 49-1001 *et seq.*; and Management of Special Waste, A.R.S. Section 49-851 to 49-868.

(c) All substances, materials and wastes that are, or that become, regulated under, or that are classified as hazardous or toxic under any Environmental Law during the term of this Lease.

(3) "Release" Any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping.

B. Compliance. Tenant shall, at Tenant's own expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Tenant's operation on the Premises and the Public Tract. Tenant shall not cause or permit any Regulated Substance to be used, generated, manufactured, produced, stored, brought upon, or released on, or under the Premises or the Public Tract, or transported to or from the Premises or the Public Tract, by Tenant, its agents, employees, contractors, invitees or a third party in a manner that would constitute or result in a violation of any Environmental Law or that would give rise to liability under an Environmental Law.

C. Indemnification.

(1) Tenant shall indemnify, defend, pay and hold harmless, on demand, Landlord, its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys, for, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, claims, legal and investigation fees or costs,

arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons, property, the environment or the Premises and the Public Tract and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, human health, property or the environment pursuant to any Environmental Law, the common law, or other statute, ordinance, rule, regulation, judgment or order of any governmental agency or judicial entity, which are incurred or assessed as a result, whether in part or in whole, of any use of the Premises and the Public Tract during the term of this Lease or any previous lease or uses of the Premises and the Public Tract by Tenant or its owners or affiliated entities, agents, employees, invitees, contractors, visitors or licensees unless caused by Landlord. Regardless of the date of termination of this Lease, Tenant's obligations and liabilities under this Section 34 shall continue so long as the Landlord bears any liability or responsibility under the Environmental Laws for any use of the Premises and the Public Tract during the term of this Lease. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial actions, removal or restoration work required or conducted by any federal, state or local governmental agency or political subdivision because of Regulated Substances located on the Premises or the Public Tract, or present in the soil or ground water on, or under the Premises or the Public Tract. The parties agree that Landlord's right to enforce this covenant to indemnify is not an adequate remedy at law for Tenant's violation of any provision of this Section and that Landlord shall also have the rights set forth in this Section in addition to all other rights and remedies provided by law or otherwise provided for in this Lease.

(2) Without limiting the foregoing, if the presence of any Regulated Substance on, or under the Premises and the Public Tract results in any contamination of the Premises or the Public Tract or any adjacent real property during the term of this Lease, Tenant shall promptly take all actions at its sole cost and expense as are necessary to mitigate any immediate threat to human health or the environment. Tenant shall then undertake any further action necessary to return the Premises and the Public Tract or other property to the condition existing prior to the introduction of any Regulated Substance to the Premises or the Public Tract; provided that Landlord's written approval of such actions shall first be obtained. Tenant shall undertake such actions without regard to the potential legal liability of any other person, however, any remedial activities by Tenant shall not be construed as to impair Tenant's rights, if any, to seek contribution or indemnity from another person.

(3) Tenant shall, at Tenant's own cost and expense, make all tests, reports, studies and provide all information to any appropriate governmental agency as may be required pursuant to the Environmental Laws pertaining to Tenant's use of the Premises and the Public Tract. This obligation includes but is not limited to any requirements for a site characterization, site assessment and/or a cleanup plan that may be necessary due to any actual or potential spills or discharges of Regulated Substances on, or under the Premises or the Public Tract, during the term of this Lease. At no cost or expense to Landlord, Tenant shall promptly provide all information requested by Landlord pertaining to the applicability of the Environmental Laws to the Premises and the Public Tract, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination.

In addition, Landlord shall have the right to access, within twenty (20) days of Tenant's receipt of written request, and copy any and all records, test results, studies and/or other documentation, other than trade secrets, regarding environmental conditions relating to the use, storage, or treatment of Regulated Substances by the Tenant on, or under the Premises and the Public Tract.

(4) Tenant shall immediately notify Landlord of any of the following: (1) any correspondence or communication from any governmental agency regarding the application of Environmental Laws to the Premises or the Public Tract, or to Tenant's use of the Premises or the Public Tract, (2) any change in Tenant's use of the Premises or the Public Tract that will change or has the potential to change Tenant's or Landlord's obligations or liabilities under Environmental Laws, and (3) any assertion of a claim or other occurrence for which Tenant may incur an obligation under this Section 34.

(5) Tenant shall insert the provisions of this Section 34 in any sublease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

(6) Tenant shall, at its own expense, obtain and comply with any permits or approvals that are required or may become required as a result of any use of the Premises and the Public Tract by the Tenant, its agents, employees, contractors, invitees and assigns.

(7) Tenant shall obtain and maintain compliance with any applicable financial responsibility requirements of federal and/or state law regarding the ownership or operation of any underground storage tank(s) or any device used for the treatment or storage of a Regulated Substance and present evidence thereof to Landlord, as may be applicable.

D. Noncompliance.

(1) Tenant's failure or the failure of its agents, employees, contractors, invitees or of a third party to comply with any of the requirements and obligations of this Section 34 or applicable Environmental Law shall constitute a material default of this Lease. Notwithstanding any other provision in this Lease to the contrary, Landlord shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Law on, or under the Premises or the Public Tract, without waiving any of its rights under this Lease. The exercise by Landlord of any of its rights under this Section 34 shall not release Tenant from any obligation it would otherwise have hereunder.

(2) The covenants in this Section 34 shall survive the expiration or earlier termination of this Lease.

35. **Signatures.** The Parties have executed this Lease to be effective as of the date set forth in Section 1 of this Lease.

LANDLORD:

CITY OF CHANDLER, ARIZONA, a municipal corporation

By: 
Its: MAYOR

ATTEST:

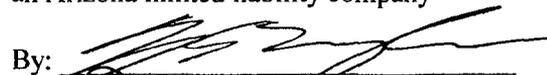

City Clerk

APPROVED AS TO FORM:


City Attorney

TENANT:

SMC II, L.L.C.
an Arizona limited liability company

By: 
Nick E. Kreipke, Manager

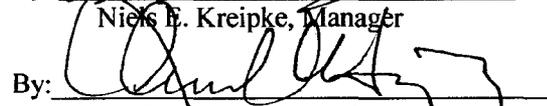
By: 
Michael W. Hogarty, Manager

EXHIBIT A
Legal Description

Parcel 6 of the San Marcos Commons final plat, Book 865, Page 18, recorded 9/07/2006.

EXHIBIT B Parcel Map

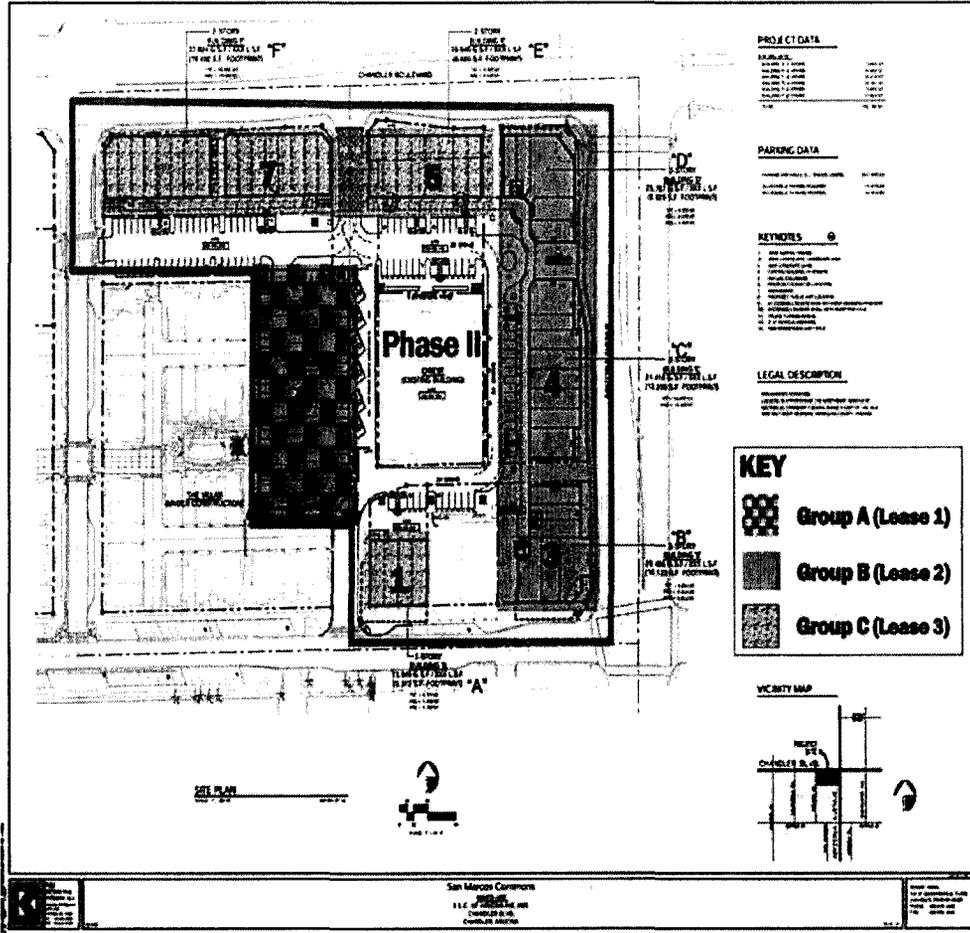


EXHIBIT C
REQUIRED INSURANCE

A. From and after any entry by Tenant into the Premises, Tenant shall carry, at Tenant's sole cost and expense, the following types of insurance, in the amounts specified or in such higher amounts as are customary as a result of increases in standard liability coverage resulting from the passage of time during the term of the Lease:

1. Commercial general liability insurance for personal injury, bodily injury (including wrongful death) and property damage with a combined single limit of not less than Three Million and No/100 Dollars (\$3,000,000.00), per occurrence, Three Million and No/100 Dollars (\$3,000,000.00) annual aggregate insuring against any and all liability of the insured with respect to the Premises and the Public Tract, or arising out of the maintenance, use or occupancy thereof, including premises operations, products and completed operations and owned, hired and non-owned automobiles, providing coverage at least as broad as ISO policy form CG 0001. The commercial general liability insurance policy shall contain a contractual liability endorsement specifically deleting the contractual liability exclusion for Personal Injury. At least One Million and No/100 Dollars (\$1,000,000.00) of such insurance coverage shall be primary coverage and the remaining Two Million and No/100 Dollars (\$2,000,000.00) of such coverage may be pursuant to an umbrella or excess liability policy. In addition, the policy required pursuant to the provisions of this **Section A(1)** shall not have a deductible in excess of Ten Thousand and No/100 Dollars (\$10,000.00).

2. A policy or policies of insurance covering the building and all other improvements constituting the Premises, in an amount not less than one hundred percent (100%) of full replacement cost (inclusive of the cost of excavations, foundations and footings) from time to time during the Lease Term, providing protection against any peril generally included in the classification "**Causes of Loss-Special Form**" (including flood, earthquake damage and/or terrorism coverage if so elected by Landlord), together with insurance against sprinkler damage, vandalism and malicious mischief, and the following endorsements: boiler and machinery, difference in conditions, business income and extra expense (with extended period of indemnity), contingent business income and extra expense (with extended period of indemnity), service interruption, building ordinance or law and excess rental value. In addition, the policy required pursuant to the provisions of this **Section A(2)** shall not have a deductible in excess of Ten Thousand and No/100 Dollars (\$10,000.00).

3. Insurance covering all plate glass on the Premises.

4. Boiler and machinery insurance on all boilers, pressure vessels, gas-fired equipment, air conditioning equipment and systems serving the Premises.

5. A policy or policies of workers' compensation insurance with an insurance carrier and in amounts required by applicable Governmental Restrictions and a policy of employer's liability insurance with limits of liability not less than One Million and No/100 Dollars (\$1,000,000.00), each accident; One Million and No/100 Dollars (\$1,000,000.00), disease policy limit; and One Million and No/100 Dollars (\$1,000,000.00) disease each employee. Both such policies shall contain waivers of subrogation in favor of Landlord.

6. Appropriate insurance coverage insuring Landlord and Tenant against any and all liability with respect to the release, transportation and/or use by Tenant of Regulated Substances (as defined in the Lease) on or under the Premises or the Public Tract during the Lease Term and for such additional periods of time within which Landlord or Tenant may be liable with respect to Regulated Substances under applicable Environmental Laws (as defined in the Lease). Such insurance shall be

carried in amounts, in a form and from such carriers as Landlord shall reasonably approve and shall name Landlord as an additional insured.

7. All policies of insurance to be procured by Tenant shall be issued by insurance companies having a general policy holders rating of not less than A-VIII in the most current available "**Best's Key Rating Guide**", qualified to do business in the State of Arizona. All property policies shall be issued in the name of Tenant, and shall name Landlord and its Representatives as "**loss payees as their interests may appear**". All liability policies obtained by Tenant shall name Landlord and Landlord Parties as additional insureds. In addition, Tenant's liability policies shall be endorsed as needed to provide cross-liability coverage for Tenant, Landlord, and Landlord Parties and shall provide for severability of interests. Executed copies of the policies of insurance or evidence of insurance meeting the requirements of Acord Form No. 27 or 28 or their equivalent or such other evidence as may be reasonably acceptable to Landlord and evidence of required additional insured endorsements on ISO Form CG 20-26 or its equivalent (collectively referred to in this **Exhibit C** as "**Certificates**") shall be delivered to Landlord within ten (10) days after Substantial Completion of the Premises and thereafter, executed copies of renewal policies or Certificates thereof shall be delivered to Landlord within thirty (30) days prior to the expiration of the term of each such policy. All liability policies shall contain a provision that Landlord, and Landlord Parties, although named as additional insureds, shall nevertheless be entitled to recovery under the policy for any loss occasioned to such parties by reason of the negligence of Tenant or its agents. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent. All policies of insurance delivered to Landlord must contain a provision that the company writing the policy shall give Landlord not less than twenty (20) days notice in writing in advance of any cancellation or lapse or the effective date of any material change in the policy, including any reduction in the amounts of insurance. All liability, property and other casualty policies shall be written as primary policies and shall provide that any insurance which Landlord may carry is strictly excess, secondary and non-contributing with any insurance carried by Tenant. The insurance requirements contained in this **Exhibit C** are independent of Tenant's waiver, indemnification and other obligations under this Lease and shall not be construed or interpreted in any way to restrict, limit or modify Tenant's waiver, indemnification or other obligations or to in any way limit Tenant's obligations under this Lease.

B. **BLANKET POLICY.** Tenant's obligation to carry the insurance required by this **Exhibit C** may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Tenant; provided, however, that the coverage afforded Landlord will not be reduced or diminished by reason of the use of a blanket policy of insurance, and provided further that the requirements set forth in this **Exhibit C** are otherwise satisfied. If Tenant uses such a blanket policy, Tenant shall deliver to Landlord satisfactory evidence that the Premises has been properly added to the blanket policy and evidence that the insurance company that issued the blanket policy has allocated to the Premises the type of insurance coverage in the amounts required by this **Exhibit C**, with the limitations of liability required by this Lease. Tenant shall permit Landlord at any reasonable time to inspect any policies of insurance of Tenant, which policies or copies thereof are not delivered to Landlord.

C. **ADEQUACY OF INSURANCE.** Landlord makes no representation or warranty to Tenant that the amount of insurance to be carried by Tenant under the terms of this Lease is adequate to fully protect Tenant's interest. If Tenant believes that the amount of any such insurance is insufficient, Tenant is encouraged to obtain, at its sole cost and expense, such additional insurance as Tenant may deem desirable or adequate. Tenant acknowledges that Landlord shall not, by the fact of approving, disapproving, waiving, accepting, or obtaining any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of such insurance, the solvency of any insurance companies or the payment or

defense of any lawsuit in connection with such insurance coverage, and Tenant hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

D. **DEFINITIONS.** For purposes of this **Exhibit C**: (a) the term "**Tenant Parties**" means Tenant, Tenant's agents, and all Persons claiming through any of these Persons; (b) the term "**Landlord Parties**" means Landlord, Landlord's agents, the City Council of the City of Chandler and all Persons claiming through any of these Persons; (c) the term "**Indemnify**" means indemnify, defend (with counsel reasonably acceptable to Landlord), pay and hold harmless for, from and against; (d) the term "**Claims**" means all liabilities, claims, damages (including consequential damages), losses, penalties, litigation, demands, causes of action (whether in tort or contract, in law or at equity or otherwise), suits, proceedings, judgments, disbursements, charges, assessments, and expenses (including attorneys' and experts' fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding); (e) the term "**Waives**" means that the Tenant Parties waive and knowingly and voluntarily assume the risk of; and (f) the terms "**Bodily Injury**," "**Personal Injury**" and "**Property Damage**" will have the same meanings as in the form of commercial general insurance policy issued by Insurance Services Office, Inc. most recently prior to the date of the injury or loss in question.

EXHIBIT D Prohibited Uses

In general, allowed uses consist of active retail and office uses, with ground floor being required to be retail and restaurant services. Some office uses are allowed on the ground floor as specifically called out in the Lease for that building.

Though allowed under general C-2 zoning, the following uses are prohibited as part of this development agreement for San Marcos Commons Phase II Commercial with any exceptions noted:

- Ambulance service
- Appliance repairer
- Automobile accessories (sales)
- Automobile washateria
- Boat sales
- Building contractors, EXCEPT office-only functions not on a ground floor
- Building materials companies
- Building supplies and materials, glass sales, and installation.
- Caterers, EXCEPT if there is an active walk-up food sales frontage.
- Churches and other places of worship
- Cleaning of building exteriors, disinfecting or exterminating establishments
- Clothing manufacturer, EXCEPT if there is an active retail frontage.
- Convalescence homes, nursing homes and homes for the aged
- Drive-in and drive-up establishments and functions. Fast turnover establishments are prohibited unless the City chooses to grant an exception for a specific tenant. Fast serve ice cream, yogurt and fruit drink establishments are allowed.
- Fuel dispensing equipment or facilities
- Furniture and appliance repairer
- Funeral parlors, mortuaries
- General contractor or workman, EXCEPT office-only functions not on the ground floor
- Greenhouse and nursery, commercial

- Home improvement company, EXCEPT office-only functions not on the ground floor. This is not intended to exclude companies that sell furnishings as long as at least 50% of the leased space is used for showroom and sales area.
- Hospitals (excluding animal hospitals)
- Hospital supplies
- Laboratories serving professional requirements, dentist, medical, etc.
- Laboratory supplies
- Laundromat, self-service or wholesale
- Medical marijuana establishments.
- Monument sales establishment
- Motor vehicle repairs, wholesale and retail
- Nursery and greenhouse, commercial
- Pawn shop
- "Pay Day," title loan, and similar lending operations
- Rescue service
- Residential.
- Restaurant supplies. Specialty food sales tenants may be allowed with City agreement for a specific tenant.
- Tattoo Parlors
- Taxi dispatching and operations
- Trailers
- Transient Service Facilities
- Upholsterer. This use will be allowed if the sales area is greater than 50% of the leased space and all work areas are screened from exterior visibility.
- Veterinarian hospital or clinic

EXHIBIT E
Approved Construction Budget

San Marcos Commons Garage Approved Construction Budget*

	Estimate	Notes
Architect/Engineering/Permits	342,500	
SWPPP	15,000	
Horizontal and Vertical Control	19,600	
Geotechnical	30,000	
<hr/>		
Indirect Costs	407,100	
General Requirements	73,445	
Earthwork and Paving	521,700	
Termite Pretreat	1,100	
Site Concrete	21,525	
Site Utilities	41,200	
Dry Utilities	18,000	
Landscape and Irrigation	235,166	
Concrete and Reinforcing	6,055,875	
Masonry	204,940	
Structural and Misc Steel	141,025	
Standing Seam Metal Roof	170,830	
Sealants/Caulking/Waterproofing	196,896	
Hollow Metal Doors, Frames and Grates	31,971	
Finish Hardware	13,821	
EIFS	165,298	
Framing and Drywall	91,753	
Painting	47,234	

Miscell Building Construction	48,093	
Signage and Striping	42,323	
Elevator	283,000	
Fire Sprinkler Sysemt	337,822	
Plumbing	29,660	
HVAC, Exhaust System, CO2 Monitor	31,500	
Electrical	484,960	
<hr/>		
Direct Construction Costs	9,289,137	
GC's General Conditions @3.0% of Construction Costs	278,674	General conditions will be paid based on actual expenses, not a percentage.
GC's Fees @ 5.5% of Direct Construction Costs and General Conditions	526,230	
Sales Tax @5.72% of Direct Construction Costs, General Conditions, GC Fees and Insurance/Bonds	584,529	
<hr/>		
Construction Overhead Costs	1,389,433	
Total Construction Costs w/ Overhead	11,085,670	
Insurance and Bonds	125,000	
Developer Fee	225,000	City contribution maxed at \$150,000; will be paid as a % of current invoice, not as an upfront lump sum
Contingency	464,457	City will only pay when a contingency expense occurs: 5% based on direct construction costs only
<hr/>		
Miscellaneous Costs	814,457	
<hr/>		
Total Preliminary Costs	\$ 11,900,127	

*Note: This represents the budget agreed to the parties, but as this has not yet been bid, there may be variation in the specific costs.

EXHIBIT G
Form of Special Warranty Deed

When Recorded, Mail to:

SPECIAL WARRANTY DEED

For the consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration received, The City of Chandler, an Arizona municipal corporation ("**Grantor**"), does hereby convey to _____ ("**Grantee**"), all of Grantor's right, title and interest in and to the following described real property (the "**Property**") situated in Maricopa County, Arizona, together with all improvements thereon and all of Grantor's interest in any rights and privileges appurtenant thereto:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS
REFERENCE MADE A PART HEREOF

SUBJECT ONLY TO any and all conditions, easements, encroachments, rights-of-way, or restrictions which a physical inspection, or accurate ALTA survey, of the Property would reveal; any matters of record; and all applicable municipal, county, state or federal zoning and use regulations.

AND GRANTOR hereby binds itself and its successors to warrant and defend the title against all of the acts of Grantor and no other, subject to the matters set forth above.

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed as of this ___ day of _____, 20__.

GRANTOR:

The City of Chandler, an Arizona municipal
corporation

By: _____

Name: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this the ____ day of _____, 20 __, before me, the undersigned Notary Public, personally appeared _____, who acknowledged himself/herself to be the _____ of The City of Chandler, an Arizona municipal corporation, and that, being authorized so to do, he/she executed the foregoing instrument for the purposes herein contained on behalf of the said municipal corporation.

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

Notary Public

My Commission Expires:

EXHIBIT H

San Marcos Commons Phase I Outstanding Public Improvements

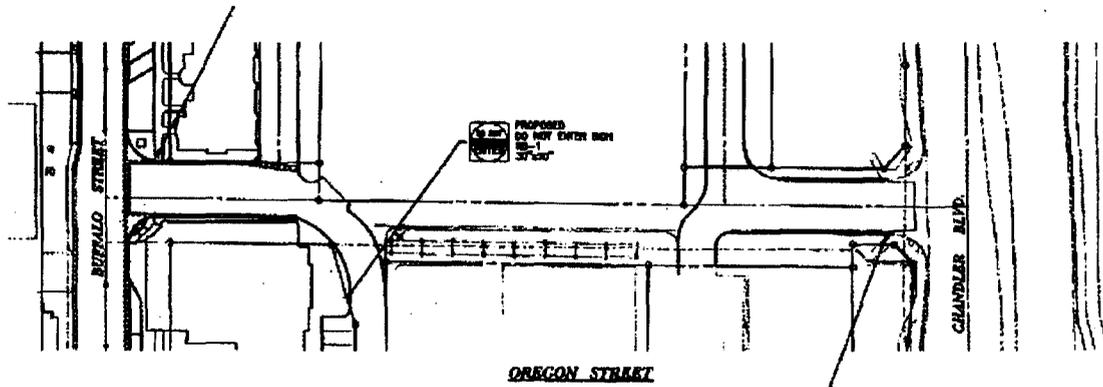
The public improvements are those improvements that were originally submitted as part of the Villas at San Marcos Commons and modified with the plan set ENR 06-0015.

These include the following:

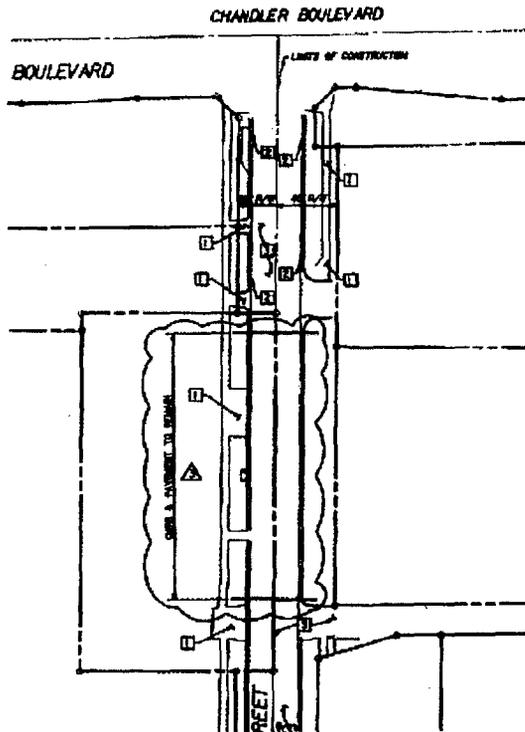
Oregon Street

Original plans included a number of improvements to Oregon Street including modification to the North and South access points in the vicinity of the Parcel 6. These improvement were not completed, and Oregon Street was left open to the public.

Sheet 14 of the off-site improvement plans illustrate the intent of the configuration of the access point.

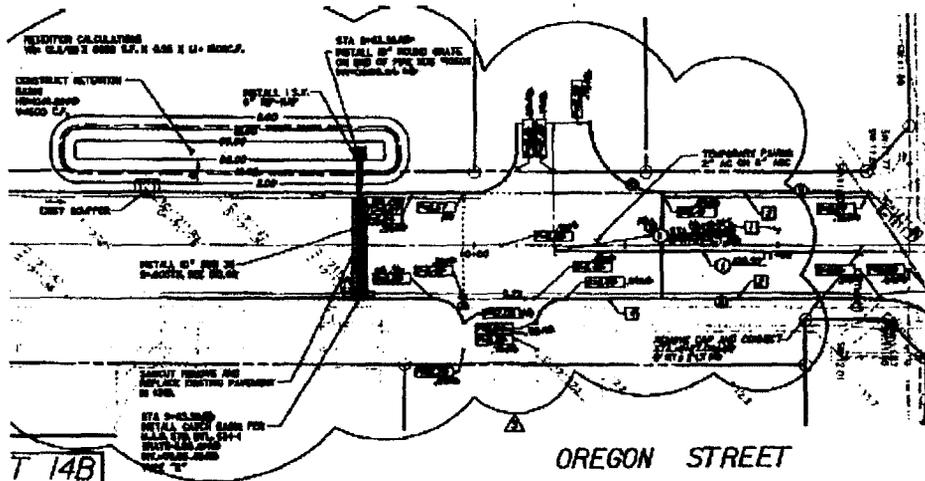


Oregon Street was left in this configuration

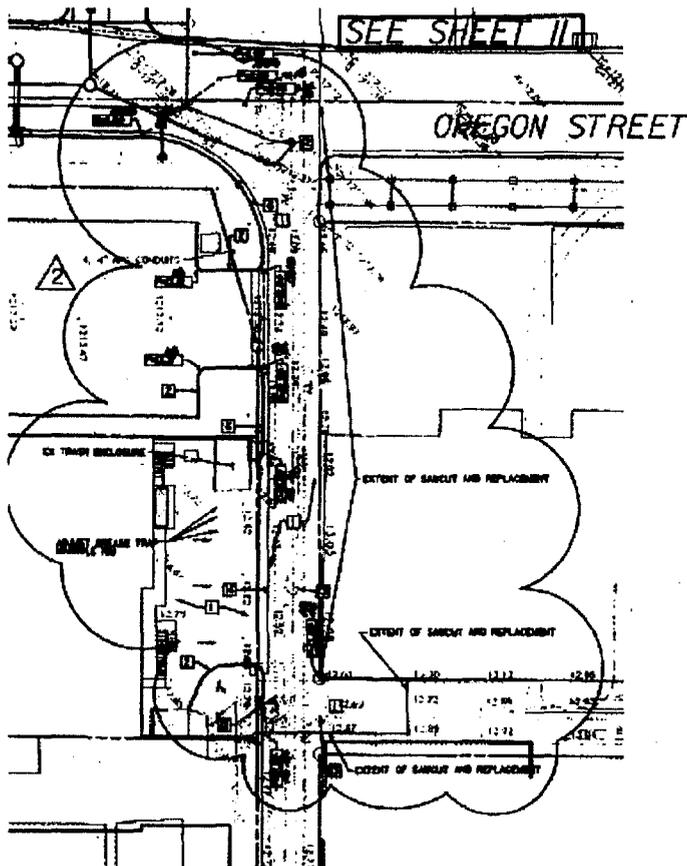


The pedestrian walkway between Lot 2 of the Qwest Plat and the Parcel 6 (Parking Garage) improvement are still required. This includes but not limited to:

- repaving Oregon Street - Temp Pavement was placed and temporary retention was created these drainage and pavement areas will need to reflect the ultimate improvements. Including drainage improvement to facilitate the construction of the garage and the pedestrian/service corridor.



Completion of improvements ultimate improvements on the east-west alley east of Oregon Street.. These improvements were not finalized to allow temporary access to the parking provided on Parcel 1.

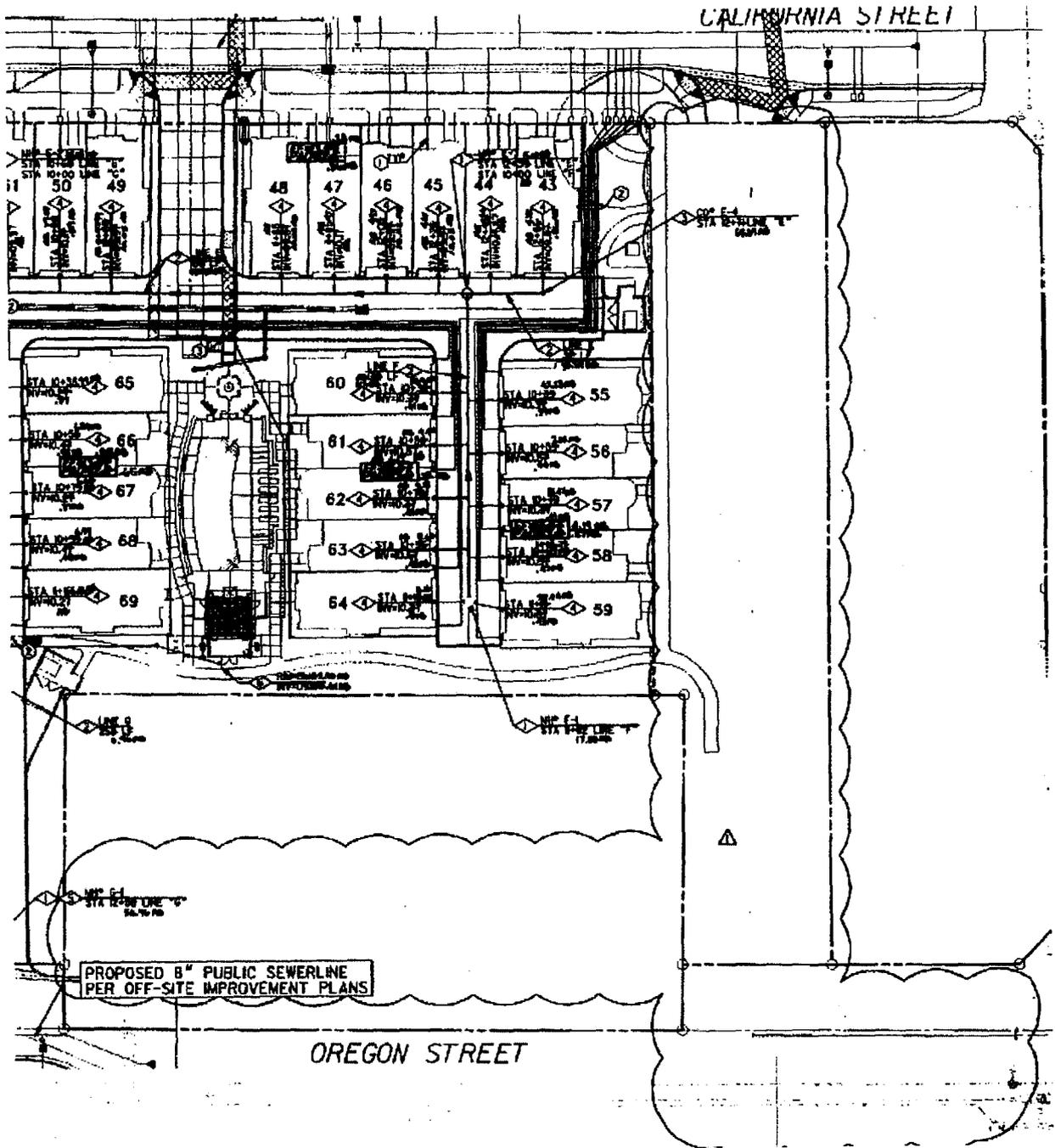


Pedestrian improvements and tie in to Qwest Lot 2. Pedestrian improvements on the east side of Oregon street were removed and ultimate pedestrian improvements were not constructed along the west side of Parcel 1.

Street lighting, street scape and landscaping along the Oregon Street needs to be addressed.

Parking Areas - Tract BB

All improvements to Tract BB were removed. These improvement including Landscape, street scape, drainage, paving and infrastructure associated with the parking area and Parcel 6 will need to be completed.



GOVERNMENT PROPERTY IMPROVEMENTS LEASE
San Marcos Commons – Parcels 3 and 4

1. **Date.** The date of this Lease (the "Lease") is January 14, 2011.
2. **Parties.** The parties to this lease are as follows:
 - A. **Landlord:**

City of Chandler
City Manager
P.O. Box 4008, MS 605
Chandler, Arizona 85244-4008
 - B. **Tenant:**

SMC II, L.L.C., an Arizona limited liability company
c/o Niels E. Kreipke or Michael W. Hogarty
101 West Commonwealth Avenue
Chandler, Arizona 85225
 - C. **Parties.** Landlord and Tenant may be referred to in this Lease individually as a "Party" or collectively as the "Parties."
3. **Recitals.** As background to this Lease, the Parties agree, acknowledge and recite as follows, each of which shall be deemed a material term and provision of this Lease:
 - A. Pursuant to a "Development Agreement -- San Marcos Commons, Phase II," dated as of the date of this Lease (the "Development Agreement"), Tenant has agreed to perform certain acts as more fully set forth in the Development Agreement.
 - B. Pursuant to the Development Agreement, Landlord has agreed to enter into a lease with Tenant for the Property (as defined below).
 - C. It is intended by Landlord and Tenant that this Lease be subject to the provisions of A.R.S. Section 42-6201 et seq.
 - D. Landlord is a "Government Lessor" as defined in A.R.S. Section 42-6010.
 - E. The improvements presently existing, or to be constructed, on the Property are (or will be) Government Property Improvements as defined in A.R.S. Section 42-6201.
4. **Lease of the Premises.**

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A. **Premises.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon and in consideration of the terms and conditions contained herein, the surface and subsurface rights on and above that certain parcel of real property, and any and all improvements presently existing thereon, within the portion of the redevelopment area generally located in the City of Chandler, County of Maricopa, State of Arizona, shown or designated as Parcels 3 and 4 of San Marcos Commons all as more particularly described in Exhibit A (legal description) and as depicted on Exhibit B (parcel map) attached hereto, which real property may be referred to in this Lease as the "Property" and which Property, together with the improvements presently situated on the Property, or to be constructed on the Property by Tenant in accordance with the terms and provisions of this Lease, is or may be referred to as the "Premises"; subject, however, to:

- (1) All covenants, restrictions, easements, agreements, and reservations of record.
- (2) Present and future building restrictions and regulations, zoning laws, ordinances, resolutions and regulations of the municipality in which the land lies and all present and future ordinances, laws, regulations and orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction.
- (3) The condition and state of repair of the Premises as the same may be on the Commencement Date.

B. **Public Tract.** Although this Lease imposes certain obligations on Tenant with respect to maintenance of, and insurance covering bodily injury and property damage occurring on the Public Tract, the Public Tract is not included within the Premises.

C. **Term.** The term of this Lease ("Term") shall commence on the date of execution of this Lease ("Commencement Date"), and shall expire at 12:00 midnight on the last day of the Rental Period, unless this Lease is sooner terminated as hereinafter provided.

5. **Definitions.**

For the purposes of this Lease, the following words shall have the definition and meaning set forth in this Lease:

- (a) "Additional Payments" means as defined in Section 7(A).
- (b) "Administrative Fee" means as defined in Section 11(D).
- (c) "Affiliate" means, with respect to Tenant (including all entities that have an ownership interest in Tenant), any person or legal entity that is controlled by Tenant, that controls Tenant or that is under common control with Tenant, whether direct or indirect, and whether through ownership of voting securities, by control or otherwise. For purposes of this definition, "control" shall be conclusively presumed in the case of direct or indirect ownership of fifty percent (50%) or more of outstanding interests in terms of value or voting power of Tenant.

- (d) "Applicable Laws" means as defined in Section 12(A).
- (e) "Certificate of Occupancy" means as defined in Section 13(A)(6).
- (f) "City's Maximum Contribution" means as defined in Section 13(A)(2).
- (g) "Commencement Date" means as defined in Section 4(B).
- (h) "Depository" means an Institutional Lender holding a Permitted Mortgage or, if there be none, a bank or trust company having its principal office in Maricopa County selected by Tenant with a net worth of not less than \$50 million.
- (i) "Development Agreement" means that Development Agreement dated as of the date of this Lease, between the City and Tenant, as Tenant, as described in Recital 3(A).
- (j) "Enforced Delay" means as defined in Section 32.
- (k) "Event of Default" means as defined in Section 21(A).
- (l) "Impositions" means as defined in Section 7(A).
- (m) "Institutional Lender" means any savings bank, bank or trust company, savings and loan association, insurance company, mortgage banker, mortgage broker, finance company, college or university, governmental pension or retirement funds or systems, any pension retirement funds or systems of which any of the foregoing shall be trustee, provided the same be organized under the laws of the United States or of any State thereof, or a Real Estate Investment Trust as defined in Section 856 of the Internal Revenue Code of 1986 as amended.
- (n) "Landlord" means the City of Chandler, Arizona, a municipal corporation.
- (o) "Lease 1" means that certain Lease dated concurrently with this Lease, between the City, as Landlord, and Tenant, as Tenant, for Parcel 6.
- (p) "Lease 1 Improvements" means the improvements required to be constructed upon Parcel 6 by Tenant pursuant to Lease 1.
- (q) "Lease 3" means that certain Lease proposed to be executed by and between the City, as Landlord, and Tenant, as Tenant, for Parcels 1, 5, and 7.
- (r) "Lease 3 Improvements" means the improvements required to be constructed on Parcels 1, 5 and 7.
- (s) "Leases" means this Lease, Lease 1 and Lease 3.

- (t) "Mortgagee" means the holder, trustee, or beneficiary of any Permitted Mortgage.
- (u) "Option Period" means as defined in Section 33(B).
- (v) "Parcel 1," "Parcel 3," "Parcel 4," "Parcel 5," "Parcel 6" and "Parcel 7" mean the parcels so designated on Exhibit B.
- (w) "Parcels" means all or any combination of Parcel 1, Parcel 3, Parcel 4, Parcel 5, Parcel 6 and Parcel 7.
- (x) "Permitted Mortgage" means any mortgage or deed of trust not held by a Related Party (unless such Related Party is approved by Landlord) that constitutes a lien upon this Lease, the leasehold estate hereby created, or all (or any portion of) Tenant's interest in the Project, and which complies with the requirements of Section 20.
- (y) "Permitted Mortgagee" means the beneficiary, secured party or mortgagee under any Permitted Mortgage, and its successors and assigns and purchasers at any foreclosure sale.
- (z) "Phase I Developer" means Desert Viking DV Town Homes LLC, an Arizona limited liability company, an Affiliate of Tenant.
- (aa) "Phase I Development Agreement" means that certain development agreement between the City and Phase I Developer.
- (bb) "Phase II" means all of the development and construction contemplated for all of the Parcels in and under the Development Agreement.
- (cc) "Premises" means as defined in Section 4(A) and described in Exhibits A and B.
- (dd) "Project" means the construction of the Shops and all appurtenant improvements, including any improvements on the Public Tract shown on the approved plans and specifications.
- (ee) "Property" means as defined in Section 4(A).
- (ff) "Public Tract" means the portion of the east-west alley (the "Parcel 3 Alley") running from Oregon Street to Arizona Avenue that is appurtenant to Parcel 3, and the north-south alley (the "Parcel 4 Alley") that runs from Parcel 2 to Chandler Boulevard, as shown on the plat recorded in the Official Records of Maricopa County, Arizona, in Book 865 of Maps, Page 18, whether or not such area is actually used for public right-of-way or other public purposes.
- (gg) "Purchase Option" means as defined in Section 33(A).
- (hh) "Rental Period" means the period beginning on the Commencement Date and ending on the earlier of September 1, 2037, or twenty-five (25) years from the first day of the month

following the date of issuance of the Certificate of Occupancy (or comparable instrument) for the Shops and Lease 1 Improvements.

(ii) "Second Notice" means as defined in Section 21(B).

(jj) "Shops" shall mean that certain retail (including restaurant) and office space to be constructed by Tenant on the Property in accordance with the plans and specifications approved by Landlord. The Shops shall consist of three buildings: B, C and D, totaling approximately 71,000 square feet as a portion of the total project (that is, including Buildings A, E and F as required by Lease 3) square footage of not less than 139,000 square feet. All buildings will be fully constructed and improved with all required certifications excluding tenant improvements. Building B is a minimum two stories under roof with total square footage of approximately 20,200 square feet and includes a clock tower. Ground floor restaurant and/or retail are required, with the option of retail, restaurant or office on the second story. Building C is a minimum two stories under roof with approximately 24,400 square feet. The majority of the ground floor shall be restaurant and/or retail with some service office businesses allowed, such as copying, insurance, travel, banking, etc. The second story of Building C shall be office only. Building D is a minimum three stories under roof with a total square footage of approximately 26,700 square feet with a signature rotunda. The majority of the ground floor shall be restaurant and/or retail with some service office businesses allowed, such as copying, insurance, travel, banking, etc. The second and third stories of Building D shall be office only.

(kk) "Tenant" means the Tenant named herein and its permitted successors and assigns.

(ll) "Term" means as defined in Section 4(C).

(mm) "Transfer" means as defined in Section 20(B)(6).

(nn) "Work" means as defined in Section 17(A).

6. Rent.

A. Net Rent.

(1) Base and Adjustments. Tenant shall pay to Landlord, in collected funds and at the addresses specified or furnished pursuant to Section 24, during the term of this Lease a net annual rental ("Net Rent") in the amount of Five Thousand and no/100 Dollars (\$5,000.00).

(2) Annual Installments. All payments of annual Net Rent shall be made in annual installments in advance, without notice, on the first day of the month following the date of issuance of the Certificate of Occupancy for the improvements to be constructed pursuant to Section 10 of this Lease.

(3) Additional to Other Payments. Net Rent shall be in addition to all of the other payments to be made by Tenant as hereinafter provided.

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B. Rent Absolutely Net. It is the purpose and intent of the Landlord and Tenant that Net Rent payable hereunder shall be absolutely net to Landlord so that this Lease shall yield to Landlord the Net Rent herein specified, free of any charges, assessments, Impositions, or deductions of any kind charged, assessed, or imposed on or against the Premises and without abatement, deduction or set-off by the Tenant, and Landlord shall not be expected or required to pay any such charge, assessment or Imposition or be under any obligation or liability hereunder except as herein expressly set forth, and that all costs expenses, and obligations of any kind relating to the maintenance and operation of the Premises, including all construction, alterations, repairs, reconstruction, and replacements as hereinafter provided, which may arise or become due during the term hereof shall be paid by Tenant, and Landlord shall be indemnified and saved harmless by Tenant from and against such costs, expenses, and obligations in accordance with Section 16.

C. Non-Subordination. Landlord's interest in this Lease, as the same may be modified, amended or renewed, shall not be subject or subordinate to (a) any mortgage now or hereafter placed upon Tenant's interest in this Lease, or (b) any other liens or encumbrances hereafter affecting Tenant's interest in this Lease.

D. No Release of Obligations. Except for either a mutual release and waiver of rights and liabilities arising under this Lease or to the extent expressly provided in this Lease, no happening, event, occurrence, or situation during the Rental Period, whether foreseen or unforeseen, and however extraordinary (including, without limitation, Tenant's failure, refusal, or inability for any reason to construct the Shops) shall permit the Tenant to quit or surrender the Premises or this Lease nor shall it relieve the Tenant of its liability to pay the Net Rent and Additional Payments and other charges under this Lease, nor shall it relieve the Tenant of any of its other obligations under this Lease.

7. Additional Payments.

A. "Additional Payments" Defined. Tenant shall pay as Additional Payments during the Term hereof, without notice and without abatement, deduction or setoff, before any fine, penalty, interest, or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, all sums, impositions, costs, expenses and other payments and all taxes (including personal property taxes and taxes on rents, leases or occupancy, if any, and government property improvement lease excise tax), assessments, special assessments, enhanced municipal services district assessments, water and sewer rents, rates and charges, charges for public utilities, excises, levies, licenses, and permit fees, any expenses incurred by Landlord on behalf of Tenant pursuant to this Lease (including the Administrative Fee provided for herein), and other governmental or quasi-governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which, at any time during the Term hereof may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or with respect to, or become a lien on, the Premises or any part thereof, or any appurtenances thereto, any use or occupation of the Premises, or such franchises as may be appurtenant to the use of the Premises (all of which are sometimes herein referred to collectively as "Impositions" and individually as "Imposition") provided, however, that:

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(1) if, by law, any Imposition may at the option of the Tenant be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and in such event, shall pay such installments as they become due during the Term hereof before any fine, penalty, further interest or cost may be added thereto; and

(2) any Imposition (including Impositions which have been converted into installment payments by Tenant, as referred to in subparagraph (A) above) relating to a fiscal period of the taxing authority, a part of which period is included within the Term hereof and a part of which is included in the period of time after the expiration of the Term hereof shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or become a lien upon the Premises, or shall become payable, during the Term hereof) be adjusted between Landlord and Tenant as of the expiration of the Term hereof, so that Tenant shall pay that portion of such Imposition attributable to the tenancy period and Landlord shall pay the remainder thereof.

B. Payments. Tenant shall pay to Landlord, with and in addition to the monthly rental payments, all taxes imposed by any governmental unit on the rentals received by Landlord pursuant to the terms of this Lease. Tenant shall pay all other impositions directly to the taxing authority or authorities.

C. Contest. Tenant, if it shall so desire, and at its sole cost and expense, may contest the validity or amount of any Imposition, in which event, Tenant may defer the payment thereof during the pendency of such contest; provided, that upon request by Landlord at any time after the same shall have become due, Tenant shall deposit with the Landlord any amount sufficient to pay such contested item together with the interest and penalties thereon (as reasonably estimated by Landlord), which amount shall be applied to the payment of such item when the amount thereof shall be finally fixed and determined. Nothing herein contained, however, shall be so construed as to allow such item to remain unpaid for a length of time that permits the Premises or any part thereof, or the lien thereon created by such Imposition to be sold for the nonpayment of the same. If the amount so deposited shall exceed the amount of such payment, the excess shall be paid to Tenant or, in case there shall be any deficiency, the amount of such deficiency shall be promptly paid by Tenant to Landlord together with all interest, penalties or other charges accruing thereon. At any time that the Tenant hereunder is an Institutional Lender, the requirements for deposits set forth in this Section shall be waived by Landlord.

D. Assessment Reduction. Tenant if it shall so desire, and its sole cost and expense, may endeavor at any time to obtain a lowering of an imposition or assessment upon the Premises for the purpose of reducing the amount thereof. However, in such event, Landlord will not be required to cooperate with Tenant and may in fact oppose such endeavor. Tenant shall be authorized to collect any refund payable as a result of any proceeding Tenant may institute for that purpose and any such refund shall be the property of Tenant to the extent to which it may be based on a payment made by Tenant.

E. **Hold Harmless.** Landlord shall not be required to join in any action or proceeding referred to in Sections 7(C) or 7(D) (unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event any such action or proceeding may be taken by Tenant in the name of the Landlord only with Landlord's prior written consent). Tenant hereby agrees to indemnify, defend, pay and hold Landlord harmless for, from and against any and all costs, expenses, claims, loss or damage by reason of, in connection with, on account of, growing out of or resulting from, any such action or proceeding.

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

8. **Insurance.**

A. **Tenant Obligation to Insure.** Tenant shall procure and maintain for the entire Rental Period of this Lease, at Tenant's own cost and expense, insurance against casualty to or loss of the Premises and against claims for bodily injury or property damage which may arise from or in connection with this Lease by the Tenant, its agents, subtenants, employees, contractors, licensees or invitees in accordance with the insurance requirements set forth in Exhibit C attached hereto. Such obligation shall expressly include bodily injury or property damage occurring on the Public Tract. Notwithstanding the foregoing, in the event of casualty to the Shops (whether or not such casualty is insured or fully insured with respect to the cost of restoration), Tenant shall repair, restore or rebuild the Shops to its pre-casualty condition providing the required number of parking spaces (and appurtenant amenities) for the benefit of the City as described in Section 13(C).

B. **Failure to Maintain Insurance.** If Tenant fails or refuses to provide a copy of the renewal insurance certificates, together with evidence of payment of premiums therefor, or otherwise fails or refuses to procure or maintain insurance as required by this Lease, Landlord shall have the right, at Landlord's election, and without notice, to procure and maintain such insurance. The premiums paid by Landlord shall be due and payable from Tenant to Landlord on the first day of the month following the date on which the premiums were paid. Landlord shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer(s) and insured(s). The lapse or cancellation of any policy of insurance required herein, in whole or in part for the benefit of Landlord, shall be an event of default. No cure of such default can be accomplished unless a new or renewed policy is issued which specifically provides the required coverage to the Landlord for any liability arising during the lapsed or previously uncovered period.

9. **Surrender.**

A. **Surrender.** Unless Tenant has purchased the Premises pursuant to the Purchase Option set forth in Section 33, upon the expiration of the term of this Lease or on the sooner termination thereof, Tenant shall peaceably and quietly leave, surrender, and yield up to the Landlord all of the Premises broom-clean and free of occupants, and shall repair all damage to the Premises

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caused by or resulting from the removal of any removable property of Tenant, normal wear and tear excepted. Any property of Tenant or any subtenant which shall remain in the Building after the expiration of the Term hereof or sooner termination thereof shall be deemed to have been abandoned, and may either be retained by Landlord as its property or disposed of in such manner as Landlord may see fit. If such property or any part thereof shall be sold, Landlord shall receive and retain the proceeds of such sale. Tenant shall be liable to Landlord for any and all costs of removal and the repair of any and all damages caused thereby in excess of any proceeds received by Landlord from any sale of Tenant's property pursuant to this provision.

B. Waste. Tenant shall not commit or suffer to be committed any waste or impairment of the Premises.

C. Soil and Buildings Tests. Within the three (3) months immediately preceding the expiration of this Lease or within (2) two months of any earlier termination of the Lease (unless Tenant has purchased the Premises pursuant to the Purchase Option set forth in Section 33), Tenant shall deliver to Landlord a soil and building conditions report prepared in compliance with current ASTM standards by an independent qualified engineer, licensed by the State of Arizona, stating that the Premises are free of any hazardous materials as they are hereinafter defined or identified by either the United States Environmental Protection Agency or similar State agency as such. If any hazardous materials are identified, Tenant is fully personally liable for removing the hazard and leaving the Premises in a hazard free condition, except to the extent present on Premises prior to the Commencement Date or as a result of any act or omission of Landlord, its employees, agents, or contractors.

D. Failure to Correct Hazardous Conditions or Obtain Tests. Should Tenant fail to deliver to Landlord the report required by Section 9(C), Landlord may cause a report to be prepared to like effect and Tenant shall be liable to Landlord for one hundred thirty percent (130%) of the cost of said report. Should the report provided by either Landlord or Tenant state that the Premises cannot be used or leased in a hazard free condition, Tenant promptly shall cause the hazardous condition to be fully corrected at Tenant's expense, except to the extent present on Premises prior to the Commencement Date or as a result of any act or omission of Landlord, its employees, agents, or contractors. This shall not be construed as an extension of an expired or terminated lease but solely as damages to Landlord due to Tenant's activities which prevent Landlord from re-leasing the Premises. Tenant, following such lease expiration or termination, shall be allowed access to the Premises only to the extent necessary to remove or otherwise correct any hazard and shall conduct no gainful business activity whatsoever at said Premises.

E. Survival of Provisions. The provisions of this Section 9 shall survive the expiration or any termination of this Lease.

10. Landlord's Performance For Tenant. If Tenant shall fail to pay any Imposition or make any other payment required to be made under this Lease or shall default in the performance of any other covenant, agreement, term, provision, limitation, or condition herein contained, following any applicable notice required by Section 21, Landlord, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default for

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the account and at the expense of Tenant. Bills for any expense required by Landlord in connection therewith, and bills for all such expenses and disbursements of every kind and nature whatsoever, including reasonable attorney's or administrative fees, involved in collection or endeavoring to collect the rent or Additional Payments or any part thereof, or enforcing or endeavoring to enforce any right against Tenant, under or in connection with this Lease, or pursuant to law, including (without being limited to) any such cost, expense, and disbursements involved in instituting and prosecuting summary proceedings, as well as bills for any property, material, labor, or services provided furnished, or rendered, or caused to be furnished or rendered, by Landlord to Tenant, with respect to the Premises and other equipment and construction work done for the account of the Tenant together with interest at the rate of ten percent (10%) per annum compounded monthly from the respective dates of the Landlord's making of each such payment or incurring of each such cost or expense, may be sent by Landlord to Tenant monthly, or immediately, at Landlord's option, and shall be due and payable in accordance with the terms of said bills and if not paid when due the amount thereof shall immediately become due and payable as Additional Payments.

11. **Uses And Maintenance.**

A. **Absence of Warranties.** Tenant has leased the Premises after a full and complete examination thereof, as well as the title thereto and knowledge of its present uses and nonuses. Tenant accepts the same in the condition or state in which they now are without any representation or warranty, express or implied in fact or by law, by Landlord and without recourse to Landlord, as to the title thereto, the nature, condition, or usability thereof or the use or uses to which the Premises or any part thereof may be put. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Premises or to provide any off-site improvements, such as utilities or paving, or other forms of access to the Premises, other than what may already exist on the Commencement Date, as well as those services and facilities normally provided to other similar commercial properties throughout the Term hereof. Tenant hereby assumes the full and sole responsibility for the condition, construction, operation, repair, demolition, replacement, maintenance, and management of the Premises, including but not limited to the performance of all burdens running with the Land.

B. **Permitted Uses.** In no event shall the Premises or any part thereof be used for any purpose prohibited by this Lease. Regardless of the uses which would otherwise be allowed pursuant to the zoning classification or other ordinances which may be applicable to the Premises at any time during the Rental Period, the uses set forth in Exhibit D are expressly prohibited. Additionally, during the Rental Period use of the Premises by Tenant or its subtenants is hereby restricted to restaurant, entertainment, retail, office, parking and other similar or related ancillary uses and the Premises may not be used for any other purpose without the prior written consent of Landlord, which may be given or withheld at Landlord's sole discretion. Moreover, any permitted use which involves the handling, production and/or storage of Hazardous Materials on the Premises shall be subject to all applicable federal, state and local laws rules and regulations.

C. **Maintenance, Repairs, Indemnity.** Tenant shall take good care of the Premises, make all repairs thereto (including replacements, if repairs are impossible or inadequate), interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall

maintain and keep the Premises, the sidewalks, curbs, drives and landscaping (including all landscaping in adjacent public rights-of-way) and the Public Tract in first-class order, repair, and condition in accordance with City of Chandler standards and this Lease, whichever is more stringent. Tenant shall also keep the sidewalks and gutters in front of the Premises free and clear from rubbish and shall not obstruct the same or allow the same to be obstructed in any manner. Tenant shall indemnify Landlord and save it harmless from any and all claims or demands, upon or arising out of any accident, injury, or damage to any person or property occurring in or upon the Premises or any part thereof, or upon the sidewalks about the Premises, or upon the Public Tract however caused, and shall keep the Premises free and clear of any and all mechanics' liens or other similar liens or charges incidental to work done or material supplied in or about the Premises, except claims arising from the acts of Landlord.

D. Performance by Landlord. In the event Tenant fails to maintain and repair the Premises or the Public Tract in the condition required by Section 11(C) hereof, Landlord may, upon fourteen (14) days' written notice to Tenant with respect to failures of Tenant that are not emergencies, or twenty-four (24) hours' notice to Tenant with respect to failures of Tenant that are reasonably determined by Landlord to be emergencies, but without being under any obligation to do so and without thereby waiving any default, may perform or have performed any and all such work as it, in its sole and absolute discretion, deems necessary to maintain or restore the Premises and the Public Tract to their required condition. Any and all work performed by or for Landlord pursuant to this Section 11(D), shall be deemed to have been undertaken for and at the expense of Tenant. All cost incurred by Landlord in undertaking such work shall, along with an administrative fee equaling twenty percent (20%) of such costs and expenses ("Administrative Fee"), be subject to the provisions of Section 7(A) of this Lease.

E. Alterations. Except as provided in Section 10 or Section 13 hereof or with the prior written consent of Landlord, Tenant shall not erect any structures, make any improvements, or do any other construction work on the Premises or the Public Tract or alter, modify, or make additions, improvements, or repairs to or replacements of any structure, now existing or built at any time during the Term hereof, or install any fixtures (other than trade fixtures removable without injury to the Premises) which would (i) affect the structural integrity of the Shops or (ii) affect or modify the exterior or design of the Shops or (iii) interfere with or affect utility systems on the Premises (other than heating, ventilating, and air conditioning systems installed by Tenant) or (iv) require filing of plans with, or other approval by, the City of Chandler. In the event any such construction, improvement, alteration, modification, addition, repair, or replacement is made without such approval, then, upon reasonable notice so to do, the Tenant will remove the same, or, at the option of the Landlord, cause the same to be changed to the satisfaction of the Landlord. In case of any failure on the part of Tenant to comply with such notice, the Landlord may effect the removal or change, and the Tenant shall pay the costs thereof to the Landlord on demand and such costs and expenses shall be subject to the provisions of Section 7(A) of this Lease.

12. Compliance.

A. Tenant Obligations. Tenant shall assume and perform any and all obligations of Landlord under any covenants, easements, and agreements affecting the title to the Premises and

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shall diligently comply with, at its own expense during the Term hereof, all present and future laws, acts, rules, requirements, orders, directions, ordinances, and/or regulations, ordinary or extraordinary, foreseen or unforeseen, concerning the Premises or any part thereof, or the use thereof, or the Public Tract or the use thereof, or the public rights-of-way adjacent thereto, of any federal, state, municipal, or other public department, bureau, officer, or authority, or other body having similar functions ("Applicable Laws"), or of any liability, fire, or other insurance company having policies outstanding with respect to the Premises, whether or not such laws, acts, rules, requirements, orders, directions, ordinances and/or regulations require the making of structural alterations or the use or application of portions of the Premises for compliance therewith or interfere with the use and enjoyment of the Premises, the intention of the parties being with respect thereto that Tenant during the Term hereby granted, shall discharge and perform all the obligations of Landlord, as well as all obligations of Tenant, arising as aforesaid, and save Landlord harmless therefrom, so that at all times the rental of the Premises shall be net to the Landlord without deduction or expenses on account of any such law, act, rule, requirement, order direction, ordinance and/or regulation whatever it may be; provided, however, that Tenant may, in good faith (and wherever necessary, in the name of, but without expense to and with the prior written permission of, Landlord), contest the validity of any such law, act, rule, requirement, order, direction, ordinance and/or regulation and, pending the determination of such contest, may postpone compliance therewith, except that Tenant shall not so postpone compliance therewith, as to subject Landlord to the risk of any fine or penalty or to prosecute for a crime, or to cause the Premises or any part thereof to be condemned or to be vacated.

B. Certificate of Occupancy. Tenant shall obtain any certificate of occupancy with respect to the Premises which may at any time be required by any governmental agency having jurisdiction thereof.

13. **Construction And Operation Of Project.**

A. Project. Tenant shall construct the Shops and all appurtenant improvements on the Property and the Public Tract.

(1) Commencement of vertical construction of all structures required under this Lease and Lease 1 (evidenced by framing above foundation slabs) shall occur no later than September 1, 2012.

(2) The Shops and any improvement required with respect to the Public Tract shall be constructed in accordance with the approved plans and specifications.

(3) Tenant will construct all improvements in a good, careful, proper, and workmanlike manner in accordance with (a) the approved plans and specifications; (b) all provisions of law and any and all permits and authority required by ordinance, code, law, or public regulations or by any authority at any time having jurisdiction over the Premises; and (c) the requirements of any public or quasi-public body having similar jurisdiction.

(i) Tenant will comply with all applicable public bidding requirements in connection with the construction of the Shops; provided, however, to the extent permitted by Applicable Laws, Tenant shall not be obligated to accept the low bid and may reject any and all bids.

(ii) Landlord will be an additional insured on all liability insurance policies maintained by Tenant and its contractor(s) during construction of all improvements on the Parcels.

(4) Construction of all improvements shall be diligently prosecuted to completion.

(5) Completion of construction of the Project and of the Lease 1 Improvements (evidenced by issuance of certificates of completion or occupancy or similar approvals issued by the City of Chandler certifying compliance with all applicable building codes and indicating the Improvements are in a condition suitable for occupancy, each a "Certificate of Occupancy") shall be no later than September 1, 2013.

(6) In addition to the foregoing, and prior to the City's having any obligation to issue a Certificate of Occupancy for the Shops, Tenant shall have demonstrated, to Landlord's reasonable satisfaction, that Tenant (or Phase I Developer, as applicable) has completed all improvements (including but not limited to curbs, driveways, sidewalks, parking lots and landscaping) that (i) were not previously completed as part of the plans approved by the City in connection with the Phase I Development Agreement, and (ii) were required in connection with Lease 1 and the completion of all Lease 1 Improvements.

B. Ownership of Buildings and Improvements.

(1) During Term. Prior to receipt of a Certificate of Occupancy, title to all buildings and improvements constructed on the Premises by Tenant pursuant to this Lease shall be in the Tenant.

(2) Upon Completion. Following issuance of a Certificate of Occupancy and thereafter, title to all buildings and improvements constructed on the Premises by Tenant pursuant to this Lease, together with any improvements or other infrastructure constructed on the Public Tract, shall be automatically vested in the Landlord without further act, notice or instrument required (the "Accretion"), subject to this Lease; and the use and occupancy of the improvements shall be subject to all terms and conditions of this Lease. There shall be no increase in the rental payment owing to Landlord as a result of the Accretion.

(3) Ownership at Termination. Unless Tenant has purchased the Premises pursuant to the Purchase Option set forth in Section 33, on the expiration or sooner termination of this Lease, title to all buildings and improvements, which constitute or are a part of the Premises, exclusive of trade fixtures and personal property of Lessee and subtenants, shall (without the payment of compensation to Tenant or others) remain in Landlord free and clear of all claims and encumbrances on such buildings and improvements by Tenant, and anyone claiming under or through Tenant. Any piping, wells, pumps, tanks or other equipment installed on the Premises by

Tenant shall be left in a structurally sound, nonleaking condition so as not to become the source of any future environmental contamination or hazard. Upon request, Tenant shall quitclaim to Landlord its possessory interest in the buildings and improvements. Tenant shall indemnify, defend, pay and hold Landlord harmless for, from and against any and all liability and loss which may arise from the assertion of any claims and any encumbrances on such buildings and improvements; provided, however, such duty to indemnify and hold harmless shall not apply to any claims or encumbrances which are attributable to the acts or conduct of the Landlord. Additionally, Tenant shall assign to Landlord, and Landlord shall be entitled to the benefit of, any licenses, warranties or guarantees applicable to equipment, systems, fixtures or personal property conveyed or otherwise transferred to, or for the benefit of, Landlord under this Lease. The foregoing notwithstanding, Tenant shall not quitclaim its possessory interest in the aforementioned buildings and equipment to Landlord until such buildings and equipment have been inspected by Landlord and they have been determined not to present a potential environmental hazard. This provision shall survive the expiration or earlier termination of this Lease.

(4) Tenant's Management and Operating Covenant. Following issuance of the Certificate of Occupancy and continuing during the remainder of the Term, Tenant shall prudently manage and operate (or cause to be managed and operate) the Shops and will properly maintain all improvements and the Premises in good condition and repair, reasonable wear and tear excepted.

14. Impairment Of Landlord's Title.

A. No Liens. Tenant shall not create, or suffer to be created or to remain, and shall promptly discharge any mechanic's, laborer's, or materialman's lien which might be or become a lien, encumbrance, or charge upon the Premises or any part thereof or the income therefrom and Tenant will not suffer any other matter or thing arising out of Tenant's use and occupancy of the Premises whereby the estate, rights, and interests of Landlord in the Premises or any part thereof might be impaired.

B. Discharge. If any mechanic's, laborer's, or materialman's lien shall at any time be filed against the Premises or any part thereof, Tenant, within thirty (30) days after notice of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise. Tenant shall notify Landlord in writing of its action to either satisfy or contest the lien and, if contested, of the matter's status on a monthly basis until concluded. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by Landlord and costs and expenses incurred by Landlord in connection therewith, shall constitute an Additional Payment payable by Tenant and shall be paid by Tenant to Landlord on demand.

C. No Implied Consent. Nothing contained in this Lease shall be deemed or construed in any way as constituting Landlord's expressed or implied authorization, consent or request to any contractor, subcontractor, laborer or materialman, architect, or consultant, for the construction or

demolition of any improvement, the performance of any labor or services or the furnishing of any materials for any improvements, alterations to or repair of the Premises or any part thereof.

D. No Agency Intended. The parties acknowledge that Tenant is entitled to construct the Shops. In connection therewith, the parties agree that Tenant is not the agent of Landlord for the construction, alteration or repair of any improvement Tenant may construct upon the Premises, the same being done at the sole expense of Tenant.

E. Public Tract. Tenant shall not grant (or purport to grant) to any subtenant, licensee, invitee or other person, any right or interest in or to any portion of the Public Tract.

15. Inspection. Landlord shall have the right to enter upon the Premises, or any part thereof, for the purpose of ascertaining their condition or whether Tenant is observing and performing the obligations assumed by it under this Lease, all without hindrance or molestation from Tenant, provided that (absent an emergency) such entry does not interfere with Tenant's business operations and provided that Landlord shall give Tenant at least twenty (20) days written notice prior to any inspection of any building interior. This twenty (20) days notice provision shall not be construed to prohibit or delay any entry by Landlord in its capacity as a municipality exercising its police power or in its criminal law enforcement capacity, nor to any entry authorized by any writ or warrant issued by any Court, nor to any entry authorized by any health or welfare statute, code, ordinance, rule or regulation.

16. Indemnification of Landlord.

A. Indemnification. Tenant shall indemnify, defend, pay and hold Landlord harmless for, from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including property damage, personal injury and wrongful death and further including, without limitation, architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against Landlord by reason of any of the following occurring during the term unless caused by the Landlord, its agents or employees or a failure to act by the Landlord, its agents or employees when a duty to act is present:

(1) construction of any improvements constituting the Project or any other work or thing done in, on or about the Premises or any part thereof by Tenant or its agents;

(2) any use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or the Public Tract or any nuisance made or suffered thereon or any failure by Tenant to keep the Premises or improvements or any part thereof, in a safe condition;

(3) any acts of the Tenant or any subtenant or any of its or their respective agents, contractors, servants, employees, licensees or invitees;

(4) any fire, accident, injury (including death) or damage to any person or property occurring in, on or about the Premises or the Public Tract or any part thereof;

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(5) any failure on the part of Tenant to pay rent or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with and the exercise by Landlord of any remedy provided in this Lease with respect thereto;

(6) any lien or claim which may be alleged to have arisen against or on the Premises or improvements or any part thereof or any of the assets of, or funds appropriated to, Landlord or any liability which may be asserted against Landlord with respect thereto to the extent arising, in each such case, out of the acts of Tenant, its contractors, agents, sublessees;

(7) any failure on the part of Tenant to keep, observe, comply with and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the subleases or other contracts and agreements affecting the Premises or the Public Tract or any part thereof, on Tenant's part to be kept, observed or performed;

(8) any transaction relating to or arising out of the execution of this Lease or other contracts and agreements affecting the Premises or the Public Tract, the Shops or any part thereof or any activities performed by any party, person or entity which are required by the terms of this Lease or such other contracts and agreements;

(9) any tax, including any tax attributable to the execution, delivery or recording of this Lease, with respect to events occurring during the term of this Lease.

B. Tenant will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises and improvements at the sole risk of Tenant and indemnify, defend, pay and hold Landlord harmless for, from and against any and all loss or damage thereto by any cause whatsoever.

C. The obligations of Tenant under this Section shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Premises and the Public Tract.

D. If any claim, action or proceeding is made or brought against Landlord by reason of any event to which reference is made in this Section, then, upon demand by Landlord, Tenant, at its sole cost and expense, shall resist or defend such claim, action or proceeding in Landlord's name, if necessary, by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys as Landlord shall approve, which approval shall not be unreasonably withheld or delayed; provided however that nothing in this Lease shall prevent or prohibit Landlord from assisting in its own defense at its sole cost and expense and with attorneys of its choosing. If, in Landlord's reasonable discretion, Tenant fails timely and diligently to undertake such defense, then Landlord may engage its own attorneys to defend it, and Tenant shall pay on demand the reasonable fees and disbursements of such attorneys.

The provisions of this Section 16 shall survive the expiration or earlier termination of this Lease.

17. **Damage Or Destruction.**

A. **Tenant Repair and Restoration.** If, at any time during the Term, the Premises or the Public Tract or any part thereof shall be damaged or destroyed by fire or other occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant, at its sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, shall proceed with reasonable diligence to repair, alter, restore, replace, or rebuild the same as nearly as possible to its value, condition, and character immediately prior to such damage or destruction. Such repair, alteration, restoration, replacement, or rebuilding, including such changes and alterations as aforementioned and including temporary repairs for the protection of other property pending the completion of any thereof, are sometimes referred to in this Section as the "Work." Anything herein to the contrary notwithstanding, Tenant shall immediately secure the Premises and undertake temporary repairs and work necessary to protect the public and to protect the Premises from further damage.

B. **Payment of Insurance Proceeds.** All insurance proceeds on account of such damage or destruction under the policies of insurance provided for in Section 5, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof (herein sometimes referred to as the "insurance proceeds") shall be paid to the Depository and held in an interest bearing account. All insurance proceeds shall be applied by the Depository to the payment of the cost of the Work to the extent such insurance proceeds shall be sufficient for the purpose, and shall be paid out to or for the account of Tenant from time to time as such Work progresses. The Depository shall make such payments or disbursements upon the written request by Tenant when accompanied by the following:

(1) **Certificate of Costs.** A certificate dated not more than fifteen (15) days prior to such request, signed by Tenant (by an officer, if Tenant be a corporation) and by an architect in charge of the Work who shall be selected by Tenant setting forth that:

(a) The sum then requested either has been paid by Tenant or is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the Work, giving a brief description of the services and materials and the several amounts so paid or due and stating that no part thereof has been made the basis of any previous or then pending request or has been paid out of any insurance proceeds received by Tenant, and that the sum requested does not exceed the value of the services and materials described in the certificate. If sums are sought by way of reimbursement the request shall be accompanied by a lien release; if sums are sought for payment in the first instance a lien release shall be submitted to the Depository within seven (7) day of disbursement by the Depository; and,

(b) Except for the amount stated in such certificate to be due as aforesaid, there is no outstanding indebtedness known to the persons signing such certificate after due inquiry which might become the basis of a vendor, mechanic, or materialman or similar lien upon such Work, the Premises or Tenant's leasehold interest, or any part thereof, and

(2) Sums Paid to Tenant. Upon compliance with the foregoing provisions of this Section, the Depository, out of the insurance proceeds, shall pay or cause to be paid to Tenant or to the persons named in the certificate the respective amounts stated therein to have been paid by Tenant or to be due to them, as the case may be. Upon receipt by the Depository of a lien release from every contractor and subcontractor working on the Shops and such other evidence satisfactory to it of the character required by Section 17(B)(2) that the Work is complete and paid for in full and that there are no liens of the character referred to therein, and if Tenant is not then in default, the Depository shall pay to Tenant any remaining balance of said insurance proceeds.

(3) Deficiency. If the insurance proceeds received by the Depository shall not be sufficient to pay the entire cost of the Work, Tenant shall supply the amount of any such deficiency. Under no circumstances shall Landlord be obligated to make any payment, reimbursement, or contribution towards the cost of the Work.

C. Failure to Commence Repairs. If the Work shall not have been commenced within one hundred and eighty (180) days after the date of the damage or destruction, or if such Work after commencement shall not proceed expeditiously or is not completed within 18 months after commencement, Landlord may terminate this Lease pursuant to Section 18. On such termination the insurance proceeds received by the Depository shall be paid to Landlord to be used in the reconstruction or restoration of the Project, and any remaining proceeds shall be paid over by Landlord to the Tenant, but subject to the rights of any Permitted Mortgagee as herein set forth.

D. Cure by Mortgagee. If, within thirty (30) days from receipt by a Permitted Mortgagee of Landlord's notice of any default of Tenant, the holder of the Permitted Mortgage moves, either itself or through a receiver, to take possession of the Premises and begins or continues the Work, and if, with respect to any default by Tenant under this Lease, the right of Landlord to terminate this Lease shall not have accrued, then the Depository shall pay over to the holder of such Permitted Mortgage, or to the receiver, as the case may be, the proceeds of insurance pursuant to Section 17(B) upon receipt from the holder of such Permitted Mortgage or such receiver of the certificates of the character required from Tenant under Section 17(B)(1), provided that such proceeds be used to complete the Work promptly and expeditiously.

E. Lease Obligations Continue. In no event shall Tenant be entitled to any abatement, allowance, reduction, or suspension of rent because part or all of the Premises shall be untenantable owing to the partial or total destruction thereof. No such damage or destruction shall affect in any way the obligation of Tenant to pay the rent, Additional Payments, and other charges herein reserved or required to be paid, nor release Tenant of or from obligations imposed upon Tenant hereunder.

18. **Condemnation**.

A. Total, Substantial, or Unusable Remainder. If at any time during the term of this Lease, title to the whole or substantially all of the Premises shall be taken in condemnation proceedings or by any right of eminent domain or by agreement in lieu of such proceedings, this Lease shall terminate and expire on the date possession is transferred to the condemning authority

and the Net Rent and Additional Payments reserved shall be apportioned and paid to the date of such taking. All compensation paid by the condemning authority in the case of any condemnation (total or partial) shall be the sole property of Tenant free and clear of any right, title, claim or interest of Landlord.

B. Partial Taking--Lease Continues. In the event of any taking of less than the whole or substantially all of the Premises, neither Rental Period of this Lease shall not be reduced or affected in any way. In such a case, the Net Rent payable for that part of the balance of the Term hereof occurring prior to the termination or expiration of the Lease, shall be based on the ratio of the remaining square footage of leased Land to the square footage of the land prior to the condemnation.

C. Rights of Participation. Tenant shall have the sole right, at its own expense, to appear in and defend any condemnation proceeding and participate in any and all hearings, trials, and appeals therein. Landlord shall, at the request of Tenant, shall execute a Disclaimer of Interest in the condemnation action evidencing the fact that Landlord has no interest in the proceeds of the condemnation.

D. Notice of Proceeding. In the event Landlord or Tenant shall receive notice of any proposed or pending condemnation proceedings affecting the Premises, the party receiving such notice shall promptly notify the other party of the receipt and contents thereof.

E. Relocation Benefits. Tenant shall also retain any federal, state or local relocation benefits or assistance provided in connection with any condemnation or prospective condemnation action.

19. **[Reserved]**

20. **Encumbrances and Assignments.**

A. Tenant may encumber its leasehold interests to obtain construction and permanent financing for the Shops and appurtenant improvements (a "Permitted Mortgage"), subject to the following:

(1) Tenant may encumber its interest in this Lease and the Premises only if (i) Tenant is not then in default of any of its obligations under the Development Agreement; (ii) Tenant's Affiliate has completed all of the Phase 1 Improvements in accordance with the Phase 1 Development Agreement; and (iii) Tenant has a commitment in form reasonably acceptable to Landlord for construction financing for the Shops and Lease 1 Improvements from a recognized institutional lender (and has demonstrated such committed financing to Landlord). There may be only one Permitted Mortgage in existence with respect to this Lease at any time, and junior liens or encumbrances of any kind are prohibited. The holder of a Permitted Mortgage shall be a "Permitted Mortgage."

(2) A Permitted Mortgage encumbering this Lease and the Premises may only be in favor of a lender for the improvements to be constructed on Parcels 3, 4 and 6; provided, however, U:\ATTORNEYS\JHP\18513-1 (City of Chandler)\GPLET Lease Parcel 3-4 2011.3 (01.08.11).doc

Tenant may obtain two leasehold financing commitments, one for the Shops and another for the Lease 1 Improvements, each of which is conditioned upon the financing of the improvements required to be completed pursuant to the other lease.

(3) With respect to such leasehold financing, Landlord will agree to a form of commercially standard non-disturbance and recognition agreement with Tenant's Lender as well as other reasonable, non-material modifications to the applicable Lease requested by a recognized institutional lender.

(4) Leasehold financing will further be subject to a suitable intercreditor agreement between Tenant's lender and Landlord dealing with such issues as completion of construction of the Shops and the Lease 1 Improvements, and the operation of the Shops, in the event of a default by Tenant. The intercreditor agreement will address conditions for removing any cross-default provisions and any repurchase restrictions imposed by this Lease upon completion of a foreclosure of the lender's interest.

(5) A Permitted Mortgage cannot secure obligations other than costs and expenses in connection with the construction of the applicable improvements and the projects contemplated by the mortgaged lease.

(6) A Permitted Mortgage shall cover no interest in the real property other than Tenant's interest in the Premises;

(7) Tenant or the holder of a Permitted Mortgage shall promptly deliver to Landlord in the manner herein provided for the giving of notice to Landlord, a true copy of the Permitted Mortgage(s), of any assignment thereof, and of the satisfaction thereof; and

(8) For the purpose of this Section 20, the making of a Permitted Mortgage shall not be deemed to constitute an assignment or transfer of this Lease, nor shall any holder of a Permitted Mortgage, as such, be deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such holder of a Permitted Mortgage, as such, to assume the performance of any of the terms, covenants, or conditions on the part of Tenant to be performed hereunder; but the purchaser at any sale of this Lease in any proceedings for the foreclosure of any Permitted Mortgage, or the assignee or transferee of this Lease under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Mortgage, shall be deemed to be an assignee or transferee within the meaning of this Section and shall be deemed to have assumed the performance of all the terms, covenants, and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment.

B. An assignment of this Lease to another entity (a "Transfer") is permitted only as follows:

(1) During construction, and for the first four (4) years from the issuance of the certificate of occupancy (or comparable instrument) for the applicable improvements, no Transfer is

permitted. Notwithstanding the foregoing, the City may approve a Transfer during this period in its sole, absolute and unfettered discretion.

(2) For the next four years thereafter, any Transfer will require the City's approval in its reasonable commercial discretion.

(3) If Tenant does Transfer this Lease during the first eight (8) year period, an exit fee shall be paid to the City in the amount of Four Hundred Thousand Dollars (\$400,000.00).

(4) Following year 8, no exit fee will be charged.

(5) Notwithstanding the foregoing, any of these requirements can be waived in the City's sole and absolute discretion.

(a) A "Transfer" shall be a transfer, assignment or conveyance of Tenant's interest in this Lease, or of any member's or manager's interest in Tenant or in Desert Viking Properties, LLC, to an individual other than Niels E. Kreipke and/or Michael W. Hogarty, or to an entity in which Niels E. Kreipke or Michael W. Hogarty (individually or collectively) does not maintain both (i) a 25% percent entity interest, and (ii) effective and exclusive daily management and control of such entity for a period of at least three (3) years following such Transfer.

(6) The restriction on Transfer shall not limit the granting of easements or permits reasonably necessary or customary in the normal course of development, prohibit normal tenant leasing activity, restrict typical or customary financing activity, or the prohibit the opportunity to replace equity investors other than Tenant (provided that such replacement does not constitute a Transfer as defined in Section 20(B)(6). Further, a Transfer shall not include the foreclosure by the beneficiary of a leasehold deed of trust, of its beneficial interest in the applicable lease; provided, however, that such beneficiary shall be an unaffiliated third-party lender acting in good faith.

(7) Rent From Assignee. If this Lease is assigned, whether or not in violation of the provisions hereof, Landlord may and hereby is empowered to collect rent from the assignee. In such event, Landlord may apply the net amount received by it to Net Rent and Additional Payments, and no such collection shall be deemed a waiver of the covenant herein against assignment, or an acceptance of the assignee or subtenant as a Tenant under this Lease, or a release of Tenant from the further performance of the covenants herein contained on the part of Tenant. Nothing herein contained shall be deemed to prohibit Tenant from assigning its interest in this Lease or its interest as sublessor in any subleases to the holder of any Permitted Mortgage as further security for the indebtedness outstanding under such Mortgage.

(8) Continuing Liability. The making of any assignment in whole or in part, shall not operate to relieve Tenant from its obligations under this Lease and, notwithstanding any such assignment, except as otherwise provided in this Section, Tenant shall remain liable for the payment of all Net Rent and Additional Payments and for the due performance of all the covenants, agreements, terms, and provisions of this Lease to the full end of the Term hereof, whether or not there shall have been any prior termination of this lease by summary proceedings or otherwise.

(9) Assignee Bound. Every assignee, whether as assignee or as successor in interest of any assignee of Tenant herein named or as assignee of the holder of any Permitted Mortgage, or as successor in interest of any assignee, including any purchaser of the Lease under a foreclosure of any Permitted Mortgage, shall immediately be and become and remain liable for the payment of Net Rent and Additional Payments, and for the due performance of all the covenants, agreements, terms, and provisions hereof on Tenant's part to be performed to the end of the Term hereof, and every provision of this Lease applicable to Tenant shall apply to and bind every such assignee and purchaser with the same force and effect as though such assignee or purchaser were the Tenant named in this Lease. No transfer to such assignee or to such purchaser shall be binding upon Landlord unless such assignee or purchaser shall deliver to the Landlord a recordable instrument which contains a covenant of assumption by said assignee or purchaser to such effect, but the failure or refusal of such assignee or purchaser to deliver such instrument shall not release or discharge such assignee or purchaser from its obligations and liability as above set forth.

(10) Consent Limited. Any consent by Landlord herein contained or hereafter given to any act of assignment, shall be held to apply only to the specific transaction hereby or thereby approved. Such consent shall not be construed as a waiver of the duty of Tenant, or its successors or assigns, to obtain Landlord's consent to any other or subsequent assignment, or as a modification or limitation of the right of Landlord with respect to the foregoing covenant by Tenant.

(11) Notice of Transfer. Tenant shall deliver written notice of (i) any Transfer, or (ii) any transfer, conveyance or assignment of Tenant's rights in this Lease that is not a Transfer, within three (3) business days following the completion of such transaction, together with a true and complete copy of the instrument (or instruments) effecting such Transfer or other conveyance.

21. **Default By Tenant.**

A. Events of Default. The happening of any one of the following events (each, an "Event of Default") shall be considered a material breach and default by Tenant under this Lease:

(1) Monetary Default. If default shall be made in the due and punctual payment of any Net Rent or Additional Payments within thirty (30) days after written notice thereof to Tenant; or

(2) Non-Monetary Default. If default shall be made by Tenant in the performance of or compliance with any of the covenants, agreements, terms, limitations, or conditions hereof other than those referred to in the foregoing subsection (A), and such default shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant (provided, that if Tenant proceeds with due diligence during such thirty (30) day period to substantially cure such default and is unable by reason of the nature of the work involved, to cure the same within the required thirty (30) days, its time to do so shall be extended by the time reasonably necessary to cure the same; or

(3) Bankruptcy, Voluntary. If Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall take the benefit of any relevant legislation that may be in force for bankrupt or insolvent debtors or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state, or other statute, law or regulation, or if Tenant shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties, or shall make any general assignment for the benefit of creditors; or

(4) Bankruptcy, Involuntary. If a petition shall be filed against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation, and shall remain undismissed or unstayed for ninety (90) days, or if any trustee, receiver or liquidator of Tenant, or of all or substantial part of its properties, shall be appointed without the consent or acquiescence of Tenant and such appointment shall remain unvacated and unstayed for ninety (90) days; or

(5) Insurance, Lapse or Termination. Notwithstanding the provisions of paragraph B, above, the lapse or cancellation of any policy of insurance required herein, in whole or in part for the benefit of Landlord, shall be an event of default. No cure of such default can be accomplished unless a new or renewed policy is issued which specifically provides the required coverage to the Landlord for any liability arising during the lapsed or previously uncovered period.

B. Notice and Termination. Upon the occurrence of one or more of the events listed in Section 21(A) the Landlord at any time thereafter, but not after such default is cured, may give written notice ("Second Notice") to Tenant and any permitted mortgagee specifying such Event(s) of Default and stating that this Lease and the term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least thirty (30) days after the giving of such Second Notice, and upon the date specified in such Second Notice, subject to the Event of Default having been cured or remedied on or prior to the date set forth in the Second Notice, this Lease and the term hereby demised and all rights of Tenant under this Lease shall expire and terminate as though such date were the date originally set forth herein for the termination hereof.

C. Tenant Liability Continues. No such expiration or termination of this Lease shall relieve Tenant of its liability and obligations under this Lease, and such liability and obligations shall survive any such expiration or termination. In the event of any such expiration or termination, whether or not the Premises or any part thereof shall have been relet, Tenant shall pay to Landlord the Net Rent and Additional Payments required to be paid by Tenant up to the time of such expiration or termination of this Lease, and thereafter Tenant, until the end of what would have been the Term of this Lease in the absence of such expiration or termination, shall be liable to Landlord for, and shall pay to Landlord, as and for the liquidated and agreed current damages for Tenant's default:

The equivalent of the amount of the Net Rent and Additional Payments which would be payable hereunder by Tenant if this Lease were still in effect, less the net proceeds of any reletting effected pursuant to the provisions of Section 18.3 after deducting all Landlord's expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage

commissions, legal expenses, reasonable attorney's fees, alteration costs, and expenses of preparation for such reletting, which shall be due and payable to Landlord on the days on which the Net Rent and Additional Payments would have been payable under this Lease if this Lease were still in effect.

D. No Implied Waivers. No failure by Landlord to insist upon the strict performance of any covenant, agreement, term or condition hereof or to exercise any right or remedy consequent upon a breach hereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition hereof to be performed or complied with by Landlord or Tenant, and no breach thereof, shall be waived, altered or modified, except by a written instrument executed by the party to be charged therewith. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term, limitation and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach hereof.

E. Remedies Cumulative. In the event of any breach by Tenant of any of the covenants, agreements, terms or conditions hereof, Landlord, in addition to any and all other rights, shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise for such breach as though reentry, summary proceedings, and other remedies were not provided for in this Lease. In the event of Tenant's failure to pay Net Rent or Additional Payments on the date when due, Tenant shall pay Landlord interest on any such overdue payments and associated late charges at the rate of two percent (2%) per month, but in no event an amount greater than permitted by law, but this shall in no way limit any claim for damages for Landlord for any breach or default by Tenant.

F. Late Charge. In the event that any payment required to be made by Tenant to Landlord under the terms of this Lease is not received within ten (10) days after the due date thereof, a late charge shall become immediately due and payable as an Additional Payment in an amount equal to two and one-half percent (2.5%) of the late payment.

G. Specific Performance. If a default is not commenced to be cured within thirty (30) calendar days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, Landlord may, at its option, thereafter (but not before) commence an action for specific performance of the terms of this Lease pertaining to such default.

22. Default By Landlord.

A. Limitations of Landlord's Liability. The term "Landlord," as used herein, so far as Landlord's covenants and agreements hereunder are concerned, shall be limited to mean and include only the owner or owners of the fee title to the Premises or those having the right of immediate possession in a pending condemnation action at the time in question. In the event of any conveyance of such title, and regardless of whether the grantee is financially responsible or solvent and notwithstanding that the grantor may be a stockholder, officer or director of a corporate grantee, Landlord herein named and each subsequent grantor shall be automatically relieved, from and after the date of such conveyance, of all personal liability as respects the performance of any of Landlord's

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covenants and agreements thereafter to be performed, and such grantee shall be bound by all such covenants and agreements; it being intended that Landlord's covenants and agreements shall be binding on Landlord, its successors and assigns, only during and in respect of their successive periods of ownership.

B. Remedies. In the event of any breach by Landlord of any of the covenants, agreements, terms, or conditions hereof, Tenant, in addition to any and all other rights, shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise for such breach.

23. Unenforceable Terms. If any term or provision hereof or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision hereof shall be valid and be enforced to the fullest extent permitted by law.

24. **Notices.** Any notice, request, demand, statement, or consent herein required or permitted to be given by either party to the other hereunder, shall be in writing signed by or on behalf of the party giving the notice and addressed to the other at the address as set forth below:

Landlord

City of Chandler
City Manager
P. O. Box 4008, MS 605
Chandler, Arizona 85244-4008

and

City of Chandler
City Attorney's Office
P.O. Box 4008, MS 602
Chandler, Arizona 85244-4008

Tenant

SMC II, L.L.C.
c/o Niels E. Kreipke or Michael W. Hogarty
101 West Commonwealth Avenue
Chandler, Arizona 85225

and

R. Neil Irwin, Esq.
Bryan Cave
2 North Central Avenue
Phoenix, Arizona 85004

Each party may by notice in writing change its address for the purpose of this Lease, which address shall thereafter be used in place of the former address. Each notice, demand, request, or communication which shall be mailed to any of the aforesaid shall be deemed sufficiently given, served, or sent for all purposes hereunder (i) two business days after it shall be mailed by United States registered or certified mail, postage prepaid and return receipt requested, in any post office or branch post office regularly maintained by the United States Postal Service, (ii) upon personal delivery, or (iii) one business day after deposit with any recognized commercial air courier or express service. Any communication made by e-mail or similar method shall not constitute notice pursuant to this Lease.

25. **Condition of Premises.** Tenant represents that the Premises, the title to the Premises, parking, drive and walk areas adjoining the Premises (including but not limited to the Public Tract), the environmental condition of the Premises any subsurface conditions thereof, and the present uses and nonuses thereof, have been examined by Tenant and that Tenant accepts the same in the condition or state in which they or any of them may be on the date of the execution of this Lease, without representation or warranty, express or implied in fact or by law, by Landlord and without

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recourse to Landlord, as to the nature, condition, or usability thereof or the use or uses to which the Premises or any part thereof may be put.

26. **Quiet Enjoyment.**

A. **Quiet Enjoyment.** Subject to all of the conditions, terms, and provisions contained in this Lease, Landlord covenants that Tenant, upon paying the Net Rent, and additional payments and observing and keeping all terms, covenants, agreements, limitations, and conditions hereof on its part to be kept, shall quietly have and enjoy the Premises during the term hereof, without hindrance or molestation by Landlord.

B. **Construction Activities.** Tenant acknowledges and understands that construction activities may be undertaken by Landlord (or its tenants) from time to time in connection with periodic renovations to or redevelopment of the adjacent arena property owned by Landlord, and Tenant is proceeding with its development of the Shops with the understanding that such activities will generate a certain amount of noise or temporary inconveniences.

27. **Estoppel Certificates.** Landlord or Tenant may request a certificate evidencing whether or not:

A. The Lease is in full force and effect along with the amount and current status of the Net Rent and Additional Payments due hereunder;

B. The Lease has been modified or amended in any respect or describing such modifications or amendments, if any; and

C. There are any existing defaults thereunder, to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any.

Such certificate shall be returned to the requesting party not later than twenty (20) days following receipt of the request. The failure of the receiving party to return the certificate within the specified period shall be deemed an acknowledgement of the correctness of the matters set forth in the certificate.

28. **Consents.**

A. **Parties and Notice.** Whenever the consent or approval of a party to this Lease is required or reasonably requested under this Lease, if they fail to notify the other party in writing within thirty (30) days (except where a different period is otherwise specified herein for the giving of such consent or approval) after the giving of a written request therefor in the manner specified herein for the giving of notice, it shall be concluded that such consent or approval has been given.

B. **No Unreasonable Withholding.** Wherever in this Lease the consent or approval of either party is required, such consent or approval shall not be unreasonably withheld nor delayed, except where otherwise specifically provided.

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29. **Limitation of Landlord's Liability.** Landlord shall not be responsible or liable for any damage or injury to any property, fixtures, merchandise, or decorations or to any person or persons at any time on the Premises from steam, gas, electricity, water, rain, or any other source whether the same may leak into, issue or flow from any part of the Building or from pipes or plumbing work of the same, or from any other place or quarter; nor shall Landlord be in any way responsible or liable in case of any accident or injury including death to any of Tenant's employees, agents, subtenants, or to any person or persons in or about the Premises or the streets, sidewalks or vaults adjacent thereto; and Tenant agrees that it will not hold Landlord in any way responsible or liable therefore unless caused by Landlord. Landlord shall not be liable for interference with light or incorporeal hereditaments caused by anybody or the operation of or for any governmental authority in the construction of any public or quasi-public work and Landlord shall not be liable for any latent or any other defects in the Premises.

30. **Miscellaneous.**

A. **Tax Incentives.** The Property is located in a "slum" or "blighted" area designated for redevelopment within a single central business district. It is further acknowledged by Landlord that the improvements to be made to the Property pursuant to this Lease will result in an increase in its value of at least one hundred percent (100%) from the date of Tenant's possession of the Property pursuant to this Lease to the date of Landlord's issuance to the Tenant of a Certificate of Occupancy for the Shops. Accordingly, it is the intent of the parties that, pursuant to the provisions of A.R.S. Section 42-6209 or any applicable substitute legislation which may hereafter be enacted, Tenant shall not be required to pay any government property lease excise tax upon the Shops for the eight (8) year period commencing with the issuance of a Certificate of Occupancy for the Shops.

B. **City's Right of Cancellation.** All parties hereto acknowledge that this agreement is subject to cancellation by the City of Chandler pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

C. **Choice of Law.** This Lease shall be construed and enforced in accordance with the laws of the State of Arizona.

D. **Memorandum.** Landlord and Tenant agree that at the request of either, each will execute a short form memorandum of this Lease in a form satisfactory for recording in the Office of the County Recorder, Maricopa County, Arizona.

E. **Entire Agreement.** This Lease with its schedules and annexes contains the entire agreement between Landlord and Tenant and any executory agreement hereafter made between Landlord and Tenant shall be ineffective to change, modify, waive, release, discharge, terminate, or effect an abandonment of this Lease, in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, waiver, release, discharge, termination, or the effect of the abandonment is sought.

F. Captions. The captions of Sections in this Lease are inserted only as a convenience and for reference and they in no way define, limit, or describe the scope of this Lease or the intent of any provision thereof. References to Section numbers are to those in this Lease unless otherwise noted.

G. Execution and Delivery. This Lease shall bind Tenant upon its execution thereof. Landlord shall be bound only after it executes and delivers the Lease to Tenant.

H. Singular and Plural, Gender. If two or more persons, firms, corporations, or other entities constitute either the Landlord or the Tenant, the word "Landlord" or the word "Tenant" shall be construed as if it reads "Landlords" or "Tenants," and the pronouns "it," "he," and "him" appearing herein shall be construed to be the singular or plural, masculine, feminine, or neuter gender as the context in which it is used shall require.

I. Multiple Parties. If at any time Landlord, Tenant, or any Permitted Mortgagee (Landlord, Tenant or any such mortgagee being in this Section referred to as a "party") is other than one individual, partnership, firm, corporation, or other entity, the act of, or notice, demand, request, or other communication from or to, or payment of refund from or to, or signature of, or any one of the individuals, partnerships, firms, corporations, or other entities then constituting such party with respect to such party's estate or interest in the Premises or this Lease shall bind all of them as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed, unless all of them theretofore have executed and acknowledged in recordable form and given a notice (which has not theretofore been revoked by notice given by all of them) designating not more than three individuals, partnerships, firms, corporations, or other entities as the agent or agents for all of them. If such a notice of designation has theretofore been given, then, until it is revoked by notice given by all of them, the act of, or notice, demand, request or other communication from or to, or payment or refund from or to, or signature of, the agent or agents so designated with respect to such party's estate or interest in the Premises or this Lease shall bind all of the individuals, partnerships, firms, corporations, or other entities then constituting such party as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed.

J. Exhibits and Incorporation. The following exhibits, which are attached hereto or are in the possession of the Landlord and Tenant, are incorporated herein by reference as though fully set forth:

Exhibit "A"	Legal Description
Exhibit "B"	Parcel Map
Exhibit "C"	Required Insurance
Exhibit "D"	Prohibited Uses
Exhibit "E"	Form of Special Warranty Deed

K. Immigration Reform and Control Act of 1986 (IRCA). Tenant understands and acknowledges the applicability of the IRCA to it and agrees to comply with the IRCA for all

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activities undertaken under this lease and agrees to permit Landlord to inspect its personnel records to verify such compliance.

31. **Equal Employment Opportunity.** Tenant shall comply with all ordinances and other requirements of the City of Chandler relating to nondiscrimination and equal employment opportunity. In performing under this contract, Tenant shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age, sexual orientation or disability, nor otherwise commit an unfair employment practice. Tenant will take affirmative action to insure that applicants are employed, and that employees are dealt with during employment, without regard to their race, color, religion, gender, national origin, age, sexual orientation or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Tenant further agrees that this clause will be incorporated in all subcontracts entered into with suppliers of materials or services, and all labor organization furnishing skilled, unskilled and union labor, or who may perform such labor or services in connection with this contract.

32. **Enforced Delay; Extension of Time of Performance.** Whether stated or not, all periods of time in this Lease are subject to this Section 32 and the grace and cure periods in Section 21. Neither Landlord nor Tenant, as the case may be, shall be considered in Default of its obligations under this Lease in the event of an enforced delay due to causes beyond its control and without its fault, without its failure to comply with Applicable Laws, or without its negligence (an "Enforced Delay"), including but not limited to: (1) acts of God, acts of public enemy, acts of the federal, state or local government, and acts of Third Parties, including Tenant's contractors, subcontractors, suppliers, and persons or entities with whom or which Tenant has a contractual relationship, if the act or omission of such Third Party resulting in the delay was beyond the reasonable control of Tenant; and (2) litigation concerning the validity and enforceability of this Lease or relating to transactions contemplated by this Lease (including the effect of petitions for initiative or referendum), fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, and unusually severe weather. In no event will Enforced Delay include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants or purchasers of portions of the Project, nor from the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Tenant in connection with the Project, it being agreed that Tenant will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any Enforced Delay, the time or times for performance of the obligations of the Party claiming Enforced Delay shall be extended for the period of the Enforced Delay; provided that the Party seeking the benefit of the provisions of this Section 32 shall, within thirty (30) days after such Party knows or reasonably could have known of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay. Notwithstanding the foregoing, no period of Enforced Delay shall exceed one hundred and eighty (180) days, although Landlord shall not unreasonably withhold its consent to one or more thirty (30) day extensions upon prior written notice to Landlord received not less than ten (10) days prior to the expiration of the initial period of Enforced Delay, or subsequently permitted extension (as applicable), and setting forth in reasonable detail the reason that Tenant believes such extension should be granted.

33. **Option To Purchase Property.**

A. **Option to Purchase.** Landlord hereby grants to Tenant the exclusive option to purchase the Property ("Purchase Option") according to the terms and conditions hereinafter set forth.

B. **Exercise of Option.** The Purchase Option granted herein shall become effective and Tenant shall have the right to exercise the Purchase Option hereunder at any time after the Commencement Date ("Option Period"), provided that Tenant's right to exercise the Purchase Option shall be conditioned upon Tenant not being in default under this Lease or under any other lease or subsidiary agreement between Landlord and Tenant regarding or relating to the Premises. The Purchase Option granted herein may be exercised by Tenant at any time during the Option Period by Tenant delivering written notice of exercise to Landlord.

C. If Tenant is not then in default of any of the Leases, Tenant can purchase all (but only all) of the Parcels at any time prior to lease termination for a total purchase price of \$2,500,000.00, net to the City, but the purchase option can be exercised by Tenant only if all construction has been completed on the Premises and the Lease 1 and Lease 3 Parcels. In the event a lender forecloses on any particular leasehold interest, then the lender or its successor shall be given the right to purchase Parcels 3 and 4 for \$1,000,000.00.

D. Except in connection with financing, there will be limitations on a subsequent Transfer of the Parcels after exercise of the Purchase Option by Tenant, which limitations shall be included in a deed restriction included in the conveyance to Tenant. If Tenant exercises its Purchase Option and acquires fee title to all of the Parcels, and thereafter Transfers any of the Parcels before the end of what would have been year eight (8) of this Lease, then the City shall receive an exit fee in the amount of:

Parcel 3 -- \$ 210,000.00
Parcel 4 -- \$ 210,000.00

E. Notwithstanding the foregoing, Tenant may not exercise its Purchase Option during construction and for the first four (4) years from the issuance of the Certificate of Occupancy for the improvements on the applicable Parcel, although the City may permit a Transfer during such time in its sole, absolute and unfettered discretion. For the next four (4) years thereafter, any Transfer will require the City's approval in its reasonable commercial discretion.

F. If an exit fee has been received by the City in connection with an earlier Transfer of a lease, the exit fee required upon resale of the applicable parcels will be waived or prorated, as applicable.

G. **Conveyance of Premises.**

(1) **Form of Conveyance.** Landlord and Tenant agree to perform all acts necessary for conveyance in sufficient time for the property interest to be conveyed ninety (90) days after

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delivery to Landlord of Tenant's notice of exercise or on the last day of the Rental Period, whichever first occurs. Landlord's entire interest in the Premises shall be conveyed by Special Warranty Deed in the form of Exhibit E (the "Deed"). All expenses in connection with conveyance of the Premises to Tenant including, but not limited to, title insurance, recordation and notary fees and all other closing costs, shall be paid by Tenant. Possession shall be delivered to Tenant concurrently with the conveyance of title.

(2) Conditions, Covenants and Restrictions. The conveyance of Parcel 3 shall require the Grantee to maintain and insure the Parcel 3 Alley in accordance with the "Conditions, Covenants and Restrictions" attached to the Deed. The conveyance of Parcel 4 shall require the Grantee to maintain and insure the Parcel 4 Alley in accordance with the "Conditions, Covenants and Restrictions" attached to the Deed.

34. Compliance With Environmental Laws.

A. Definitions.

(1) "Environmental Laws. Those laws promulgated for the protection of human health or the environment, including but not limited to the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Section 300f *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*; the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Arizona Environmental Quality Act, Title 49 of the Arizona Revised Statutes; the Occupational Safety and Health Act of 1970, as amended, 84 Stat. 1590, 29 U.S.C. Section 651-678; Maricopa County Air Pollution Control Regulations; Title 41, Article 4, Archaeological Discovery, Arizona Revised Statutes; regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, county, state or federal government) now in effect or hereinafter enacted that deal with Regulated Substances and the regulation or protection of human health and the environment, including but not limited to the ambient air, ground water, surface water, and land use, including substrata soils.

(2) "Regulated Substances":

(a) Any substance identified or listed as a hazardous substance, pollutant, hazardous material, or petroleum in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 *et seq.*, and in the regulations promulgated thereto; and Underground Storage Tanks, U.S.C. Section 6991 to 6991i.

(b) Any substance identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or as a special or solid waste in the Arizona Environmental Quality Act, A.R.S. Section 49-201 *et seq.*; including, but not limited to, the Water Quality Assurance Revolving Fund Act, A.R.S. Section 49-281 *et seq.*; the Solid Waste Management Act, A.R.S. Section 49-701 *et*

seq.; the Underground Storage Tank Regulation Act, A.R.S. Section 49-1001 *et seq.*; and Management of Special Waste, A.R.S. Section 49-851 to 49-868.

(c) All substances, materials and wastes that are, or that become, regulated under, or that are classified as hazardous or toxic under any Environmental Law during the term of this Lease.

(3) "Release" Any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping.

B. Compliance. Tenant shall, at Tenant's own expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Tenant's operation on the Premises and the Public Tract. Tenant shall not cause or permit any Regulated Substance to be used, generated, manufactured, produced, stored, brought upon, or released on, or under the Premises or the Public Tract, or transported to or from the Premises or the Public Tract, by Tenant, its agents, employees, contractors, invitees or a third party in a manner that would constitute or result in a violation of any Environmental Law or that would give rise to liability under an Environmental Law.

C. Indemnification.

(1) Tenant shall indemnify, defend, pay and hold harmless, on demand, Landlord, its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys, for, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, claims, legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons, property, the environment or the Premises and the Public Tract and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, human health, property or the environment pursuant to any Environmental Law, the common law, or other statute, ordinance, rule, regulation, judgment or order of any governmental agency or judicial entity, which are incurred or assessed as a result, whether in part or in whole, of any use of the Premises and the Public Tract during the term of this Lease or any previous lease or uses of the Premises and the Public Tract by Tenant or its owners or affiliated entities, agents, employees, invitees, contractors, visitors or licensees unless caused by Landlord. Regardless of the date of termination of this Lease, Tenant's obligations and liabilities under this Section 34 shall continue so long as the Landlord bears any liability or responsibility under the Environmental Laws for any use of the Premises and the Public Tract during the term of this Lease. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial actions, removal or restoration work required or conducted by any federal, state or local governmental agency or political subdivision because of Regulated Substances located on the Premises or the Public Tract or present in the soil or ground water on, or under the Premises or the Public Tract. The parties agree that Landlord's right to enforce this covenant to indemnify is not an adequate remedy at law for Tenant's violation of any provision of this Section and that Landlord shall

also have the rights set forth in this Section in addition to all other rights and remedies provided by law or otherwise provided for in this Lease.

(2) Without limiting the foregoing, if the presence of any Regulated Substance on, or under the Premises and the Public Tract results in any contamination of the Premises or the Public Tract or any adjacent real property during the term of this Lease, Tenant shall promptly take all actions at its sole cost and expense as are necessary to mitigate any immediate threat to human health or the environment. Tenant shall then undertake any further action necessary to return the Premises and the Public Tract or other property to the condition existing prior to the introduction of any Regulated Substance to the Premises; provided that Landlord's written approval of such actions shall first be obtained. Tenant shall undertake such actions without regard to the potential legal liability of any other person, however, any remedial activities by Tenant shall not be construed as to impair Tenant's rights, if any, to seek contribution or indemnity from another person.

(3) Tenant shall, at Tenant's own cost and expense, make all tests, reports, studies and provide all information to any appropriate governmental agency as may be required pursuant to the Environmental Laws pertaining to Tenant's use of the Premises and the Public Tract. This obligation includes but is not limited to any requirements for a site characterization, site assessment and/or a cleanup plan that may be necessary due to any actual or potential spills or discharges of Regulated Substances on, or under the Premises or the Public Tract, during the term of this Lease. At no cost or expense to Landlord, Tenant shall promptly provide all information requested by Landlord pertaining to the applicability of the Environmental Laws to the Premises and the Public Tract, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination.

In addition, Landlord shall have the right to access, within twenty (20) days of Tenant's receipt of written request, and copy any and all records, test results, studies and/or other documentation, other than trade secrets, regarding environmental conditions relating to the use, storage, or treatment of Regulated Substances by the Tenant on, or under the Premises and the Public Tract.

(4) Tenant shall immediately notify Landlord of any of the following: (1) any correspondence or communication from any governmental agency regarding the application of Environmental Laws to the Premises or the Public Tract, or to Tenant's use of the Premises or the Public Tract, (2) any change in Tenant's use of the Premises or the Public Tract that will change or has the potential to change Tenant's or Landlord's obligations or liabilities under Environmental Laws, and (3) any assertion of a claim or other occurrence for which Tenant may incur an obligation under this Section 34.

(5) Tenant shall insert the provisions of this Section 34 in any sublease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

(6) Tenant shall, at its own expense, obtain and comply with any permits or approvals that are required or may become required as a result of any use of the Premises and the Public Tract by the Tenant, its agents, employees, contractors, invitees and assigns.

(7) Tenant shall obtain and maintain compliance with any applicable financial responsibility requirements of federal and/or state law regarding the ownership or operation of any underground storage tank(s) or any device used for the treatment or storage of a Regulated Substance and present evidence thereof to Landlord, as may be applicable.

D. Noncompliance.

(1) Tenant's failure or the failure of its agents, employees, contractors, invitees or of a third party to comply with any of the requirements and obligations of this Section 34 or applicable Environmental Law shall constitute a material default of this Lease. Notwithstanding any other provision in this Lease to the contrary, Landlord shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Law on, or under the Premises or the Public Tract, without waiving any of its rights under this Lease. The exercise by Landlord of any of its rights under this Section 34 shall not release Tenant from any obligation it would otherwise have hereunder.

(2) The covenants in this Section 34 shall survive the expiration or earlier termination of this Lease.

35. **Signatures.** The Parties have executed this Lease to be effective as of the date set forth in Section 1.

LANDLORD:

CITY OF CHANDLER, ARIZONA, a municipal corporation

By: 
Its: MAYOR

ATTEST:

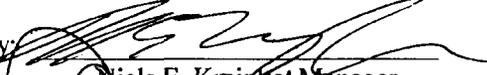

City Clerk

APPROVED AS TO FORM:


City Attorney

TENANT:

SMC II, L.L.C.
an Arizona limited liability company

By: 
Niels E. Kreipke, Manager

By: 
Michael W. Hogarty, Manager

EXHIBIT A
Legal Description

Parcels 3 and 4 of the San Marcos Commons final plat, Book 865, Page 18, recorded 9/07/2006.

EXHIBIT C
REQUIRED INSURANCE

A. From and after any entry by Tenant into the Premises, Tenant shall carry, at Tenant's sole cost and expense, the following types of insurance, in the amounts specified or in such higher amounts as are customary as a result of increases in standard liability coverage resulting from the passage of time during the term of the Lease:

1. Commercial general liability insurance for personal injury, bodily injury (including wrongful death) and damage to property with a combined single limit of not less than Three Million and No/100 Dollars (\$3,000,000.00), per occurrence, Three Million and No/100 Dollars (\$3,000,000.00) annual aggregate insuring against any and all liability of the insured with respect to the Premises and the Public Tract, or arising out of the maintenance, use or occupancy thereof, including premises operations, products and completed operations and owned, hired and non-owned automobiles, providing coverage at least as broad as ISO policy form CG 0001. The commercial general liability insurance policy shall contain a contractual liability endorsement specifically deleting the contractual liability exclusion for Personal Injury. At least One Million and No/100 Dollars (\$1,000,000.00) of such insurance coverage shall be primary coverage and the remaining Two Million and No/100 Dollars (\$2,000,000.00) of such coverage may be pursuant to an umbrella or excess liability policy. In addition, the policy required pursuant to the provisions of this **Section A(1)** shall not have a deductible in excess of Ten Thousand and No/100 Dollars (\$10,000.00).

2. A policy or policies of insurance covering the building and all other improvements constituting the Premises, in an amount not less than one hundred percent (100%) of full replacement cost (inclusive of the cost of excavations, foundations and footings) from time to time during the Lease Term, providing protection against any peril generally included in the classification "**Causes of Loss-Special Form**" (including flood, earthquake damage and/or terrorism coverage if so elected by Landlord), together with insurance against sprinkler damage, vandalism and malicious mischief, and the following endorsements: boiler and machinery, difference in conditions, business income and extra expense (with extended period of indemnity), contingent business income and extra expense (with extended period of indemnity), service interruption, building ordinance or law and excess rental value. In addition, the policy required pursuant to the provisions of this **Section A(2)** shall not have a deductible in excess of Ten Thousand and No/100 Dollars (\$10,000.00).

3. Insurance covering all plate glass on the Premises.

4. Boiler and machinery insurance on all boilers, pressure vessels, gas-fired equipment, air conditioning equipment and systems serving the Premises.

5. A policy or policies of workers' compensation insurance with an insurance carrier and in amounts required by applicable Governmental Restrictions and a policy of employer's liability insurance with limits of liability not less than One Million and No/100 Dollars (\$1,000,000.00), each accident; One Million and No/100 Dollars (\$1,000,000.00), disease policy limit; and One Million and No/100 Dollars (\$1,000,000.00) disease each employee. Both such policies shall contain waivers of subrogation in favor of Landlord.

6. Appropriate insurance coverage insuring Landlord and Tenant against any and all liability with respect to the release, transportation and/or use by Tenant of Regulated Substances (as defined in the Lease) onto the Premises or the Public Tract during the Lease Term and for such

additional periods of time within which Landlord or Tenant may be liable with respect to Regulated Substances under applicable Environmental Laws (as defined in the Lease). Such insurance shall be carried in amounts, in a form and from such carriers as Landlord shall reasonably approve and shall name Landlord as an additional insured.

7. All policies of insurance to be procured by Tenant shall be issued by insurance companies having a general policy holders rating of not less than A-VIII in the most current available "**Best's Key Rating Guide**", qualified to do business in the State of Arizona. All property policies shall be issued in the name of Tenant, and shall name Landlord and its Representatives as "**loss payees as their interests may appear**". All liability policies obtained by Tenant shall name Landlord and Landlord Parties as additional insureds. In addition, Tenant's liability policies shall be endorsed as needed to provide cross-liability coverage for Tenant, Landlord, and Landlord Parties and shall provide for severability of interests. Executed copies of the policies of insurance or evidence of insurance meeting the requirements of Acord Form No. 27 or 28 or their equivalent or such other evidence as may be reasonably acceptable to Landlord and evidence of required additional insured endorsements on ISO Form CG 20-26 or its equivalent (collectively referred to in this **Exhibit C** as "**Certificates**") shall be delivered to Landlord within ten (10) days after Substantial Completion of the Premises and thereafter, executed copies of renewal policies or Certificates thereof shall be delivered to Landlord within thirty (30) days prior to the expiration of the term of each such policy. All liability policies shall contain a provision that Landlord, and Landlord Parties, although named as additional insureds, shall nevertheless be entitled to recovery under the policy for any loss occasioned to such parties by reason of the negligence of Tenant or its agents. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent. All policies of insurance delivered to Landlord must contain a provision that the company writing the policy shall give Landlord not less than twenty (20) days notice in writing in advance of any cancellation or lapse or the effective date of any material change in the policy, including any reduction in the amounts of insurance. All liability, property and other casualty policies shall be written as primary policies and shall provide that any insurance which Landlord may carry is strictly excess, secondary and non-contributing with any insurance carried by Tenant. The insurance requirements contained in this **Exhibit C** are independent of Tenant's waiver, indemnification and other obligations under this Lease and shall not be construed or interpreted in any way to restrict, limit or modify Tenant's waiver, indemnification or other obligations or to in any way limit Tenant's obligations under this Lease.

B. **BLANKET POLICY.** Tenant's obligation to carry the insurance required by this **Exhibit C** may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Tenant; provided, however, that the coverage afforded Landlord will not be reduced or diminished by reason of the use of a blanket policy of insurance, and provided further that the requirements set forth in this **Exhibit C** are otherwise satisfied. If Tenant uses such a blanket policy, Tenant shall deliver to Landlord satisfactory evidence that the Premises has been properly added to the blanket policy and evidence that the insurance company that issued the blanket policy has allocated to the Premises the type of insurance coverage in the amounts required by this **Exhibit C**, with the limitations of liability required by this Lease. Tenant shall permit Landlord at any reasonable time to inspect any policies of insurance of Tenant, which policies or copies thereof are not delivered to Landlord.

C. **ADEQUACY OF INSURANCE.** Landlord makes no representation or warranty to Tenant that the amount of insurance to be carried by Tenant under the terms of this Lease is adequate to fully protect Tenant's interest. If Tenant believes that the amount of any such insurance is insufficient, Tenant is

encouraged to obtain, at its sole cost and expense, such additional insurance as Tenant may deem desirable or adequate. Tenant acknowledges that Landlord shall not, by the fact of approving, disapproving, waiving, accepting, or obtaining any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of such insurance, the solvency of any insurance companies or the payment or defense of any lawsuit in connection with such insurance coverage, and Tenant hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

D. **DEFINITIONS.** For purposes of this **Exhibit C**: (a) the term "**Tenant Parties**" means Tenant, Tenant's agents, and all Persons claiming through any of these Persons; (b) the term "**Landlord Parties**" means Landlord, Landlord's agents, the City Council of the City of Chandler and all Persons claiming through any of these Persons; (c) the term "**Indemnify**" means indemnify, defend (with counsel reasonably acceptable to Landlord), pay and hold harmless for, from and against; (d) the term "**Claims**" means all liabilities, claims, damages (including consequential damages), losses, penalties, litigation, demands, causes of action (whether in tort or contract, in law or at equity or otherwise), suits, proceedings, judgments, disbursements, charges, assessments, and expenses (including attorneys' and experts' fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding); (e) the term "**Waives**" means that the Tenant Parties waive and knowingly and voluntarily assume the risk of; and (f) the terms "**Bodily Injury**," "**Personal Injury**" and "**Property Damage**" will have the same meanings as in the form of commercial general insurance policy issued by Insurance Services Office, Inc. most recently prior to the date of the injury or loss in question.

EXHIBIT D Prohibited Uses

In general, allowed uses consist of active retail and office uses, with ground floor being required to be retail and restaurant services.

Though allowed under general C-2 zoning, the following uses are prohibited as part of this development agreement for San Marcos Commons Phase II Commercial with any exceptions noted:

- Ambulance service
- Appliance repairer
- Automobile accessories (sales)
- Automobile washateria
- Boat sales
- Building contractors, EXCEPT office-only functions not on a ground floor
- Building materials companies
- Building supplies and materials, glass sales, and installation.
- Caterers, EXCEPT if there is an active walk-up food sales frontage.
- Churches and other places of worship
- Cleaning of building exteriors, disinfecting or exterminating establishments
- Clothing manufacturer, EXCEPT if there is an active retail frontage.
- Convalescence homes, nursing homes and homes for the aged
- Drive-in and drive-up establishments and functions. Fast turnover establishments are prohibited unless the City chooses to grant an exception for a specific tenant. Fast serve ice cream, yogurt and fruit drink establishments are allowed.
- Fuel dispensing equipment or facilities
- Furniture and appliance repairer
- Funeral parlors, mortuaries
- General contractor or workman, EXCEPT office-only functions not on the ground floor

- Greenhouse and nursery, commercial
- Home improvement company, EXCEPT office-only functions not on the ground floor. This is not intended to exclude companies that sell furnishings as long as at least 50% of the leased space is used for showroom and sales area.
- Hospitals (excluding animal hospitals)
- Hospital supplies
- Laboratories serving professional requirements, dentist, medical, etc.
- Laboratory supplies
- Laundromat, self-service or wholesale
- Medical marijuana establishments.
- Monument sales establishment
- Motor vehicle repairs, wholesale and retail
- Nursery and greenhouse, commercial
- Pawn shop
- "Pay Day," title loan and similar lending operations
- Rescue service
- Residential.
- Restaurant supplies. Specialty food sales tenants may be allowed with City agreement for a specific tenant.
- Tattoo Parlors
- Taxi dispatching and operations
- Trailers
- Transient Service Facilities
- Upholsterer. This use will be allowed if the sales area is greater than 50% of the leased space and all work areas are screened from exterior visibility.
- Veterinarian hospital or clinic

EXHIBIT E
Form of Special Warranty Deed

When Recorded, Mail to:

SPECIAL WARRANTY DEED

For the consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration received, The City of Chandler, an Arizona municipal corporation ("**Grantor**"), does hereby convey to _____ ("**Grantee**"), all of Grantor's right, title and interest in and to the following described real property (the "**Property**") situated in Maricopa County, Arizona, together with all improvements thereon and all of Grantor's interest in any rights and privileges appurtenant thereto:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS
REFERENCE MADE A PART HEREOF

SUBJECT ONLY TO any and all conditions, easements, encroachments, rights-of-way, or restrictions which a physical inspection, or accurate ALTA survey, of the Property would reveal; any matters of record; and all applicable municipal, county, state or federal zoning and use regulations; and

FURTHER SUBJECT TO those Conditions, Covenants and Restrictions attached hereto as Exhibit "B" and by this reference made a part hereof.

AND GRANTOR hereby binds itself and its successors to warrant and defend the title against all of the acts of Grantor and no other, subject to the matters set forth above.

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed as of this ___ day of _____, 20___.

GRANTOR:

The City of Chandler, an Arizona municipal
corporation

By: _____

Name: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this the ____ day of _____, 20__, before me, the undersigned Notary Public, personally appeared _____, who acknowledged himself/herself to be the _____ of The City of Chandler, an Arizona municipal corporation, and that, being authorized so to do, he/she executed the foregoing instrument for the purposes herein contained on behalf of the said municipal corporation.

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

Notary Public

My Commission Expires:

Exhibit "A" to Special Warranty Deed
Legal Description of the Property

Exhibit "B" to Special Warranty Deed

CONDITIONS, COVENANTS AND RESTRICTIONS

These Conditions, Covenants and Restrictions (this "Declaration") bind and burden the Grantee and the Property, and benefit the City and the Public Tract. "Grantee" shall mean the Grantee named in the foregoing Deed, and its successors and assigns with respect to any portion of the Property. "Property" shall mean the Property that is conveyed to Grantee by the City by the foregoing Deed. "City" shall mean the City of Chandler, Arizona, an Arizona municipal corporation. "Public Tract" shall mean _____ as described or depicted as such in the plat of record in Book 865 of Maps, Page 18, in the Official Records of Maricopa County, Arizona.

1. Insurance.

C. Grantee Obligation to Insure -- Bodily Injury or Property Damage. Grantee shall procure and maintain, at Grantee's cost and expense, insurance against claims for bodily injury or property damage occurring on the Public Tract in accordance with the insurance requirements set forth below:

8. Commercial general liability insurance for personal injury, bodily injury (including wrongful death) and property damage with a combined single limit of not less than Three Million and No/100 Dollars (\$3,000,000.00), per occurrence, Three Million and No/100 Dollars (\$3,000,000.00) annual aggregate insuring against any and all liability of Grantee and its agents and representatives with respect to the Public Tract, or arising out of the maintenance, use or occupancy thereof, including operations, products and completed operations and owned, hired and non-owned automobiles, providing coverage at least as broad as ISO policy form CG 0001. The commercial general liability insurance policy shall contain a contractual liability endorsement specifically deleting the contractual liability exclusion for Personal Injury. At least One Million and No/100 Dollars (\$1,000,000.00) of such insurance coverage shall be primary coverage and the remaining Two Million and No/100 Dollars (\$2,000,000.00) of such coverage may be pursuant to an umbrella or excess liability policy. In addition, the policy required pursuant to the provisions of this Section 1(A)(1) shall not have a deductible in excess of Ten Thousand and No/100 Dollars (\$10,000.00).

9. Insurance shall be maintained in the amounts specified or in such higher amounts as are customary as a result of increases in standard liability coverage resulting from the passage of time, as reasonably required by the City following written notice to Grantee.

D. Grantee Obligation to Insure -- Regulated Substances. Grantee shall procure and maintain, at Grantee's cost and expense, insurance coverage insuring the City against any and all liability with respect to the release, transportation and/or use by Grantee of Regulated Substances on or under the Public Tract under applicable Environmental Laws. Such insurance shall be carried in

amounts, in a form and from such carriers as the City shall reasonably approve and shall name the City as an additional insured.

a. "Environmental Law" means those laws promulgated for the protection of human health or the environment, including but not limited to the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Section 300f *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*; the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Arizona Environmental Quality Act, Title 49 of the Arizona Revised Statutes; the Occupational Safety and Health Act of 1970, as amended, 84 Stat. 1590, 29 U.S.C. Section 651-678; Maricopa County Air Pollution Control Regulations; Title 41, Article 4, Archaeological Discovery, Arizona Revised Statutes; regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, county, state or federal government) now in effect or hereinafter enacted that deal with Regulated Substances and the regulation or protection of human health and the environment, including but not limited to the ambient air, ground water, surface water, and land use, including substrata soils.

b. "Regulated Substances" means:

(a) Any substance identified or listed as a hazardous substance, pollutant, hazardous material, or petroleum in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 *et seq.*, and in the regulations promulgated thereto; and Underground Storage Tanks, U.S.C. Section 6991 to 6991i.

(b) Any substance identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or as a special or solid waste in the Arizona Environmental Quality Act, A.R.S. Section 49-201 *et seq.*; including, but not limited to, the Water Quality Assurance Revolving Fund Act, A.R.S. Section 49-281 *et seq.*; the Solid Waste Management Act, A.R.S. Section 49-701 *et seq.*; the Underground Storage Tank Regulation Act, A.R.S. Section 49-1001 *et seq.*; and Management of Special Waste, A.R.S. Section 49-851 to 49-868.

(c) All substances, materials and wastes that are, or that become, regulated under, or that are classified as hazardous or toxic under any Environmental Law during the term of this Lease.

c. "Release" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping.

E. Failure to Maintain Insurance. If Grantee fails or refuses to provide a copy of the renewal insurance certificates, together with evidence of payment of premiums therefor, or otherwise fails or refuses to procure or maintain insurance as required by this Declaration, the City shall have the right, at the City's election, and without notice, to procure and maintain such insurance. Bills for any expense required by the City in connection therewith, and bills for all such expenses and disbursements of every kind and nature whatsoever, including reasonable attorney's or administrative fees, involved in endeavoring to enforce any right against Grantee, under or in

connection with this Declaration, or pursuant to law, shall be due and payable by Grantee immediately upon demand by the City, and any unpaid amounts shall bear interest at the rate of ten percent (10%) per annum compounded monthly from the respective dates of the City's making of each such payment or incurring of each such cost or expense.

F. All policies of insurance to be procured by Grantee shall be issued by insurance companies having a general policy holders rating of not less than A-VIII in the most current available "Best's Key Rating Guide," qualified to do business in the State of Arizona. All property policies shall be issued in the name of Grantee, and shall name the City as "loss payees as their interests may appear". All liability policies obtained by Grantee shall name City as additional insured. In addition, Grantee's liability policies shall be endorsed as needed to provide cross-liability coverage for Grantee, and the City, and shall provide for severability of interests. Executed copies of the policies of insurance or evidence of insurance meeting the requirements of Acord Form No. 27 or 28 or their equivalent or such other evidence as may be reasonably acceptable to the City and evidence of required additional insured endorsements on ISO Form CG 20-26 or its equivalent (collectively referred to in this Exhibit B as "Certificates") shall be delivered to the City within ten (10) days after acquisition of title to the Property and thereafter, executed copies of renewal policies or Certificates thereof shall be delivered to City within thirty (30) days prior to the expiration of the term of each such policy. All liability policies shall contain a provision that the City, although named as additional insured, shall nevertheless be entitled to recovery under the policy for any loss occasioned to such parties by reason of the negligence of Grantee or its agents. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Grantee in like manner and to like extent. All policies of insurance delivered to the City must contain a provision that the company writing the policy shall give the City not less than twenty (20) days notice in writing in advance of any cancellation or lapse or the effective date of any material change in the policy, including any reduction in the amounts of insurance. All liability, property and other casualty policies shall be written as primary policies and shall provide that any insurance which City may carry is strictly excess, secondary and non-contributing with any insurance carried by Grantee. The insurance requirements contained in this Declaration are independent of Grantee's waiver, indemnification and other obligations under this Declaration and shall not be construed or interpreted in any way to restrict, limit or modify Grantee's waiver, indemnification or other obligations or to in any way limit Grantee's obligations under this Declaration.

2. Maintenance.

F. Maintenance and Repairs. Grantee at its sole cost and expense shall maintain the Public Tract and make all repairs thereto (including replacements, if repairs are impossible or inadequate).

G. Grantee shall indemnify, defend, pay and hold the City harmless for, from and against any and all claims or demands, upon or arising out of any accident, injury, or damage to any person or property occurring in or upon the Public Tract however caused.

H. Performance by the City. In the event Grantee fails to maintain and repair the Public Tract in the condition required by Section 2(A) of this Declaration, the City may, upon fourteen (14) days' written notice to Grantee with respect to failures of Grantee that are not emergencies, or twenty-four (24) hours' notice to Grantee with respect to failures of Grantee that are

reasonably determined by the City to be emergencies, but without being under any obligation to do so and without thereby waiving any default, may perform or have performed any and all such work as it, in its sole and absolute discretion, deems necessary to maintain or restore the Public Tract to its required condition. Any and all work performed by or for the City pursuant to this Section 2(C), shall be deemed to have been undertaken for and at the expense of Grantee. All cost incurred by the City in undertaking such work shall be subject to the provisions of Section 1(C) of this Declaration.

I. Alterations. Except with the prior written consent of the City, Grantee shall not erect any structures, make any improvements, or do any other construction work on the Public Tract. In the event any such construction, improvement, alteration, modification, addition, repair, or replacement is made without such approval, then, upon reasonable notice so to do, the Grantee will remove the same, or, at the option of the City, cause the same to be changed to the satisfaction of the City. In case of any failure on the part of Grantee to comply with such notice, the City may effect the removal or change, and the Grantee shall pay the costs thereof to the City on demand and such costs and expenses shall be subject to the provisions of Section 1(C) of this Declaration.

3. Indemnification of the City.

E. Indemnification. Grantee shall indemnify, defend, pay and hold the City harmless for, from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including property damage, personal injury and wrongful death and further including, without limitation, architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against the City by reason of any of the following occurring during the term unless caused by the City, its agents or employees or a failure to act by the City, its agents or employees when a duty to act is present:

(10) any use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Public Tract or any nuisance made or suffered thereon or any failure by Grantee to keep the Public Tract in a safe condition;

(11) any acts of Grantee or any of its or their respective agents, contractors, servants, employees, licensees or invitees;

(12) any fire, accident, injury (including death) or damage to any person or property occurring in, on or about the Public Tract or any part thereof;

(13) any failure on the part of Grantee to keep, observe, comply with and perform any of the covenants, conditions or restrictions contained in this Declaration;

F. The obligations of Grantee under this Section 3 shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Public Tract.

G. If any claim, action or proceeding is made or brought against the City by reason of any event to which reference is made in this Section, then, upon demand by the City, Grantee, at its sole cost and expense, shall resist or defend such claim, action or proceeding in the

City's name, if necessary, by the attorneys for Grantee's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys as the City shall approve, which approval shall not be unreasonably withheld or delayed; provided however that nothing in this Declaration shall prevent or prohibit the City from assisting in its own defense at its sole cost and expense and with attorneys of its choosing. If, in the City's reasonable discretion, Grantee fails timely and diligently to undertake such defense, then the City may engage its own attorneys to defend it, and Grantee shall pay on demand the reasonable fees and disbursements of such attorneys in accordance with the provisions of Section 1(C) of this Declaration.

4. Compliance With Environmental Laws.

E. Compliance. Grantee shall, at Grantee's own expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Grantee's operation on the Public Tract. Grantee shall not cause or permit any Regulated Substance to be used, generated, manufactured, produced, stored, brought upon, or released on, or under the Public Tract, or transported to or from the Public Tract, by Grantee, its agents, employees, contractors, invitees or a third party in a manner that would constitute or result in a violation of any Environmental Law or that would give rise to liability under an Environmental Law.

F. Indemnification.

a. Grantee shall indemnify, defend, pay and hold harmless, on demand, the City, its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys, for, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, claims, legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons, property, the environment or the Public Tract and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, human health, property or the environment pursuant to any Environmental Law, the common law, or other statute, ordinance, rule, regulation, judgment or order of any governmental agency or judicial entity, which are incurred or assessed as a result, whether in part or in whole, of any use of the Public Tract by Grantee or its agents, employees, invitees, contractors, visitors or licensees unless caused by the City. Grantee's obligations and liabilities under this Section 4 shall continue so long as the City bears any liability or responsibility under the Environmental Laws for any use of the Public Tract. This indemnification of the City by Grantee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial actions, removal or restoration work required or conducted by any federal, state or local governmental agency or political subdivision because of Regulated Substances located on the Property or present in the soil or ground water on, or under the Property. The parties agree that the City's right to enforce this covenant to indemnify is not an adequate remedy at law for Grantee's violation of any provision of this Section and that the City shall also have the rights set forth in this Section in addition to all other rights and remedies provided by law or otherwise provided for in this Declaration.

b. Without limiting the foregoing, if the presence of any Regulated Substance on, or under the Public Tract results in any contamination of the Public Tract or any adjacent real property, Grantee shall promptly take all actions at its sole cost and expense as are

necessary to mitigate any immediate threat to human health or the environment. Grantee shall then undertake any further action necessary to return the Public Tract or other property to the condition existing prior to the introduction of any Regulated Substance to the Public Tract ; provided that the City's written approval of such actions shall first be obtained. Grantee shall undertake such actions without regard to the potential legal liability of any other person; however, any remedial activities by Grantee shall not be construed as to impair Grantee's rights, if any, to seek contribution or indemnity from another person.

c. Grantee shall, at Grantee's own cost and expense, make all tests, reports, studies and provide all information to any appropriate governmental agency as may be required pursuant to the Environmental Laws pertaining to Grantee's use of the Public Tract. This obligation includes but is not limited to any requirements for a site characterization, site assessment and/or a cleanup plan that may be necessary due to any actual or potential spills or discharges of Regulated Substances on, or under the Public Tract. At no cost or expense to the City, Grantee shall promptly provide all information requested by the City pertaining to the applicability of the Environmental Laws to the Public Tract, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination. In addition, the City shall have the right to access, within twenty (20) days of Grantee's receipt of written request, and copy any and all records, test results, studies and/or other documentation, other than trade secrets, regarding environmental conditions relating to the use, storage, or treatment of Regulated Substances by the Grantee on, or under the Public Tract.

d. Grantee shall immediately notify the City of any of the following: (1) any correspondence or communication from any governmental agency regarding the application of Environmental Laws to the Public Tract or Grantee's use of the Public Tract, (2) any change in Grantee's use of the Public Tract that will change or has the potential to change Grantee's or the City's obligations or liabilities under Environmental Laws, and (3) any assertion of a claim or other occurrence for which Grantee may incur an obligation under this Section 4.

G. Noncompliance.

(1) Grantee's failure or the failure of its agents, employees, contractors, invitees or of a third party to comply with any of the requirements and obligations of this Section 4 or applicable Environmental Law shall constitute a material default of this Declaration. Notwithstanding any other provision in this Declaration to the contrary, the City shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Law on, or under the Public Tract, without waiving any of its rights under this Declaration. The exercise by the City of any of its rights under this Section 4 shall not release Grantee from any obligation it would otherwise have hereunder.

(2) The covenants in this Section 4 shall survive the expiration or earlier termination of this Declaration.

5. Term. This Declaration shall be effective upon recordation of the Deed and shall continue in full force and effect for perpetuity or until terminated by the City in its sole and absolute discretion.

6. Enforcement Rights. Any action to enforce this Declaration may be brought by the City. In the event of a breach or threatened breach by any person or any of the terms or provisions of this Declaration, the City shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including specific performance. In the event of any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party shall be entitled to recover from the unsuccessful party its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

7. Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this Declaration shall run with and bind the Property and shall be and shall inure to the benefit of the City and the Public Tract.

EXHIBIT E (AMENDED)

Lease 3

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GOVERNMENT PROPERTY IMPROVEMENTS LEASE San Marcos
Commons-Parcels 1, 5 and 7

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1. **Date.** The date of this Lease (the "Lease") is _____, 20__

2. **Parties.** The parties to this lease are as follows: A. Landlord:

City of Chandler
City Manager
P.O. Box 4008, MS 605
Chandler, Arizona 85244-4008

B. Tenant:

SMC II, L.L.C., an Arizona limited liability company
c/o Niels E. Kreipke or Michael W. Hogarty
101 West Commonwealth Avenue
Chandler, Arizona 85225

C. **Parties.** Landlord and Tenant may be referred to in this Lease individually as a "Party" or collectively as the "Parties."

3. **Recitals.** As background to this Lease, the Parties agree, acknowledge and recite as follows, each of which shall be deemed a material term and provision of this Lease:

A. Pursuant to a "Development Agreement -- San Marcos Commons, Phase II," dated January 1, 2011 (the "Development Agreement"), Tenant has agreed to perform certain acts as more fully set forth in the Development Agreement.

B. Pursuant to the Development Agreement, Landlord has agreed to enter into a lease with Tenant for the Property (as defined below).

C. It is intended by Landlord and Tenant that this Lease be subject to the provisions of A.R.S. Section 42-6201 *et seq.*

D. Landlord is a "Government Lessor" as defined in A.R.S. Section 42-6010.

E. The improvements presently existing, or to be constructed, on the Property are (or will be) Government Property Improvements as defined in A.R.S. Section 42-6201.

4. **Lease of the Premises.**

A. **Premises.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon and in consideration of the terms and conditions contained herein, the

surface and subsurface rights on and above that certain parcel of real property, and any and all improvements presently existing thereon, within the portion of the redevelopment area generally located in the City of Chandler, County of Maricopa, State of Arizona, shown or designated as Parcels 1, 5 and 7 of San Marcos Commons all as more particularly described in Attachment 1 (legal description) and as depicted on Attachment 2 (plat map) attached hereto, which real property may be referred to in this Lease as the "Property" and which Property, together with the improvements presently situated on the Property, or to be constructed on the Property by Tenant in accordance with the terms and provisions of this Lease, is or may be referred to as the "Premises"; subject, however, to:

(1) All covenants, restrictions, easements, agreements, and reservations of record.

(2) Present and future building restrictions and regulations, zoning laws, ordinances, resolutions and regulations of the municipality in which the land lies and all present and future ordinances, laws, regulations and orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction.

(3) The condition and state of repair of the Premises as the same may be on the Commencement Date.

B. Public Tract. Although this Lease imposes certain obligations on Tenant with respect to maintenance of, and insurance covering bodily injury and property damage occurring on the Public Tract, the Public Tract is not included within the Premises.

C. Term. The term of this Lease ("Term") shall commence on March 1, 2016 ("Commencement Date"), and shall expire at 12:00 midnight on the last day of the Rental Period, unless this Lease is sooner terminated as hereinafter provided.

5. **Definitions.**

For the purposes of this Lease, the following words shall have the definition and meaning set forth in this Lease:

A. "Additional Payments" means as defined in Section 7(A).

B. "Administrative Fee" means as defined in Section 11(0).

C. "Affiliate" means, with respect to Tenant (including all entities that have an ownership interest in Tenant), any person or legal entity that is controlled by Tenant, that controls Tenant or that is under common control with Tenant, whether direct or indirect, and whether through ownership of voting securities, by control or otherwise. For purposes of this definition, "control" shall be conclusively presumed in the case of direct or indirect ownership of fifty percent (50%) or more of outstanding interests in terms of value or voting power of Tenant.

- D. "Applicable Laws" means as defined in Section 12(A).
- E. "Certificate of Occupancy" means as defined in Section 13(A)(6).
- F. "City's Maximum Contribution" means as defined in Section 13(A)(2)
- G. "Commencement Date" means as defined in Section 4(B).

(kkkk)H. "Depository" means an Institutional Lender holding a Permitted Mortgage or, if there be none, a bank or trust company having its principal office in Maricopa County selected by Tenant with a net worth of not less than \$50 million.

I. "Development Agreement" means that Development Agreement dated as of the date of this Lease, between the City and Tenant, as Tenant, as described in Recital 3(A).

J. "Enforced Delay" means as defined in Section 32.

K. "Event of Default" means as defined in Section 21(A).

L. "Impositions" means as defined in Section 7(A).

M. "Institutional Lender" means any savings bank, bank or trust company, savings and loan association, insurance company, mortgage banker, mortgage broker, finance company, college or university, governmental pension or retirement funds or systems, any pension retirement funds or systems of which any of the foregoing shall be trustee, provided the same be organized under the laws of the United States or of any State thereof, or a Real Estate Investment Trust as defined in Section 856 of the Internal Revenue Code of 1986 as amended.

N. "Landlord" means the City of Chandler, Arizona, a municipal corporation.

O. "Lease 1" means that certain Lease dated concurrently with this Lease, between the City, as Landlord, and Tenant, as Tenant, for Parcel 6.

P. "Lease 1 Improvements" means the improvements required to be constructed upon Parcel 6 by Tenant pursuant to Lease 1.

Q. "Lease 2" means that certain Lease proposed to be executed by and between the City, as Landlord, and Tenant, as Tenant, for Parcels 3 and 4.

R. "Lease 2 Improvements" means the improvements required to be constructed on Parcels 3 and 4.

S. "Leases" means this Lease 3, Lease I and Lease 2.

- T. Mortgage. "Mortgagee" means the holder, trustee, or beneficiary of any Permitted
- U. "Option Period" means as defined in Section 33(B).
- V. "Parcel 1," "Parcel 3," "Parcel 4," "Parcel 5," "Parcel 6" and "Parcel 7" mean the parcels so designated on Attachment 2.
- W. "Parcels" means all or any combination of Parcel 1, Parcel 3, Parcel 4, Parcel 5, Parcel 6 and Parcel 7.
- X. "Permitted Mortgage" means any mortgage or deed of trust not held by a Related Party (unless such Related Party is approved by Landlord) that constitutes a lien upon this Lease, the leasehold estate hereby created, or all (or any portion of) Tenant's interest in the Project, and which complies with the requirements of Section 20.
- Y. "Permitted Mortgagee" means the beneficiary, secured party or mortgagee under any Permitted Mortgage, and its successors and assigns and purchasers at any foreclosure sale.
- Z. "Phase I Developer" means Desert Viking DV Town Homes LLC, an Arizona limited liability company, an Affiliate of Tenant.
- AA. "Phase I Development Agreement" means that certain development agreement between the City and Phase I Developer.
- BB. "Phase II" means all of the development and construction contemplated for all of the Parcels in and under the Development Agreement.
- CC. "Premises" means as defined in Section 4(A) and described in Exhibits A and B.
- DD. "Project" means the construction of the Shops and all appurtenant improvements.
- EE. "Property" means as defined in Section 4(A).
- FF. "Public Tract" means the portion of the east-west alley (the "Parcel 1 Alley") running from Oregon Street to Arizona Avenue that is appurtenant to Parcels 1 and 2, Tract BB ("Tract BB"), and that southern portion of Exception Lot I that is intended to be replatted as Tract CC ("Tract CC"), as shown on the plat recorded in the Official Records of Maricopa County, Arizona in Book 865 of Maps, Page 18, whether or not such area is actually used for public right-of-way or other public purposes.
- GG. "Purchase Option" means as defined in Section 33(A).
- HH. "Rental Period" means the period beginning on the Commencement Date and ending on the earlier of September 1, 2039, or twenty-five (25) years from the first day of

the month following the date of issuance of the Certificate of Occupancy (or comparable instrument) for the Shops and Lease 1 Improvements.

II. "Second Notice" means as defined in Section 21(B).

JJ. "Shops" shall mean that certain retail (including restaurant) and office space to be constructed by Tenant on the Property in accordance with the plans and specifications approved by Landlord. The Shops shall consist of three buildings: A, E and F, totaling approximately 68,000 square feet, more or less, in order to bring the completed project (that is, including Buildings B, C and D as required by Lease 2) square footage to not less than 139,000 square feet. All buildings will be fully constructed and improved with all required certifications excluding tenant improvements. Building A is two stories with minimum total square footage of approximately 10,600 square feet under roof with ground floor retail or restaurant and the option of retail, restaurant or office on the second story. Building E is two stories with minimum total square footage of approximately 19,800 square feet under roof. The majority of the ground floor shall be restaurant and/or retail with some service office businesses allowed, such as copying, insurance, travel, banking, etc. The second story of Building E shall be office only. Building F is two stories with a minimum total square footage of approximately 37,800 square feet under roof. The majority of the ground floor shall be restaurant and/or retail, with some service office businesses allowed, such as copying, insurance, travel, banking, etc. The second story of Building F shall be office only.

KK. "Tenant" means the Tenant named herein and its permitted successors and assigns.

LL. "Term" means as defined in Section 4(C).

MM. "Transfer" means as defined in Section 20(B)(6).

NN. "Work" means as defined in Section 17(A).

6. **Rent.**

A. Net Rent.

(1) Base and Adjustments. Tenant shall pay to Landlord, in collected funds and at the addresses specified or furnished pursuant to Section 24, during the term of this Lease a net annual rental ("Net Rent") in the amount of Five Thousand and No Dollars (\$5,000.00).

(2) Annual Installments. All payments of annual Net Rent shall be made in annual installments in advance, without notice, on the first day of the month following the date of issuance of the Certificate of Occupancy for the improvements to be constructed pursuant to Section 10 of this Lease.

(3) Additional to Other Payments. Net Rent shall be in addition to all of the other payments to be made by Tenant as hereinafter provided.

B. Rent Absolutely Net. It is the purpose and intent of the Landlord and Tenant that Net Rent payable hereunder shall be absolutely net to Landlord so that this Lease shall yield to Landlord the Net Rent herein specified, free of any charges, assessments, Impositions, or deductions of any kind charged, assessed, or imposed on or against the Premises and without abatement, deduction or set-off by the Tenant, and Landlord shall not be expected or required to pay any such charge, assessment or Imposition or be under any obligation or liability hereunder except as herein expressly set forth, and that all costs expenses, and obligations of any kind relating to the maintenance and operation of the Premises, including all construction, alterations, repairs, reconstruction, and replacements as hereinafter provided, which may arise or become due during the term hereof shall be paid by Tenant, and Landlord shall be indemnified and saved harmless by Tenant from and against such costs, expenses, and obligations in accordance with Section 16.

C. Non-Subordination. Landlord's interest in this Lease, as the same may be modified, amended or renewed, shall not be subject or subordinate to (a) any mortgage now or hereafter placed upon Tenant's interest in this Lease, or (b) any other liens or encumbrances hereafter affecting Tenant's interest in this Lease.

D. No Release of Obligations. Except for either a mutual release and waiver of rights and liabilities arising under this Lease or to the extent expressly provided in this Lease, no happening, event, occurrence, or situation during the Rental Period, whether foreseen or unforeseen, and however extraordinary (including, without limitation, Tenant's failure, refusal, or inability for any reason to construct the Shops) shall permit the Tenant to quit or surrender the Premises or this Lease nor shall it relieve the Tenant of its liability to pay the Net Rent and Additional Payments and other charges under this Lease, nor shall it relieve the Tenant of any of its other obligations under this Lease.

7. **Additional Payments.**

A. "Additional Payments" Defined. Tenant shall pay as Additional Payments during the Term hereof, without notice and without abatement, deduction or setoff, before any fine, penalty, interest, or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, all sums, impositions, costs, expenses and other payments and all taxes (including personal property taxes and taxes on rents, leases or occupancy, if any, and government property improvement lease excise tax), assessments, special assessments, enhanced municipal services district assessments, water and sewer rents, rates and charges, charges for public utilities, excises, levies, licenses, and permit fees, any expenses incurred by Landlord on behalf of Tenant pursuant to this Lease (including the Administrative Fee provided for herein), and other governmental or quasi-governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which, at any time during the Term hereof may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or with

respect to, or become a lien on, the Premises or any part thereof, or any appurtenances thereto, any use or occupation of the Premises, or such franchises as may be appurtenant to the use of the Premises (all of which are sometimes herein referred to collectively as "Impositions" and individually as "Imposition") provided, however, that:

(1) if, by law, any Imposition may at the option of the Tenant be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and in such event, shall pay such installments as they become due during the Term hereof before any fine, penalty, further interest or cost may be added thereto; and

(2) any Imposition (including Impositions which have been converted into installment payments by Tenant, as referred to in subparagraph (A) above) relating to a fiscal period of the taxing authority, a part of which period is included within the Term hereof and a part of which is included in the period of time after the expiration of the Term hereof shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or become a lien upon the Premises, or shall become payable, during the Term hereof) be adjusted between Landlord and Tenant as of the expiration of the Term hereof, so that Tenant shall pay that portion of such Imposition attributable to the tenancy period and Landlord shall pay the remainder thereof.

B. Payments. Tenant shall pay to Landlord, with and in addition to the monthly rental payments, all taxes imposed by any governmental unit on the rentals received by Landlord pursuant to the terms of this Lease. Tenant shall pay all other impositions directly to the taxing authority or authorities.

C. Contest. Tenant, if it shall so desire, and at its sole cost and expense, may contest the validity or amount of any Imposition, in which event, Tenant may defer the payment thereof during the pendency of such contest; provided, that upon request by Landlord at any time after the same shall have become due, Tenant shall deposit with the Landlord any amount sufficient to pay such contested item together with the interest and penalties thereon (as reasonably estimated by Landlord), which amount shall be applied to the payment of such item when the amount thereof shall be finally fixed and determined. Nothing herein contained, however, shall be so construed as to allow such item to remain unpaid for a length of time that permits the Premises or any part thereof, or the lien thereon created by such Imposition to be sold for the nonpayment of the same. If the amount so deposited shall exceed the amount of such payment, the excess shall be paid to Tenant or, in case there shall be any deficiency, the amount of such deficiency shall be promptly paid by Tenant to Landlord together with all interest, penalties or other charges accruing thereon. At any time that the Tenant hereunder is an Institutional Lender, the requirements for deposits set forth in this Section shall be waived by Landlord.

D. Assessment Reduction. Tenant if it shall so desire, and its sole cost and expense, may endeavor at any time to obtain a lowering of an imposition or assessment upon the Premises for the purpose of reducing the amount thereof. However, in such event, Landlord

will not be required to cooperate with Tenant and may in fact oppose such endeavor. Tenant shall be authorized to collect any refund payable as a result of any proceeding Tenant may institute for that purpose and any such refund shall be the property of Tenant to the extent to which it may be based on a payment made by Tenant.

E. Hold Harmless. Landlord shall not be required to join in any action or proceeding referred to in Sections 7(C) or 7(O) (unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event any such action or proceeding may be taken by Tenant in the name of the Landlord only with Landlord's prior written consent). Tenant hereby agrees to indemnify, defend, pay and hold Landlord harmless for, from and against any and all costs, expenses, claims, loss or damage by reason of, in connection with, on account of, growing out of or resulting from, any such action or proceeding.

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

8. Insurance.

A. Tenant Obligation to Insure. Tenant shall procure and maintain for the entire Rental Period of this Lease, at Tenant's own cost and expense, insurance against casualty to or loss of the Premises and against claims for bodily injury or property damage which may arise from or in connection with this Lease by the Tenant, its agents, subtenants, employees, contractors, licensees or invitees in accordance with the insurance requirements set forth in Attachment 3 attached hereto. Such obligation shall expressly include bodily injury or property damage occurring on the Public Tract. Notwithstanding the foregoing, in the event of casualty to the Shops (whether or not such casualty is insured or fully insured with respect to the cost of restoration), Tenant shall repair, restore or rebuild the Shops to its pre-casualty condition providing the required number of parking spaces (and appurtenant amenities) for the benefit of the City as described in Section 13(C).

B. Failure to Maintain Insurance. If Tenant fails or refuses to provide a copy of the renewal insurance certificates, together with evidence of payment of premiums therefor, or otherwise fails or refuses to procure or maintain insurance as required by this Lease, Landlord shall have the right, at Landlord's election, and without notice, to procure and maintain such insurance. The premiums paid by Landlord shall be due and payable from Tenant to Landlord on the first day of the month following the date on which the premiums were paid. Landlord shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer(s) and insured(s). The lapse or cancellation of any policy of insurance required herein, in whole or in part for the benefit of Landlord, shall be an event of default. No cure of such default can be accomplished unless a new or renewed

policy is issued which specifically provides the required coverage to the Landlord for any liability arising during the lapsed or previously uncovered period.

9. Surrender.

A. Surrender. Unless Tenant has purchased the Premises pursuant to the Purchase Option set forth in Section 33, upon the expiration of the term of this Lease or on the sooner termination thereof, Tenant shall peaceably and quietly leave, surrender, and yield up to the Landlord all of the Premises broom-clean and free of occupants, and shall repair all damage to the Premises caused by or resulting from the removal of any removable property of Tenant, normal wear and tear excepted. Any property of Tenant or any subtenant which shall remain in the Building after the expiration of the Term hereof or sooner termination thereof shall be deemed to have been abandoned, and may either be retained by Landlord as its property or disposed of in such manner as Landlord may see fit. If such property or any part thereof shall be sold, Landlord shall receive and retain the proceeds of such sale. Tenant shall be liable to Landlord for any and all costs of removal and the repair of any and all damages caused thereby in excess of any proceeds received by Landlord from any sale of Tenant's property pursuant to this provision.

B. Waste. Tenant shall not commit or suffer to be committed any waste or impairment of the Premises.

C. Soil and Buildings Tests. Within the three (3) months immediately preceding the expiration of this Lease or within (2) two months of any earlier termination of the Lease (unless Tenant has purchased the Premises pursuant to the Purchase Option set forth in Section 33), Tenant shall deliver to Landlord a soil and building conditions report prepared in compliance with current ASTM standards by an independent qualified engineer, licensed by the State of Arizona, stating that the Premises are free of any hazardous materials as they are hereinafter defined or identified by either the United States Environmental Protection Agency or similar State agency as such. If any hazardous materials are identified, Tenant is fully personally liable for removing the hazard and leaving the Premises in a hazard free condition, except to the extent present on Premises prior to the Commencement Date or as a result of any act or omission of Landlord, its employees, agents, or contractors.

D. Failure to Correct Hazardous Conditions or Obtain Tests. Should Tenant fail to deliver to Landlord the report required by Section 9(C), Landlord may cause a report to be prepared to like effect and Tenant shall be liable to Landlord for one hundred thirty percent (130%) of the cost of said report. Should the report provided by either Landlord or Tenant state that the Premises cannot be used or leased in a hazard free condition, Tenant promptly shall cause the hazardous condition to be fully corrected at Tenant's expense, except to the extent present on Premises prior to the Commencement Date or as a result of any act or omission of Landlord, its employees, agents, or contractors. This shall not be construed as an extension of an expired or terminated lease but solely as damages to Landlord due to Tenant's activities which prevent Landlord from re-leasing the Premises. Tenant, following such lease expiration or termination, shall be allowed access to the Premises only to the

extent necessary to remove or otherwise correct any hazard and shall conduct no gainful business activity whatsoever at said Premises.

E. Survival of Provisions. The provisions of this Section 9 shall survive the expiration or any termination of this Lease.

10. Landlord's Performance For Tenant. If Tenant shall fail to pay any Imposition or make any other payment required to be made under this Lease or shall default in the performance of any other covenant, agreement, term, provision, limitation, or condition herein contained, following any applicable notice required by Section 21, Landlord, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default for the account and at the expense of Tenant. Bills for any expense required by Landlord in connection therewith, and bills for all such expenses and disbursements of every kind and nature whatsoever, including reasonable attorney's or administrative fees, involved in collection or endeavoring to collect the rent or Additional Payments or any part thereof, or enforcing or endeavoring to enforce any right against Tenant, under or in connection with this Lease, or pursuant to law, including (without being limited to) any such cost, expense, and disbursements involved in instituting and prosecuting summary proceedings, as well as bills for any property, material, labor, or services provided furnished, or rendered, or caused to be furnished or rendered, by Landlord to Tenant, with respect to the Premises and other equipment and construction work done for the account of the Tenant together with interest at the rate of ten percent (10%) per annum compounded monthly from the respective dates of the Landlord's making of each such payment or incurring of each such cost or expense, may be sent by Landlord to Tenant monthly, or immediately, at Landlord's option, and shall be due and payable in accordance with the terms of said bills and if not paid when due the amount thereof shall immediately become due and payable as Additional Payments.

11. Uses And Maintenance.

A. Absence of Warranties. Tenant has leased the Premises after a full and complete examination thereof, as well as the title thereto and knowledge of its present uses and nonuses. Tenant accepts the same in the condition or state in which they now are without any representation or warranty, express or implied in fact or by law, by Landlord and without recourse to Landlord, as to the title thereto, the nature, condition, or usability thereof or the use or uses to which the Premises or any part thereof may be put. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Premises or to provide any off-site improvements, such as utilities or paving, or other forms of access to the Premises, other than what may already exist on the Commencement Date, as well as those services and facilities normally provided to other similar commercial properties throughout the Term hereof. Tenant hereby assumes the full and sole responsibility for the condition, construction, operation, repair, demolition, replacement, maintenance, and management of the Premises, including but not limited to the performance of all burdens running with the Land.

B. Permitted Uses. In no event shall the Premises or any part thereof be used for any purpose prohibited by this Lease. Regardless of the uses which would otherwise be allowed pursuant to the zoning classification or other ordinances which may be applicable to the Premises at any time during the Rental Period, the uses set forth in Attachment 4 are expressly prohibited. Additionally, during the Rental Period use of the Premises by Tenant or its subtenants is hereby restricted to restaurant, entertainment, retail, office, parking and other similar or related ancillary uses and the Premises may not be used for any other purpose without the prior written consent of Landlord, which may be given or withheld at Landlord's sole discretion. Moreover, any permitted use which involves the handling, production and/or storage of Hazardous Materials on the Premises shall be subject to all applicable federal, state and local laws rules and regulations.

C. Maintenance, Repairs, Indemnity. Tenant shall take good care of the Premises, make all repairs thereto (including replacements, if repairs are impossible or inadequate), interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Premises, the sidewalks, curbs, drives and landscaping (including all landscaping in adjacent public rights-of-way) and the Public Tract in first-class order, repair, and condition in accordance with City of Chandler standards and this Lease, whichever is more stringent. Tenant shall also keep the sidewalks and gutters in front of the Premises free and clear from rubbish and shall not obstruct the same or allow the same to be obstructed in any manner. Tenant shall indemnify Landlord and save it harmless from any and all claims or demands, upon or arising out of any accident, injury, or damage to any person or property occurring in or upon the Premises or any part thereof, or upon the sidewalks about the Premises, or upon the Public Tract however caused, and shall keep the Premises free and clear of any and all mechanics' liens or other similar liens or charges incidental to work done or material supplied in or about the Premises, except claims arising from the acts of Landlord.

D. Performance by Landlord. In the event Tenant fails to maintain and repair the Premises or the Public Tract in the condition required by Section II (C) hereof, Landlord may, upon fourteen (14) days' written notice to Tenant with respect to failures of Tenant that are not emergencies, or twenty-four (24) hours' notice to Tenant with respect to failures of Tenant that are reasonably determined by Landlord to be emergencies, but without being under any obligation to do so and without thereby waiving any default, may perform or have performed any and all such work as it, in its sole and absolute discretion, deems necessary to maintain or restore the Premises and the Public Tract to their required condition. Any and all work performed by or for Landlord pursuant to this Section II (D), shall be deemed to have been undertaken for and at the expense of Tenant. All cost incurred by Landlord in undertaking such work shall, along with an administrative fee equaling twenty percent (20%) of such costs and expenses ("Administrative Fee"), be subject to the provisions of Section 7(A) of this Lease.

E. Alterations. Except as provided in Section 10 or Section 13 hereof or with the prior written consent of Landlord, Tenant shall not erect any structures, make any improvements, or do any other construction work on the Premises or the Public Tract or

alter, modify, or make additions, improvements, or repairs to or replacements of any structure, now existing or built at any time during the Term hereof, or install any fixtures (other than trade fixtures removable without injury to the Premises) which would (i) affect the structural integrity of the Shops or (ii) affect or modify the exterior or design of the Shops or (iii) interfere with or affect utility systems on the Premises (other than heating, ventilating, and air conditioning systems installed by Tenant) or (iv) require filing of plans with, or other approval by, the City of Chandler. In the event any such construction, improvement, alteration, modification, addition, repair, or replacement is made without such approval, then, upon reasonable notice so to do, the Tenant will remove the same, or, at the option of the Landlord, cause the same to be changed to the satisfaction of the Landlord. In case of any failure on the part of Tenant to comply with such notice, the Landlord may effect the removal or change, and the Tenant shall pay the costs thereof to the Landlord on demand and such costs and expenses shall be subject to the provisions of Section 7(A) of this Lease.

12. Compliance.

A. Tenant Obligations. Tenant shall assume and perform any and all obligations of Landlord under any covenants, easements, and agreements affecting the title to the Premises and shall diligently comply with, at its own expense during the Term hereof, all present and future laws, acts, rules, requirements, orders, directions, ordinances, and/or regulations, ordinary or extraordinary, foreseen or unforeseen, concerning the Premises or any part thereof, or the use thereof, or the Public Tract or the use thereof, or the public rights-of-way adjacent thereto, of any federal, state, municipal, or other public department, bureau, officer, or authority, or other body having similar functions ("Applicable Laws"), or of any liability, fire, or other insurance company having policies outstanding with respect to the Premises, whether or not such laws, acts, rules, requirements, orders, directions, ordinances and/or regulations require the making of structural alterations or the use or application of portions of the Premises for compliance therewith or interfere with the use and enjoyment of the Premises, the intention of the parties being with respect thereto that Tenant during the Term hereby granted, shall discharge and perform all the obligations of Landlord, as well as all obligations of Tenant, arising as aforesaid, and save Landlord harmless therefrom, so that at all times the rental of the Premises shall be net to the Landlord without deduction or expenses on account of any such law, act, rule, requirement, order direction, ordinance and/or regulation whatever it may be; provided, however, that Tenant may, in good faith (and wherever necessary, in the name of, but without expense to and with the prior written permission of, Landlord), contest the validity of any such law, act, rule, requirement, order, direction, ordinance and/or regulation and, pending the determination of such contest, may postpone compliance therewith, except that Tenant shall not so postpone compliance therewith, as to subject Landlord to the risk of any fine or penalty or to prosecute for a crime, or to cause the Premises or any part thereof to be condemned or to be vacated.

B. Certificate of Occupancy. Tenant shall obtain any certificate of occupancy with respect to the Premises which may at any time be required by any governmental agency having jurisdiction thereof.

13. Construction And Operation Of Project.

A. Project. Tenant shall construct the Shops and all appurtenant improvements on the Property and the Public Tract.

(1) Commencement of vertical construction of all structures required under this Lease and Lease 1 (evidenced by framing above foundation slabs) shall occur no later than March 1, 2016.

(2) The Shops and any improvement required with respect to the Public Tract shall be constructed in accordance with the approved plans and specifications.

(3) Tenant will construct all improvements in a good, careful, proper, and workmanlike manner in accordance with (a) the approved plans and specifications; (b) all provisions of law and any and all permits and authority required by ordinance, code, law, or public regulations or by any authority at any time having jurisdiction over the Premises; and (c) the requirements of any public or quasi-public body having similar jurisdiction.

(i) Tenant will comply with all applicable public bidding requirements in connection with the construction of the Shops; provided, however, to the extent permitted by Applicable Laws, Tenant shall not be obligated to accept the low bid and may reject any and all bids.

(ii) Landlord will be an additional insured on all liability insurance policies maintained by Tenant and its contractor(s) during construction of all improvements on the Parcels.

(4) Construction of all improvements shall be diligently prosecuted to completion.

(5) Completion of construction of the Project (evidenced by issuance of certificates of completion or occupancy or similar approvals issued by the City of Chandler certifying compliance with all applicable building codes and indicating the Improvements are in a condition suitable for occupancy, each a "Certificate of Occupancy") shall be no later than March 1, 2017.

(6) In addition to the foregoing, and prior to the City's having any obligation to issue a Certificate of Occupancy for the Shops, Tenant shall have demonstrated, to Landlord's reasonable satisfaction, that Tenant has completed all Lease 1 Improvements and all Lease 2 Improvements, and is not in default of any term or provision of Lease 1 or Lease 2.

B. Ownership of Buildings and Improvements.

(1) During Term. Prior to receipt of a Certificate of Occupancy, title to all buildings and improvements constructed on the Premises by Tenant pursuant to this Lease shall be in the Tenant.

(2) Upon Completion. Following issuance of a Certificate of Occupancy and thereafter, title to all buildings and improvements constructed on the Premises by Tenant pursuant to this Lease, together with any improvements or other infrastructure constructed on the Public Tract, shall be automatically vested in the Landlord without further act, notice or instrument required (the "Accretion"), subject to this Lease; and the use and occupancy of the improvements shall be subject to all terms and conditions of this Lease. There shall be no increase in the rental payment owing to Landlord as a result of the Accretion.

(3) Ownership at Termination. Unless Tenant has purchased the Premises pursuant to the Purchase Option set forth in Section 33, on the expiration or sooner termination of this Lease, title to all buildings and improvements, which constitute or are a part of the Premises, exclusive of trade fixtures and personal property of Lessee and subtenants, shall (without the payment of compensation to Tenant or others) remain in Landlord free and clear of all claims and encumbrances on such buildings and improvements by Tenant, and anyone claiming under or through Tenant. Any piping, wells, pumps, tanks or other equipment installed on the Premises by Tenant shall be left in a structurally sound, nonleaking condition so as not to become the source of any future environmental contamination or hazard. Upon request, Tenant shall quitclaim to Landlord its possessory interest in the buildings and improvements. Tenant shall indemnify, defend, pay and hold Landlord harmless for, from and against any and all liability and loss which may arise from the assertion of any claims and any encumbrances on such buildings and improvements; provided, however, such duty to indemnify and hold harmless shall not apply to any claims or encumbrances which are attributable to the acts or conduct of the Landlord. Additionally, Tenant shall assign to Landlord, and Landlord shall be entitled to the benefit of, any licenses, warranties or guarantees applicable to equipment, systems, fixtures or personal property conveyed or otherwise transferred to, or for the benefit of, Landlord under this Lease. The foregoing notwithstanding, Tenant shall not quitclaim its possessory interest in the aforementioned buildings and equipment to Landlord until such buildings and equipment have been inspected by Landlord and they have been determined not to present a potential environmental hazard. This provision shall survive the expiration or earlier termination of this Lease.

(4) Tenant's Management and Operating Covenant. Following issuance of the Certificate of Occupancy and continuing during the remainder of the Term, Tenant shall prudently manage and operate (or cause to be managed and operate) the Shops and will properly maintain all improvements and the Premises in good condition and repair, reasonable wear and tear excepted.

14. Impairment Of Landlord's Title.

A. No Liens. Tenant shall not create, or suffer to be created or to remain, and shall promptly discharge any mechanic's, laborer's, or materialman's lien which might be or become a lien, encumbrance, or charge upon the Premises or any part thereof or the income therefrom and Tenant will not suffer any other matter or thing arising out of Tenant's use and occupancy of the Premises whereby the estate, rights, and interests of Landlord in the Premises or any part thereof might be impaired.

B. Discharge. If any mechanic's, laborer's, or materialman's lien shall at any time be filed against the Premises or any part thereof, Tenant, within thirty (30) days after notice of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise. Tenant shall notify Landlord in writing of its action to either satisfy or contest the lien and, if contested, of the matter's status on a monthly basis until concluded. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by Landlord and costs and expenses incurred by Landlord in connection therewith, shall constitute an Additional Payment payable by Tenant and shall be paid by Tenant to Landlord on demand.

C. No Implied Consent. Nothing contained in this Lease shall be deemed or construed in any way as constituting Landlord's expressed or implied authorization, consent or request to any contractor, subcontractor, laborer or materialman, architect, or consultant, for the construction or demolition of any improvement, the performance of any labor or services or the furnishing of any materials for any improvements, alterations to or repair of the Premises or any part thereof.

D. No Agency Intended. The parties acknowledge that Tenant is entitled to construct the Shops. In connection therewith, the parties agree that Tenant is not the agent of Landlord for the construction, alteration or repair of any improvement Tenant may construct upon the Premises, the same being done at the sole expense of Tenant.

E. Public Tract. Tenant shall not grant (or purport to grant) to any subtenant, licensee, invitee or other person, any right or interest in or to any portion of the Public Tract.

15. Inspection. Landlord shall have the right to enter upon the Premises, or any part thereof, for the purpose of ascertaining their condition or whether Tenant is observing and performing the obligations assumed by it under this Lease, all without hindrance or molestation from Tenant, provided that (absent an emergency) such entry does not interfere with Tenant's business operations and provided that Landlord shall give Tenant at least twenty (20) days written notice prior to any inspection of any building interior. This twenty (20) days notice provision shall not be construed to prohibit or delay any entry by Landlord in

its capacity as a municipality exercising its police power or in its criminal law enforcement capacity, nor to any entry authorized by any writ or warrant issued by any Court, nor to any entry authorized by any health or welfare statute, code, ordinance, rule or regulation.

16. Indemnification of Landlord.

A. Indemnification. Tenant shall indemnify, defend, pay and hold Landlord harmless for, from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including property damage, personal injury and wrongful death and further including, without limitation, architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against Landlord by reason of any of the following occurring during the term unless caused by the Landlord, its agents or employees or a failure to act by the Landlord, its agents or employees when a duty to act is present:

- (1) construction of any improvements constituting the Project or any other work or thing done in, on or about the Premises or any part thereof by Tenant or its agents;
- (2) any use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or the Public Tract or any nuisance made or suffered thereon or any failure by Tenant to keep the Premises or improvements or any part thereof, in a safe condition;
- (3) any acts of the Tenant or any subtenant or any of its or their respective agents, contractors, servants, employees, licensees or invitees;
- (4) any fire, accident, injury (including death) or damage to any person or property occurring in, on or about the Premises or the Public Tract or any part thereof;
- (5) any failure on the part of Tenant to pay rent or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with and the exercise by Landlord of any remedy provided in this Lease with respect thereto;
- (6) any lien or claim which may be alleged to have arisen against or on the Premises or improvements or any part thereof or any of the assets of, or funds appropriated to, Landlord or any liability which may be asserted against Landlord with respect thereto to the extent arising, in each such case, out of the acts of Tenant, its contractors, agents, sublessees;
- (7) any failure on the part of Tenant to keep, observe, comply with and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the subleases or other contracts and agreements affecting the Premises or the Public Tract or any part thereof, on Tenant's part to be kept, observed or performed;

(8) any transaction relating to or arising out of the execution of this Lease or other contracts and agreements affecting the Premises or the Public Tract, the Shops or any part thereof or any activities performed by any party, person or entity which are required by the terms of this Lease or such other contracts and agreements;

(9) any tax, including any tax attributable to the execution, delivery or recording of this Lease, with respect to events occurring during the term of this Lease.

B. Tenant will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises and improvements at the sole risk of Tenant and indemnify, defend, pay and hold Landlord harmless for, from and against any and all loss or damage thereto by any cause whatsoever.

C. The obligations of Tenant under this Section shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Premises and the Public Tract.

D. If any claim, action or proceeding is made or brought against Landlord by reason of any event to which reference is made in this Section, then, upon demand by Landlord, Tenant, at its sole cost and expense, shall resist or defend such claim, action or proceeding in Landlord's name, if necessary, by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys as Landlord shall approve, which approval shall not be unreasonably withheld or delayed; provided however that nothing in this Lease shall prevent or prohibit Landlord from assisting in its own defense at its sole cost and expense and with attorneys of its choosing. If, in Landlord's reasonable discretion, Tenant fails timely and diligently to undertake such defense, then Landlord may engage its own attorneys to defend it, and Tenant shall pay on demand the reasonable fees and disbursements of such attorneys.

The provisions of this Section 16 shall survive the expiration or earlier termination of this Lease.

17. **Damage Or Destruction.**

A. Tenant Repair and Restoration. If, at any time during the Term, the Premises or the Public Tract or any part thereof shall be damaged or destroyed by fire or other occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant, at its sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, shall proceed with reasonable diligence to repair, alter, restore, replace, or rebuild the same as nearly as possible to its value, condition, and character immediately prior to such damage or destruction. Such repair, alteration, restoration, replacement, or rebuilding, including such changes and alterations as aforementioned and including temporary repairs for the protection of other property pending the completion of any thereof, are sometimes referred to in this Section as the "Work." Anything herein to the contrary notwithstanding, Tenant shall immediately secure the Premises and undertake

temporary repairs and work necessary to protect the public and to protect the Premises from further damage.

B. Payment of Insurance Proceeds. All insurance proceeds on account of such damage or destruction under the policies of insurance provided for in Section 5, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof (herein sometimes referred to as the "insurance proceeds") shall be paid to the Depository and held in an interest bearing account. All insurance proceeds shall be applied by the Depository to the payment of the cost of the Work to the extent such insurance proceeds shall be sufficient for the purpose, and shall be paid out to or for the account of Tenant from time to time as such Work progresses. The Depository shall make such payments or disbursements upon the written request by Tenant when accompanied by the following:

(1) Certificate of Costs. A certificate dated not more than fifteen (15) days prior to such request, signed by Tenant (by an officer, if Tenant be a corporation) and by an architect in charge of the Work who shall be selected by Tenant setting forth that:

(a) The sum then requested either has been paid by Tenant or is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the Work, giving a brief description of the services and materials and the several amounts so paid or due and stating that no part thereof has been made the basis of any previous or then pending request or has been paid out of any insurance proceeds received by Tenant, and that the sum requested does not exceed the value of the services and materials described in the certificate. If sums are sought by way of reimbursement the request shall be accompanied by a lien release; if sums are sought for payment in the first instance a lien release shall be submitted to the Depository within seven (7) day of disbursement by the Depository; and,

(b) Except for the amount stated in such certificate to be due as aforesaid, there is no outstanding indebtedness known to the persons signing such certificate after due inquiry which might become the basis of a vendor, mechanic, or materialman or similar lien upon such Work, the Premises or Tenant's leasehold interest, or any part thereof, and

(2) Sums Paid to Tenant. Upon compliance with the foregoing provisions of this Section, the Depository, out of the insurance proceeds, shall pay or cause to be paid to Tenant or to the persons named in the certificate the respective amounts stated therein to have been paid by Tenant or to be due to them, as the case may be. Upon receipt by the Depository of a lien release from every contractor and subcontractor working on the Shops and such other evidence satisfactory to it of the character required by Section 17(B)(2) that the Work is complete and paid for in full and that there are no liens of the character referred to therein, and if Tenant is not then in default, the Depository shall pay to Tenant any remaining balance of said insurance proceeds.

(3) Deficiency. If the insurance proceeds received by the Depository shall not be sufficient to pay the entire cost of the Work, Tenant shall supply the amount of any

such deficiency. Under no circumstances shall Landlord be obligated to make any payment, reimbursement, or contribution towards the cost of the Work.

C. Failure to Commence Repairs. If the Work shall not have been commenced within one hundred and eighty (180) days after the date of the damage or destruction, or if such Work after commencement shall not proceed expeditiously or is not completed within 18 months after commencement, Landlord may terminate this Lease pursuant to Section 18. On such termination the insurance proceeds received by the Depository shall be paid to Landlord to be used in the reconstruction or restoration of the Project, and any remaining proceeds shall be paid over by Landlord to the Tenant, but subject to the rights of any Permitted Mortgagee as herein set forth.

D. Cure by Mortgagee. If, within thirty (30) days from receipt by a Permitted Mortgagee of Landlord's notice of any default of Tenant, the holder of the Permitted Mortgage moves, either itself or through a receiver, to take possession of the Premises and begins or continues the Work, and if, with respect to any default by Tenant under this Lease, the right of Landlord to terminate this Lease shall not have accrued, then the Depository shall pay over to the holder of such Permitted Mortgage, or to the receiver, as the case may be, the proceeds of insurance pursuant to Section 17(8) upon receipt from the holder of such Permitted Mortgage or such receiver of the certificates of the character required from Tenant under Section 17(8)(1), provided that such proceeds be used to complete the Work promptly and expeditiously.

E. Lease Obligations Continue. In no event shall Tenant be entitled to any abatement, allowance, reduction, or suspension of rent because part or all of the Premises shall be untenable owing to the partial or total destruction thereof. No such damage or destruction shall affect in any way the obligation of Tenant to pay the rent, Additional Payments, and other charges herein reserved or required to be paid, nor release Tenant of or from obligations imposed upon Tenant hereunder.

18. **Condemnation.**

A. Total, Substantial, or Unusable Remainder. If at any time during the term of this Lease, title to the whole or substantially all of the Premises shall be taken in condemnation proceedings or by any right of eminent domain or by agreement in lieu of such proceedings, this Lease shall terminate and expire on the date possession is transferred to the condemning authority and the Net Rent and Additional Payments reserved shall be apportioned and paid to the date of such taking. All compensation paid by the condemning authority in the case of any condemnation (total or partial) shall be the sole property of Tenant free and clear of any right, title, claim or interest of Landlord.

B. Partial Taking--Lease Continues. In the event of any taking of less than the whole or substantially all of the Premises, neither Rental Period of this Lease shall not be reduced or affected in any way. In such a case, the Net Rent payable for that part of the

balance of the Term hereof occurring prior to the termination or expiration of the Lease, shall be based on the ratio of the remaining square footage of leased Land to the square footage of the land prior to the condemnation.

C. **Rights of Participation.** Tenant shall have the sole right, at its own expense, to appear in and defend any condemnation proceeding and participate in any and all hearings, trials, and appeals therein. Landlord shall, at the request of Tenant, shall execute a **Disclaimer of Interest** in the condemnation action evidencing the fact that Landlord has no interest in the proceeds of the condemnation.

D. **Notice of Proceeding.** In the event Landlord or Tenant shall receive notice of any proposed or pending condemnation proceedings affecting the Premises, the party receiving such notice shall promptly notify the other party of the receipt and contents thereof.

E. **Relocation Benefits.** Tenant shall also retain any federal, state or local relocation benefits or assistance provided in connection with any condemnation or prospective condemnation action.

19. **[Reserved]**

20. **Encumbrances and Assignments.**

A. Tenant may encumber its leasehold interests to obtain construction and permanent financing for the Shops and appurtenant improvements (a "**Permitted Mortgage**"), subject to the following:

(1) Tenant may encumber its interest in this Lease and the Premises only if (i) Tenant is not then in default of any of its obligations under the Development Agreement, Lease 1 or Lease 2; and (ii) Tenant has a commitment in form reasonably acceptable to Landlord for construction financing for the Project from a recognized institutional lender (and has demonstrated such committed financing to Landlord). There may be only one Permitted Mortgage in existence with respect to this Lease at any time, and junior liens or encumbrances of any kind are prohibited. The holder of a Permitted Mortgage shall be a "Permitted Mortgagee;"

(2) A Permitted Mortgage encumbering this Lease and the Premises may only be in favor of a lender for the improvements to be constructed on Parcels 1, 5 and 7;

(3) With respect to such leasehold financing, Landlord will agree to a form of commercially standard non-disturbance and recognition agreement with Tenant's Lender as well as other reasonable, non-material modifications to the applicable Lease requested by a recognized institutional lender;

(4) A Permitted Mortgage cannot secure obligations other than costs and expenses in connection with the construction of the Project;

(5) A Permitted Mortgage shall cover no interest in the real property other than Tenant's interest in the Premises;

(6) Tenant or the holder of a Permitted Mortgage shall promptly deliver to Landlord in the manner herein provided for the giving of notice to Landlord, a true copy of the Permitted Mortgage(s), of any assignment thereof, and of the satisfaction thereof; and

(7) For the purpose of this Section 20, the making of a Permitted Mortgage shall not be deemed to constitute an assignment or transfer of this Lease, nor shall any holder of a Permitted Mortgage, as such, be deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such holder of a Permitted Mortgage, as such, to assume the performance of any of the terms, covenants, or conditions on the part of Tenant to be performed hereunder; but the purchaser at any sale of this Lease in any proceedings for the foreclosure of any Permitted Mortgage, or the assignee or transferee of this Lease under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Mortgage, shall be deemed to be an assignee or transferee within the meaning of this Section and shall be deemed to have assumed the performance of all the terms, covenants, and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment.

B. An assignment of this Lease to another entity (a "Transfer") is permitted only as follows:

(1) During construction, and for the first four (4) years from the issuance of the certificate of occupancy (or comparable instrument) for the applicable improvements, no Transfer is permitted. Notwithstanding the foregoing, the City may approve a Transfer during this period in its sole, absolute and unfettered discretion.

(2) For the next four years thereafter, any Transfer will require the City's approval in its reasonable commercial discretion.

(3) If Tenant does Transfer this Lease during the first eight (8) year period, an exit fee shall be paid to the City in the amount of Four Hundred Thousand Dollars (\$400,000.00).

(4) Following year 8, no exit fee will be charged.

(5) Notwithstanding the foregoing, any of these requirements can be waived in the City's sole and absolute discretion.

(6) A "Transfer" shall be a transfer, assignment or conveyance of Tenant's interest in this Lease, or of any member's or manager's interest in Tenant or in Desert

Viking Properties, LLC, to an individual other than Niels E. Kreipke and/or Michael W. Hogarty, or to an entity in which Niels E. Kreipke or Michael W. Hogarty (individually or collectively) does not maintain both (i) a 25% percent entity interest, and (ii) effective and exclusive daily management and control of such entity for a period of at least three (3) years following such Transfer.

(7) The restriction on Transfer shall not limit the granting of easements or permits reasonably necessary or customary in the normal course of development, prohibit normal tenant leasing activity, restrict typical or customary financing activity, or the prohibit the opportunity to replace equity investors other than Tenant (provided that such replacement does not constitute a Transfer as defined in Section 20(B)(6). Further, a Transfer shall not include the foreclosure by the beneficiary of a leasehold deed of trust, of its beneficial interest in the applicable lease; provided, however, that such beneficiary shall be an unaffiliated third-party lender acting in good faith.

(8) Rent From Assignee. If this Lease is assigned, whether or not in violation of the provisions hereof, Landlord may and hereby is empowered to collect rent from the assignee. In such event, Landlord may apply the net amount received by it to Net Rent and Additional Payments, and no such collection shall be deemed a waiver of the covenant herein against assignment, or an acceptance of the assignee or subtenant as a Tenant under this Lease, or a release of Tenant from the further performance of the covenants herein contained on the part of Tenant. Nothing herein contained shall be deemed to prohibit Tenant from assigning its interest in this Lease or its interest as sublessor in any subleases to the holder of any Permitted Mortgage as further security for the indebtedness outstanding under such Mortgage.

(9) Continuing Liability. The making of any assignment in whole or in part, shall not operate to relieve Tenant from its obligations under this Lease and, notwithstanding any such assignment, except as otherwise provided in this Section, Tenant shall remain liable for the payment of all Net Rent and Additional Payments and for the due performance of all the covenants, agreements, terms, and provisions of this Lease to the full end of the Term hereof, whether or not there shall have been any prior termination of this lease by summary proceedings or otherwise.

(10) Assignee Bound. Every assignee, whether as assignee or as successor in interest of any assignee of Tenant herein named or as assignee of the holder of any Permitted Mortgage, or as successor in interest of any assignee, including any purchaser of the Lease under a foreclosure of any Permitted Mortgage, shall immediately be and become and remain liable for the payment of Net Rent and Additional Payments, and for the due performance of all the covenants, agreements, terms, and provisions hereof on Tenant's part to be performed to the end of the Term hereof, and every provision of this Lease applicable to Tenant shall apply to and bind every such assignee and purchaser with the same force and effect as though such assignee or purchaser were the Tenant named in this Lease. No transfer to such assignee or to such purchaser shall be binding upon Landlord unless such assignee or purchaser shall deliver to the Landlord a recordable instrument which contains a

covenant of assumption by said assignee or purchaser to such effect, but the failure or refusal of such assignee or purchaser to deliver such instrument shall not release or discharge such assignee or purchaser from its obligations and liability as above set forth.

(11) Consent Limited. Any consent by Landlord herein contained or hereafter given to any act of assignment, shall be held to apply only to the specific transaction hereby or thereby approved. Such consent shall not be construed as a waiver of the duty of Tenant, or its successors or assigns, to obtain Landlord's consent to any other or subsequent assignment, or as a modification or limitation of the right of Landlord with respect to the foregoing covenant by Tenant.

(12) Notice of Transfer. Tenant shall deliver written notice of (i) any Transfer, or (ii) any transfer, conveyance or assignment of Tenant's rights in this Lease that is not a Transfer, within three (3) business days following the completion of such transaction, together with a true and complete copy of the instrument (or instruments) effecting such Transfer or other conveyance.

21. **Default By Tenant.**

A. Events of Default. The happening of any one of the following events (each, an "Event of Default") shall be considered a material breach and default by Tenant under this Lease:

(1) Monetary Default. If default shall be made in the due and punctual payment of any Net Rent or Additional Payments within thirty (30) days after written notice thereof to Tenant; or

(2) Non-Monetary Default. If default shall be made by Tenant in the performance of or compliance with any of the covenants, agreements, terms, limitations, or conditions hereof other than those referred to in the foregoing subsection (A), and such default shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant (provided, that if Tenant proceeds with due diligence during such thirty (30) day period to substantially cure such default and is unable by reason of the nature of the work involved, to cure the same within the required thirty (30) days, its time to do so shall be extended by the time reasonably necessary to cure the same; or

(3) Bankruptcy, Voluntary. If Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall take the benefit of any relevant legislation that may be in force for bankrupt or insolvent debtors or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state, or other statute, law or regulation, or if Tenant shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties, or shall make any general assignment for the benefit of creditors; or

(4) Bankruptcy, Involuntary. If a petition shall be filed against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation, and shall remain undismissed or unstayed for ninety (90) days, or if any trustee, receiver or liquidator of Tenant, or of all or substantial part of its properties, shall be appointed without the consent or acquiescence of Tenant and such appointment shall remain unvacated and unstayed for ninety (90) days; or

(5) Insurance, Lapse or Termination. Notwithstanding the provisions of paragraph B, above, the lapse or cancellation of any policy of insurance required herein, in whole or in part for the benefit of Landlord, shall be an event of default. No cure of such default can be accomplished unless a new or renewed policy is issued which specifically provides the required coverage to the Landlord for any liability arising during the lapsed or previously uncovered period.

B. Notice and Termination. Upon the occurrence of one or more of the events listed in Section 21(A) the Landlord at any time thereafter, but not after such default is cured, may give written notice ("Second Notice") to Tenant and any permitted mortgagee specifying such Event(s) of Default and stating that this Lease and the term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least thirty (30) days after the giving of such Second Notice, and upon the date specified in such Second Notice, subject to the Event of Default having been cured or remedied on or prior to the date set forth in the Second Notice, this Lease and the term hereby demised and all rights of Tenant under this Lease shall expire and terminate as though such date were the date originally set forth herein for the termination hereof.

C. Tenant Liability Continues. No such expiration or termination of this Lease shall relieve Tenant of its liability and obligations under this Lease, and such liability and obligations shall survive any such expiration or termination. In the event of any such expiration or termination, whether or not the Premises or any part thereof shall have been relet, Tenant shall pay to Landlord the Net Rent and Additional Payments required to be paid by Tenant up to the time of such expiration or termination of this Lease, and thereafter Tenant, until the end of what would have been the Term of this Lease in the absence of such expiration or termination, shall be liable to Landlord for, and shall pay to Landlord, as and for the liquidated and agreed current damages for Tenant's default:

The equivalent of the amount of the Net Rent and Additional Payments which would be payable hereunder by Tenant if this Lease were still in effect, less the net proceeds of any reletting effected pursuant to the provisions of Section 18.3 after deducting all Landlord's expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, reasonable attorney's fees, alteration costs, and expenses of preparation for such reletting, which shall be due and payable to Landlord on the days on which the Net Rent and Additional Payments would have been payable under this Lease if this Lease were still in effect.

D. No Implied Waivers. No failure by Landlord to insist upon the strict performance of any covenant, agreement, term or condition hereof or to exercise any right or remedy consequent upon a breach hereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition hereof to be performed or complied with by Landlord or Tenant, and no breach thereof, shall be waived, altered or modified, except by a written instrument executed by the party to be charged therewith. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term, limitation and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach hereof.

E. Remedies Cumulative. In the event of any breach by Tenant of any of the covenants, agreements, terms or conditions hereof, Landlord, in addition to any and all other rights, shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise for such breach as though reentry, summary proceedings, and other remedies were not provided for in this Lease. In the event of Tenant's failure to pay Net Rent or Additional Payments on the date when due, Tenant shall pay Landlord interest on any such overdue payments and associated late charges at the rate of two percent (2%) per month, but in no event an amount greater than permitted by law, but this shall in no way limit any claim for damages for Landlord for any breach or default by Tenant.

F. Late Charge. In the event that any payment required to be made by Tenant to Landlord under the terms of this Lease is not received within ten (10) days after the due date thereof, a late charge shall become immediately due and payable as an Additional Payment in an amount equal to two and one-half percent (2.5%) of the late payment.

G. Specific Performance. If a default is not commenced to be cured within thirty (30) calendar days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, Landlord may, at its option, thereafter (but not before) commence an action for specific performance of the terms of this Lease pertaining to such default.

22. Default By Landlord.

A. Limitations of Landlord's Liability. The term "Landlord," as used herein, so far as Landlord's covenants and agreements hereunder are concerned, shall be limited to mean and include only the owner or owners of the fee title to the Premises or those having the right of immediate possession in a pending condemnation action at the time in question. In the event of any conveyance of such title, and regardless of whether the grantee is financially responsible or solvent and notwithstanding that the grantor may be a stockholder, officer or director of a corporate grantee, Landlord herein named and each subsequent grantor shall be automatically relieved, from and after the date of such conveyance, of all personal liability as respects the performance of any of Landlord's covenants and agreements thereafter to be

performed, and such grantee shall be bound by all such covenants and agreements; it being intended that Landlord's covenants and agreements shall be binding on Landlord, its successors and assigns, only during and in respect of their successive periods of ownership.

B. Remedies. In the event of any breach by Landlord of any of the covenants, agreements, terms, or conditions hereof, Tenant, in addition to any and all other rights, shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise for such breach.

23. Unenforceable Terms. If any term or provision hereof or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision hereof shall be valid and be enforced to the fullest extent permitted by law.

24. Notices. Any notice, request, demand, statement, or consent herein required or permitted to be given by either party to the other hereunder, shall be in writing signed by or on behalf of the party giving the notice and addressed to the other at the address as set forth below:

Landlord City of Chandler
 City Manager
 P. O. Box 4008, MS 605
 Chandler, Arizona 85244-4008 and

City of Chandler
City Attorney's Office
P.O. Box 4008, MS 602
Chandler, Arizona 85244-4008

Tenant SMC II, L.L.C.
 c/o Niels E. Kreipke or Michael W. Hogarty
 101 West Commonwealth Avenue
 Chandler, Arizona 85225 and

R. Neil Irwin, Esq. Bryan Cave
2 North Central Avenue
Phoenix, Arizona 85004

Each party may by notice in writing change its address for the purpose of this Lease, which address shall thereafter be used in place of the former address. Each notice, demand, request, or communication which shall be mailed to any of the aforesaid shall be deemed sufficiently given, served, or sent for all purposes hereunder (i) two business days after it shall be mailed by United States registered or certified mail, postage prepaid and

return receipt requested, in any post office or branch post office regularly maintained by the United States Postal Service, (ii) upon personal delivery, or (iii) one business day after deposit with any recognized commercial air courier or express service. Any communication made by e-mail or similar method shall not constitute notice pursuant to this Lease.

25. **Condition of Premises.** Tenant represents that the Premises, the title to the Premises, parking, drive and walk areas adjoining the Premises (including but not limited to the Public Tract), the environmental condition of the Premises any subsurface conditions thereof, and the present uses and nonuses thereof, have been examined by Tenant and that Tenant accepts the same in the condition or state in which they or any of them may be on the date of the execution of this Lease, without representation or warranty, express or implied in fact or by law, by Landlord and without recourse to Landlord, as to the nature, condition, or usability thereof or the use or uses to which the Premises or any part thereof may be put.

26. **Quiet Enjoyment.**

A. **Quiet Enjoyment.** Subject to all of the conditions, terms, and provisions contained in this Lease, Landlord covenants that Tenant, upon paying the Net Rent, and additional payments and observing and keeping all terms, covenants, agreements, limitations, and conditions hereof on its part to be kept, shall quietly have and enjoy the Premises during the term hereof, without hindrance or molestation by Landlord.

B. **Construction Activities.** Tenant acknowledges and understands that construction activities may be undertaken by Landlord (or its tenants) from time to time in connection with periodic renovations to or redevelopment of the adjacent arena property owned by Landlord, and Tenant is proceeding with its development of the Shops with the understanding that such activities will generate a certain amount of noise or temporary inconveniences.

27. **Estoppel Certificates.** Landlord or Tenant may request a certificate evidencing whether or not:

A. The Lease is in full force and effect along with the amount and current status of the Net Rent and Additional Payments due hereunder;

B. The Lease has been modified or amended in any respect or describing such modifications or amendments, if any; and

C. There are any existing defaults thereunder, to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any.

Such certificate shall be returned to the requesting party not later than twenty (20) days following receipt of the request. The failure of the receiving party to return the certificate within the specified period shall be deemed an acknowledgement of the correctness of the matters set forth in the certificate.

28. **Consents.**

A. Parties and Notice. Whenever the consent or approval of a party to this Lease is required or reasonably requested under this Lease, if they fail to notify the other party in writing within thirty (30) days (except where a different period is otherwise specified herein for the giving of such consent or approval) after the giving of a written request therefor in the manner specified herein for the giving of notice, it shall be concluded that such consent or approval has been given.

B. No Unreasonable Withholding. Wherever in this Lease the consent or approval of either party is required, such consent or approval shall not be unreasonably withheld nor delayed, except where otherwise specifically provided.

29. **Limitation of Landlord's Liability.** Landlord shall not be responsible or liable for any damage or injury to any property, fixtures, merchandise, or decorations or to any person or persons at any time on the Premises from steam, gas, electricity, water, rain, or any other source whether the same may leak into, issue or flow from any part of the Building or from pipes or plumbing work of the same, or from any other place or quarter; nor shall Landlord be in any way responsible or liable in case of any accident or injury including death to any of Tenant's employees, agents, subtenants, or to any person or persons in or about the Premises or the streets, sidewalks or vaults adjacent thereto; and Tenant agrees that it will not hold Landlord in any way responsible or liable therefore unless caused by Landlord. Landlord shall not be liable for interference with light or incorporeal hereditaments caused by anybody or the operation of or for any governmental authority in the construction of any public or quasi-public work and Landlord shall not be liable for any latent or any other defects in the Premises.

30. **Miscellaneous.**

A. Tax Incentives. The Property is located in a "slum" or "blighted" area designated for redevelopment within a single central business district. It is further acknowledged by Landlord that, to the degree that, the improvements to be made to the Property pursuant to this Lease will result in an increase in its value of at least one hundred percent (100%) from the date of Tenant's possession of the Property pursuant to this Lease to the date of Landlord's issuance to the Tenant of a Certificate of Occupancy for the Shops. Accordingly, it is the intent of the parties that, pursuant to the provisions of A.R.S. Section 42-6209 or any applicable substitute legislation which may hereafter be enacted, Tenant shall not be required to pay any government property lease excise tax upon the Shops for the eight (8) year period commencing with the issuance of a Certificate of Occupancy for the Shops.

B. City's Right of Cancellation. All parties hereto acknowledge that this agreement is subject to cancellation by the City of Chandler pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

C. Choice of Law. This Lease shall be construed and enforced in accordance with the laws of the State of Arizona.

D. Memorandum. Landlord and Tenant agree that at the request of either, each will execute a short form memorandum of this Lease in a form satisfactory for recording in the Office of the County Recorder, Maricopa County, Arizona.

E. Entire Agreement. This Lease with its schedules and annexes contains the entire agreement between Landlord and Tenant and any executory agreement hereafter made between Landlord and Tenant shall be ineffective to change, modify, waive, release, discharge, terminate, or effect an abandonment of this Lease, in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, waiver, release, discharge, termination, or the effect of the abandonment is sought.

F. Captions. The captions of Sections in this Lease are inserted only as a convenience and for reference and they in no way define, limit, or describe the scope of this Lease or the intent of any provision thereof. References to Section numbers are to those in this Lease unless otherwise noted.

G. Execution and Delivery. This Lease shall bind Tenant upon its execution thereof. Landlord shall be bound only after it executes and delivers the Lease to Tenant.

H. Singular and Plural, Gender. If two or more persons, firms, corporations, or other entities constitute either the Landlord or the Tenant, the word "Landlord" or the word "Tenant" shall be construed as if it reads "Landlords" or "Tenants," and the pronouns "it," "he," and "him" appearing herein shall be construed to be the singular or plural, masculine, feminine, or neuter gender as the context in which it is used shall require.

I. Multiple Parties. If at any time Landlord, Tenant, or any Permitted Mortgagee (Landlord, Tenant or any such mortgagee being in this Section referred to as a "party") is other than one individual, partnership, firm, corporation, or other entity, the act of, or notice, demand, request, or other communication from or to, or payment of refund from or to, or signature of, or any one of the individuals, partnerships, firms, corporations, or other entities then constituting such party with respect to such party's estate or interest in the Premises or this Lease shall bind all of them as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed, unless all of them theretofore have executed and acknowledged in recordable form and given a notice (which has not theretofore been revoked by notice given by all of them) designating not more than three individuals, partnerships, firms, corporations, or other entities as the agent or agents for all of them. If such a notice of designation has theretofore been given, then, until it is revoked by notice given by all of them, the act of, or notice, demand, request or other communication from or to, or payment or refund from or to, or signature of, the agent or agents so designated with respect to such party's estate or interest in the Premises or this Lease shall bind all of the individuals, partnerships, firms, corporations, or other entities then constituting such party as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed.

JJ. Exhibits and Incorporation. The following exhibits, which are attached hereto or are in the possession of the Landlord and Tenant, are incorporated herein by reference as though fully set forth:

- Attachment 1 Legal Description
- Attachment 2 Plat map
- Attachment 3 Required Insurance
- Attachment 4 Prohibited Uses
- Attachment 5 Form of Special Warranty Deed

K. Immigration Reform and Control Act of 1986 (IRCA). Tenant understands and acknowledges the applicability of the IRCA to it and agrees to comply with the IRCA for all activities undertaken under this lease and agrees to permit Landlord to inspect its personnel records to verify such compliance.

31. **Equal Employment Opportunity**. Tenant shall comply with all ordinances and other requirements of the City of Chandler relating to nondiscrimination and equal employment opportunity. In performing under this contract, Tenant shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age, sexual orientation or disability, nor otherwise commit an unfair employment practice. Tenant will take affirmative action to insure that applicants are employed, and that employees are dealt with during employment, without regard to their race, color, religion, gender, national origin, age, sexual orientation or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Tenant further agrees that this clause will be incorporated in all subcontracts entered into with suppliers of materials or services, and all labor organization furnishing skilled, unskilled and union labor, or who may perform such labor or services in connection with this contract.

32. **Enforced Delay: Extension of Time of Performance**. Whether stated or not, all periods of time in this Lease are subject to this Section 32 and the grace and cure periods in Section 21. Neither Landlord nor Tenant, as the case may be, shall be considered in Default of its obligations under this Lease in the event of an enforced delay due to causes beyond its control and without its fault, without its failure to comply with Applicable Laws, or without its negligence (an "**Enforced Delay**"), including but not limited to: (1) acts of God, acts of public enemy, acts of the federal, state or local government, and acts of Third Parties, including Tenant's contractors, subcontractors, suppliers, and persons or entities with whom or which Tenant has a contractual relationship, if the act or omission of such Third Party resulting in the delay was beyond the reasonable control of Tenant; and (2) litigation concerning the validity and enforceability of this Lease or relating to transactions contemplated by this Lease (including the effect of petitions for initiative or referendum), fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, and unusually severe weather. In no event will Enforced Delay include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants or purchasers of

portions of the Project, nor from the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Tenant in connection with the Project, it being agreed that Tenant will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any Enforced Delay, the time or times for performance of the obligations of the Party claiming Enforced Delay shall be extended for the period of the Enforced Delay; provided that the Party seeking the benefit of the provisions of this Section 32 shall, within thirty (30) days after such Party knows or reasonably could have known of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay. Notwithstanding the foregoing, no period of Enforced Delay shall exceed one hundred and eighty (180) days, although Landlord shall not unreasonably withhold its consent to one or more thirty (30) day extensions upon prior written notice to Landlord received not less than ten (10) days prior to the expiration of the initial period of Enforced Delay, or subsequently permitted extension (as applicable), and setting forth in reasonable detail the reason that Tenant believes such extension should be granted.

33. Option To Purchase Property.

A. Option to Purchase. Landlord hereby grants to Tenant the exclusive option to purchase the Property ("Purchase Option") according to the terms and conditions hereinafter set forth.

B. Exercise of Option. The Purchase Option granted herein shall become effective and Tenant shall have the right to exercise the Purchase Option hereunder at any time after the Commencement Date ("Option Period"), provided that Tenant's right to exercise the Purchase Option shall be conditioned upon Tenant not being in default under this Lease or under any other lease or subsidiary agreement between Landlord and Tenant regarding or relating to the Premises. The Purchase Option granted herein may be exercised by Tenant at any time during the Option Period by Tenant delivering written notice of exercise to Landlord.

C. If Tenant is not then in default of any of the Leases, Tenant can purchase all (but only all) of the Parcels at any time prior to lease termination for a total purchase price of \$2,500,000.00, net to the City, but the purchase option can be exercised by Tenant only if all construction has been completed on the Premises and the Lease 1 and Lease 3 Parcels. In the event a lender forecloses on any particular leasehold interest, then the lender or its successor shall be given the right to purchase Parcels 1, 5 and 7 for \$1,000,000.00.

D. Except in connection with financing, there will be limitations on a subsequent Transfer of the Parcels after exercise of the Purchase Option by Tenant, which limitations shall be included in a deed restriction included in the conveyance to Tenant. If Tenant exercises its Purchase Option and acquires fee title to all of the Parcels, and thereafter Transfers any of the Parcels before the end of what would have been year eight (8) of this Lease, then the City shall receive an exit fee in the amount of:

Parcel 1 \$210,000.00

Parcel 5	\$120,000.00
Parcel 7	\$120,000.00

E. Notwithstanding the foregoing, Tenant may not exercise its Purchase Option during construction and for the first four (4) years from the issuance of the Certificate of Occupancy for the improvements on the applicable Parcel, although the City may permit a Transfer during such time in its sole, absolute and unfettered discretion. For the next four (4) years thereafter, any Transfer will require the City's approval in its reasonable commercial discretion.

F. If an exit fee has been received by the City in connection with an earlier Transfer of a lease, the exit fee required upon resale of the applicable parcels will be waived or prorated, as applicable.

G. Conveyance of Premises.

(1) Form of Conveyance. Landlord and Tenant agree to perform all acts necessary for conveyance in sufficient time for the property interest to be conveyed ninety (90) days after delivery to Landlord of Tenant's notice of exercise or on the last day of the Rental Period, whichever first occurs. Landlord's entire interest in the Premises shall be conveyed by Special Warranty Deed in the form of Attachment 5 (the "Deed"). All expenses in connection with conveyance of the Premises to Tenant including, but not limited to, title insurance, recordation and notary fees and all other closing costs, shall be paid by Tenant. Possession shall be delivered to Tenant concurrently with the conveyance of title.

(2) Conditions, Covenants and Restrictions. The conveyance of Parcel 1 shall require the Grantee to maintain and insure the Parcel 1 Alley in accordance with the "Conditions, Covenants and Restrictions" attached to the Deed. The conveyance of Parcel 5 shall require the Grantee to maintain and insure Tract CC in accordance with the "Conditions, Covenants and Restrictions" attached to the Deed. The conveyance of Parcel 7 shall require the Grantee to maintain and insure Tract BB in accordance with the "Conditions, Covenants and Restrictions" attached to the Deed.

34. **Compliance With Environmental Laws.**

A. Definitions.

(1) "Environmental Laws. Those laws promulgated for the protection of human health or the environment, including but not limited to the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Section 300f *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*; the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Arizona Environmental Quality Act, Title 49 of the Arizona Revised Statutes; the Occupational Safety and Health Act of 1970, as amended, 84 Stat. 1590, 29 U.S.C. Section 651-678; Maricopa County Air Pollution Control Regulations; Title 41, Article 4,

Archaeological Discovery, Arizona Revised Statutes; regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, county, state or federal government) now in effect or hereinafter enacted that deal with Regulated Substances and the regulation or protection of human health and the environment, including but not limited to the ambient air, ground water, surface water, and land use, including substrata soils.

(2) "Regulated Substances":

(a) Any substance identified or listed as a hazardous substance, pollutant, hazardous material, or petroleum in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 *et seq.*, and in the regulations promulgated thereto; and Underground Storage Tanks, U.S.C. Section 6991 to 6991 i.

(b) Any substance identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or as a special or solid waste in the Arizona Environmental Quality Act, A.R.S. Section 49-201 *et seq.*; including, but not limited to, the Water Quality Assurance Revolving Fund Act, A.R.S. Section 49-281 *et seq.*; the Solid Waste Management Act, A.R.S. Section 49-701 *et seq.*; the Underground Storage Tank Regulation Act, A.R.S. Section 49-1001 *et seq.*; and Management of Special Waste, A.R.S. Section 49-851 to 49-868.

(c) All substances, materials and wastes that are, or that become, regulated under, or that are classified as hazardous or toxic under any Environmental Law during the term of this Lease.

(3) "Release" Any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping.

B. Compliance. Tenant shall, at Tenant's own expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Tenant's operation on the Premises and the Public Tract. Tenant shall not cause or permit any Regulated Substance to be used, generated, manufactured, produced, stored, brought upon, or released on, or under the Premises and the Public Tract, or transported to or from the Premises or the Public Tract, by Tenant, its agents, employees, contractors, invitees or a third party in a manner that would constitute or result in a violation of any Environmental Law or that would give rise to liability under an Environmental Law.

C. Indemnification.

(1) Tenant shall indemnify, defend, pay and hold harmless, on demand, Landlord, its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys, for, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, claims, legal and investigation fees or costs, arising from or related to any claim or action for injury,

liability, breach of warranty or representation, or damage to persons, property, the environment or the Premises and the Public Tract and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, human health, property or the environment pursuant to any Environmental Law, the common law, or other statute, ordinance, rule, regulation, judgment or order of any governmental agency or judicial entity, which are incurred or assessed as a result, whether in part or in whole, of any use of the Premises and the Public Tract during the term of this Lease or any previous lease or uses of the Premises and the Public Tract by Tenant or its owners or affiliated entities, agents, employees, invitees, contractors, visitors or licensees unless caused by Landlord. Regardless of the date of termination of this Lease, Tenant's obligations and liabilities under this Section 34 shall continue so long as the Landlord bears any liability or responsibility under the Environmental Laws for any use of the Premises and the Public Tract during the term of this Lease. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial actions, removal or restoration work required or conducted by any federal, state or local governmental agency or political subdivision because of Regulated Substances located on the Premises or the Public Tract or present in the soil or ground water on, or under the Premises or the Public Tract. The parties agree that Landlord's right to enforce this covenant to indemnify is not an adequate remedy at law for Tenant's violation of any provision of this Section and that Landlord shall also have the rights set forth in this Section in addition to all other rights and remedies provided by law or otherwise provided for in this Lease.

(2) Without limiting the foregoing, if the presence of any Regulated Substance on, or under the Premises and the Public Tract results in any contamination of the Premises or the Public Tract or any adjacent real property during the term of this Lease, Tenant shall promptly take all actions at its sole cost and expense as are necessary to mitigate any immediate threat to human health or the environment. Tenant shall then undertake any further action necessary to return the Premises and the Public Tract or other property to the condition existing prior to the introduction of any Regulated Substance to the Premises; provided that Landlord's written approval of such actions shall first be obtained. Tenant shall undertake such actions without regard to the potential legal liability of any other person, however, any remedial activities by Tenant shall not be construed as to impair Tenant's rights, if any, to seek contribution or indemnity from another person.

(3) Tenant shall, at Tenant's own cost and expense, make all tests, reports, studies and provide all information to any appropriate governmental agency as may be required pursuant to the Environmental Laws pertaining to Tenant's use of the Premises and the Public Tract. This obligation includes but is not limited to any requirements for a site characterization, site assessment and/or a cleanup plan that may be necessary due to any actual or potential spills or discharges of Regulated Substances on, or under the Premises or the Public Tract, during the term of this Lease. At no cost or expense to Landlord, Tenant shall promptly provide all information requested by Landlord pertaining to the applicability of the Environmental Laws to the Premises and the Public Tract, to respond to any

governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination.

In addition, Landlord shall have the right to access, within twenty (20) days of Tenant's receipt of written request, and copy any and all records, test results, studies and/or other documentation, other than trade secrets, regarding environmental conditions relating to the use, storage, or treatment of Regulated Substances by the Tenant on, or under the Premises and the Public Tract.

(4) Tenant shall immediately notify Landlord of any of the following: (1) any correspondence or communication from any governmental agency regarding the application of Environmental Laws to the Premises or the Public Tract, or to Tenant's use of the Premises or the Public Tract, (2) any change in Tenant's use of the Premises or the Public Tract that will change or has the potential to change Tenant's or Landlord's obligations or liabilities under Environmental Laws, and (3) any assertion of a claim or other occurrence for which Tenant may incur an obligation under this Section 34.

(5) Tenant shall insert the provisions of this Section 34 in any sublease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

(6) Tenant shall, at its own expense, obtain and comply with any permits or approvals that are required or may become required as a result of any use of the Premises and the Public Tract by the Tenant, its agents, employees, contractors, invitees and assigns.

(7) Tenant shall obtain and maintain compliance with any applicable financial responsibility requirements of federal and/or state law regarding the ownership or operation of any underground storage tank(s) or any device used for the treatment or storage of a Regulated Substance and present evidence thereof to Landlord, as may be applicable.

D. Noncompliance.

(1) Tenant's failure or the failure of its agents, employees, contractors, invitees or of a third party to comply with any of the requirements and obligations of this Section 34 or applicable Environmental Law shall constitute a material default of this Lease. Notwithstanding any other provision in this Lease to the contrary, Landlord shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Law on, or under the Premises or the Public Tract, without waiving any of its rights under this Lease. The exercise by Landlord of any of its rights under this Section 34 shall not release Tenant from any obligation it would otherwise have hereunder.

(2) The covenants in this Section 34 shall survive the expiration or earlier termination of this Lease.

35. **Signatures.** The Parties have executed this Lease to be effective as of the date set forth in Section I.

Attachment 1

Legal Description

Parcels 1 and 7 of the San Marcos Commons final plat, Book 865, Page 18, recorded 9/07/2006.

Parcel 6 OF SAN MARCOS COMMONS and Lot 1 of QWEST CHANDLER MAIN shall be replatted into the Proposed Lease Parcel as described below but this Lease does not include the remnant of Lot 1 after the Proposed Lease Parcel 1s replatted which shall be referred to as Tract CC:

Proposed Lease Parcel

That part of Parcel 5, of SAN MARCOS COMMONS, as shown on the Final Plat of SAN MARCOS COMMONS, recorded in Book 865 of Maps, Page 18, in the official Records of Maricopa County, Arizona, and a part of Lot 1, of QWEST CHANDLER MAIN, as shown on the Final Plat of QWEST CHANDLER MAIN, recorded in Book 694 of Maps, Page 15, in the official Records of Maricopa County, Arizona, along with a portion of the Right of Way of OREGON STREET, combined to form a parcel located in the Northeast Quarter of Section 33, Township 1 South, Range 5 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Brass Cap in manhole at the Northeast corner of section 33, Township I South Range 5 East, also being the Monument line of Chandler Boulevard and the North line of Section 33 bearing South 89°37'36" West a Distance of 219.95 feet to a point;

Thence departing said North line and running South 00°39'39" West a distance of 45.51 feet to the northeast corner of Parcel 5, also being the True Point of Beginning;

Thence continuing South 00°39'39" West a distance of 88.00 feet to a point;

Thence South 89°42'05" West a distance of 164.94 feet;

Thence North 00°39'32" East a distance of 85.30 feet to the Northwest corner of Parcel 5;

Thence North 45°27'53" East a distance of 17.92 feet;

Thence North 89°37'36" East a distance of 14.10 feet; Thence South 84°24'44" East a distance of 96.29 feet;

Thence North 89°37'36" East a distance of 42.27 feet to the True Point of Beginning. containing 15,164 square feet, more or less.

Remnant of Lot 1 after proposed lease Parcel 1 is replatted shall be referred to as Tract CC.

Attachment 2
Plat Map for San Marcos Commons

THE DOCUMENT INTENDED TO BE ATTACHED AS ATTACHMENT 2 TO THIS PLAT MAP WAS UNABLE TO BE RECORDED AS A PORTION OF EXHIBIT E. IT IS RETAINED ON FILE AT THE OFFICE OF THE CHANDLER CITY CLERK. UPON REQUEST, A TRUE AND CORRECT COPY OF ATTACHMENT 2 CAN BE OBTAINED FROM THE OFFICE OF THE CHANDLER CITY CLERK OR AS RECORDED ON SEPTEMBER 7, 2006 BY THE MARICOPA COUNTY RECORDERS OFFICE AT BOOK 865, PAGE 18.

Attachment 3

REQUIRED INSURANCE

I. From and after any entry by Tenant into the Premises, Tenant shall carry, at Tenant's sole cost and expense, the following types of insurance, in the amounts specified or in such higher amounts as are customary as a result of increases in standard liability coverage resulting from the passage of time during the term of the Lease:

17. Commercial general liability insurance for personal injury, bodily injury (including wrongful death) and damage to property with a combined single limit of not less than Three Million and No Dollars (\$3,000,000.00), per occurrence, Three Million and no Dollars (\$3,000,000.00) annual aggregate insuring against any and all liability of the insured with respect to the Premises, or arising out of the maintenance, use or occupancy thereof, including premises operations, products and completed operations and owned, hired and non-owned automobiles, providing coverage at least as broad as ISO policy form CG 000 I. The commercial general liability insurance policy shall contain a contractual liability endorsement specifically deleting the contractual liability exclusion for Personal Injury. At least One Million and No Dollars (\$1,000,000.00) of such insurance coverage shall be primary coverage and the remaining Two Million and No Dollars (\$2,000,000.00) of such coverage may be pursuant to an umbrella or excess liability policy. In addition, the policy required pursuant to the provisions of this **Section A(1)** shall not have a deductible in excess of Ten Thousand and No Dollars (\$10,000.00).

18. A policy or policies of insurance covering the building and all other improvements constituting the Premises, in an amount not less than one hundred percent (100%) of full replacement cost (inclusive of the cost of excavations, foundations and footings) from time to time during the Lease Term, providing protection against any peril generally included in the classification "**Causes of Loss-Special Form**" (including flood, earthquake damage and/or terrorism coverage if so elected by Landlord), together with insurance against sprinkler damage, vandalism and malicious mischief, and the following endorsements: boiler and machinery, difference in conditions, business income and extra expense (with extended period of indemnity), contingent business income and extra expense (with extended period of indemnity), service interruption, building ordinance or law and excess rental value. In addition, the policy required pursuant to the provisions of this **Section A(2)** shall not have a deductible in excess of Ten Thousand and No Dollars (\$10,000.00).

19. Insurance covering all plate glass on the Premises.

20. Boiler and machinery insurance on all boilers, pressure vessels, gas-fired equipment, air conditioning equipment and systems serving the Premises.

21. A policy or policies of workers' compensation insurance with an insurance carrier and in amounts required by applicable Governmental Restrictions and a policy of employer's liability insurance with limits of liability not less than One Million and No

Dollars (\$1,000,000.00), each accident; One Million and No Dollars (\$1,000,000.00), disease policy limit; and One Million and Noll 00 Dollars (\$1,000,000.00) disease each employee. Both such policies shall contain waivers of subrogation in favor of Landlord.

22. Appropriate insurance coverage insuring Landlord and Tenant against any and all liability with respect to the release, transportation and/or use by Tenant of Regulated Substances (as defined in the Lease) during the Lease Term and for such additional periods of time within which Landlord or Tenant may be liable with respect to Regulated Substances under applicable Environmental Laws (as defined in the Lease). Such insurance shall be carried in amounts, in a form and from such carriers as Landlord shall reasonably approve and shall name Landlord as an additional insured.

23. All policies of insurance to be procured by Tenant shall be issued by insurance companies having a general policy holders rating of not less than A-VIII in the most current available "Best's Key Rating Guide", qualified to do business in the State of Arizona. All property policies shall be issued in the name of Tenant, and shall name Landlord and its Representatives as "loss payees as their interests may appear". All liability policies obtained by Tenant shall name Landlord and Landlord Parties as additional insureds. In addition, Tenant's liability policies shall be endorsed as needed to provide cross-liability coverage for Tenant, Landlord, and Landlord Parties and shall provide for severability of interests. Executed copies of the policies of insurance or evidence of insurance meeting the requirements of Acord Form No. 27 or 28 or their equivalent or such other evidence as may be reasonably acceptable to Landlord and evidence of required additional insured endorsements on ISO Form CG 20-26 or its equivalent (collectively referred to in this Attachment 3 as "Certificates") shall be delivered to Landlord within ten (10) days after Substantial Completion of the Premises and thereafter, executed copies of renewal policies or Certificates thereof shall be delivered to Landlord within thirty (30) days prior to the expiration of the term of each such policy. All liability policies shall contain a provision that Landlord, and Landlord Parties, although named as additional insureds, shall nevertheless be entitled to recovery under the policy for any loss occasioned to such parties by reason of the negligence of Tenant or its agents. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent. All policies of insurance delivered to Landlord must contain a provision that the company writing the policy shall give Landlord not less than twenty (20) days notice in writing in advance of any cancellation or lapse or the effective date of any material change in the policy, including any reduction in the amounts of insurance. All liability, property and other casualty policies shall be written as primary policies and shall provide that any insurance which Landlord may carry is strictly excess, secondary and non-contributing with any insurance carried by Tenant. The insurance requirements contained in this Attachment 3 are independent of Tenant's waiver, indemnification and other obligations under this Lease and shall not be construed or interpreted in any way to

restrict, limit or modify Tenant's waiver, indemnification or other obligations or to in any way limit Tenant's obligations under this Lease.

J. **BLANKET POLICY.** Tenant's obligation to carry the insurance required by this Attachment 3 may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Tenant; provided, however, that the coverage afforded Landlord will not be reduced or diminished by reason of the use of a blanket policy of insurance, and provided further that the requirements set forth in this Attachment 3 are otherwise satisfied. If Tenant uses such a blanket policy, Tenant shall deliver to Landlord satisfactory evidence that the Premises has been properly added to the blanket policy and evidence that the insurance company that issued the blanket policy has allocated to the Premises the type of insurance coverage in the amounts required by this Attachment 3, with the limitations of liability required by this Lease. Tenant shall permit Landlord at any reasonable time to inspect any policies of insurance of Tenant, which policies or copies thereof are not delivered to Landlord.

K. **ADEQUACY OF INSURANCE.** Landlord makes no representation or warranty to Tenant that the amount of insurance to be carried by Tenant under the terms of this Lease is adequate to fully protect Tenant's interest. If Tenant believes that the amount of any such insurance is insufficient, Tenant is encouraged to obtain, at its sole cost and expense, such additional insurance as Tenant may deem desirable or adequate. Tenant acknowledges that Landlord shall not, by the fact of approving, disapproving, waiving, accepting, or obtaining any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of such insurance, the solvency of any insurance companies or the payment or defense of any lawsuit in connection with such insurance coverage, and Tenant hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

L. **DEFINITIONS.** For purposes of this Attachment 3: (a) the term "**Tenant Parties**" means Tenant, Tenant's agents, and all Persons claiming through any of these Persons; (b) the term "**Landlord Parties**" means Landlord, Landlord's agents, the City Council of the City of Chandler and all Persons claiming through any of these Persons; (c) the term "**Indemnify**" means indemnity, defend (with counsel reasonably acceptable to Landlord), pay and hold harmless for, from and against; (d) the term "**Claims**" means all liabilities, claims, damages (including consequential damages), losses, penalties, litigation, demands, causes of action (whether in tort or contract, in law or at equity or otherwise), suits, proceedings, judgments, disbursements, charges, assessments, and expenses (including attorneys' and experts' fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding); (e) the term "**Waives**" means that the Tenant Parties waive and knowingly and voluntarily assume the risk of; and (f) the terms "**Bodily Injury**," "**Personal Injury**" and "**Property Damage**" will have the same meanings as in the form of commercial general insurance policy issued by Insurance Services Office, Inc. most recently prior to the date of the injury or loss in question.

Attachment 4 Prohibited Uses

In general, allowed uses consist of active retail and office uses, with ground floor being required to be retail and restaurant services.

Though allowed under general C-2 zoning, the following uses are prohibited as part of this development agreement for San Marcos Commons Phase II Commercial with any exceptions noted:

- Ambulance service
- Appliance repairer
- Automobile accessories (sales)
- Automobile washateria
- Boat sales
- Building contractors, EXCEPT office-only functions not on a ground floor
- Building materials companies
- Building supplies and materials, glass sales, and installation.
- Caterers, EXCEPT if there is an active walk-up food sales frontage.
- Churches and other places of worship
- Cleaning of building exteriors, disinfecting or exterminating establishments
- Clothing manufacturer, EXCEPT if there is an active retail frontage.
- Convalescence homes, nursing homes and homes for the aged
- Drive-in and drive-up establishments and functions. Fast turnover establishments are prohibited unless the City chooses to grant an exception for a specific tenant. Fast serve ice cream, yogurt and fruit drink establishments are allowed.
- Fuel dispensing equipment or facilities
- Furniture and appliance repairer
- Funeral parlors, mortuaries

- General contractor or workman, EXCEPT office-only functions not on the ground floor
- Greenhouse and nursery, commercial
- Home improvement company, EXCEPT office-only functions not on the ground floor. This is not intended to exclude companies that sell furnishings as long as at least 50% of the leased space is used for showroom and sales area.
- Hospitals (excluding animal hospitals)
- Hospital supplies
- Laboratories serving professional requirements, dentist, medical, etc.
- Laboratory supplies
- Laundromat, self-service or wholesale
- Medical marijuana establishments.
- Monument sales establishment
- Motor vehicle repairs, wholesale and retail
- Nursery and greenhouse, commercial
- Pawn shop
- "Pay Day," title loan, and similar lending operations
- Rescue service
- Residential.
- Restaurant supplies. Specialty food sales tenants may be allowed with City agreement for a specific tenant.
- Tattoo Parlors
- Taxi dispatching and operations
- Trailers
- Transient Service Facilities

- Upholsterer. This use will be allowed if the sales area is greater than 50% of the leased space and all work areas are screened from exterior visibility.
- Veterinarian hospital or clinic

Attachment 5
Form of Special Warranty Deed

When Recorded, Mail to:

=====
SPECIAL WARRANTY DEED
=====

For the consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration received, The City of Chandler, an Arizona municipal corporation ("Grantor"), does hereby convey to ("Grantee"), all of Grantor's right, title and interest in and to the following described real property (the "Property") situated in Maricopa County, Arizona, together with all improvements thereon and all of Grantor's interest in any rights and privileges appurtenant thereto:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF

SUBJECT ONLY TO any and all conditions, easements, encroachments, rights-of-way, or restrictions which a physical inspection, or accurate ALTA survey, of the Property would reveal; any matters of record; and all applicable municipal, county, state or federal zoning and use regulations; and

FURTHER SUBJECT TO those Conditions, Covenants and Restrictions attached thereto as Exhibit "B" and by this reference made a part hereof;

AND GRANTOR hereby binds itself and its successors to warrant and defend the title against all of the acts of Grantor and no other, subject to the matters set forth above.

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed as of this __ day of _____, 20__.

GRANTOR:

The City of Chandler, an Arizona municipal corporation

By: _____
MAYOR

STATE OF ARIZONA)

County of Maricopa) ss.
)

On this the ___day of _____, 20___, before me, the undersigned Notary Public, personally appeared _____, who acknowledged himself/herself to be the _____ of The City of Chandler, an Arizona municipal corporation, and that, being authorized so to do, he/she executed the foregoing instrument for the purposes herein contained on behalf of the said municipal corporation.

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

Notary Public

My Commission Expires:

Exhibit "A" to Special Warranty Deed
Legal Description of the Property

Exhibit "B" to Special Warranty Deed

CONDITIONS, COVENANTS AND RESTRICTIONS

These Conditions, Covenants and Restrictions (this "Declaration") bind and burden the Grantee and the Property, and benefit the City and the Public Tract. "Grantee" shall mean the Grantee named in the foregoing Deed, and its successors and assigns with respect to any portion of the Property. "Property" shall mean the Property that is conveyed to Grantee by the City by the foregoing Deed. "City" shall mean the City of Chandler, Arizona, an Arizona municipal corporation. "Public Tract" shall mean as described or depicted as such in the plat of record in Book 865 of Maps, Page 18, in the Official Records of Maricopa County, Arizona.

8. Insurance.

K. Grantee Obligation to Insure -- Bodily Injury or Property Damage. Grantee shall procure and maintain, at Grantee's cost and expense, insurance against claims for bodily injury or property damage occurring on the Public Tract in accordance with the insurance requirements set forth below:

24. Commercial general liability insurance for personal injury, bodily injury (including wrongful death) and property damage with a combined single limit of not less than Three Million and No/100 Dollars (\$3,000,000.00), per occurrence, Three Million and No Dollars (\$3,000,000.00) annual aggregate insuring against any and all liability of Grantee and its agents and representatives with respect to the Public Tract, or arising out of the maintenance, use or occupancy thereof, including operations, products and completed operations and owned, hired and non-owned automobiles, providing coverage at least as broad as ISO policy form CG 0001. The commercial general liability insurance policy shall contain a contractual liability endorsement specifically deleting the contractual liability exclusion for Personal Injury. At least One Million and No Dollars (\$1,000,000.00) of such insurance coverage shall be primary coverage and the remaining Two Million and No Dollars (\$2,000,000.00) of such coverage may be pursuant to an umbrella or excess liability policy. In addition, the policy required pursuant to the provisions of this **Section I(A)(I)** shall not have a deductible in excess of Ten Thousand and No Dollars (\$10,000.00).

25. Insurance shall be maintained in the amounts specified or in such higher amounts as are customary as a result of increases in standard liability coverage resulting from the passage of time, as reasonably required by the City following written notice to Grantee.

L. Grantee Obligation to Insure -- Regulated Substances. Grantee shall procure and maintain, at Grantee's cost and expense, insurance coverage insuring the City against any and all liability with respect to the release, transportation and/or use by Grantee of

Regulated Substances on or under the Public Tract under applicable Environmental Laws. Such insurance shall be carried in amounts, in a form and from such carriers as the City shall reasonably approve and shall name the City as an additional insured.

a. "Environmental Law" means those laws promulgated for the protection of human health or the environment, including but not limited to the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Section 300f *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*; the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Arizona Environmental Quality Act, Title 49 of the Arizona Revised Statutes; the Occupational Safety and Health Act of 1970, as amended, 84 Stat. 1590, 29 U.S.C. Section 651-678; Maricopa County Air Pollution Control Regulations; Title 41, Article 4, Archaeological Discovery, Arizona Revised Statutes; regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, county, state or federal government) now in effect or hereinafter enacted that deal with Regulated Substances and the regulation or protection of human health and the environment, including but not limited to the ambient air, ground water, surface water, and land use, including substrata soils.

b. "Regulated Substances" means:

(a) Any substance identified or listed as a hazardous substance, pollutant, hazardous material, or petroleum in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 *et seq.*, and in the regulations promulgated thereto; and Underground Storage Tanks, U.S.C. Section 6991 to 6991 i.

(b) Any substance identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or as a special or solid waste in the Arizona Environmental Quality Act, A.R.S. Section 49-201 *et seq.*; including, but not limited to, the Water Quality Assurance Revolving Fund Act, A.R.S. Section 49-281 *et seq.*; the Solid Waste Management Act, A.R.S. Section 49-701 *et seq.*; the Underground Storage Tank Regulation Act, A.R.S. Section 49-1001 *et seq.*; and Management of Special Waste, A.R.S. Section 49-851 to 49-868.

(c) All substances, materials and wastes that are, or that become, regulated under, or that are classified as hazardous or toxic under any Environmental Law during the term of this Lease.

c. "Release" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping.

M. Failure to Maintain Insurance. If Grantee fails or refuses to provide a copy of the renewal insurance certificates, together with evidence of payment of premiums therefor, or otherwise fails or refuses to procure or maintain insurance as required by this Declaration, the City shall have the right, at the City's election, and without notice, to procure and maintain such insurance. Bills for any expense required by the City in connection therewith, and bills for all such expenses and disbursements of every kind and nature whatsoever, including reasonable attorney's or administrative fees, involved in endeavoring to enforce any right against Grantee, under or in connection with this Declaration, or pursuant to law, shall be due and payable by Grantee immediately upon demand by the City, and any unpaid amounts shall bear interest at the rate of ten percent (10%) per annum compounded monthly from the respective dates of the City's making of each such payment or incurring of each such cost or expense.

N. All policies of insurance to be procured by Grantee shall be issued by insurance companies having a general policy holders rating of not less than A-VIII in the most current available "Best's Key Rating Guide," qualified to do business in the State of Arizona. All property policies shall be issued in the name of Grantee, and shall name the City as "loss payees as their interests may appear". All liability policies obtained by Grantee shall name City as additional insured. In addition, Grantee's liability policies shall be endorsed as needed to provide cross-liability coverage for Grantee, and the City, and shall provide for severability of interests. Executed copies of the policies of insurance or evidence of insurance meeting the requirements of Acord Form No. 27 or 28 or their equivalent or such other evidence as may be reasonably acceptable to the City and evidence of required additional insured endorsements on ISO Form CG 20-26 or its equivalent (collectively referred to in this **Attachment 2** as "**Certificates**") shall be delivered to the City within ten (10) days after acquisition of title to the Property and thereafter, executed copies of renewal policies or Certificates thereof shall be delivered to City within thirty (30) days prior to the expiration of the term of each such policy. All liability policies shall contain a provision that the City, although named as additional insured, shall nevertheless be entitled to recovery under the policy for any loss occasioned to such parties by reason of the negligence of Grantee or its agents. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Grantee in like manner and to like extent. All policies of insurance delivered to the City must contain a provision that the company writing the policy shall give the City not less than twenty (20) days notice in writing in advance of any cancellation or lapse or the effective date of any material change in the policy, including any reduction in the amounts of insurance. All liability, property and other casualty policies shall be written as primary policies and shall provide that any insurance which City may carry is strictly excess, secondary and non-contributing with any insurance carried by Grantee. The insurance requirements contained in this Declaration are independent of Grantee's waiver, indemnification and other obligations under this Declaration and shall not be construed or interpreted in any way to restrict, limit or modify Grantee's waiver, indemnification or other obligations or to in any way limit Grantee's obligations under this Declaration.

9. Maintenance.

T. Maintenance and Repairs. Grantee at its sole cost and expense shall maintain the Public Tract and make all repairs thereto (including replacements, if repairs are impossible or inadequate).

U. Grantee shall indemnify, defend, pay and hold the City harmless for, from and against any and all claims or demands, upon or arising out of any accident, injury, or damage to any person or property occurring in or upon the Public Tract however caused.

V. Performance by the City. In the event Grantee fails to maintain and repair the Public Tract in the condition required by Section 2(A) of this Declaration, the City may, upon fourteen (14) days' written notice to Grantee with respect to failures of Grantee that are not emergencies, or twenty-four (24) hours' notice to Grantee with respect to failures of Grantee that are reasonably determined by the City to be emergencies, but without being under any obligation to do so and without thereby waiving any default, may perform or have performed any and all such work as it, in its sole and absolute discretion, deems necessary to maintain or restore the Public Tract to its required condition. Any and all work performed by or for the City pursuant to this Section 2(C), shall be deemed to have been undertaken for and at the expense of Grantee. All cost incurred by the City in undertaking such work shall be subject to the provisions of Section 1(C) of this Declaration.

W. Alterations. Except with the prior written consent of the City, Grantee shall not erect any structures, make any improvements, or do any other construction work on the Public Tract. In the event any such construction, improvement, alteration, modification, addition, repair, or replacement is made without such approval, then, upon reasonable notice so to do, the Grantee will remove the same, or, at the option of the City, cause the same to be changed to the satisfaction of the City. In case of any failure on the part of Grantee to comply with such notice, the City may effect the removal or change, and the Grantee shall pay the costs thereof to the City on demand and such costs and expenses shall be subject to the provisions of Section 1(C) of this Declaration.

10. Indemnification of the City.

P. Indemnification. Grantee shall indemnify, defend, pay and hold the City harmless for, from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including property damage, personal injury and wrongful death and further including, without limitation, architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against the City by reason of any of the following occurring during the term unless caused by the City, its agents or employees or a failure to act by the City, its agents or employees when a duty to act is present:

(32) any use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Public Tract or any nuisance

made or suffered thereon or any failure by Grantee to keep the Public Tract in a safe condition;

(33) any acts of Grantee or any of its or their respective agents, contractors, servants, employees, licensees or invitees;

(34) any fire, accident, injury (including death) or damage to any person or property occurring in, on or about the Public Tract or any part thereof;

(35) any failure on the part of Grantee to keep, observe, comply with and perform any of the covenants, conditions or restrictions contained in this Declaration;

Q. The obligations of Grantee under this Section 3 shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Public Tract.

R. If any claim, action or proceeding is made or brought against the City by reason of any event to which reference is made in this Section, then, upon demand by the City, Grantee, at its sole cost and expense, shall resist or defend such claim, action or proceeding in the City's name, if necessary, by the attorneys for Grantee's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys as the City shall approve, which approval shall not be unreasonably withheld or delayed; provided however that nothing in this Declaration shall prevent or prohibit the City from assisting in its own defense at its sole cost and expense and with attorneys of its choosing. If, in the City's reasonable discretion, Grantee fails timely and diligently to undertake such defense, then the City may engage its own attorneys to defend it, and Grantee shall pay on demand the reasonable fees and disbursements of such attorneys in accordance with the provisions of Section I(C) of this Declaration.

11. Compliance With Environmental Laws.

P. Compliance. Grantee shall, at Grantee's own expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Grantee's operation on the Public Tract. Grantee shall not cause or permit any Regulated Substance to be used, generated, manufactured, produced, stored, brought upon, or released on, or under the Public Tract, or transported to or from the Public Tract, by Grantee, its agents, employees, contractors, invitees or a third party in a manner that would constitute or result in a violation of any Environmental Law or that would give rise to liability under an Environmental Law.

Q. Indemnification.

a. Grantee shall indemnify, defend, pay and hold harmless, on demand, the City, its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys, for, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, claims, legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons, property, the environment or the Public Tract and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, human health, property or the environment pursuant to any Environmental Law, the common law, or other statute, ordinance, rule, regulation, judgment or order of any governmental agency or judicial entity, which are incurred or assessed as a result, whether in part or in whole, of any use of the Public Tract by Grantee or its agents, employees, invitees, contractors, visitors or licensees unless caused by the City. Grantee's obligations and liabilities under this Section 4 shall continue so long as the City bears any liability or responsibility under the Environmental Laws for any use of the Public Tract. This indemnification of the City by Grantee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial actions, removal or restoration work required or conducted by any federal, state or local governmental agency or political subdivision because of Regulated Substances located on the Property or present in the soil or ground water on, or under the Property. The parties agree that the City's right to enforce this covenant to indemnify is not an adequate remedy at law for Grantee's violation of any provision of this Section and that the City shall also have the rights set forth in this Section in addition to all other rights and remedies provided by law or otherwise provided for in this Declaration.

b. Without limiting the foregoing, if the presence of any Regulated Substance on, or under the Public Tract results in any contamination of the Public Tract or any adjacent real property, Grantee shall promptly take all actions at its sole cost and expense as are necessary to mitigate any immediate threat to human health or the environment. Grantee shall then undertake any further action necessary to return the Public Tract or other property to the condition existing prior to the introduction of any Regulated Substance to the Public Tract ; provided that the City's written approval of such actions shall first be obtained. Grantee shall undertake such actions without regard to the potential legal liability of any other person; however, any remedial activities by Grantee shall not be construed as to impair Grantee's rights, if any, to seek contribution or indemnity from another person.

c. Grantee shall, at Grantee's own cost and expense, make all tests, reports, studies and provide all information to any appropriate governmental agency as may be required pursuant to the Environmental Laws pertaining to Grantee's use of the Public Tract. This obligation includes but is not limited to any requirements for a site characterization, site assessment and/or a cleanup plan that may be necessary due to any actual or potential spills or discharges of Regulated Substances on, or under the Public Tract. At no cost or expense to the City, Grantee shall promptly provide all information requested by the City pertaining to the applicability of the Environmental Laws to the Public

Tract, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination. In addition, the City shall have the right to access, within twenty (20) days of Grantee's receipt of written request, and copy any and all records, test results, studies and/or other documentation, other than trade secrets, regarding environmental conditions relating to the use, storage, or treatment of Regulated Substances by the Grantee on, or under the Public Tract.

d. Grantee shall immediately notify the City of any of the following: (1) any correspondence or communication from any governmental agency regarding the application of Environmental Laws to the Public Tract or Grantee's use of the Public Tract, (2) any change in Grantee's use of the Public Tract that will change or has the potential to change Grantee's or the City's obligations or liabilities under Environmental Laws, and (3) any assertion of a claim or other occurrence for which Grantee may incur an obligation under this Section 4.

R. Noncompliance.

(3) Grantee's failure or the failure of its agents, employees, contractors, invitees or of a third party to comply with any of the requirements and obligations of this Section 4 or applicable Environmental Law shall constitute a material default of this Declaration. Notwithstanding any other provision in this Declaration to the contrary, the City shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Law on, or under the Public Tract, without waiving any of its rights under this Declaration. The exercise by the City of any of its rights under this Section 4 shall not release Grantee from any obligation it would otherwise have hereunder.

(4) The covenants in this Section 4 shall survive the expiration or earlier termination of this Declaration.

12. Term. This Declaration shall be effective upon recordation of the Deed and shall continue in full force and effect for perpetuity or until terminated by the City in its sole and absolute discretion.

13. Enforcement Rights. Any action to enforce this Declaration may be brought by the City. In the event of a breach or threatened breach by any person or any of the terms or provisions of this Declaration, the City shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including specific performance. In the event of any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party shall be entitled to recover from the unsuccessful party its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

14. Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this Declaration shall run with and bind the Property and shall be and shall inure to the benefit of the City and the Public Tract.