

#28  
MAR 17 2016



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**MEMORANDUM**

**Downtown Redevelopment – Council Memo DT16-015**

**DATE:** MARCH 17, 2016

**TO:** MAYOR AND CITY COUNCIL

**THRU:** MARSHA REED, ACTING CITY MANAGER *MR*

**FROM:** KIM MOYERS, DOWNTOWN REDEVELOPMENT MANAGER *Kim*

**SUBJECT:** INTRODUCTION AND TENTATIVE ADOPTION OF ORDINANCE NO. 4697 AUTHORIZING THE PROVISIONS OF A DEVELOPMENT AGREEMENT BETWEEN RYAN COMPANIES US, INC., AND THE CITY OF CHANDLER FOR DISPOSITION AND REDEVELOPMENT OF SITE 6.

**RECOMMENDATION:** Staff recommends City Council introduce and tentatively adopt Ordinance No. 4697 authorizing the provisions of a development agreement between Ryan Companies US, Inc., and the City of Chandler for disposition and redevelopment of Site 6.

**BACKGROUND/DISCUSSION:** Site 6 is a 4.25 acre site directly across from Chandler City Hall, located at the northwest corner of Chicago Street and Arizona Avenue. The site is vacant and owned by the City. It is currently utilized for parking, but is otherwise unencumbered.

On August 14, 2014, City Council adopted Resolution No. 4795, awarding the Site 6 Request for Proposal to Ryan Companies US, Inc., and authorizing staff to begin development agreement deal terms between the City of Chandler and Ryan Companies US, Inc., and directing staff to present the negotiated development agreement to the City Council for consideration and possible action.

Ryan Companies US, Inc., is a 75-year, nationally recognized company specializing in office development, construction, and management experience in the Phoenix area. Over the past 17 years, Ryan Companies US, Inc., has developed over 18 million square feet of office, industrial, and mixed-use product throughout metropolitan Phoenix.

Ryan Companies US, Inc. proposes the development of a mixed-use project consisting of two office buildings and related retail focusing on attracting significant jobs into downtown Chandler.

Phase 1 will consist of a minimum of a two-story office building (1 floor = approximately 22,000 s.f.) and minimum 4,000 s.f. for restaurant and retail uses.

Phase 2 will consist of a minimum of a five-story office building (1 floor = approximately 25,000 s.f.) and minimum 7,000 s.f. for restaurant and retail uses.

Ryan Companies US, Inc.'s minimum office improvements will be built to Class A standards and will be designed to encourage uses from industry segments including high tech, financial, medical administration, and communications. Additionally, Ryan Companies US, Inc., will provide an open space/gathering area encouraging pedestrian connectivity south of the Historic Downtown Square, construction of a trash enclosure for the use of the property and businesses along Boston Street, between Arizona Avenue and Oregon Street, and will pay into the Enhanced Municipal Services District (EMSD). Ryan Companies, LLC will commence construction of Phase 1 no later than October 2018 and commence construction of Phase 2 no later than August 2021.

Ryan Companies US, Inc., is requesting that the City provide for a 25-year Government Property Lease Excise Tax (GPLET) rate, a provision in Arizona's Tax Code that allows for a specific dollar value per square foot assessment, as opposed to the traditional assessment that is based on the value of the property. Further, because the site is located in both the City's existing Central Business District and the City's Redevelopment Area, the site will also be able to take advantage of an 8-year abatement on all property tax, as part of the requested 25-year GPLET. Notices, required by A.R.S. § 42-6206, were sent to all taxing jurisdictions on December 8, 2015. The statutes require a 60 day notification period before City Council can vote on the GPLET provision, which has passed.

As part of the Development Agreement, the City assures adequate water and sewer for the project and electrical undergrounding, which was part of the Fiscal Year (FY) 2015-16 Capital Improvement Program (CIP). City of Chandler will lease Site 6 with options to purchase throughout the term of the agreement. Additionally, the City of Chandler will participate in the construction of a parking garage that will be built congruently with each phased development. Ryan Companies US, Inc., will operate and maintain the parking garage through a Parking Management Services Agreement and will lease parking spaces from the City of Chandler in a Parking Lease Agreement.

**FINANCIAL IMPLICATIONS:** The financial implications to the City of the proposed development agreement for Site 6 with Ryan Companies US, Inc. include the estimated costs of providing water (\$1,000,000) and sewer (\$500,000) upgrades. This funding is budgeted in the FY 2015-16 Water Bond Fund, Water Capital Cost Center (601.3820.6714.6WA110) for \$1,000,000 and the FY 2015-16 Wastewater Operating Fund, Wastewater Capital Cost Center (615.3910.6813.6WW332) for \$500,000. Street

improvements and other infrastructure improvements on Chicago Street and Oregon Street are budgeted at \$1,753,775. This capital project was planned and budgeted in the FY 2015-16 General Government Capital Fund, Streets Capital Cost Center (401.3310.6513.6ST699 ) and will be used to fund this project.

The parking garage will provide approximately 340 parking spaces in Phase 1 and approximately 6 parking spaces for each 1,000 s.f. of Phase 2. The FY 2015-16 budget includes carryforward funding for a capital project called San Marcos Commons Phase 2 parking. This capital project is budgeted in the General Government Capital Fund, Non-Department Capital Cost Center (401.1291.61106GG623) for \$7,795,370. This project will be closed out and fall back to General Fund balance to be requested in the CIP for FY 2016-17 for downtown parking. The estimated cost of for Phase 1 is \$5,250,000.

Ryan Companies US, Inc. will lease Site 6 for a period of 8 years at \$10 per year, with an option to purchase during the term of the GPLET at \$6.50 s.f. Should Ryan Companies US, Inc. continue to lease between years 9-19, the annual rent will be 8% of the purchase price and shall increase by 20% every 10 years thereafter. If Ryan Companies US, Inc. does not purchase the property during the term of the GPLET, a new appraisal will be completed which shall establish the purchase price for the next 25 years. Ryan will have the option of leasing the real property only after the term of the GPLET Lease up to 74 years with the rent increasing by 20% every decade of the Ground Lease. All leases and operating agreements were negotiated as part of the Development Agreement process so that both parties are aware of their obligations going forward. The City Council's approval of the Development Agreement also approves the form agreements for the leases and garage operating agreement.

**PROPOSED MOTION:** Move City Council introduce and tentatively adopt Ordinance No. 4697 authorizing the provisions of a development agreement between Ryan Companies US, Inc., and the City of Chandler for disposition and redevelopment of Site 6.

Attachments: Ordinance No. 4697  
Development Agreement  
Site Map

**ORDINANCE NO. 4697**

AN ORDINANCE OF THE CITY OF CHANDLER, ARIZONA, ADOPTING THE PROVISIONS OF A DEVELOPMENT AND OPTION AGREEMENT BETWEEN RYAN COMPANIES US, INC, AND THE CITY OF CHANDLER FOR DISPOSITION AND REDEVELOPMENT OF SITE 6

WHEREAS, The City owns certain real property in its downtown area (the northwest corner of Arizona Avenue and Chicago) that is generally identified as Site 6;

WHEREAS, Site 6 is located in the City's "Chandler Redevelopment Area" established pursuant to Resolution No. 1180 and in the City's Central Business District established pursuant to Resolution No. 4646;

WHEREAS, Site 6 was acquired by the City as part of its plan to redevelop and revitalize the downtown area of the City as described in the Chandler Redevelopment Area Plan;

WHEREAS, Ryan Companies US, Inc has proposed to build improvements and procure uses on Site 6 ("Project") that the City finds will contribute to the implementation and achievement of the City's goals of redevelopment and revitalization of Site 6 and other properties within the City's downtown area.

WHEREAS, the City finds that redevelopment of the Project will result, during the term of the GPLET Leases, in significant direct and indirect benefits accruing to the City and the general public, including, without limitation, increased property values of Site 6 by at least one hundred percent as well as enhancing the economic viability of the City in numerous ways, including, without limitation, (i) increasing transaction privilege tax revenues and other revenues to the City, (ii) increasing the City's employment base, (iii) stimulating further economic development, (iv) incentivizing the redevelopment of other properties within the City's downtown and (v) otherwise improving or enhancing the economic welfare of the residents of the City

WHEREAS, The City finds that without the incentives provided herein, such benefits, as outlined above in Recital G is not likely to occur and this Agreement will generate revenues and other benefits to the City that outweigh or are not disproportionate to the costs associated with these benefits.

WHEREAS, the Development Agreement between the City and Ryan Companies US, Inc sets forth certain obligations of the parties with regard to the Project, as permitted by Arizona law;

WHEREAS, in accordance with A.R.S. § 42-6206(B)(1)(a) and (b), the City has notified Maricopa County, Chandler Unified School District, and the Chandler-Gilbert Community College about its intent to lease Site 6, after construction of the Project, under the Government Property Lease Excise Tax laws and abate the first eight years of the Government Property Lease Excise Tax;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Chandler, Arizona, as follows:

1. The Project, as set forth in the Development Agreement, is consistent with the City's General Plan, and the Chandler Redevelopment Area Plan;
2. Approval of the terms and conditions of the Development Agreement providing for the lease and eventual sale of Site 6 to Ryan Companies US, Inc, for its development in accordance with the Development Agreement; and
3. Authorize the Mayor to execute and provide necessary documentation needed to implement the Development Agreement including, but not limited to, executing the Purchase Agreement, GPLET Leases, and Ground Lease in accordance therewith.

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this \_\_\_\_ day of \_\_\_\_\_ 2016.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4697 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2016, and that a quorum was present thereat.

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY (*leb*)

Downtown Chandler  
Redevelopment Site 6



Site 6 City Owned Land

When recorded, return to:  
Chandler City Attorney's Office  
City of Chandler  
Post Office Box 4008, Mailstop 602  
Attn: Kay Bigelow

**DEVELOPMENT AGREEMENT**

**CITY OF CHANDLER,  
an Arizona municipal corporation**

**and**

**RYAN COMPANIES US, INC.,  
a Minnesota corporation**

**Approved by City Council  
March 31, 2016**

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “**Agreement**”) is made by and between the CITY OF CHANDLER, an Arizona municipal corporation (the “**City**”) and RYAN COMPANIES US, INC., a Minnesota corporation (“**Developer**”). The City and Developer shall be referred to in this Agreement, collectively as “**Parties**,” and individually as a “**Party**.”

### **SECTION 1. EFFECTIVE DATE & TERM.**

**1.1 Effective Date.** This Agreement shall be effective as of the date that it is executed by the representative of the last Party to sign it and the recordation in the Official Records of Maricopa County, Arizona, in accordance with the requirement of A.R.S. § 9-500.05.

**1.2 Term.** The term of this Agreement (“**Term**”) shall be the later of (i) twenty (20) years from the Effective Date, (ii) the expiration of the term of the longest running Term of any of the Leases (as defined below); or (iii) as otherwise set forth in this Agreement.

### **SECTION 2. RECITALS.**

**A.** The City issued a request for proposals for development of an approximately four acre site owned by the City and located at the northwest corner of Chicago Street and Arizona Avenue in the City’s Downtown (“**Property**”) as more particularly described in Exhibit A and included in the City’s Central Business District (“**CBD**”) established pursuant to Resolution No. 4646, and included within the Chandler Redevelopment Area Plan (“**Redevelopment Area Plan**”).

**B.** Site 6 was acquired by the City as part of its plan to redevelop and revitalize the downtown area of the City as described in the Redevelopment Area Plan.

**C.** Developer submitted a response to the request for proposal. Throughout this Agreement, the proposal accepted by the City will be referred to as the “**Proposed Development Plan**,” which is attached hereto as Exhibits F-1 and F-2.

**D.** Developer has proposed to build improvements and procure uses on Site 6 (“**Project**”) that the Parties believe will contribute to the implementation and achievement of the City’s goals of redevelopment and revitalization of the City’s downtown area.

**E.** The City has determined Developer is qualified and capable of acting as the Developer for the Property in a manner that will facilitate the redevelopment of downtown Chandler and benefit the citizens of Chandler.

**F.** The City, therefore, desires to convey Site 6 by lease and sale to Developer, on the terms and conditions set forth in this Agreement, the Lease and the Purchase Agreement.

**G.** The City and Developer hereby acknowledge and agree that redevelopment of the Project will result in significant direct and indirect benefits accruing to the City and the general public, including, without limitation, increased property values of the Property by at least one

hundred percent as well as enhancing the economic viability of the City in numerous ways, including, without limitation, (i) increasing transaction privilege tax revenues and other revenues to the City, (ii) increasing the City's employment base, (iii) stimulating further economic development, and (iv) otherwise improving or enhancing the economic welfare of the residents of the City.

H. The Parties acknowledge that without the incentives provided herein, such benefits, as outlined above in Recital G is not likely to occur and this Agreement will generate revenues and other benefits to the City that outweigh or are not disproportionate to the costs associated with these benefits.

I. This Agreement is intended to set forth certain obligations of the Parties with respect to the contemplated redevelopment of the Property, as permitted by Arizona law. The Parties intend for this Agreement to be a "**Development Agreement**" within the meaning of A.R.S. § 9-500.05, an agreement to promote economic development activities within the meaning of A.R.S. § 9-500.11, and redevelopment of the Redevelopment Area consistent with A.R.S. § 34-1471 *et seq.*

J. The City has determined that the proposed development of the Property is in accordance with this Agreement is consistent with the City's General Plan (as adopted by, and attached to, City Resolution 4195), and the Redevelopment Area Plan.

## **AGREEMENT**

IN CONSIDERATION of the foregoing recitals and representations and the mutual covenants and conditions in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**SECTION 3. DEFINITIONS.** In this Agreement, unless a different meaning clearly appears from the context:

**3.1 "Affiliate"** means, with respect to Developer, any Person that controls or is controlled by Developer, or is under common control of the Developer. For the purposes of this definition, "control" (including with correlative meaning, the terms "controlling," "controlled by" and "under common control"), as applied to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities, by contract or otherwise.

**3.2 "Agreement"** means this Agreement, as amended or supplemented in writing from time to time, and includes all exhibits and schedules attached hereto. References to Sections or Exhibits are to this Agreement unless otherwise qualified.

**3.3 "Applicable Laws"** means the federal, state, county and local laws (statutory and common law), charter provisions, codes, ordinances, rules, regulations, permit requirements, fee schedules and assessments, and other requirements and official policies of the City which apply to the development of all or any part of the Property.

**3.4** “**Certificate of Completion**” means a certificate issued by the City certifying that a building shell or other improvement is completed in accordance with approved plans in accordance with Applicable Laws.

**3.5** “**City**” means the City of Chandler, an Arizona municipal corporation (and any successor public body or officer hereafter designated by or pursuant to law).

**3.6** “**City Code**” or “**Code**” means the Chandler City Code and regulations of the City.

**3.7** “**Commence Construction**” or “**Commencement of Construction**” or “**Construction Commencement**” and variations means the occurrence of both of the following: (i) the issuance of a construction permit, and (ii) the commencement of construction of the Minimum Improvements beyond grading of foundation and footing for the structures for which the construction permit is issued, but inclusive of subsurface construction.

**3.8** “**Completion of Construction**” means the issuance of a permanent Certificate of Completion for the Phase 1 or Phase 2 Minimum Improvements, as applicable.

**3.9** “**Default**” means as defined in Section 9.1.

**3.10** “**Developer**” means Ryan Companies US, Inc., a Minnesota corporation duly authorized to transact business in Arizona (and any successor or assignee).

**3.11** “**Final Development Approval**” means Developer shall have obtained all land use entitlements and other regulatory approvals from the City and/or any other applicable other governmental and/or quasi-governmental authority having jurisdiction that are necessary for construction of the relevant phase of the Project.

**3.12** “**First Future Purchase Price**” means the purchase price as defined in Subsection 4.2C(2).

**3.13** “**Force Majeure Events**” means any one or more of the following which prohibits or materially interferes with, delays or alters the performance of the applicable duty under this Agreement: strikes or lockouts; shortages of material (excluding those caused by lack of funds) or labor; acts of the public enemy; confiscation or seizure by any government or public authority; injunction, restraining order or other court order or decree, blockades; insurrections; riots; civil disturbances; epidemics; acts of nature; fires; explosions; nuclear reaction or radiation; radioactive contamination; any other similar cause (excluding those caused by lack of funds); and any other event not within the reasonable control of the applicable Party.

**3.14** “**GPLET Leases**” without any specific phase noted, means the Phase 1 GPLET Lease and Phase 2 GPLET lease, collectively.

**3.15** “**Ground Lease**” without any specific phase noted, Ground Lease means the lease for the Property available to the Developer after the end of the twenty-five (25) year term of the GPLET Leases.

**3.16 “Improvements”** means all buildings and other structures located within the Property and include all of the Phase I Minimum Improvements and the Phase 2 Minimum Improvements as well as landscaping and utilities.

**3.17 “Initial Purchase Price”** means as defined in Section 4.2C(1).

**3.18 “Lease”** without a specific modifier means any one of, or combination thereof, the leases, Phase 1 GPLET Lease, Phase 2 GPLET Lease, or the Ground Lease, in each case as the context requires.

**3.19 “Minimum Improvements”** means the aggregate of the Phase 1 and Phase 2 Minimum Improvements as required in Subsections 7.1B and 7.1C and as depicted on Exhibits F-1 and F-2.

**3.20 “Oregon Street Improvements”** means as described on Exhibit H.

**3.21 “Person”** means and includes natural persons and all other legal formed entities, including but not limited to, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts or other organizations.

**3.22 “Phase 1 Commencement Date”** means as described in Subsection 7.2.C

**3.23 “Phase 1 Completion Date”** means as described in Subsection 7.2.C.

**3.24 “Phase 1 Garage”** shall mean the multi-story parking structure provided by the City for public parking and part-time reserved parking for the Phase 1 Office Building as described in Subsection 8.2.A and depicted in Exhibit G.

**3.25 “Phase 1 GPLET Lease”** means the City’s leaseback of Phase 1 Property and Phase 1 Improvements under a Government Property Lease Excise Tax Lease as defined in A.R.S. §§ 42-6201 through 42-6210, inclusive, and more particularly described in Section 5.1 and Exhibit I-1

**3.26 “Phase I Minimum Improvements”** means as described in Subsection 7.1B and depicted on Exhibit F-1.

**3.27 “Phase I Property”** means the approximately southern half of the Property that will be the site for the Phase 1 Minimum Improvements (generally depicted on Exhibit F-1) and for which Developer will create, for the GPLET Lease for Phase 1, a legal description concurrently with the approval of the civil plans for Phase 1 Minimum Improvements for the GPLET Lease for Phase 1.

**3.28 “Phase 2 Commencement Date”** means as described in Subsection 7.2D.

**3.29 “Phase 2 Completion Date”** means as described in Subsection 7.2D.

**3.30** “Phase 2 Garage” shall mean the multi-story parking structure provided by the City for public parking and part-time reserved parking for the Phase 2 Office Building as described in Subsection 8.2.B and depicted in Exhibit G.

**3.31** “Phase 2 GPLET Lease” means the City’s leaseback of Phase 2 Property and Phase 2 Improvements under a Government Property Lease Excise Tax Lease as defined in A.R.S. §§ 42-6201 through 42-6210, inclusive, and more particularly described in Subsection 5.2 and Exhibit I-2

**3.32** “Phase 2 Minimum Improvements” means as described in Section 7.1C and depicted on Exhibit F-2.

**3.33** “Phase 2 Property” means the approximately northern half of the Property that will be the site for the Phase 2 Minimum Improvements (generally depicted on Exhibit F-2) and for which Developer will create, for the GPLET Lease for Phase 2, a legal description concurrently with the approval of the civil plans for Phase 2 Minimum Improvements .

**3.34** “Planned Area Development” or “PAD” means as defined in Section 7.1 and City Code Chapter 35.

**3.35** “Project” means the Minimum Improvements plus any additional private land uses constructed on the Property by Developer.

**3.36** “Proposed Development Plan” means the development plan (described in Subsections 7.1B and 7.1C and as depicted on Exhibits F-1 and F-2) as proposed by Developer for the Property that illustrates and demonstrates the general components of buildings, structures and Improvements included within the Minimum Improvements.

**3.37** “Public Infrastructure Improvements” means as described in Section 7.5.

**3.38** “Property” shall mean the real property described in the legal descriptions set forth in Exhibit A.

**3.39** “Purchase Agreement” means the purchase agreement in the form attached hereto as Exhibit C-2.

**3.40** “Schedule of Performance” means the Schedule of Performance described in Section 7.2, containing milestones for commencement and completion of the Minimum Improvements.

**3.41** “Second Future Purchase Price” means as defined in Subsection 4.2C(3).

**3.42** “Site 6 Garage” shall mean the aggregate of the described Phase 1 Garage and Phase 2 Garage as described in Section 8.2 and as identified on Exhibit G and located adjoining the west side of Oregon Street between Boston and Chicago streets.

**3.43** “Temporary Construction Easement” or “TCE” means as described in Section 2.1 and Exhibit B.

**3.44** “**Third Future Purchase Price**” means as defined in Subsection 4.2C(4).

**3.45** “**Zoning Code**” means Chapter 35 of the City Code.

**3.46** “**Zoning Designation**” means all land use entitlements granted to the Property pursuant to City Code Chapters 35, 39 and 48.

#### **SECTION 4. ACQUISITION AND DISPOSITION OF THE PROPERTY.**

**4.1 Temporary Inspection and Construction Easement.** Upon the Effective Date of this Agreement, the City, at no cost to Developer, shall execute a temporary inspection and construction easement in favor of Developer, in a form substantially similar as attached hereto as Exhibit B (“**TCE**”), over, under and across the Property for the purpose of granting Developer the right to inspect the Property, including, without limitation, conduct a Phase I environmental investigation, and construct the Project Improvements, over, under and upon the Property. If within six months of the Effective Date and in the event Developer is not satisfied with the physical condition of the Property for any reason, Developer may terminate this Agreement upon notice to the City, and neither party shall have any further rights or obligations hereunder. If Developer finds that the physical condition of the Property is unsuitable for any reason after six months, the Developer may terminate this Agreement upon notice to the City and a check for \$5,000.00, and neither party shall have any further rights or obligations hereunder.

**4.2 Purchase Process.** It is contemplated Developer will purchase the Property from the City prior to the expiration of this Agreement and/or expiration of any one of the Leases. Concurrently with the execution of this Agreement, the City will deliver its executed counterparts of the Purchase Agreement.

**A.** At any time during the Term of this Agreement, but not later than forty-five (45) days prior to the expiration of the term of the last Lease, and provided Developer is not in breach of this Agreement or any one of the Leases beyond applicable notice and cure periods, Developer shall have the right to deliver the fully-executed original Purchase Agreement to the Escrow Holder, as that term is defined in the Purchase Agreement. Such Purchase Agreement may apply to all or any portion of the Property. Developer shall provide Notice to the City of Developer’s delivery of the executed Purchase Agreements to Escrow Holder, which Notice shall include which portion of the Property is the subject of the Purchase Agreement. Upon Escrow Holder’s receipt of the fully-executed Purchase Agreements, the Parties shall proceed with the purchase and sale of the Property in accordance with the terms and conditions set forth in the Purchase Agreement. If Developer elects to purchase less than all of the Property, its rights to purchase the balance of the Property in accordance with this Section 4 shall continue throughout the term of this Agreement. Nothing in this Agreement shall be deemed to restrict Developer’s right to convey any portion of the Property to a third party after its acquisition thereof.

**B. Earnest Money Deposit.** Concurrently with Developer’s delivery of the fully-executed Purchase Agreement to Escrow Holder, Developer will deposit an amount equal to five percent (5%) of the then existing Purchase Price as Developer’s earnest money deposit (“**Deposit**”) with Escrow Holder, in cash, certified or bank cashier’s check or other form of collected funds.

C. The purchase price for the Property shall be as follows:

(1) Initial Purchase Price. The purchase price for the Property shall be \$6.50 per square foot of the Property, exclusive of the improvements constructed thereon (the "**Initial Purchase Price**") and shall apply to the purchase of all or any portion of the Property by Developer during the twenty-five (25) year period following the Effective Date of the Phase 1 GPLET Lease.

(2) First Future Purchase Price. In the event Developer does not complete and close escrow on the purchase of the Property prior to the expiration of the twenty-five year term of the Phase 1 GPLET Lease, the Initial Purchase Price for the Property will no longer be available to Developer. In such an event, the City shall cause the Property to be appraised by an Arizona-licensed appraiser who also holds an MAI or ASA designation (from the Appraisal Institute or the American Society of Appraisers, as applicable), at the City's sole expense. The appraisal shall be for the land value only and shall exclude any value attributable to any Improvements installed by the Developer upon it. The appraisal shall establish the purchase price for the Property for the next twenty-five years thereafter ("First Future Purchase Price"), on a per square foot basis.

(3) Second Future Purchase Price. In the event Developer does not complete and close escrow on the purchase of the Property prior to the expiration of the twenty-five year term of the Phase 1 GPLET Lease plus the first twenty-five years of the term of the Ground Lease, the First Purchase Price for the Property will no longer be available to Developer. In such an event, the City shall cause the Property to be appraised by an Arizona-licensed appraiser who also holds an MAI or ASA designation (from the Appraisal Institute or the American Society of Appraisers, as applicable), at the City's sole expense. The appraisal shall be for the land value only and shall exclude any value attributable to any Improvements installed by the Developer upon it. The appraisal shall establish the purchase price for the Property for the next twenty-five (25) years thereafter ("Second Future Purchase Price"), on a per square foot basis. \_

(4) Third Future Purchase Price. In the event Developer does not complete and close escrow on the purchase of the Property prior to the expiration of the twenty-five year term of the Phase 1 GPLET Lease plus the first fifty years of the term of the Ground Lease, the Second Purchase Price for the Property will no longer be available to Developer, the City shall cause the Property to be appraised by an Arizona-licensed appraiser who also holds an MAI or ASA designation (from the Appraisal Institute or the American Society of Appraisers, as applicable), at the City's sole expense. The appraisal shall be for the land value only and shall exclude any value attributable to any Improvements installed by the Developer upon it. The appraisal shall establish the purchase price for the Property for the next twenty-four (24) years thereafter ("Third Future Purchase Price"), on a per square foot basis.

D. Non-Purchase of Property before Lease Termination. The Parties expressly acknowledge that in the event Developer fails to exercise its right or option to purchase the Property granted in this Agreement, the City shall not be obligated to extend, renew or otherwise amend this Agreement, the Lease(s), or the Purchase Agreement for any additional terms beyond the Lease Term(s). In the event this Agreement, the Lease, or the Purchase Agreement are terminated, expired or otherwise cancelled prior to the end of their Terms, the Parties

acknowledge any Improvements installed by Developer or the City on the Property shall become the property of the City without further action or instrument of conveyance. Thereafter Developer shall have no right, claim or ownership interest in any Improvement then existing on the Property. At Developer's option, Developer shall either (1) cause the Improvements to be surrendered in a neat and clean condition, and structurally sound, or (2) remove the Improvements and restore the Site to substantially the same condition in which it existed prior to the date of this Agreement.

## **SECTION 5. GPLET LEASES.**

### **5.1 Phase 1 GPLET Lease.**

**A.** The City hereby agrees that if Developer completes Phase 1 of the Project in compliance with this Agreement and Developer has otherwise satisfied its obligations, in all material respects, under this Agreement and upon issuance of the last Certificate of Completion for Phase 1 Improvements, (i) Developer may convey the Improvements for Phase 1 to the City by a special warranty deed in substantially the same form attached hereto as Exhibit D, and (ii) contemporaneously with such conveyance, the City shall lease back the Improvements and the Phase 1 Property to Developer pursuant to a Government Property Lease Excise Tax Lease (the "Phase 1 **GPLET Lease**") substantially in the form attached hereto as Exhibit I.

**B.** Concurrently with the approval of the civil plans for Phase 1 Minimum Improvements, the Developer will cause a legal description of the Phase 1 Property to be created.

**C.** The term of the Leases shall be twenty-five (25) years from the date of conveyance of the Phase 1 Improvements to the City. If Developer so elects to do so, the Improvements must be conveyed to the City within six (6) months after the date of issuance of the last Certificate of Completion for each of the relevant phase.

**D.** The Improvements must be conveyed to the City free of all monetary liens or encumbrances other than liens for current property taxes and assessments not yet due and payable that shall remain Developer's obligation for payment pursuant to the terms of the GPLET Lease. Any deed of trust liens on the Improvements securing financing for development of the Phase 1 of the Project shall be released from the fee interest in the Improvements prior to conveyance of title of the Improvements to the City.

### **5.2 Phase 2 GPLET Lease.**

**A.** The City hereby agrees that if Developer completes Phase 2 of the Project in compliance with this Agreement and Developer has otherwise satisfied its obligations, in all material respects, under this Agreement and upon issuance of the last Certificate of Completion for Phase 2 Improvements, (i) Developer may convey the Improvements for Phase 2 to the City by a special warranty deed in substantially the same form attached hereto as Exhibit D, and (ii) contemporaneously with such conveyance, the City shall lease back the Improvements and the Phase 2 Property to Developer pursuant to a Government Property Lease Excise Tax Lease (the "Phase 2 **GPLET Lease**") substantially in the form attached hereto as Exhibit I.

**B.** Concurrently with the approval of the civil plans for Phase 2 Minimum Improvements, the Developer will cause a legal description of the Phase 2 Property to be created.

**C.** The term of the Phase 2 GPLET Lease shall be twenty-five (25) years from the date of conveyance of the Phase 1 Improvements to the City so that both GPLET Leases run concurrently from that time forward until their termination. If Developer so elects to do so, the Phase 2 Improvements must be conveyed to the City within six (6) months after the date of issuance of the last Certificate of Completion for Phase 2.

**D.** The Improvements must be conveyed to the City free of all monetary liens or encumbrances other than liens for current property taxes and assessments not yet due and payable that shall remain Developer's obligation for payment pursuant to the terms of the Phase 2 GPLET Lease. Any deed of trust liens on the Phase 2 Improvements securing financing for development of the Project shall be released from the fee interest in the Phase 2 Improvements prior to conveyance of title of the Phase 2 Improvements to the City.

**5.3 Abatement of GPLET.** During the first eight (8) years of each Lease, the Developer shall be entitled to the statutorily-authorized eight (8) year abatement of the Government Property Lease Excise Tax ("GPLET") available pursuant to the provisions of A.R.S. §§ 42-6201 through 42-6210, inclusive. The City acknowledges that the Developer's execution of this Agreement satisfies the statutory requirement in A.R.S. 42-6209(B) for Developer's application for the GPLET tax abatement.

**5.4 GPLET Lease Rent.** The Developer will pay \$10 per year rent for the first eight (8) years of each GPLET Lease. Thereafter and for the next ten (10) years, the annual rent for the Leases will be eight percent (8%) of the Purchase Price, as set forth in Section 4, for the portion of the Property in the relevant Phase. Beginning on the first day of the nineteenth (19<sup>th</sup>) year of the term of the GPLET Leases, the rent shall increase by twenty percent (20%), and shall likewise increase on the same day every ten (10) years thereafter.

## **SECTION 6. GROUND LEASE.**

**6.1** The City hereby agrees that if Developer has otherwise satisfied its obligations, in all material respects, under this Agreement and the GPLET Leases and has not purchased the Property at the end of the GPLET Leases, (i) City will, upon written request from the Developer before the end of the Term of the GPLET Leases, convey the Improvements to the Developer by means of mutually acceptable instrument in AS-IS condition of the Improvements and without any warranty or representation as to condition by the City, and (ii) contemporaneously with such conveyance, the Developer will execute a Ground Lease for the Property substantially in the form attached hereto as Exhibit C-1 (the "**Ground Lease**").

**6.2 Ground Lease Term.** The term of the Ground Lease shall be up to seventy-four (74) years from the date of conveyance of the Improvements back to the Developer.

**6.3 Ground Lease Rent.** The Developer will pay rent in advance annually and in the amount of eight percent (8%) of the First Future Purchase Price ("**Ground Lease Rent**") for the first ten (10) years of the Ground Lease. At the end of the first ten (10) years of the Ground Lease Term, the rent shall increase by twenty percent (20%) every ten (10) years thereafter.

**6.4 Ground Lease Assignment.** The Ground Lease contemplated in this Section 5 Section 6 is not assignable by either Party, whether by operation of law or otherwise, without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Developer may assign the Ground Lease to Developer's Affiliates or successors in interest upon written notice of any such assignment to the City. Any assignee shall assume all obligations of its assignor under this Agreement. Any assignment in violation of this provision is void. Nothing herein shall prevent Developer from subleasing any portions of the Improvements, so long as Developer remains primarily liable under the Ground Lease.

**6.5 Ground Lease Terminations by Purchase.** Upon written notice to the City, Developer shall be entitled to terminate, by purchase as set forth in Section 4, any Lease contemplated pursuant to Section 5 at any time for any reason or no reason.

## **SECTION 7. DEVELOPMENT OF THE PROPERTY.**

**7.1 Development of the Property.** The construction of the Minimum Improvements, as described in this Section 7 and as depicted on Exhibits F-1 and F-2 shall occur in two phases and in accordance with the deadlines set forth in Section 7.2. Developer's compliance with the timing of its provision of the Minimum Improvements and its compliance with the Proposed Development Plans were material considerations for the City's determination to enter into this Agreement for revitalization and redevelopment of downtown Chandler in accordance with the Redevelopment Area Plan. Developer's timely compliance is a material part of the consideration being provided by Developer for the incentives provided in this Agreement, the Lease, and the Purchase Agreement. Because the timely provision of the Minimum Improvements is a material provision of this Agreement, the Parties agree that the Developer may ask for an expedited hearing before the City Council for its proposed changes to the Minimum Improvements that may require amendment to this Agreement. For purposes of this Section 7.1, "expedited hearing" shall mean that the City Council will meet within three (3) weeks of the date that the Developer has provided a written request for changes to the Minimum Improvements accompanied by full graphic and narrative descriptions regarding the changes along with information regarding the potential building tenant(s) that are requesting such changes.

**A. Minimum Improvements.** The Minimum Improvements shall consist of at least two Class A office buildings; one shall be a two-story (on southern portion of Property) and the other shall be a minimum of five-story building (on northern portion of Property) with accessory retail and/or restaurant uses on the Property. The Minimum Improvements shall be built to Class A standards using material including pre-cast concrete, glass, and metal panels. The Minimum Improvements shall be designed to encourage uses from industry segments such as high tech, financial, medical administration and communications. Minimum Improvements shall also be designed to strengthen the pedestrian appeal while complimenting, without competing with, the vertical City Hall building directly across Arizona Avenue.

**B. Phase 1 Minimum Improvements.** The development of Phase 1 of the Property shall commence in a single phase and shall include the Phase 1 Minimum Improvements as identified on Exhibit F-1 and the following:

(1) At least a two-story building containing a minimum of 44,000 square feet of “shell” Class A office space on approximately 1.81 acres in the southern portion of the Property (the “**Phase 1 Office Building**”) plus approx. 0.8 acres for surface parking spaces (motor court) and landscaping;

(2) At least a minimum of 4000 square feet of “shell” building space proposed for restaurant and retail uses (the “**Phase 1 Retail Building**”) adjacent to Arizona Avenue;

(3) Completion of sidewalks and landscaping abutting Phase 1 Improvements as outlined in the South Arizona Avenue Area Plan on Chicago Street and Oregon Street;

(4) Completion of all on-site utility infrastructure for the Phase 1 Minimum Improvements;

(5) Complete construction of a temporary trash enclosure for the use of the Phase 1 Property.

(6) Collectively the Improvements detailed in Subsection 7.1B are referred to as Phase 1 Minimum Improvements

**C. Phase 2 Minimum Improvements.** The development of Phase 2 of the Property shall commence in a single phase and shall include the Phase 2 Minimum Improvements as identified on Exhibit F-1 and the following:

(1) At least a five-story building containing a minimum of a 100,000 square feet of “shell” Class A office space on approximately 1.4 acres the northern part of the Property (the “**Phase 2 Office Building**”) plus approximately 0.51 acres for expansion of the surface parking spaces (motor court) and landscaping started in Phase 1;

(2) At least a minimum of 7,000 square feet of “shell” building space proposed for restaurant and retail uses (the “**Phase 2 Retail Building**”) adjacent to Arizona Avenue;

(3) Completion of sidewalks and landscaping as outlined in the South Arizona Avenue Area Plan on the adjacent roadway frontages;

(4) Completion of all on-site utility infrastructure for the Phase 2 Minimum Improvements;

(5) Complete construction of a trash enclosure for the use of the Property and other adjacent properties fronting on Boston Street between Arizona Avenue and Oregon Street. The design and details of the trash enclosure will be determined during the Zoning Designation process.

(6) Collectively the Improvements detailed in Subsections 7.1C(1) and 7.1C(3) are referred to as Phase 2 Minimum Improvements.

## **7.2 Timelines for Development of Phases 1 and 2.**

**A. Development of Property.** No later than six (6) months from the Effective Date of this Agreement, Developer shall submit to the City an administratively complete application for PAD zoning to be applied to the Property (“**Zoning Designation**”) that is substantially in compliance with the Proposed Development Plan. No later than twelve (12) months from the Effective Date of this Agreement, Developer shall obtain Final Development Approval of the Zoning Designation.

**B. Schedules for Development.** If Developer has not performed its obligations set forth herein by the dates set forth below in Subsections 7.2C and 7.2D, the City may proceed to declare a default as set forth in Section 9 as the timely construction of the Minimum Improvements in both Phase 1 and Phase 2 are a material part of the consideration being delivered by Developer for the incentives provided herein by the City.

**C. Phase 1 Development Schedule.**

<b>PHASE 1 DEADLINES</b>	
<b>ACTION</b>	<b>DEADLINE</b>
Developer will have marketing materials prepared and sent out to brokerage community within 30 days of signing Development Agreement. Developer will host a broker event on site to kick off project.	30 days from Effective Date
Developer’s submittal of administratively complete application(s) for Phase 1 land use entitlements required for Phase 1 Minimum Improvements	Six (6) months from the Effective Date
Developer obtains Final Development Approval	No later than 12 months from Effective Date
Developer must have 50% of Phase 1 pre-leased	April 2017
Developer’s submittal of 90% completed civil plans for the grading permit	No later than October 2017
Developer obtains approval of site and structural civil plans:	No later than April 2018 or six (6) months from submittal of civil plans, whichever is later
Developer’s Commencement of Construction of the Phase 1 Improvements	No later than August 2018 or six (6) months from approval of civil plans, whichever is later
Developer’s Completion of Construction of the Phase 1 Improvements	12 months from commencement of Phase 1 Improvements

	or August 2019, whichever is later
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**D. Phase 2 Development Schedule.**

<b>PHASE 2 DEADLINES</b>	
<b>ACTION</b>	<b>DEADLINE</b>
Developer will have marketing materials prepared and sent out to brokerage community within 30 days of signing Development Agreement. Developer will host a broker event on site to kick off project.	30 days after from Effective Date
Developer's submittal of administratively complete application(s) for Phase 2 land use entitlements required for Phase 2 Minimum Improvements	six (6) months from the Effective Date
Developer obtains Final Development Approval	No later than 12 months from Effective Date
Developer must have 50% of Phase 2 pre-leased	April 2020
Developer's submittal of 90% completed civil plans for the grading permit	No later than October 2020
Developer obtains approval of site and structural civil plans:	No later than April 2021 or six (6) months from submittal of civil plans, whichever is later
Developer's Commencement of Construction of the Phase 2 Improvements (" <b>Phase 2 Commencement Date</b> ").	No later than October 2021 or six (6) months from approval of civil plans, whichever is later
Developer's Completion of Construction of the Phase 2 Improvements (the " <b>Phase 2 Completion Date</b> ")	16 months from commencement of Phase 2 Minimum Improvements or October 2022, whichever is later

**7.3 Developer as Construction Manager.** The City will publicly procure the design and construction services for the Garage through the alternative project delivery method of a design-build, one-step qualification based procurement process in accordance with Arizona Revised Statutes, Title 34.

**7.4 Downtown Enhanced Municipal Services District Assessment.** The Project is within the boundaries of a special taxing district created pursuant to Title 48 of the Arizona Revised Statutes, namely the Downtown Enhanced Municipal Services District (“**District**”). The District was created for, among other things, the provision of enhanced municipal services to property owners within the District. The Parties acknowledge the Property is within the boundaries of the District. Upon Developer’s receipt of a certificate of completion from the City for the Phase 1 Minimum Improvements, Developer will, during the term of this Agreement and the Lease, timely pay the amount that would be assessed on the real property constituting the Property if the City were not the title owner of the Property (“**In Lieu Assessment**”) as well as any amount assessed for the Improvements owned separately by Developer.

**7.5 Public Infrastructure.** Prior to the issuance of any Certificate of Completion for either Phase 1 or Phase 2 of the Project, Developer, at its sole cost and expense, shall cause to be designed, constructed and installed the sidewalks and landscaping, as more particularly described on the attached Exhibit H (“**Streetscape Improvements**”), within, adjacent to, and abutting any public street or roadway relating to the particular Phase of the Project to which the Certificate of Completion applies.

## **SECTION 8. CHANDLER OBLIGATIONS.**

**8.1 Utilities.** No later than four (4) months after the Commencement of Construction of the Phase 1 Minimum Improvements, the City will provide the off-site new water, sewer and natural gas lines to serve the Minimum Improvements. No later than four (4) months after the Commencement of Construction of the Phase 1 Minimum Improvements, the City will upgrade the off-site electrical, cable and telephone infrastructure to serve the Minimum Improvements. All improvements to be made pursuant to this Section 8.1 shall be made by the City at its sole cost and expense.

### **8.2 Site 6 Garage.**

**A. Phase 1 Garage Obligations.** No later than four (4) months after the Commencement of Construction of the Phase 1 Minimum Improvements, the City, at its sole cost and expense, shall cause to be designed and constructed a parking facility (“**Site 6 Garage**”) at the location generally on the west side of Oregon Street between Boston and Chicago streets, consisting of approximately 340 parking spaces (“**Phase 1 Garage**”) of which approximately 270 parking spaces will be reserved for the Phase 1 Office Building from 7 a.m. through 6 p.m. on weekdays, and from 8 a.m. to noon on Saturdays. The City shall cause such Phase 1 Garage to be completed on the Phase 1 Improvements are completed. Developer shall have the right to use such portion of the Phase 1 Garage under a 99 year Parking Lease (defined below), pursuant to the terms and conditions set forth on Exhibits J-1 and J-2 attached hereto and incorporated herein by reference; provided, the parties acknowledge and agree that the economic terms of the Parking Lease will be subject to change not more than once per every five (5) years during the term thereof. Developer may record a memorandum of such Parking Lease at Developer’s option.

**B. Phase 2 Garage Obligations.** No later than four (4) months after the Commencement of Construction of the Phase 2 Minimum Improvements, the City, at its sole cost and expense, shall cause to be designed and constructed a parking facility (“**Phase 2**

**Garage**") at the location generally on the west side of Oregon Street between Boston and Chicago streets, consisting of approximately 6 parking spaces for each 1000 square feet of the Phase 2 Office Building ("**Phase 2 Garage**") of which approximately 5 parking spaces for each 1000 square feet of the Phase 2 Office Building will be reserved from 7 a.m. through 6 p.m. on weekdays, and from 8 a.m. to noon on Saturdays. The City shall cause such Phase 2 Garage to be completed on the Phase 2 Improvements are completed. Developer shall have the right to use such portion of the Phase 2 Garage under a 99-year Parking Lease from the City, pursuant to the terms and conditions set forth on Exhibits J-1 and J-2 attached hereto and incorporated herein by reference; provided, the parties acknowledge and agree that the economic terms of the Parking Lease will be subject to change not more than once per every five (5) years during the term thereof. Developer may record a memorandum of such Parking Lease at Developer's option.

C. The Parties shall execute two agreements in regards to the Site 6 Garage. One will be a Parking Management Services Agreement ("Parking Management Agreement"), substantially in the form attached hereto as Exhibit J, and the second agreement is a Parking Lease Agreement ("Parking Lease") which will be developed during the six (6) months following the Effective Date, and which will incorporate the terms and conditions set forth on Exhibit J-3. The Parking Management Agreement shall provide for the operation and maintenance of the Site 6 Garage by the Developer. The Parking Lease will provide for the reservation of the Developer's parking spaces at the Site 6 Garage such that the Developer pays its percentage of the operating and maintenance costs for the Garage each year through it lease payments. The percentage of the operating and maintenance costs for the Garage shall be determined by the number of reserved parking spaces reserved for Developer's tenants in the Phase 1 Garage or Phase 2 Garage as the numerator and the total number of spaces within the relevant Garage being the denominator. The Parties' working copies of the cost allocation and month parking fees are set forth on Exhibits J-1 and J-2.

### 8.3 Oregon Street Improvements

A. The Parties hereby acknowledge and agree that pursuant to the 2015-16 annual budget and 2015-2024 capital improvement program approved by City Council in June 2015, the City, at its sole cost and expense, shall complete certain street improvements along Oregon Street between West Boston Street and West Chicago Street ("**Oregon Street Improvements**"), such improvements being more particularly described on the attached Exhibit H.

B. Right to Cure. In the event the Oregon Street Improvements are not completed and fully functional prior to that date which is four (4) months following the Phase 1 Commencement Date ("**Oregon Street Completion Date**"), Developer shall have the right, but shall not be required, to pay such sums or do any act which requires the expenditure of monies which may be necessary or appropriate in order to complete the Oregon Street Improvements. In the event of the exercise of any such right by Developer and that Developer complied with Section 10.1, the Parties hereby agree the Developer shall be entitled to reimbursement from the City for the reasonable cost and expense of timely completing the Oregon Street Improvements arising from and after the Oregon Street Completion Date. Developer shall not be entitled to reimbursement for any costs incurred as a result of the delay of the Oregon Street Improvements except those costs actually incurred to complete the Oregon Street Improvements.

C. Construction Staging Area. City will provide a parcel of real property south of the Property and as depicted in Exhibit E-2 and legally described in Exhibit E-1 for Developer's use as a construction staging area. The parties shall execute a commercially reasonable license agreement evidencing Developer's right to use such area generally in the form of the Temporary Inspection and Construction Easement attached hereto as Exhibit B.

## **SECTION 9. DEFAULTS.**

**9.1 Events of Default.** It shall be a default hereunder if either Party fails to perform any of its obligations hereunder, or under either the Lease or the Purchase Agreement and such failure continues for a period of thirty (30) days after written notice from the non-defaulting Party specifying in reasonable detail the nature of the failure; provided that if the nature of the default is such that it cannot reasonably be cured within a thirty-day period, no default shall be deemed to exist if the defaulting Party commences a cure within that thirty-day period and diligently and expeditiously pursues such cure to completion within forty-five (45) days after notification by the non-defaulting Party.

**9.2 Remedy of Parties.** In the event of a non-monetary default, the non-defaulting Party's sole and exclusive remedy shall be to terminate this Agreement, the Lease, and/or Purchase Agreement, or seek specific performance without the requirement of posting a bond.

**9.3 Delays; Waivers.** Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any default by the other Party shall not be considered as a waiver of rights with respect to any other default by the non-defaulting Party or with respect to the particular default except to the extent specifically waived in writing.

**9.4 Rights and Remedies Cumulative.** The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other default by the other Party.

**9.5 Waiver of Claims for Damages.** The Parties hereby waive any right to seek actual, consequential, punitive, multiple, exemplary or any other damages for a breach of this Agreement by the defaulting Party.

## **SECTION 10. REPRESENTATIONS.**

**10.1 City Representations.** The City represents and warrants to Developer that:

A. The City is duly formed and validly existing under Arizona law and that the individual(s) executing this Agreement on behalf of the City is authorized and empowered to bind the City.

B. The City has the full right, power and authorization to enter into and perform this Agreement and each of the City's obligations and undertakings under this Agreement, and the

City's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of its Charter and Arizona law.

**C.** All consents and approvals necessary to the execution, delivery and performance of this Agreement, the Lease and the Purchase Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance; provided, however, the Parties hereby acknowledge and agree that pursuant to City Charter, additional documents may require approval from Chandler City Council.

**D.** The City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

**10.2 Developer Representations.** Developer represents and warrants to the City that:

**A.** Developer is duly formed and validly existing under Minnesota law and that the individual(s) executing this Agreement on behalf of the Developer is authorized and empowered to bind Developer.

**B.** Developer has the full right, power and authorization to enter into and perform this Agreement and of the obligations and undertakings of Developer under this Agreement, and the execution, delivery and performance of this Agreement has been duly authorized and agreed to in compliance with its organizational documents and Arizona law.

**C.** All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

**D.** Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

**SECTION 11. GENERAL PROVISIONS.**

**11.1 Public Bid.** If Developer seeks reimbursement for any work defined as Public Works in Title 34, Chapter 2 of Arizona Revised Statutes, Developer must comply with the competitive and open procurement processes set forth in A.R.S. § 34-101 *et seq.* The City will process the request for bids for such work through its process up through and including selection by the City Council.

**11.2 Force Majeure.** If either Party is delayed or prevented from the performance of any duty or obligation under this Agreement by reason of a Force Majeure Event, then the performance of such duty or obligation shall be excused for the period of the delay, and the period for the performance by such Party of any such duty or obligation shall be extended for a period equivalent to the period of such delay. The Party subject to any Force Majeure Event shall provide Notice to the other Party as soon as reasonably practicable.

**11.3 Notices.** Except as otherwise required by law, any notice, demand or other communication required to be given by this Agreement (each, a "**Notice**") shall be in writing and shall be given by (i) personal delivery; (ii) by certified or registered U.S. Mail, return receipt

requested; or (iii) or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid and addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this paragraph:

To Developer: RYAN COMPANIES US, INC  
3900 East Camelback Road  
Suite 100  
Phoenix, Arizona 85018-2653  
Attention: Steve Jordan  
Phone: (602) 322-6100

With a copy to: Ryan Companies US, Inc.  
50 South Tenth Street  
Suite 300  
Minneapolis, Minnesota 55403-2012  
Attention: Legal Department  
Phone: (612) 492-4000

To the City: City of Chandler  
Economic Development Office (MS 416)  
P. O. Box 4008  
Chandler, AZ 85244-4008  
Attention: Kim Moyers  
Downtown Redevelopment Manager

With a copy to: City of Chandler  
City Attorney's Office  
P. O. Box 4008  
Chandler, AZ 84244-4008  
Attention: Kay Bigelow

**11.4 Effective Date of Notices.** All such notices, demands or other communications will (i) if delivered personally or delivered through a same day delivery/courier service be deemed effective upon delivery or refusal to accept delivery by the addressee; and (ii) if delivered by U.S. mail in the manner described above be deemed effective upon the earlier of receipt or three (3) business days after deposit in a post office operated by the United States or with a United States postal officer; and (iii) if sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee. The Parties hereby acknowledge and agree that any Notice transmitted solely by facsimile or by electronic mail shall be deemed ineffective.

**11.5 Waiver of Right to Trial by Jury.** The Parties expressly covenant and agree that in the event of a dispute arising from this Agreement, each Party waives any right to a trial by jury. In the event of litigation, the Parties agree to submit to a trial before the court.

**11.6 Reimbursement of Costs to Enforce Agreement.** In the event of commencement of a legal action in an appropriate forum by a Party to enforce any covenant or any of such Party's rights or remedies under this Agreement, including any action for declaratory, injunctive or other equitable relief, the prevailing Party in any such action shall be entitled to reimbursement of its reasonable attorneys' fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the Party and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

**11.7 Recordation.** The City will cause this Agreement to be recorded in its entirety in the Official Records of Maricopa County, Arizona, not later than ten (10) days after execution of the Agreement by the Parties.

**11.8 Governing Law.** This Agreement shall be governed by and construed under the internal laws of the State of Arizona, without reference to the principles of conflict of laws.

**11.9 Severability.** If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. If any applicable law or court of competent jurisdiction prohibits or excuses the City from undertaking any contractual commitment to perform under any provision of this Agreement, the remaining portions of this Agreement shall remain in full force and effect, and the Parties will negotiate diligently in good faith for such amendments of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.

**11.10 Amendment.** No change or addition is to be made to this Agreement except by written amendment executed by the City and Developer. Within ten (10) days after any amendment to this Agreement, the City will cause such amendment to be recorded in the Official Records of Maricopa County, Arizona, and shall thereafter promptly provide a recorded copy of such amendment to Developer.

**11.11 Further Assurances.** Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of (i) this Agreement as in full force and effect, and (ii) the performance of the obligations hereunder at any time.

**11.12 Calculation of Days.** If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday in the State of Arizona, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday in the State of Arizona.

**11.13 Section Headings.** The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision

of this Agreement. References to sections or exhibits are to Sections or Exhibits of this Agreement unless otherwise qualified.

**11.14 No Partnerships; Third Parties.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Developer and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any Person not a party hereto, and no such other Person shall have any right or cause of action hereunder, except for permitted transferees or assignees to the extent that they assume or succeed to the rights and/or obligations of Developer under this Agreement.

**11.15 Recitals, Exhibits.** The Recitals set forth in Section 2 of this Agreement are incorporated herein by reference and form a part of this Agreement. The Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes. Parties acknowledge, however, that the Maricopa County Recorder refuses to record graphical exhibits; and accordingly some of the incorporated exhibits are not contained in the recorded copy of this Agreement but are deemed attached and incorporated herein nonetheless. Exhibits that are not included in the recorded copy of this Agreement are attached to the copy of this Agreement in the office of the City Clerk.

**11.16 Entire Agreement.** This Agreement, the Lease, and the Purchase Agreement and all exhibits thereto attached and incorporated constitute the entire agreement between the Parties pertaining to the subject matter hereof and compliance with all terms and conditions of the three agreements are important consideration for the Parties entry into the three agreements and breach of one agreement will be considered a breach under the other agreements. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, are hereby superseded and merged herein.

**11.17 Additional Provisions.** Developer agrees to and does knowingly waive any and all rights to compensation for diminution in value pursuant to A.R.S. § 12-1134 that may now or in the future exist as a result of the approval or performance of, and all conditions, terms and agreements contained in this Agreement.

**11.18 Conflict of Interest.** This Agreement is subject to the cancellation provisions for conflicts of interest pursuant to A.R.S. §38-511.

**11.19 Time of Essence.** Time is of the essence of this Agreement and each provision of this Agreement.

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

**CITY:**

CITY OF CHANDLER,  
an Arizona municipal corporation

By: \_\_\_\_\_

Mayor Jay Tibshraeny

Date: \_\_\_\_\_, 2016

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CHANDLER CITY ATTORNEY *KB*

STATE OF ARIZONA )

) ss.

City of Chandler Acknowledgement

County of Maricopa )

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by Jay Tibshraeny, Mayor of City of Chandler, an Arizona municipal corporation, on behalf of the municipal corporation.

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

My Commission Expires:



EXHIBIT A-1  
LEGAL DESCRIPTION

**SITE 6**

**Parcel 1**

LOTS 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510 AND 511 INCLUSIVE, TOWNSITE OF CHANDLER, ACCORDING TO BOOK 5 OF MAPS, PAGE 34, RECORDS OF MARICOPA COUNTY, ARIZONA.

**Parcel 2**

THAT PORTION OF LAND AS DESCRIBED IN THE DEED RECORDED IN DOCKET 2703, PAGE 279, RECORDS OF MARICOPA COUNTY MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
BEGINNING AT THE NORTHEAST CORNER OF LOT 498 TOWNSITE OF CHANDLER, ACCORDING TO BOOK 5 OF MAPS, PAGE 34, RECORD OF MARICOPA COUNTY, ARIZONA;  
THENCE EAST 4 INCHES;  
THENCE SOUTH PARALLEL TO THE WEST LINE OF ARIZONA AVENUE A DISTANCE OF 150 FEET;  
THENCE WEST TO THE SOUTHEAST CORNER OF LOT 502 OF SAID SUBDIVISION;  
THENCE NORTH ALONG THE WEST LINE OF ARIZONA AVENUE TO THE POINT OF BEGINNING

**Parcel 3**

LOT 512, TOWNSITE OF CHANDLER, ACCORDING TO BOOK 5 OF MAPS, PAGE 34, RECORDS OF MARICOPA COUNTY, ARIZONA.  
EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 512;  
THENCE NORTH 89° 20' 12" WEST ALONG THE SOUTH LINE THEREOF, A DISTANCE OF 5.00 FEET;  
THENCE NORTH 25° 49' 01" EAST 12.15 FEET TO THE EAST LINE OF SAID LOT 512;  
THENCE SOUTH 1° 30' 18" WEST ALONG SAID EAST LOT LINE, A DISTANCE OF 11 FEET TO THE POINT OF BEGINNING

**Parcel 4**

THAT PORTION OF ABANDONED ALLEY SHOWN IN THE PLAT FOR THE TOWNSITE OF CHANDLER, ACCORDING TO BOOK 5 OF MAPS, PAGE 34, RECORDS OF MARICOPA COUNTY, ARIZONA AND RECORDED NOVEMBER 20, 2000 AS 2000-0887169 OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:  
BEGINNING AT THE NORTHWEST CORNER OF LOT 498 OF SAID SUBDIVISION;  
THENCE SOUTH ALONG THE EAST LINE OF THE ALLEY TO THE SOUTHWEST CORNER OF LOT 512 OF SAID SUBDIVISION;  
THENCE WEST TO THE SOUTHEAST CORNER OF LOT 513 OF SAID SUBSIVISION;  
THENCE NORTH ALONG THE WEST LINE OF THE ALLEY TO THE NORTHEAST CORNER OF LOT 499 OF SAID SUBDIVISION;  
THENCE EAST TO THE POINT OF BEGINNING.

**NOTE: THIS LEGAL DESCRIPTION IS BASED ON RECORDED DOCUMENTS SUCH AS PARCEL DEEDS AND PLAT. IT IS NOT BASED ON A BOUNDARY SURVEY OF THE SUBJECT PARCELS.**

EXHIBIT A-2  
MAP OF SITE 6

EXHIBIT A  
SITE 6



EXHIBIT B  
TEMPORARY CONSTRUCTION EASEMENT

**Exhibit B**  
**TEMPORARY CONSTRUCTION EASEMENT**

When recorded, return to:

**CITY OF CHANDLER**

City Clerk  
P.O. Box 4008, Mail Stop 606  
Chandler, AZ 85244-4008

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This document is exempt from Affidavit and Fee requirement pursuant to A.R.S. § 11-1134(A)(2).

**TEMPORARY CONSTRUCTION EASEMENT**

For and in consideration of the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, **CITY OF CHANDLER**, an **Arizona municipal corporation** (“Grantor”), does hereby grant to **RYAN COMPANIES US, INC.**, a **Minnesota corporation** (“Grantee”), a Temporary Construction Easement in connection with (i) the construction of the Phase I Site 6 Improvements; and (ii) the Phase II Site 6 Improvements (“Phase I” and “Phase II”, respectively, and collectively the “Project”). The purpose of this Temporary Construction Easement is to allow Grantee, its agents, contractors and assigns, to use the property, as described herein, for the improvement of the phases of the Project. This Temporary Construction Easement shall be on, over, and across that certain real property situated in Maricopa County, Arizona, and more particularly described in Exhibit “A”, attached hereto and made a part hereof by this reference (the “Easement Property”).

**Comment [AW1]:** Needs definition

**Comment [AW2]:** Needs definition

The term of this easement shall commence on \_\_\_\_\_, 20\_\_ and shall remain effective for a period of time no greater than thirty (30) days following the issuance of the last Certificate of Completion for each respective Phase I or Phase II of the Project. In the event completion of the Project occurs earlier than the full term of this easement, or in the event any portion of the Project has not been completed prior to August 1, 2022, Grantor may terminate the easement by written notice to Grantee.

Grantor covenants to and with Grantee and its assigns that he is lawfully seized and possessed of the Easement Property, that Grantor has good and lawful right to grant said easement interest, and that Grantor warrants and will defend the title to said easement interest

against all claims and demands.

Grantee shall repair and restore the Easement Property to a like or equivalent substantially the same condition as existed prior to the construction activity and shall indemnify, defend and hold harmless Grantor and Grantor's shareholders, partners, members, officers, directors, managers, employees, agents from and against any and all losses, claims, liabilities, damages, costs and expenses, including, but not limited to, reasonable attorneys' fees and court costs arising out of or resulting from Grantee's use of the Easement Property or the acts or conduct of Grantee's employees, agents, contractors, subcontractors, consultants and assigns. Grantee shall procure, or have all subcontractors performing such work maintain general liability and property damage insurance in an amount not less than Two Million and No/100s Dollars (\$2,000,000.00) per occurrence, combined single limit for bodily and personal injury and property damage, and naming Grantor as an additional insured, evidence of which shall be delivered to Grantee prior to the commencement of any use of the Easement Property.

The Easements hereby granted to Grantee are appurtenant to the Benefited Property and any public right-of-way abutting the Easement Property and/or the Benefited Property and are a burden upon the Easement Property. The dominant estate shall be the Benefited Property and any such public rights-of-way and the servient estate shall be the Easement Property. The easement, covenants and conditions herein contained shall run with the land and shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

[SIGNATURE BLOCK STARTS ON NEXT PAGE]

**GRANTOR: CITY OF CHANDLER, an Arizona  
municipal corporation**

By: \_\_\_\_\_  
Jay Tibshraeny

Its: **Mayor**

STATE OF ARIZONA     )  
                                  ) ss.  
County of Maricopa     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
201\_, by Jay Tibshraeny, the Mayor of the City of Chandler.

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

My Commission Expires:

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

EXHIBIT C-1  
GROUND LEASE

## GROUND LEASE

THIS GROUND LEASE (the "Ground Lease") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("Effective Date"), by and between the CITY OF CHANDLER, an Arizona municipal corporation, as lessor (the "City"), and RYAN COMPANIES US, INC., a Minnesota corporation, and any successor or assign, as lessee ("Ground Lessee"), on the terms and conditions set forth below. Each of the City and Ground Lessee may be referred to in this Ground Lease as a "Party," or collectively as the "Parties."

### RECITALS

A. City owns certain real property in its downtown area located at the northwest corner of Chicago Street and Arizona Avenue, which is generally identified or referred to as "Site 6", and which Site 6 is legally described on Exhibit A attached hereto and incorporated herein by reference.

B. Ground Lessee has proposed to build certain improvements and procure certain uses on Site 6 ("Project") that the Parties believe will implement the City's goals of redevelopment and revitalization of the City's downtown area.

C. The City desires to convey Site 6 by lease and sale to the Ground Lessee based on the terms and conditions set forth in (i) this Ground Lease, (ii) the GPLET Lease between the City and Ground Lessee dated March \_\_\_\_\_, 20\_\_\_\_ ("GPLET Lease"), (iii) the Development Agreement between the City and Ground Lessee dated March \_\_\_\_\_, 20\_\_\_\_ ("Development Agreement"), and (iv) the Purchase and Sale Agreement between the City and Ground Lessee dated March \_\_\_\_\_, 20\_\_\_\_ ("Purchase Agreement").

D. This Ground Lease is part of a transaction between the City and Ground Lessee in which the Ground Lessee intends to develop the Project in accordance with the terms of the Development Agreement and GPLET Lease; the Ground Lessee shall lease the land upon which the Project is constructed (*i.e.*, Site 6) from the City in accordance with the terms of this Ground Lease; and the Ground Lessee may ultimately purchase the land upon which the Project is constructed (*i.e.*, Site 6) from the City in accordance with the Purchase Agreement. Accordingly, the Parties intend that this Ground Lease, the Development Agreement, the GPLET Lease, and the Purchase Agreement (collectively, the "Project Documents") be construed harmoniously in order to give full effect to the intentions of the Parties with respect to the leasing, development and purchase of Site 6 as reflected by the Project Documents. Capitalized words and phrases in this Ground Lease which are not explicitly defined herein shall have the same meaning as those in the other Project Documents. In the event of any conflict or ambiguity arising among the Project Documents, this Ground Lease shall control the terms and conditions of the lease on the real property in Site 6 after the termination of the GPLET Lease.

1. E. The City hereby agrees that if Ground Lessee has otherwise satisfied its obligations, in all material respects, under the Development Agreement and the GPLET Lease and has not purchased the Property at the end of the GPLET Lease, (i) City will, upon written request from the Ground Lessee before the end of the Term of the GPLET Lease, convey the Improvements to the Ground Lessee by means of mutually acceptable instrument in AS-IS condition of the Improvements and without any warranty or representation as to condition by the City, and (ii) contemporaneously with such conveyance, the Ground Lessee will execute a Ground Lease for the Property substantially in the form herein.

### AGREEMENT

The parties agree as follows.

#### 1. GROUND LESSEE

Name:	RYAN COMPANIES US, INC
Address:	3900 East Camelback Road, Suite 100
City, State, Zip Code:	Phoenix, AZ 85018-2653
Phone Number:	(602) 322-6100

#### 2. SITE 6.

The City hereby leases to Ground Lessee, and Ground Lessee hereby takes from the City, Site 6, which consists of approximately four (4) acres or approximately 174,240 square feet. The Improvements are more particularly discussed in Section 8 below.

#### 3. GROUND LEASE TERM.

The term of the Ground Lease (“Term”) shall be up to seventy-four (74) years from the date of conveyance of the Improvements back to the Ground Lessee until 11:59 p.m. on the last day of the Term, or as otherwise earlier terminated pursuant to the terms and conditions of this Ground Lease.

4. GROUND LEASE ASSIGNMENT. The Ground Lease is not assignable by either Party, whether by operation of law or otherwise, without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Ground Lessee may assign the Ground Lease to Ground Lessee’s Affiliates or successors in interest upon written notice of any such assignment to the City. Any assignee shall assume all obligations of its assignor under terms and conditions of this Ground Lease. Any assignment in violation of this provision is void. Nothing herein shall prevent Ground Lessee from subleasing any portions of the Improvements, so long as Ground Lessee remains primarily liable under the Ground Lease. Nothing herein shall apply to any collateral assignment of this Ground Lease by Ground Lessee, which shall be governed by the terms of Section \_\_\_ below.

5. GROUND LEASE TERMINATION BY PURCHASE. Upon written notice to the City, Ground Lessee shall be entitled to terminate, by purchase as set forth in **Error! Reference**

**source not found.** of the Development Agreement and pursuant to the terms and conditions of the Purchase and Sale Agreement, the Ground Lease at any time for any reason or no reason.

6. **NON-PURCHASE OF PROPERTY BEFORE LEASE TERMINATION.** The Parties expressly acknowledge that in the event Ground Lessee fails to exercise its right or option to purchase the Property granted in this Ground Lease, the City shall not be obligated to extend, renew or otherwise amend this Ground Lease, the Development Agreement, or the Purchase Agreement for any additional terms beyond the Ground Lease Term. In the event this Ground Lease, the Development Agreement or the Purchase Agreement are terminated, expired or otherwise cancelled prior to the end of their Terms, the Parties acknowledge any Improvements installed by Ground Lessee or the City on the Property shall become the property of the City without further action or instrument of conveyance. Thereafter Ground Lessee shall have no right, claim or ownership interest in any Improvement then existing on the Property.

**Comment [KB1]:** Pre-2/22/16 Ryan drafts., will change to be consistent with final version of Development Agreement provision.

7. **GROUND LEASE RENT.** The Ground Lessee will pay rent in advance annually and in the amount of eight percent (8%) of the First Future Purchase Price ("Ground Lease Rent") for the first ten (10) years of this Ground Lease. At the end of the first ten (10) years of the Ground Lease Term, the Ground Lease Rent shall increase by twenty percent (20%) every ten (10) years thereafter, without deduction or offset. All Ground Lease Rent is payable to the City at such place as the City may designate in writing.

A. The Ground Lease Rent to be paid by Lessee is in addition to, and not in lieu of, any requirement to pay any charges or fees that may be established by virtue of the inclusion of Site 6 within the Downtown Enhanced Municipal Services District ("District"), or any subsequent amendment thereto, or any other relevant laws and regulations, and any applicable license or permit fee required pursuant to the Chandler City Code.

B. Future Purchase Price. The Future Purchase Price is established in Section 4.4 of the Development Agreement.

C. Net Lease. It is the intention of the parties that the Ground Lease Rent shall be net to the City in each year during the term of this Lease. Accordingly, all costs, expenses and obligations of every kind relating to Site 6 (except as otherwise specifically provided in this Ground Lease) which may arise or become due during the term of this Ground Lease shall be solely the responsibility of, and be paid by, Ground Lessee.

D. Late Charges. If City does not receive any payment of Ground Lease Rent when due, then in addition to the overdue Ground Lease Rent, Ground Lessee shall pay interest on the payment of Rent then due at the rate of ten percent (10%) per annum. Interest commences on the date the payment of Rent is due and accrues until the payment of Rent has been made. The imposition of interest does not prevent the City from exercising any other rights and remedies under this Ground Lease, including the termination of this Ground Lease as set forth below.

E. Application of Ground Lease Rent Payments. All payments of Ground Lease Rent that are received by the City from Ground Lessee shall be applied first toward any accrued late payment interest, then to any other charges or fees stated in this Ground Lease that are due

and owing, then to any back Ground Lease Rent due and not yet paid, and then to the current Ground Lease Rent.

G. Prepayment of Ground Lease Rent. Ground Lessee may prepay Ground Lease Rent owing under this Ground Lease (without penalty or discount); and in the event of each such prepayment, upon request from Ground Lessee, the City shall provide a written statement to Ground Lessee showing the date through which such Ground Lease Rent has been prepaid.

8. ACCEPTANCE OF PREMISES.

A. Physical Condition. Ground Lessee has examined Site 6 and accepts it upon signing this Ground Lease in its physical condition as of the date hereof,. There are no warranties expressed or implied as to any condition apparent or unknown except as otherwise stated in this Ground Lease, the GPLET Leases, the Development Agreement and the Purchase Agreement. Ground Lessee agrees to make reasonable changes to Site 6 necessary to conform to any federal, state or local law applicable to the Ground Lessee's use of Site 6.

B. Condition of Title. Ground Lessee approves the condition of title of Site 6 as of the Effective Date. The City agrees that it shall not place or permit any additional liens, claims, encumbrances, easements or other exceptions to be placed or recorded against Site 6 during the Term without the express prior written consent of Ground Lessee, which consent may not be unreasonably withheld or conditioned by the Ground Lessee.

9. POSSESSION.

Ground Lessee shall have exclusive possession of Site 6 throughout the Term.

10. USE OF PREMISES.

Site 6 shall be used only for lawful purposes, as set forth in the Development Agreement between the Parties, and only in accordance with all applicable building and zoning codes and regulations. Ground Lessee agrees that it will not disturb the City or any other lessee of the City by making or permitting any unreasonable disturbance, noise, vibration or other condition on or in the premises after completion of the construction of the Improvements.

11. UTILITIES AND SERVICES.

Ground Lessee shall pay throughout the Term all charges for all utility services furnished to Site 6, if any, including, but not limited to, light, heat, gas, garbage disposal, electricity, water, and sewer, including any connection fees, and any fire protection, police protection, or emergency health services as furnished by local public safety or utility providers and as may be the subject of a contract between the City and such local public safety or utility providers or as imposed by ordinance or statute.

12. INSURANCE REQUIREMENT.

A. In addition to the requirements of Section 13 and Section 20 below, Ground Lessee shall carry comprehensive general liability coverage in the amount of at least \$2,000,000 per occurrence and \$4,000,000 in the annual aggregate.

B. Ground Lessee shall, at its own expense, maintain proper liability insurance with a reputable insurance company or companies holding a certificate to write insurance business in Arizona in the minimum policy limits set forth in Section 12. The City shall be named as an additional insured on the policies and shall be furnished with a certificate of insurance. This insurance may not be canceled without the insurance company first having given the City thirty (30) days advance written notice of such intent to cancel. Ground Lessee may submit certificates evidencing compliance with this paragraph.

C. To the extent available under any applicable policy or policies of insurance, the City and Ground Lessee hereby waive all subrogation rights against each other for any loss from perils insured against under their respective insurance contracts, including any extended coverage endorsements thereto, provided, that this Section 12 shall be inapplicable if it would have the effect of invalidating any insurance coverage of the City or Ground Lessee. Each party agrees to cause their respective insurance carriers to include in its policies a waiver of subrogation clause or endorsement.

### 13. INDEMNIFICATION.

The City, its employees and agents shall not be liable for any injury (including death) to any persons or for damage to any property, regardless of how such injury or damage is caused, sustained or alleged to have been sustained by Ground Lessee or by others (including, but not limited to all persons directly or indirectly employed by Ground Lessee, and any agents, contractors, subcontractors, suppliers, customers or invitees of Ground Lessee) as a result of any condition (including existing or future defects in Site 6), or occurrence (including failure or interruption of utility service) whatsoever related in any way to Site 6 or related in any way to Ground Lessee's use or occupancy of Site 6, so long as such claim does not result from any negligence or willful misconduct of the City, its employees or its agents. In no event shall Ground Lessee be responsible for loss, damage, liability or expense resulting from injuries to third parties caused by the negligence or willful misconduct of the City, its employees or agents. Where such items of actual or alleged liability, damages, costs or expenses arise from the concurrent negligence of Ground Lessee and the City, it is expressly agreed that Ground Lessee's indemnity obligation under this paragraph shall be effective only to the extent of Ground Lessee's negligence.

### 14. TAXES.

Ground Lessee shall pay, throughout the Term, all license fees and taxes covering or relating to Site 6 and its use, including, without limitation, (a) all taxes assessed and levied against the Minimum Improvements; (b) all amounts due and payable for general or special assessments against Site 6 during the term of this Ground Lease (if assessed during the term of this Ground Lease); and (c) all personal property taxes upon Ground Lessee's fixtures, furnishings, equipment and stock in trade, Ground Lessee's leasehold interest under this Ground Lease or upon any other non-City owned personal property situated in or upon Site 6. Ground Lessee, at Ground Lessee's sole cost and expense, shall have the right to contest any ad valorem

or other taxes assessed against any portion of Site 6 or the Improvements.

15. MAINTENANCE AND REPAIR.

A. Upon completion of the construction of the Improvements, Ground Lessee shall, at its own expense, keep Site 6 and the Improvements thereon maintained in a neat, clean, safe and sanitary condition. Ground Lessee shall, at its own expense, maintain the landscaped and undeveloped areas of Site 6 in a clean, sanitary, orderly and neat condition, and free from rubbish and debris. Ground Lessee shall also, at its own expense, at all times keep Site 6 and the Improvements thereon free from infestation of pests and conditions which might result in harborage for, or infestation of, pests. (Pests shall include, without limitation, rodents, insects and birds in numbers to the extent that a nuisance is created.) Ground Lessee shall keep the glass of all windows and doors on the Improvements clean and presentable, shall maintain and keep Site 6 in a good state of repair, shall commit no waste of any kind, and, without limiting the generality of the foregoing, shall replace all cracked or broken glass in the Improvements, shall keep the electrical system and all drains clean and in a good state of repair, shall protect all sprinkler systems and all pipes and drains so that they will not freeze or become clogged. Ground Lessee shall replace any of the Improvements, or any fixtures or equipment related to the use of the Improvements, which become worn out, deteriorated, unsafe or unusable and shall replace such Improvements, fixtures and equipment with at least as good a quality as was originally constructed and installed.

B. Ground Lessee shall keep the fee title of Site 6 free and clear of any liens and encumbrances arising out of or otherwise related to the use and occupancy of Site 6 or Improvements by Ground Lessee. Ground Lessee shall also keep Site 6 and the Improvements free and clear of all mechanics' liens incurred by or resulting from acts of Ground Lessee. At the City's request, Ground Lessee shall furnish the City with written proof of payment of any item that would or might constitute the basis for such a lien on Site 6 or the Improvements if not paid. If any mechanics' lien is filed, Ground Lessee at its sole cost and expense shall institute an action to cause the removal or discharge of such lien or other procedures to ensure the prompt removal thereof. The City may, at the City's option, first order the lienor to release the lien under Arizona law providing that public property is not subject to mechanics' liens.

C. Ground Lessee shall also be wholly responsible to maintain and repair the structural integrity (including foundations, bearing columns, bearing walls and exterior walls) and the roof of any building or other structure that is one of the Improvements, and to maintain and repair utility services and lines located on Site 6. Ground Lessee shall have no right to claim any monies or charges incurred for maintenance and repair of on-site utilities as a deduction or offset against the rent or other charges Ground Lessee is obligated to pay to the City under the Ground Lease. Ground Lessee acknowledges that Ground Lessee has inspected Site 6 and accepts Site 6 "as is, where is."

16. DISPOSITION OF IMPROVEMENTS.

Ground Lessee is the sole owner of the Improvements constructed on Site 6 during the Term. Upon the expiration of the Ground Lease term or earlier termination of the

Ground Lease without the purchase of Site 6 by the Ground Lessee, Ground Lessee shall surrender and deliver Site 6 and any Improvements to the City, without delay and where is, as is, excepting only Ground Lessee's, any assignee's or any sublessee's trade fixtures, machinery, equipment and personal property. Ground Lessee shall also deliver to the City all documents in Ground Lessee's custody or control necessary or appropriate for the proper operation, maintenance and management of Site 6 and the Improvements. Title to the Improvements shall automatically pass to the City, free of any right, title, and interest of Ground Lessee therein, or its successors or assigns, without the necessity of executing any further instrument and without any allowance, compensation, or payment by the City. Effective for all purposes only upon and after expiration or termination of this Ground Lease without purchase by the Ground Lessee, Ground Lessee, for itself and for any assignee, sublessee or other person claiming to have succeeded to any of Ground Lessee's interest in Site 6, grants and conveys to the City all of Ground Lessee's right, title and interest in and to Site 6 and the Improvements. Notwithstanding the foregoing, Ground Lessee agrees to execute, acknowledge and deliver to the City at or prior to the expiration or termination of the Ground Lease a proper recordable instrument prepared by the City quit claiming and releasing to the City any right, title and interest of Ground Lessee in and to Site 6 and the Improvements thereon.

17. INSPECTION.

The City, at any and all times throughout the term of this Ground Lease, upon ten (10) days' Notice to Ground Lessee, may inspect Site 6, provided that it shall not interfere unduly with Ground Lessee's operations or those of its sublessees, employees or agents. The right of inspection reserved to the City hereunder shall impose no obligation on the City to make inspections to ascertain the condition of Site 6, and shall impose no liability upon the City for failure to make such inspections.

18. RESTORATION.

A. Notwithstanding anything to the contrary contained in the preceding section, if any building that is one of the Improvements is damaged by fire or other casualty, and if the cost of repairing or restoring the same exceeds the insurance payable for such damage, and if the damage occurs during the term so that the remaining term of this Ground Lease is of insufficient length to allow Ground Lessee to finance the cost in a commercially reasonable manner, the Ground Lessee shall have the option, to be exercised within thirty (30) days after such event, to repair or restore the Minimum Improvements as herein above provided or to terminate this Ground Lease by written notice to the City.

B. If the Improvements, or any part of any Improvements, are damaged or destroyed by fire or other casualty during the term of this Ground Lease, Ground Lessee may, at its option and at its own cost and expense, repair or restore the same according to the original plans thereof or according to such modified plans as shall be previously approved in writing by the City, which approval shall not be unreasonably withheld, conditioned or delayed. The repair or restoration work shall be commenced within ninety (90) days after the issuance of all applicable permits for such restoration work and shall be completed with due diligence but not longer than eighteen (18) months after the damage or loss occurred, and the work shall be done in accordance with the requirements of this Ground Lease pertaining to construction of the

Improvements upon Site 6. The date for initiating and/or completing any repair or restoration shall be extended as necessary for delays beyond Ground Lessee's reasonable control. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration, or if Ground Lessee elects not to repair or restore, to the cost of removing, demolishing, or clearing off the Improvements to the extent necessary to complete these tasks. If (i) there are no insurance proceeds, or (ii) the available insurance proceeds are insufficient for purposes of repair, restoration or removal of the Improvements, then Ground Lessee shall make up the deficiency out of Ground Lessee's own funds. If Ground Lessee fails, refuses or makes no reasonable effort to make the repair or restoration of the Minimum Improvements within thirty (30) days after notice and demand for cure, as hereinabove provided, then the failure, lack of reasonable effort, or refusal shall constitute an event of default under the covenants and conditions hereof.

19. DEFAULTS.

A. Events of Default. It shall be a default hereunder if either Party fails to perform any of its obligations hereunder, and such failure continues for a period of thirty (30) days after written notice from the non-defaulting Party specifying in reasonable detail the nature of the failure; provided that if the nature of the default is such that it cannot reasonably be cured within a thirty-day period, no default shall be deemed to exist if the defaulting Party commences a cure within that thirty-day period and diligently and expeditiously pursues such cure to completion. If the City issues a Notice of default for the nonpayment of Ground Lease Rent, in order to cure such default, Ground Lessee must pay the overdue Ground Lease Rent, together with interest as set forth in Section 4 above, plus a Fifty Dollar (\$50.00) lease reinstatement fee.

B. Notwithstanding a default by Ground Lessee, in the event that a subtenant agrees to attorn to the City and thereafter makes timely its payment of rent (and other sums required to be paid to Ground Lessee by the terms of such subtenant's sublease with Ground Lessee) to the City, the City will not disturb the tenancy of such subtenant and shall assume the rights and obligations of Ground Lessee under such subtenant's sublease.

20. ADVANCES BY CITY FOR GROUND LESSEE.

If Ground Lessee shall fail to do anything required to be done by it under the terms of the Ground Lease, except to pay Ground Lease Rent, and such failure continues beyond applicable notice and cure periods, the City may, at its sole option, do such act or thing on behalf of Ground Lessee, and upon Notice to Ground Lessee of the cost thereof, Ground Lessee shall promptly pay the City the amount of any such cost to the extent it has been reasonably incurred. However, if the City shall pay any monies on Ground Lessee's behalf, Ground Lessee shall repay such monies, together with interest thereon commencing on the date the City paid such monies and calculated at the rate of ten percent (10%) per annum.

21. HOLDING OVER.

If Ground Lessee shall, without the consent of the City, hold over after the expiration or sooner termination of this Ground Lease, the resulting tenancy shall, unless otherwise mutually agreed, be on a month-to-month basis. During such month-to-month tenancy, Ground Lessee shall pay monthly Ground Lease Rent to the City at the rate of 150% times the then-current Ground Lease Rent under the terms of the Ground Lease, unless a different rate shall be agreed upon in writing, and the Ground Lessee shall be bound by all of the additional provisions of this Ground Lease.

22. COMPLIANCE WITH LAW.

Ground Lessee certifies, represents, warrants, covenants and agrees that, for itself and its contractors, subcontractors and agents, Ground Lessee will comply with all applicable local, state and federal environmental laws, regulations, ordinances and administrative and judicial orders relating to the generation, recycling, treatment, use, sale, storage, handling, transport and disposal of any Hazardous Substances by any person on Site 6. Ground Lessee will not, without the City's prior written consent, keep on or around Site 6, for use, disposal, treatment, generation, storage, or sale, any Hazardous Substances.

Ground Lessee shall be responsible for applying for and obtaining all necessary federal, state or local governmental permits or approvals for the use of Site 6; shall not commence any activity on Site 6 until all permits or approvals required for such activity have been issued; and shall conduct all of its activities on Site 6 in full compliance with all applicable permits and approvals.

"Hazardous Substances" shall mean those chemicals, compounds and other substances whose use and disposal are regulated by federal or state law and are understood (if improperly used or disposed of) to pose a risk to the environment or to the health of individuals or animals.

23. INSOLVENCY.

If Ground Lessee shall solicit a plan of reorganization to be filed in any subsequent case under the United States Bankruptcy Code, 11 U.S.C. Secs. 101-1330, as hereafter amended or any successor statute thereto (the "Bankruptcy Code"); negotiate with one or more creditors for any workout, including, but not limited to, an extension agreement, composition agreement, standoff, standby, or standstill agreement whereby the creditors agree to forbear in any fashion from their rights to collect a debt of Ground Lessee; cease to pay Ground Lessee's debts as they come due; admit in writing the inability to pay its debts as they come due; make an assignment for the benefit of creditors; become a party to any liquidation or dissolution action or proceeding; have appointed (voluntarily or involuntarily), a trustee, custodian, receiver, conservator, or liquidator for Ground Lessee or for a significant portion of Ground Lessee's assets; have entered against it any order by a district court or bankruptcy court of the United States or any of its territories that dismisses a voluntary petition under the Bankruptcy Code because the bankruptcy petition was filed in bad faith; have entered against it an order, judgment, or decree; have any of its assets levied against by writ of execution, attachment (including pre-

judgment attachment), garnishment, recording of a judgment or any similar process whereby a creditor seeks to obtain a legal right to dispose of particular assets of Ground Lessee to satisfy to any extent a debt of the Ground Lessee to the creditor; file a voluntary petition under the Bankruptcy Code or have filed against it an involuntary petition under the Bankruptcy Code creating any automatic stay or other injunctive force protecting the assets of Ground Lessee from the immediate collection actions of a creditor (where such involuntary petition is not subsequently dismissed within 60 days in response to pleadings filed by the Ground Lessee by entry of an order of any district court or bankruptcy court of the United States or any of its territories); have appointed voluntarily or involuntarily, a trustee, custodian, or examiner with special powers by any district court or bankruptcy court in the United States or any of its territories; admit in answer filed in response to an involuntary petition filed under the Bankruptcy Code that Ground Lessee is insolvent because Ground Lessee's assets are exceeded by Ground Lessee's debts or that Ground Lessee is unable to pay Ground Lessee's debts as they come due; then, in the event any of the foregoing shall occur, the City may, at its option, terminate this Ground Lease.

24. REASONABLE ATTORNEY'S FEES AND COSTS.

If a dispute arises between the parties as to the effect of any provision herein and the dispute is referred to an attorney and legal proceedings are commenced, whether for enforcement in court or for decision under arbitration, the non-prevailing party shall pay the prevailing party's actual and reasonably incurred attorneys' fees; costs of court or arbitration, including such fees and costs of any appeal; other reasonable legal expenses; and collection costs, provided that the amount of such fees, costs or expenses taken separately or in the aggregate, shall not be unreasonable. If such dispute arises and is later settled by the parties, such settlement shall include a specific allocation of disposition of attorney's fees on both sides.

25. JOINT AND SEVERAL LIABILITY.

Each and every party who signs this Ground Lease, other than in a representative capacity, shall be jointly and severally liable hereunder.

26. INVALIDITY OF PARTICULAR PROVISIONS.

In the unlikely event that any provision of this Ground Lease is declared void or unenforceable, such provision shall be deemed severed from this Ground Lease and this Ground Lease shall otherwise remain in full force and effect. Notwithstanding the foregoing sentence, however, this Ground Lease shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed contract provides essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments, and consents necessary to accomplish and to give effect to the purposes of this Ground Lease, as reformed.

If the Ground Lease cannot be retroactively reformed in such a way that it provides essentially the same rights and benefits to the Parties then either Party may terminate the Ground Lease without further rights or liabilities to the other Party other than those that expressly survive termination.

27. FORCE MAJEURE.

If either party is delayed or prevented from the performance of any duty or obligation under this Ground Lease by reason of acts of God, strikes, lockouts, labor troubles, failure or refusal of governmental authorities to timely issue permits or approvals or conduct reviews or inspections, civil disorder, inability to procure materials, restrictive governmental laws or regulations, or other causes beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing herein shall excuse Ground Lessee from the prompt payment of rent or any other sum or the City from tendering Site 6 upon execution of this Ground Lease.

28. NOTICES.

A. Notices. Except as otherwise required by law, any notice, demand or other communication required to be given by this Agreement (each, a “Notice”) shall be in writing and shall be given by (i) personal delivery; (ii) by certified or registered U.S. Mail, return receipt requested; or (iii) or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid and addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this paragraph:

To City: City of Chandler  
Downtown Redevelopment, MS 416  
P. O. Box 4008  
Chandler, AZ 85244-4008  
Attention: Kim Moyers, Downtown Redevelopment Manager  
Phone: 480-782-3035  
Facsimile: 480-782-3040

With a copy to: City of Chandler  
City Attorney’s Office  
P. O. Box 4008  
Chandler, AZ 84244-4008  
Attention: Kay Bigelow  
Phone: 480-782-4642  
Facsimile: 480-782-4652

To Ground Lessee: RYAN COMPANIES US, INC  
3900 East Camelback Road  
Suite 100  
Phoenix, Arizona 85018-2653  
Attention: Steve Jordan  
Phone: (602) 322-6100

With a copy to: RYAN COMPANIES US, INC.  
50 South Tenth Street

Suite 300  
Minneapolis, Minnesota 55403-2012  
Attention: Legal Department  
Phone: (612) 492-4000

B. Effective Date of Notices. Any Notice will (i) if delivered personally or delivered through a same day delivery/courier service be deemed effective upon delivery or refusal to accept delivery by the addressee; and (ii) if delivered by U.S. mail in the manner described above be deemed effective upon the earlier of receipt or three (3) business days after deposit in a post office operated by the United States or with a United States postal officer; and (iii) if sent by a recognized national overnight delivery service be deemed effective one (1) business day after deposit with such service. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee. The Parties hereby acknowledge and agree that any Notice transmitted solely by facsimile or by electronic mail shall be deemed ineffective.

29. WAIVER.

The acceptance of Ground Lease Rent by the City for the period or periods after a default by Ground Lessee hereunder shall not be deemed a waiver of such default unless the City shall so indicate in writing. No waiver by either Party of any default hereunder by the other party shall not be construed to be or act as a waiver of any subsequent default by the defaulting Party.

30. MISCELLANEOUS.

A. Arizona Law. This Ground Lease shall be construed in accordance with the laws of the State of Arizona, without reference to principles of conflict of laws.

B. No Partnership or Joint Venture. Nothing contained in this Ground Lease shall be deemed to create any relationship other than that of landlord (the City) and tenant (Ground Lessee).

C. Amendments. No alteration, amendment, change or addition to this Ground Lease shall be binding upon the City or Ground Lessee unless reduced to writing and signed by the party or parties to be charged.

D. Exhibits. Exhibits attached hereto shall by this reference be deemed a part of this Ground Lease as if set forth herein.

E. Captions. The various headings and numbers herein and the grouping of the provisions of this Ground Lease into separate articles and sections are for the purpose of convenience only and shall not control the meaning or construction of any of the provisions.

F. Time. Time is of the essence. If any time period provided for herein expires on a Saturday, Sunday, legal holiday or holiday of the City, such time period shall be extended to the next succeeding day that is not a Saturday, Sunday, legal holiday or holiday of the City.

G. No Third-Party Rights. Except as expressly provided herein for a mortgagee and as to binding effect upon successors and assigns, no term of this Ground Lease is intended to or shall be for the benefit of any person not a party to this Ground Lease, and no such other person shall have any right or cause of action hereunder.

H. Authority to Execute. Any individual executing this Ground Lease on behalf of or as representative for a corporation, limited liability company or other person, partnership or entity, is deemed to have represented and warranted that he or she is duly authorized to execute and deliver this Ground Lease on behalf of such party and that this Ground Lease is binding upon such party in accordance with its terms.

I. Binding on Successors and Assigns. Each of the provisions of this Ground Lease shall be binding, extend to and inure to the benefit of the respective heirs, legal representatives, and successors and assigns of both the City and Ground Lessee, subject to any restrictions on transfers set forth herein.

J. Impartial Interpretation. This Ground Lease is the result of limited negotiations between the City and Ground Lessee, and therefore the language contained in this Ground Lease shall be construed as a whole according to its fair meaning and not strictly for or against either the City or Ground Lessee.

31. EARLY TERMINATION.

This Ground Lease shall automatically terminate upon the full performance of the Purchase Agreement.

32. ESTOPPEL CERTIFICATES. Upon the request of either party, each party shall issue an estoppel certificate, which certificate shall confirm that this Lease is in full force and effect, that no default currently exists hereunder by either party, that Ground Lease Rent is paid through a specified date, and such other matters as reasonably requested by such party.

33. RECOGNITION AGREEMENT. At any time and from time to time upon request therefor from Ground Lessee, the City shall execute a recognition agreement, in commercially reasonable form and substance, and in favor of Ground Lessee's mortgagee, stating that the City will deliver notice of any default by Ground Lessee hereunder, and shall allow such Mortgagee notice and opportunity to cure. Further, in the event any mortgage or deed of trust filed on Ground Lessee's interest in Site 6 is foreclosed, the City shall recognize such Mortgagee as the ground lessee hereunder and this Lease shall continue in full force and effect.

LESSOR:  
City of Chandler, an Arizona municipal  
Arizona corporation

GROUND LESSEE:  
Ryan Companies US, Inc., a Minnesota  
corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: Mayor

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
City Attorney

STATE OF ARIZONA        )  
                                      ) ss.  
County of Maricopa        )

The foregoing Ground Lease was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the Mayor of the City of Chandler, an Arizona municipal corporation, for the municipal corporation, being authorized so to do.

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

My Commission Expires:

STATE OF \_\_\_\_\_ )  
                                      ) ss.  
County of \_\_\_\_\_ )

The foregoing Ground Lease was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of Ryan Companies US, Inc., a Minnesota corporation, being authorized so to do.

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

My Commission Expires:

EXHIBIT C-2  
PURCHASE AGREEMENT  
**REAL ESTATE PURCHASE AND SALE AGREEMENT  
AND  
JOINT ESCROW INSTRUCTIONS**

This Real Estate Purchase and Sale Agreement and Joint Escrow Instructions (the "Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_, ("Effective Date") by and between the CITY OF CHANDLER, an Arizona municipal corporation ("Seller") and RYAN COMPANIES US, INC., a Minnesota corporation, or its successors or assigns under any of the Project Documents as defined below ("Buyer"). Seller and Buyer shall be referred to in this Agreement, collectively as "Parties," and individually as a "Party."

**AGREEMENT**

**1. RECITAL.**

This Agreement is part of a transaction between Seller and Buyer in which Seller (as Lessor) has leased certain real property ("Site 6") to Buyer (as Lessee) pursuant to a Government Property Lease Excise Tax and Ground Lease (the "Lease") executed and dated concurrently with that certain Development Agreement (the "Development Agreement"), and upon which Buyer has proposed to construct certain improvements and procure certain uses (the "Project") pursuant to the Development Agreement between Seller (named in such document as the City)

and Buyer (named in such document as the Developer). This Agreement, which has been executed as of the Effective Date, will be delivered to the Escrow Holder (with Notice of such delivery to Seller) if and when Buyer is ready to purchase Site 6 as set forth in Section 4 of the Development Agreement. Accordingly, the Parties intend that this Agreement, the Lease and the Development Agreement (collectively, the “Project Documents”) be construed harmoniously in order to give full effect to the intentions of the Parties with respect to the leasing, development and purchase of Site 6 as reflected by the Project Documents. Although this Agreement has been entered into as of the Effective Date to bind the Parties as of the Effective Date, Buyer’s ability to purchase Site 6 is subject to certain terms and conditions set forth in the Development Agreement, and the purchase of Site 6 by Buyer is anticipated by the Parties to occur at a future date during the Term (as defined in the Leases) of the Leases. Capitalized terms in this Agreement which are not explicitly defined herein shall have the same meaning as those in the Development Agreement and Leases. In the event of any conflict or ambiguity arising from the Project Documents, this Agreement shall control the purchase and sale of Site 6.

## **2. PURCHASE AND SALE.**

Subject to the terms and conditions of this Agreement and Buyer’s compliance with the terms and conditions of the Development Agreement and Lease, Seller agrees to sell, and Buyer agrees to purchase, all of Seller’s right, title and interest in and to that certain real property located in Maricopa County, Arizona, referred to in this Agreement as Site 6 and legally described on Attachment 1.

## **3. PURCHASE PRICE.**

A. **Purchase Process.** It is contemplated Buyer will purchase the Property from the Seller prior to the expiration of the Development Agreement and/or expiration of any one of the Leases.

(1) At any time during the Term of the Development Agreement, but not later than forty-five (45) days prior to the expiration of the term of the last Lease and provided Buyer is not in breach of the Development Agreement or any one of the Leases beyond applicable notice and cure periods, Buyer shall have the right to deliver the fully-executed original Purchase Agreement to the Escrow Holder, as that term is defined herein. Buyer shall provide Notice to the Seller of Buyer’s delivery of the executed Purchase Agreements to Escrow Holder. Upon Escrow Holder’s receipt of the fully-executed Purchase Agreement, the Parties shall proceed with the purchase and sale of the Property in accordance with the terms and conditions set forth herein.

(2) **Earnest Money Deposit.** Concurrently with Buyer’s delivery of the fully-executed Purchase Agreement to Escrow Holder, Buyer will deposit an amount equal to one percent (1%) of the then existing Purchase Price as Buyer’s earnest money deposit (“**Deposit**”) with Escrow Holder, in cash, certified or bank cashier’s check or other form of collected funds. The Deposit shall be refundable to Buyer, except as otherwise set forth in this Agreement. Escrow Holder is instructed to hold and not to disburse to Seller any part or all of the Deposit until the Close of Escrow occurs, or unless it is otherwise authorized by this Agreement, or by written instruction signed by both the Seller and

Buyer. The Deposit shall be applied as a credit in partial payment towards the Purchase Price at Close of Escrow (defined below); unless this Agreement and Escrow related thereto have been properly cancelled pursuant to the terms of this Agreement, Buyer shall deposit with Escrow Holder no later than the Close of Escrow in cash or a certified or bank cashier's check or confirmed wire transfer of funds made payable to Escrow Holder for the benefit of Seller the balance of the Purchase Price, calculated as set forth below, plus Escrow Holder's estimate of all Buyer's costs, charges, and assessments as provided in Section 7(C) of this Agreement.

(3) The purchase price for the Property shall be as follows:

(i) **Initial Purchase Price.** If Buyer purchases the Property during the first twenty-five (25) years after the date of the Lease, the purchase price for the Property shall be \$6.50 per gross net square foot (the "**Initial Purchase Price**").

(ii) **First Future Purchase Price.** In the event Buyer does not complete and close escrow on the purchase of the Property prior to the expiration of the twenty-five year term of the Lease, the Initial Purchase Price for the Property will no longer be available to Buyer. In such an event, the Seller shall cause the Property to be appraised by an Arizona-licensed appraiser who also holds an MAI or ASA designation (from the Appraisal Institute or the American Society of Appraisers, as applicable). The appraisal shall be for the land value only and shall exclude any value attributable to any Improvements installed by the Buyer upon it. The appraisal shall establish the purchase price for the Property for the next twenty-five years thereafter ("**First Future Purchase Price**").

(iii) **Second Future Purchase Price.** In the event Buyer does not complete and close escrow on the purchase of the Property prior to the expiration of the twenty-five year term of the Leases plus the first twenty-five years of the term of the Ground Lease, the First Purchase Price for the Property will no longer be available to Buyer. In such an event, the Seller shall cause the Property to be appraised by an Arizona-licensed appraiser who also holds an MAI or ASA designation (from the Appraisal Institute or the American Society of Appraisers, as applicable). The appraisal shall be for the land value only and shall exclude any value attributable to any Improvements installed by the Buyer upon it. The appraisal shall establish the purchase price for the Property for the next twenty-five (25) years thereafter ("**Second Future Purchase Price**").

(iv) **Third Future Purchase Price.** In the event Buyer does not complete and close escrow on the purchase of the Property prior to the expiration of the twenty-five year term of the Phase 1 GPLET Lease plus the first fifty years of the term of the Ground Lease, the Second Purchase Price for the Property will no longer be available to Buyer, the Seller shall cause the Property to be appraised by an Arizona-licensed appraiser who also holds an MAI or ASA designation (from the Appraisal Institute or the American Society of Appraisers, as applicable). The appraisal shall be for the land value only and shall exclude any value attributable to any Improvements installed by the Buyer upon it. The appraisal shall establish

the purchase price for the Property for the next twenty-four (24) years thereafter (“Third Future Purchase Price”).

#### **4. ESCROW.**

For purpose of this Agreement, the Escrow shall be deemed opened on the date Escrow Holder shall have received the Deposit provided in Section 3 from Buyer and three (3) fully executed duplicates of this Agreement from Buyer and Seller (the “Opening of Escrow”). Escrow Holder shall notify Buyer and Seller, in writing, of the date Escrow is opened. In addition, Buyer and Seller agree to execute, deliver and be bound by any reasonable and customary supplemental escrow instructions of Escrow Holder or other instruments as may be reasonably required by Escrow Holder in order to consummate the transaction contemplated by this Agreement. Any such supplemental instructions shall not conflict with, amend, or supersede any portion of this Agreement. If there is any inconsistency between such supplemental instructions and this Agreement, this Agreement shall control.

For purposes of this Agreement, the Close of Escrow (the “Closing” or “Close of Escrow”) shall be defined as the date the Special Warranty Deed, the form of which is attached hereto as Attachment 2 (the “Deed”), conveying Site 6 to Buyer, is recorded in the Official Records of Maricopa County, Arizona. Unless this Agreement and Escrow related thereto have been properly cancelled pursuant to the terms of this Agreement, the Close of Escrow shall occur on the date which is thirty-five (35) days after the Opening of Escrow (the “Closing Date”) or on such date as is mutually agreed upon by the Parties with written notifications to the Escrow Holder specifying the agreed upon date. In the event that Seller cannot cure any Title Defect by the Closing Date, then Buyer may (but is not obligated to) extend the Closing Date for successive thirty (30) day periods to permit Seller to proceed diligently and in good faith to cure such defects.

#### **5. CONDITIONS PRECEDENT.**

(A) Condition of Title. It shall be a condition to the Close of Escrow that title to Site 6 be conveyed to Buyer by the Special Warranty Deed (in the form set forth in Attachment 2) subject only to the following condition of title (“Approved Condition of Title”):

- (i) a lien to secure payment of real property taxes not delinquent;
- (ii) Those matters set forth on Attachment 3 attached to this Agreement; and
- (iii) any matters of record either caused or placed by or on behalf of Buyer, or which were consented to in writing by Buyer (collectively, the “Permitted Exceptions”).

(B) Title Policy. At Close of Escrow, Seller shall pay for, and Escrow Holder shall furnish Buyer, a standard coverage ALTA owner’s policy of title insurance (the “Title Policy”) in the amount of the Purchase Price insuring Buyer fee simple title to Site 6, subject to

the usual printed exceptions contained in such title insurance policies and the Permitted Exceptions (the "Report", defined below), and which are not objected to or are waived in the manner described as Approved Condition of Title. In the event Buyer desires an ALTA extended coverage policy, Buyer shall pay the difference in cost between an ALTA extended coverage and a standard coverage ALTA owner's policy, together with all costs associated with any inspections or surveys of Site 6 required for such additional coverage.

(C) Conditions to Close of Escrow.

(a) Conditions to Buyer's Obligations. The Close of Escrow and Buyer's obligation to consummate the transaction contemplated by this Agreement are subject to the satisfaction or waiver of the following conditions for Buyer's benefit on or prior to the date designated below:

(i) Title. Seller shall deliver fee title to Site 6 to Buyer subject only to those exceptions constituting the Approved Condition of Title. Seller, at Seller's sole cost and expense, shall diligently and promptly secure the release of any other matter of record ("Title Defect"). Buyer may, but is not obligated, to accept an endorsement from Escrow Holder, "insuring over" any such exception.

(ii) Seller's Representations. All representations and warranties made by Seller to Buyer in this Agreement shall be true and correct as of the Close of Escrow.

(b) Conditions to Seller's Obligations. For the benefit of Seller, the Close of Escrow shall be conditioned upon the occurrence and/or satisfaction of each of the following conditions:

(i) Buyer's Obligations. Buyer shall have timely performed all of the obligations required by the terms of the Project Documents to be performed by Buyer; and

(ii) Buyer's Representations. All representations and warranties made by Buyer to Seller in this Agreement shall be true and correct as of the Close of Escrow.

**6. AS-IS, WHERE IS, WITH ALL FAULTS PURCHASE.**

Buyer acknowledges and agrees as follows:

(A) That Site 6 is to be conveyed by Seller to Buyer at the time of Closing in "AS-IS, WHERE-IS, WITH ALL FAULTS"; and

(B) That Buyer represents and warrants to Seller that it will have conducted its own independent inspection, investigation, evaluation and analysis of Site 6 as it deems necessary or appropriate in so acquiring Site 6 from Seller.

**7. CLOSING.**

(A) Closing Date, Costs and Prorations. Buyer and Seller shall deposit with Escrow Holder all instruments, documents and monies necessary to complete the sale and purchase in accordance with this Agreement. This Agreement is intended to constitute escrow instructions to Escrow Holder. At Closing, Buyer shall pay all title insurance premiums for an ALTA owner's standard coverage title insurance policy (the "Title Policy") in the amount of the Purchase Price, the closing escrow fee, recording fees, and the excise or other conveyance tax on this conveyance, if any. Seller and Buyer shall each pay their respective attorneys' fees. Real and Personal Property taxes, if any, payable in the year of Closing, shall be prorated between Seller and Buyer as of 12:00 midnight on the day immediately preceding the Closing Date. If any encumbrance is required to be removed prior to Close of Escrow, in whole or in part, Seller shall discharge such encumbrance or defect or part thereof out of the Purchase Price paid by Buyer at Closing.

(B) Seller Closing Documents. At Closing, Seller shall execute and deliver all documents necessary to effect and complete the Closing, including, but not limited to, the following documents:

- i. The Special Warranty Deed, duly executed by Seller, acknowledged as required and in recordable form;
- ii. A Certificate of non-foreign status, within the meaning of the Foreign Investment in Real Property Tax Act, duly executed by Seller in the form attached hereto as Attachment 2;
- iii. A joint Settlement Statement prepared by Escrow Holder for execution by Seller; and
- iv. Such other documents as Buyer or Escrow Holder may reasonably request in connection with this transaction.

(C) Buyer Closing Documents. At the Closing, Buyer shall execute and deliver all documents and perform such actions necessary to effect and complete the Closing, including, but not limited to, the following:

- i. The amounts required under the Purchase Price in Section 3 above in cash, cashier's check, wire transfer or other immediately available funds;
- ii. A joint Settlement Statement prepared by Escrow Holder for execution by Buyer;
- iii. Such other documents as Seller or Escrow Holder may reasonably request in connection with this transaction.

**8. REPRESENTATIONS AND WARRANTIES.**

(A) Seller's Representations and Warranties. As of the Effective Date and the Closing Date, Seller represents and warrants to Buyer as follows:

(i) Seller is owner and holder of record of fee simple title in and to Site 6 with full right, power and authority to transfer it and to perform all of its obligations under this Agreement.

(ii) All actions on the part of Seller which are required for the execution, delivery and performance by Seller of this Agreement and each of the documents and agreements to be delivered by Seller at the Closing have been duly and effectively taken.

(iii) Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

(iv) Seller has no knowledge of any violation of applicable law, ordinance, rule, regulation or requirement of any governmental agency affecting or relating to Site 6 (the "Violation"), which renders the sale and transfer of Site 6 at Closing as contemplated by this Agreement unenforceable. To the extent such Violation is disclosed by Seller or revealed by the Title Documents, Seller covenants to cause to remove the Violation prior to the Close of Escrow.

(v) Except with respect to the Project Documents and those matters noted in Attachment 3 or liens claims encumbrances or right of any third party placed on Site 6 placed on it by the Buyer during the Lease, there is no transfer, lien, claim, encumbrance or right of any third party on or existing with respect to Site 6 or Seller's interest in Site 6; and Seller shall indemnify, defend, pay and hold harmless Buyer for, from and against any and all such transfers, liens, claims, encumbrances or rights.

(B) Buyer's Representations and Warranties. As of the Effective Date and the Closing Date, Buyer represents and warrants to Seller as follows:

(i) Buyer is duly organized, validly existing and in good standing under the laws of the State of its organization, and has full power and authority, and has obtained all required consents, to enter into and to perform its obligations under this Agreement. Each of the persons executing this Agreement on behalf of Buyer has full power and authority and has obtained all required consents to do so, and to perform every act and to execute and deliver every document and instrument necessary or appropriate to consummate the transactions contemplated hereby.

(ii) All entity action on the part of Buyer which is required for the execution, delivery and performance by Buyer of this Agreement and each of the documents and agreements to be delivered by Buyer at the Closing has been (or will be by the Closing) duly and effectively taken.

## **9. REAL ESTATE COMMISSIONS**

Each Party hereby represents and warrants to the other that there are no claims for brokerage commission, finder's or similar fees in connection with the transaction contemplated

by this Agreement, and each Party hereby agrees to indemnify and hold harmless the Party from any and all liabilities, claims, expenses, costs and damages arising from the claim of any broker, finder, or other agent claiming to have acted on behalf of the indemnifying Party. Notwithstanding the foregoing, Buyer discloses to Seller that certain individuals holding an interest in Buyer are licensed as real estate brokers and salespersons by the Arizona Department of Real Estate.

#### **10. DEFAULT AND DEFAULT REMEDIES.**

(A) Seller's Default. If on or before the Closing Date, Seller materially breaches any of the terms of this Agreement and fails to cure such breach within five (5) calendar days following written notice thereof given by Buyer to Seller, Buyer, in its sole election, shall have the right (i) to terminate this Agreement by written notice to Seller and Escrow Holder, in which event Escrow Holder shall release to Buyer the Deposit referred to in Section 3(A) above, or (ii) to avail itself of any remedy available to Buyer, at law or in equity, including an action for damages or an action for Seller's specific performance of this Agreement.

(B) Buyer's Default. If on or before the Closing Date, Buyer materially breaches any of the Project Documents and the Close of Escrow fails to occur by reason of such default, then in any such event, Seller shall not hold Buyer in default of this Agreement until all applicable notice requirements and opportunities to cure set forth in the applicable Project Document have expired. In the event of an uncured default of Buyer under either the Development Agreement or the Leases, or a failure of Buyer to cure any default relating to the payment of the Purchase Price within fifteen (15) days after written notice of such default from Seller to Buyer, then Seller may instruct Escrow Holder to cancel the Escrow. Buyer and Seller agree that based upon the circumstances now existing, known and unknown, it would be impractical or extremely difficult to establish Seller's damage by reason of Buyer's default. Accordingly, Buyer and Seller agree that it would be reasonable at such time to provide and to pay Seller as liquidated damages equal to the total of the Deposit held in Escrow by Escrow Holder in the amount of referred to in Section 3 of this Agreement.

#### **11. ESCROW HOLDER.**

Buyer may select the escrow agent and title insurance underwriter to administer the escrow and issue the title insurance commitment and policy contemplated in this (the "Escrow Holder"). By its subsequent execution of this Agreement Escrow Holder agrees to perform hereunder and to hold and disburse contract payments as herein provided. Escrow Holder shall not be liable for any acts taken in good faith, shall only be liable for its willful default or gross negligence, and may, in its sole discretion, rely upon the written notices, communications, orders or instructions given by Buyer or Seller. In the event of a dispute between Buyer and Seller under this Agreement sufficient in the discretion of Escrow Holder to justify its doing so, Escrow Holder shall be entitled to tender into the registry or custody of the courts described in Section 3(A) all money or property in its hands under the terms of this Agreement, together with such legal proceedings as it deems appropriate, and thereupon to be discharged from all further duties under this Agreement. Any such legal action shall be brought in the court described in Section 18.

**12. DAMAGE OR DESTRUCTION; CONDEMNATION.**

The Parties acknowledge that Buyer is in possession of Site 6 pursuant to one of the Leases. In the event of damage, destruction or condemnation of any portion of Site 6, or any improvements on Site 6, the terms of the Lease shall govern. Notwithstanding any such damage, destruction or condemnation, Buyer in its sole election may proceed with the purchase of Site 6 and the Closing.

**13. POSSESSION**

The Parties acknowledge that Buyer is in possession of Site 6 pursuant to one of the Leases.

**14. NOTICES.** Except as otherwise required by law, any notice, demand or other communication required to be given by this Agreement (each, a “**Notice**”) shall be in writing and shall be given by (i) personal delivery; (ii) by certified or registered U.S. Mail, return receipt requested; or (iii) or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid and addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this paragraph:

To Seller:                      City of Chandler  
Economic Development Office (MS 416)  
P. O. Box 4008  
Chandler, AZ 85244-4008  
Attention:     Downtown Redevelopment Manager  
Phone: 480-782-3035  
Facsimile: 480-782-3040

With a copy to:              Chandler City Attorney’s Office  
P. O. Box 4008, MS 602  
Chandler, AZ 84244-4008  
Attention:     City Attorney  
Phone: 480-782-4642  
Facsimile: 480-782-4652

If to Buyer:                      RYAN COMPANIES US, INC  
3900 East Camelback Road, Suite 100  
Phoenix, Arizona 85018-2653  
Attention: Steve Jordan  
Phone: (602) 322-6100

With a copy to:              RYAN COMPANIES US, INC.  
50 South Tenth Street, Suite 300  
Minneapolis, Minnesota 55403-2012

Attention: Legal Department  
Phone: (612) 492-4000

If to Escrow Holder: At the address provided in Escrow Holder's Acceptance

**Effective Date of Notices.** All such notices, demands or other communications will (i) if delivered personally or delivered through a same day delivery/courier service be deemed effective upon delivery or refusal to accept delivery by the addressee; and (ii) if delivered by U.S. mail in the manner described above be deemed effective upon the earlier of receipt or three (3) business days after deposit in a post office operated by the United States or with a United States postal officer; and (iii) if sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee. The Parties hereby acknowledge and agree that any Notice transmitted solely by facsimile or by electronic mail shall be deemed ineffective.

**15. MISCELLANEOUS.**

(A) Attorneys' Fees. Should any Party hereto bring any action against any other Party related in any way to this Agreement, its validity, enforceability, scope or subject matter, the prevailing Party shall be awarded its reasonable attorneys' fees and costs incurred for prosecution, defense, consultation or advice in connection with such action.

(B) Survival. Except as otherwise provided in this Agreement, all warranties, representations, and agreements contained herein or arising out of the sale of Site 6 by Seller to Buyer (including, but not limited to, Seller's and Buyer's warranties, representations and agreements) shall survive the delivery and recordation of the Special Warranty Deed, the payment and delivery of the Purchase Price, and the Closing of the purchase and sale of Site 6.

(C) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona without regard to conflicts of laws principles that would require the application of any other law. Each Party hereby consents to the exclusive jurisdiction of any court of competent jurisdiction in Maricopa County, Arizona, in any action related to or arising under this Agreement and agrees that venue is proper in such court.

(D) Integration; Modification; Waiver. This Agreement, Attachments and closing documents pursuant to this Agreement constitute the complete, integrated, and final expression of the Agreement of the Parties relating to Site 6. This Agreement cannot be modified, except by an instrument in writing (referring specifically to this Agreement) executed by the Party against whom enforcement of the modification is sought.

(E) Invalid Provisions. If any one or more of the provisions of this Agreement, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, the Agreement shall be deemed reformed accordingly, and the validity

and enforceability of all other provisions of this Agreement and all other applications of any such provision shall not be affected hereby.

(F) Counterpart Execution. This Agreement may be executed in several counterparts, each of which shall be fully effective as an original, and all of which together shall constitute one and the same instrument.

(G) Time of the Essence. Time is of the essence of this Agreement and of the obligations of the Parties to purchase and sell Site 6, it being acknowledged and agreed by and between the Parties that any delay in effecting a closing pursuant to this Agreement may result in loss or damage to the Party in full compliance with its obligations hereunder. Notwithstanding any period for performance of any Party's obligations contained in any Escrow Instructions, the rights of the Parties hereunder shall be governed by the dates and times set forth in this Agreement.

(H) Binding Effect. This Agreement shall be binding upon and inure to the benefit of Seller and Buyer, and their respective heirs, successors and assigns.

(I) Further Acts. In addition to the acts recited in this Agreement to be performed by Seller and Buyer, Seller and Buyer agree to perform or cause to be performed at the Closing or after the Closing any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby and, upon written request from the other Party, to execute, acknowledge and deliver all documents, instruments and affidavits necessary to give effect to this Agreement and the intent of the Parties.

(J) Headings; Construction. The headings which have been used throughout this Agreement have been inserted for convenience of reference only and do not constitute matter to be construed in interpreting this Agreement. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise. The words "herein", "hereof", "hereunder", and other similar compounds of the word "here" when used in this Agreement shall refer to the entire Agreement and not to any particular provision or section. Seller and Buyer acknowledge that each Party and its counsel have reviewed this Agreement and that the rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any document executed and delivered by either Party in connection with the transactions contemplated by this Agreement.

(K) Business Day. In the event that the day for performance of any covenant or obligation under this Agreement shall fall on a Saturday, Sunday or legal holiday, the date for performance thereof shall be extended to the next Business Day. Similarly, in the event that the date for the performance of any covenant or obligation under this Agreement involving the Escrow Holder shall fall on a Saturday, Sunday or legal holiday on which Escrow Holder is closed for business to the public, the date for performance thereof shall be extended to the next Business Day on which Escrow Holder is open for business to the public. The term "Business Day" shall mean a day that is not a Saturday, Sunday or legal holiday.

IN WITNESS WHEREOF, the Parties have executed the foregoing Agreement as of the date appearing above.

**SELLER:**

CITY OF CHANDLER,  
an Arizona municipal corporation

By: \_\_\_\_\_  
Mayor Jay Tibshraeny

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CHANDLER CITY ATTORNEY

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, Mayor of City of Chandler, an Arizona municipal corporation, on behalf of the municipal corporation.

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

My Commission Expires:

**BUYER:**

RYAN COMPANIES US, INC,  
a Minnesota corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss.

County of \_\_\_\_\_ )

The foregoing Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_, the \_\_\_\_\_ of RYAN  
COMPANIES US, INC, a Minnesota corporation.

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

My Commission Expires:

**ESCROW HOLDER'S ACCEPTANCE**

The undersigned agrees to act as Escrow Holder in connection with the transaction contemplated by this Agreement:

Name of Company: \_\_\_\_\_

Name of Escrow Officer: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Address for notices in accordance with Section 14:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ATTACHMENT 1**  
**LEGAL DESCRIPTION**

**ATTACHMENT 2  
SPECIAL WARRANTY DEED**

WHEN RECORDED,  
PLEASE RETURN TO:

**SPECIAL WARRANTY DEED**

City of Chandler, an Arizona municipal corporation ( "Grantor" ), for the consideration of TEN DOLLARS (\$10.00) and other valuable consideration, does hereby convey to Ryan Companies US, Inc., a Minnesota corporation ( "Grantee" ), all its right, title and interest in and to that certain real property located in Maricopa County, Arizona, and described more fully on Exhibit A, attached hereto and incorporated by this reference, together with all improvements, situated thereon and all of Grantor's right, title, and interest in and to all easements, rights-of-way, appurtenances and other rights and benefits, if any, running with such real property (collectively "Property").

Subject to: current taxes; patent reservations; all covenants, conditions, restrictions, reservations, liens, encumbrances, easements, declarations, obligations, liabilities and all other matters of record or to which reference is made in the public record or attached hereto in Exhibit B (Approved Conditions to Title).

*Signatures on the following page.*

Grantor hereby binds itself and its successors and assigns to warrant and defend the title to the Property against the acts of Grantor and no other.

DATED as of \_\_\_\_\_, 20\_\_.

GRANTOR:

CITY OF CHANDLER,  
an Arizona municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, Mayor of City of Chandler, an Arizona municipal corporation, on behalf of the municipal corporation.

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

My Commission Expires:

**EXHIBIT B TO ATTACHMENT 2**

Certificate of Non-Foreign Status

To inform [VPK The Row, LLC, an Arizona limited liability company] ("Transferee"), that withholding of tax under Section 1445 of the Internal Revenue Code of 1986, as amended ("Code") will not be required by City of Chandler, an Arizona municipal corporation ("Transferor"), who hereby certifies the following:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, foreign estate or foreign person (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);
2. Transferor's U.S. employer or tax (social security) identification number is \_\_\_\_\_.
3. Transferor's address is \_\_\_\_\_, \_\_\_\_\_, Arizona 85\_\_\_\_\_.
4. Transferor is not a disregarded entity as defined in Section 1.1445-2(b)(2)(iii) of the Code.

Transferor understands that this Certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury we declare that we have examined this Certification and to the best of our knowledge and belief it is true, correct and complete.

TRANSFEROR

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

**ATTACHMENT 3**  
Approved Condition of Title



**EXHIBIT D**  
**SPECISAL WARRANTY DEED**  
*(INTENTIONALLY OMITTED, SEE ATTACHMENT 2 TO EXHIBIT C-2)*



**EXHIBIT E**  
**CONSTRUCTION STAGING SITE LEGAL DESCRIPTION**

EXHIBIT “ “

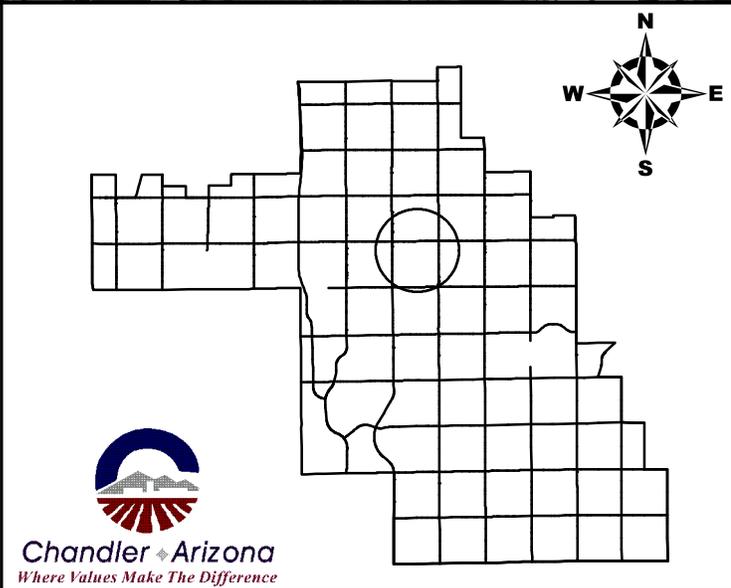
**Construction yard for Site 6**

LOT 914 AND LOT 916 OF BLOCK 1, TOWNSITE OF CHANDLER,  
ACCORING TO BOOK 9 OF MAPS, PAGE 2, RECORDS OF MARICOPA  
COUNTY, ARIZONA.

PARCEL NUMBER 303-09-108 AND 303-09-111



EXHIBIT E-2  
MAP OF CONSTRUCTION STAGING SITE



**Vicinity Map**

**EXHIBIT (\*\*\*)**

**Site 6 City Owned Property**

**Construction Yard**

CITY OF CHANDLER 10/28/2015

**EXHIBIT f-1**  
**PHASE 1 MINIMUM IMPROVEMENTS**

# PHASE 1



- 1** Office Building
  - 2 floors
  - 44,700 total sf
  - 1 floor = 22,350 sf
  - 269 pkg spaces at 6:1000 sf
- 2** Retail/Restaurant
  - indoor and outdoor dining
  - 5,400 sf
- 3** Surface Parking
  - 47 Spaces
  - 20 Existing
- 4** Site Services
  - Trash
  - Transformer
- 5** Office Building Entry
- 6** Open Space
- 7** Parking Garage
  - 3 Levels
  - 254 spaces

## PH 1 SUMMARY

- 44,700 sf of Office
- 5,400 sf of Retail/Restaurant
- 321 Parking Spaces

EXHIBIT f-2  
PHASE 2 MINIMUM IMPROVEMENTS

## PHASE 2 - 5 floors



- 1 Phase 1 Office Building  
- 44,700 sf  
- 269 pkg spaces at 6:1000 sf
- 2 Retail/Restaurant  
- indoor and outdoor dining  
- 5,400 sf
- 3 Surface Parking  
- 47 spaces
- 4 Site Services  
- Trash  
- Transformer
- 5 Office Building Entry
- 6 Open Space
- 7 Phase 2 Office Building 5 floors  
- 125,900 total sf  
- 1 floor = 25,180 sf  
- 755 pkg spaces at 6:1000 sf
- 8 Retail  
- 8,750 sf
- 9 Parking Garage  
- 7 levels  
- 1,047 spaces
- 10 Shared Motor Court

### PHASE 2 SUMMARY

- 170,600 sf of office
- 5,400 sf of Retail/Restaurant
- 8,750 sf of Retail
- 1,094 Parking Spaces

EXHIBIT G  
SITE 6 GARAGE PARKING SERVICES AGREEMENT

**THIS PARKING MANAGEMENT SERVICES AGREEMENT FOR THE SITE 6 GARAGE (the "Agreement")** is made as of \_\_\_\_\_, 201\_\_, by and between the **CITY OF CHANDLER**, an Arizona municipal corporation ("City"), and **RYAN COMPANIES US, INC.**, a Minnesota corporation duly authorized to do business in the State of Arizona ("Manager").

## **BACKGROUND**

**WHEREAS**, City is the owner of a multi-story and multi-phased parking facility known as the Site 6 Garage that is generally located on the northwest corner of Oregon and Chicago streets in the downtown area of the City of Chandler;

**WHEREAS**, the City and Manager desire to enter into this Agreement to provide for the professional management, operation, and maintenance of the Site 6 Garage.

NOW, THEREFFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.1 Defined Terms.** Capitalized terms used in this Agreement shall have the following meanings unless the context requires otherwise:

- (a) "Affiliate" means, with respect to Manager, any individual or entity that controls or is controlled by Manager, or is under common control of the Manager. For the purposes of this definition, "control" (including with correlative meaning, the terms "controlling," "controlled by" and "under common control"), as applied to any individual or entity means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that individual or entity, whether through the ownership of voting securities, by contract or otherwise.
- (b) "Business Day" is a day other than Saturday, Sunday, or a day designated as a "legal holiday" by or pursuant to Chandler declaration.
- (c) "Effective Date" shall be the first day of the first full month following the date upon which the parties have fully executed this Agreement.
- (d) "Force Majeure Events" means any one or more of the following which prohibits or materially interferes with, delays or alters the performance of the applicable duty under this Agreement: strikes or lockouts; shortages of material (excluding those caused by lack of funds) or labor; acts of the public enemy; confiscation or seizure by any government or public authority; injunction, restraining order or other court order or decree, blockades; insurrections; riots; civil disturbances; epidemics; acts of nature; fires; explosions; nuclear reaction or radiation; radioactive contamination; any

other similar cause (excluding those caused by lack of funds); and any other event not within the reasonable control of the applicable Party.

- (e) “Laws” means all present and future federal, State, and local statutes, regulations, ordinances, orders, permits licenses, and requirements, as they may be amended, changed, or adopted from time to time.
- (f) “Leased Space” means those parking spaces in the Site 6 Garage that are leased pursuant to the Parking Lease.
- (g) “Operating Hours” shall have the meaning set forth in Section 5.3 hereof.
- (h) “Parking Lease” means that certain lease between the City and Manager, dated on or about \_\_\_\_\_, 20\_\_ entitled “Parking Lease Agreement for reserved Leased Spaces in the Site 6 Garage” for the Manager’s uses on the Site 6 Project.
- (i) “Parking Rates” means the rate, fee, charge, interest, penalty, and other amount charged for or arising out of the use of the Site 6 Garage.
- (j) “Parking Revenue” means all revenue collected by Manager in its capacity as Manager of the Site 6 Garage.
- (k) “Rent” means the monthly basic rent paid by Manager, as a tenant, under the Parking Lease.
- (l) “Office Hours” means from 7:00 a.m. through 6:00 p.m., Monday through Friday, and 8:00 a.m. through 12:00 p.m. on Saturday, when tenants of Site 6 Garage through Parking Agreements have reserved Leased Spaces.
- (m) “Site 6 Project” means the Project that Manager is constructing pursuant to its Development Agreement with the City on the real property directly to the east of the Site 6 Garage.
- (n) “Tenant” means an entity with reserved Parking Spaces as a tenant under a Parking Lease.
- (o) “Visitor Parking Charges” means the Parking Rates, if any, charged to users of the Visitor Spaces
- (p) “Visitor Spaces” means the spaces located within the Site 6 Garage, which are made available for general public, non-reserved parking.

**Comment [KB1]:** Make sure tHis is consistent

**Comment [SJ2]:** Is this an accurate depiction, i.e. reserved? Also, do we need a definition for “Reserved Parking”?

## ARTICLE II

### GRANT OF RIGHTS

**Section 2.1 Agreement.** Manager agrees to supervise, direct, control, manage, and operate the Site 6 Garage during the Term in accordance with this Agreement

**Section 2.2. Attachments.** The following Attachments are attached and are, by this reference, incorporated into this Agreement

1. Attachment 1 – Housekeeping and Maintenance Schedule
2. Attachment 2 – Site 6 Garage Monthly Parking Revenue Report Form
3. Attachment 3 – Chandler Site 6 Parking Garage Maintenance Manual (the “Maintenance Manual”)
4. Attachment 4 -

### **ARTICLE III**

#### **TERM**

**Section 3.1 Term.** Unless earlier terminated in accordance with this Agreement, the term of this Agreement shall commence on the Effective Date and shall run for ten (10) years, but shall include the period of renewals described in Section 3.2 below (the” Term”). Where the word “Term” is used in this Agreement, it shall mean any Renewal Term also.

**Section 3.2 Renewal.** This Agreement shall automatically renew for \_\_\_ (\_\_) additional five (5) year terms unless (i) an Event of Default has occurred that has not been cured at the time of such renewal, or (ii) Manager provides to City written notice that it desires not to renew this Agreement, which notice Manager shall provide at least 180 days prior to the expiration of the current Term. Unless otherwise specified herein, such renewal shall be on the same terms and conditions as this Agreement.

**Section 3.3 Effective of Termination.** Any termination of the Term shall have no effect on any monies owing or obligations accrued or incurred by either party prior to the Effective Date of the termination. Unless the context requires otherwise, “termination” of the Term includes expiration by passage of time as well as the premature ending of the Term.

### **ARTICLE IV**

#### **USE OF SITE 6 GARAGE**

Manager acknowledges that the Site 6 Garage will contain Leased Spaces and Visitor Spaces. Manager shall operate and manage the Site 6 Garage in a manner that is consistent with the character of each of these types of spaces.

**Section 4.1 Leased Spaces.** Manager will operate the Site 6 Garage in a manner

consistent with the City's obligations under the Parking Lease. Manager will make the Leased Spaces available to Tenant, or Tenant's licensees, permittees, or sublessees, on an exclusive basis, and will issue parking permits to Tenant or to Tenant's licensees, permittees, or sublessees pursuant to the terms of the Parking Lease for use of the Leased Spaces during the times and periods set forth in the Parking Lease. The City and Manager will split the cost for any and all operating expenses arising out of operating the Site 6 Garage in the manner outlined in Attachment 4.

**Section 4.2. Visitor Spaces.**

- (a) The Manager will operate the Visitor Spaces as public parking available to the general public on a first-come, first-served basis. In addition, Manager will not grant licenses, permits, or leases to the Visitor Spaces on a monthly or longer basis.
- (b) Manager acknowledges and agrees that the city retains the right to establish both (i) the hours of operation of the Visitor Spaces and (ii) rates for Visitor Spaces, which rates will be consistent with other City-owned parking facilities, but subject in all cases to the terms of the Parking Lease.

**Section 4.3 Marking of Parking Spaces.** Manager shall keep all parking spaces adequately marked and identified at all times to distinguish the availability of the parking spaces for hourly, daily, reserved, handicapped, or other use, as the case maybe, and shall comply with reasonable directions from the City regarding marking and identifying the parking spaces.

**Section 4.4 Enforcement of Parking Space Restrictions.** Manager shall enforce the restrictions against the improper or unauthorized use of parking spaces, including, without limitation, arranging for the prompt towing or booting of any vehicle improperly or impermissibly parked in a parking space. Manager shall provide and install all signs that are necessary or appropriate for the enforcement of parking restrictions.

**ARTICLE V**

**OPERATION AND MANAGEMENT OF SITE 6 GARAGE**

**Section 5.1 Standard of Operation.**

- (a) Manager shall operate and manage the Site 6 Garage in first-class, efficient, and proper businesslike manner consistent with industry standards for the operation of comparable parking facilities in the Phoenix metropolitan area that are operated as monthly parking facilities, and in a manner consistent with the Maintenance Manual. Manager will maintain an office within the Phoenix metropolitan area. Manager will publish its telephone number to the general public and the City, and Manager's phone system should be capable of recording messages.
- (b) Manager will use the Site 6 Garage for the operation of parking functions only and will not use the Site 6 Garage for any other activity, including but not limited to advertisement, assembly, or storage.

**Section 5.2 Independent Contractor.** Manager shall operate and manage the Site 6 Garage as an independent contractor and shall employ a staff of efficient, skilled, and prudent employees in sufficient numbers to perform its duties and obligations under this Agreement. In operating and managing the Site 6 Garage, Manager shall be solely responsible for the costs and expenses of operation, including, but not limited to, labor, supplies, computer hardware and software, utilities, all consumables, revenue collection supplies, and insurance (as required in Section 8.1). Nothing contained in this Agreement shall be construed to create or form a partnership or joint venture between the parties or render either party liable for the debts or obligations of the other.

**Section 5.3 Hours of Operation and Regulations.**

- (a) City, in consultation with Manager, will have the right but not the obligation to establish from time to time the hours of operation for the Site 6 Garage and written regulations and policies concerning the use of the Site 6 Garage, subject to the guaranteed rights of Manager pursuant to the Parking Lease. Notwithstanding the foregoing, the City will establish hours of operation and written regulations and policies that (i) are consistent with the use of the Site 6 Garage described in this Agreement and the Parking Lease (including any existing or proposed long term parking lease agreement(s) referenced in the Parking Lease, and (ii) that do not materially increase Manager’s duties and obligations under this Agreement.
- (b) The “Operating Hours” shall be the following times:  
From 5:00 a.m. through 1:00 a.m., Monday through Friday, for all of the parking spaces in the Site 6 Garage.

**Section 5.4 Parking Rates.** Manager shall operate the Site 6 Garage using the Parking Rates established by the City and approved by Manager, which approval shall not be unreasonably withheld, conditioned or delayed.

**Section 5.5 Collection of Parking Revenue.** With the exception of long term lease agreements entered into directly between the City and a tenant (e.g. the Parking Lease), pursuant to which tenants will pay the City directly, Manager shall be responsible for collecting all Parking Revenue.

**Comment [S3]:** Presumably that’s from Bldg Owner, but would also infer events revenue as well??

**Section 5.6 Payments and Reporting.**

- (a) Manager shall, within twenty-five (25) calendar days after the end of each month during any part of which is in the Term, provide to City a report that provides to City information concerning any amounts Manager may owe City pursuant to Section 4.2(b) (“Visitor Spaces”), using the form attached hereto as Attachment 2. Manager shall submit, with the monthly report, payment to City any amounts Manager owes pursuant to Section 4.2(b) for the monthly period that is the subject of the report.
- (b) By each October 1, during the Term, and within 110 calendar days after the end of the Term, Manager shall provide City with a report that provides to City the amount paid

by Manager for maintenance and repairs during the previous fiscal year (July 1 – June 30), or in the case of the final report, of the period less than a year in length that begins on July and ends on the last day of the Term.

- (c) An authorized representative of Manager will sign each report required by this Section 5.6, which signature will serve as Manager's certification as to the accuracy of the information contained in the report.
- (d) If Manager fails to make any payment to City required by this Agreement in a timely manner, and such failure continues for thirty (30) days after notice and demand from City, Manager shall also be required to pay interest at the rate of two percent (2%) plus the rate announced by Bank of America (or its successor) from time to time as its prime rate (but in no event higher than the maximum rate allowed by Law), until paid in full, which interest shall be deemed a late fee. If there is not a prime rate announced by Bank of America or its successor that can be reasonably used to derive the interest rate for purpose of this Section, then the interest rate on said late payments shall be six percent (6%) per year but not exceeding the maximum rate allowed by law.

#### **Section 5.7 Books and Records**

- (a) Manager shall maintain, at an office in Phoenix Metropolitan area, complete and accurate books and records of account in accordance with generally accepted business and accounting practices with respect to the operation, management, and maintenance of the Site 6 Garage and shall record in these books and records the information reported by Manager pursuant to Section 5.6. The books and records of account shall be retained by Manager for three (3) years after the termination of this Agreement, and upon request by City, Manager shall deliver possession of the books and records, or accurate copies thereof, to City. In addition, upon termination of this Agreement, and for three (3) years thereafter, Manager shall make available to City for inspection and copying (at no expense to Manager) the books and records of the three (3) years preceding the expiration or termination of this Agreement.
- (b) Audits. City and its authorized representatives may conduct at any time with reasonable notice an audit or inspection of the books and records of Manager relating to the operations, management and maintenance of the Site 6 Garage.
- (c) Accounting Discrepancies. If any audit or inspection made by or on behalf of City discloses any discrepancy in any statement(s) submitted by Manager pursuant to Section 5.6 and/or in the amount of any sums of money actually paid to the City in favor of the City, Manager immediately shall pay the sum of money owed to City, plus interest equal to an amount as set forth in Subsection 5.6(d), from the date the sum should have been paid to City to the date payment is made to City. In addition, if an audit or inspection discloses a cumulative discrepancy in excess of ten percent (10%) of the amount previously paid by Manager to City for the monthly period in question, Manager immediately shall pay to City the cost of the audit and/or

inspection. The cost of the audit and/or inspection shall include all reasonable out of pocket costs incurred by City to do the audit and inspection. Payment of the penalty and cost of the audit are, at the option of the City, in addition to other remedies available for defaults in accordance with Subsection 5.6(d).

**Section 5.8 Compensation.**

(a) In consideration of the Manager's services rendered pursuant to this Agreement, the City shall pay the Manager a monthly management fee (the "Management Fee"). As of the Effective Date, the Management Fee will be \$1,000 per month.

The Management Fee will be increased by three percent (3%) on each anniversary of the Effective Date.

**Section 5.9 Subcontracts and Assignment.** Manager may enter into subcontracts with third parties to perform some or all of its responsibilities as described in this Agreement or the Maintenance Manual, provided (i) each such subcontract shall be subject to and consistent with this Agreement, and (ii) Manager shall remain fully obligated and responsible under this Agreement to the same extent as if Manager had not entered into the subcontract.

**Section 5.10 Claims and Demands.** Manager shall notify City of any claim, demand, or charge asserted or proposed to be asserted against or upon the Site 6 Garage or the Parking Revenues within five (5) calendar days of receiving notification thereof.

**Section 5.11 Compliance with Laws and Contracts.** Throughout the Term, Manager shall comply with all Laws relating to its duties and obligations under this Agreement and shall observe and comply with the requirements of all policies of insurance with respect to the Site 6 Garage and any machinery or equipment used in connection with the Site 6 Garage. Without limiting the foregoing sentences, Manager will comply with all applicable laws and regulations for the cleanup of any hazardous materials or liquids that may spill as a result of accidents, fires, or other events.

**Section 5.12 Access to the Site 6 Garage.** The Site 6 Garage is property of City. Nothing in this Agreement is intended to reduce City's right to enter it at any time for any purpose. Without limiting the preceding sentence, City has the right to enter the Site 6 Garage in accordance with Article IX, Default and Remedies of this Agreement.

**Section 5.13 Customer Relations.** Manager shall provide a high level of customer service by employing friendly, helpful, customer-oriented personnel. Manager shall handle all complaints from the general public regarding parking in a courteous and professional manner. Except to the extent City may choose from time to time to vary from this procedure, Manager shall receive and handle all communications and complaints from customers. To the extent a communication relates to a matter solely in the discretion or authority of City, such as the amount of Parking Rates set by the City, Manager shall direct the inquirer to City.

**Section 5.14 Security.**

- (a) Manager shall cause security personnel to patrol the Parking Facilities after regular operating hours in a manner consistent with the security standards set forth in the Maintenance Manual. Manager will enter into an agreement with another party (subcontractor) or parties to provide such security. In the event the Manager contracts with another party to provide security, the Manager shall name in such an agreement the City as an Indemnitee and shall name the City as an additional insured and shall consult with the City regarding the level and type of insurance required. The Manager shall make a report of all significant incidents and forward such a report to the attention of the City Attorney-Risk Manager by hand-delivery or fax (480) 782-4652.

**Section 5.15 Abandoned Vehicles, Overdue Accounts, and Violation of Rules and Regulations.**

- (a) Manager may issue rules and regulations for use of the Site 6 Garage, which rules and regulations are subject to the City's approval, which approval shall not be unreasonably withheld, conditioned or delayed (the "Rules and Regulations"). In issuing parking cards to third parties, Manager may require such third parties to execute a parking agreement that, among other things, requires the third party to abide by the Rules and Regulations and that further provides that Manager may terminate parking privileges and deactivate parking cards in the event the third party fails to pay any Parking Rate Revenues that are owed or fails to comply with the Rules and Regulations.
- (b) Manager shall have discretion as to whether to charge third parties a reasonable amount for parking cards or for the replacement of lost, stolen, or damaged parking cards.
- (c) Manager will notify the Chandler Police Department regarding any vehicles that are illegally stored or abandoned in the Site 6 Garage.

**ARTICLE VI**

**MAINTENANCE OF SITE 6 GARAGE**

**Section 6.1 Maintenance and Repair.**

- (a) Except as otherwise provided, the Manager shall maintain the Site 6 Garage in a good and clean condition and working order and in accordance with the standards in the Maintenance Manual. Manager shall comply with the maintenance and cleaning responsibilities and frequencies as set forth in Attachment 1 (the "Housekeeping and Maintenance Schedule"). City and Manager will split the cost for any and all maintenance expenses arising out of maintaining the Site 6 Garage in the manner outlined herein. City shall be responsible for the cost of maintaining the Site 6

Garage in good repair except to the extent that this Agreement expressly imposes upon Manager any repair responsibilities.

- (b) In cases of conflict between the maintenance and cleaning responsibilities and frequencies described in Attachment 1 (Housekeeping and Maintenance Schedule and the Maintenance Manual, the frequencies as described in Attachment 1 (the Housekeeping and Maintenance Schedule ) shall prevail.

**Section 6.2 Manufacturer's Recommendations.** Where City or Manager is required to perform any service on any part of the Site 6 Garage, including equipment installed therein, that party shall do so in compliance with applicable manufacturer's recommendations.

**Section 6.3 Inspections and Reports.** Manager acknowledges that it is not the City's intent to post City personnel in the Site 6 Garage to conduct periodic inspections of the Site 6 Garage, but to rely upon the inspections that Manager is to perform as described in Attachment 1. Manager shall document and photograph, if requested, any condition that it believes requires City to repair and provide a copy of the documentation and photographs to City. As soon as Manager has actual knowledge of an unsafe condition in the Site 6 Garage or of damage to the Site 6 Garage, including any problems related to the structure, light poles and light globes (not including the bulbs and tubes), Manager shall promptly report such conditions to City; provided, however, the Manager shall in no event be responsible for the identification of latent defects relating to the Site 6 Garage. City shall be obligated, at its sole cost and expense, to make all repairs and capital improvements required by applicable law or that are necessary to correct any unsafe conditions at the Site 6 Garage. Upon request, Manager will assist the City with the oversight of any repairs the City intends to perform or to contract for, including making the arrangements for the repairs.

**Section 6.4 Cleaning.** Manager shall provide cleaning services throughout the Site 6 Garage, including stairwells, elevators, all parking and driveways, and storage areas and all other areas described in Attachment 1. Manager shall follow the guidelines described in the Maintenance Manual, and shall perform these cleaning services on a schedule consistent with Attachment 1. Manager shall clean and attempt to remove any graffiti and clean up after any vandalism.

**Section 6.5 Doors and Hardware.** Manager shall perform the services regarding the doors and hardware in accordance with the guidelines described in the Maintenance Manual.

**Section 6.6 Electrical and Lighting.** Ryan Companies US, Inc., shall perform the electrical system services described in Attachment 1. City shall perform all other maintenance services required for the electrical systems. Although Manager shall replace burned-out lamps, the City shall be responsible for group relamping of the Site 6 Garage.

**Section 6.7 Elevators.** Manager shall perform the elevator services described in Attachment 1 as a Manager responsibility. After consulting with City, Manager shall secure and pay for a maintenance agreement for the elevators with a reputable and responsible elevator maintenance company. City shall be made a third-party beneficiary of that agreement. To the

extent that Attachment 1 assigns responsibilities to City, the City shall perform those services. With respect to any water leakage into the elevator shaft or elevator equipment room, Manager responsibility will be limited to inspecting the elevator shaft and equipment room for any evidence of leakage, cleaning the elevator shaft and equipment room regularly, and cleaning up any water that may be discovered. City will be responsible for any repairs that may be necessary to stop any such water leakage. Manager shall provide a copy of any written reports that Manager creates or receives related to the elevators.

**Section 6.8 Landscaping** Manager shall perform the landscaping services described in the Maintenance Manual.

**Section 6.10 Parking Control Equipment**. Manager shall perform all the parking control equipment services described in the Maintenance Manual, and shall provide supplies, such as security cards, that are needed to make the equipment function as designed. Manager shall also be responsible for replacing and repairing all Visitor Spaces-related metering equipment and devices that are installed by Manager. The City shall be responsible to replace motors, parts, and the entire parking control unit when a reasonable person who owns the equipment would choose to replace rather than repair the motor, any parts, or the entire parking control unit. In addition, City and the Manager shall cooperate with each other in pursuing any remedies that may exist under any manufacturer's warranties that may be applicable.

**Section 6.11 Plumbing Systems**. Manager shall perform the housekeeping and preventative maintenance services for plumbing system described in Attachment 1 as a Manager responsibility in a manner consistent with the guidelines described in the Maintenance Manual. City shall perform all other maintenance and repair services required for the plumbing system, including maintaining, repairing, and replacing, if necessary, the storm drainage system, the sanitary sewer system, if any, and the fire protection system.

**Section 6.12 Roofing and Waterproofing**. Manager shall perform the services for the roofing and waterproofing described in the Maintenance Manual. City shall perform the maintenance and repair services required for the roofing and waterproofing systems, including those services described in Attachment 1.

**Section 6.13 Safety Checks**. Manager shall perform the housekeeping and preventative maintenance services described in the Maintenance Manual, except that, if holes or pockets in the concrete develop and such holes or pockets are safety hazards, Manager responsibility will be to take appropriate steps to erect signage or barriers or to warn or detour persons in the Parking Garage, and to inform City of the existence of the safety hazards first by telephone followed by a written report stating the perceived hazard or other dangerous condition as soon as commercially reasonable given the severity of the hazard. City will be responsible for repairing any holes or pockets in the concrete as described in Attachment 1. City has the right to perform random safety checks.

**Section 6.14 Signage and Graphics**. Manager shall maintain and post signage (a) that is required by any Laws, (b) that is prudent, or appropriate to facilitate vehicular and pedestrian circulation throughout the Site 6 Garage, or (c) that is necessary or advisable to allow for

enforcement of parking space restrictions and any applicable regulations. Manager shall post temporary signage that is required by any Laws or that is reasonably needed to warn patrons of malfunctioning equipment and hazards, including hazards caused by weather and accidents. City shall have the right to approve any such signage, which approval shall not be unreasonably withheld, conditioned or delayed. Manager will perform the housekeeping and preventative maintenance services described in the Maintenance Manual for signs and graphics. Manager will maintain, repair, and replace the signage and graphics as necessary.

**Section 6.15 Structural Systems.** Manager shall perform the housekeeping services for structural systems described in the Maintenance Manual and the inspection services for structural systems described in the Maintenance Manual. Notwithstanding the foregoing, Manager inspection responsibilities shall be limited to performing a walk-through appraisal as described in the Maintenance Manual, and reporting to City any conditions that are observed, and the City will be responsible for performing any inspections to be performed by licensed engineers or for performing the condition appraisal.

**Section 6.16 Equipment and Supplies.** Each party shall be responsible for obtaining, providing, and replacing all equipment, inventory, and supplies that each may require in the performance of its duties under this Agreement.

## ARTICLE VII

### INDEMNIFICATION

#### **Section 7.1 Indemnity.**

- (a) To the maximum extent allowed by law, Manager shall defend, indemnify, and save harmless Indemnitees (as defined below) from and against all Charges (as defined below) that arise in any manner from, in connection with, or out of this Agreement as a result of acts or omissions of Manager or subcontractors or anyone directly or indirectly employed by Manager or anyone for whose acts Manager may be liable. Notwithstanding the foregoing, Manager shall not be required to defend, indemnify, and save harmless Indemnitees against liability for Charges that are proximately caused by or resulting from the negligence or intentional or willful acts, in whole or in part, of Indemnitees. Likewise, City shall defend, indemnify and save harmless Manager Indemnitees (as defined below) from and against all Charges that arise in any manner from, in connection with, or out of this Agreement as a result of acts or omissions of City or anyone directly or indirectly employed by City or anyone for whose acts City may be liable. Notwithstanding the foregoing, City shall not be required to defend, indemnify, and save harmless Manager Indemnitees against liability for Charges that are proximately caused by or resulting from the negligence or intentional or willful acts, in whole or in part, of Manager Indemnitees.
- (b) Definitions. As used in this Article – “Charges” means claims, judgments, costs damages, losses, demands, liabilities, duties, obligations, fines, penalties, settlements, and expenses (including without limitation (1) interest and reasonable attorneys’ fees

assessed as part of any such item, and (2) amounts for violations of sedimentation pollution, erosion control, pollution, or other environmental Laws). "Indemnitees" means City and its officers, officials, independent contractors (excluding the Manager), agents, and employees, including its City Manager. "Manager Indemnitees" means Manager and its directors, officers, employees, agents, and assigns.

(c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of City or Manager that are otherwise provided in or arise out of this Agreement. This section is in addition to and shall be construed separately from any other indemnification provision that maybe be in this Agreement.

(d) Other. In performing the parties' respective duties under subsection 7.1 (a) and (b) above, City and Manager as applicable, shall each at their sole expense defend Indemnitees or Manager Indemnitees, as the case maybe, with legal counsel of its choice reasonably acceptable to the indemnified party. Manager or City, as applicable, shall deliver to the other copies of documents served in any legal proceeding arising in connection with the Site 6 Garage. If Manager or City, as applicable, fails to defend any such legal proceeding, then the indemnified party shall have the right (but not the obligation) to defend the proceeding at the indemnifying party's expense. Neither Manager or City shall settle any such legal proceeding without the other party's prior written consent unless the effect of such settlement shall be to release all Indemnitees or Manager Indemnitees, as the case may be, from all liability with respect to such legal proceeding (and all claims and liabilities asserted herein).

## ARTICLE VIII

### INSURANCE AND CASUALTY

#### **Section 8.1 Minimum Requirements of Manager's Insurance.**

##### **A. General.**

1. At the same time as execution of this Agreement, the Manager shall furnish the City a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to City. Provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Worker's Compensation coverage.

2 The Manager shall procure and maintain, until all of its obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set

forth below.

3. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

4. The City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect Manager from liabilities that might arise out of the performance of the Agreement services under this Agreement by Manager, its agents, representatives, employees, or subcontractors and the Manager is free to purchase any additional insurance as may be determined necessary.

5. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve the Manager from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.

**B. Minimum Scope and Limits of Insurance.** The Manager shall provide coverage with limits of liability not less than those stated below.

1. **Commercial General Liability-Occurrence Form.** Manager must maintain “occurrence” form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be “follow form” equal or broader in coverage scope than underlying insurance.

2. **Automobile Liability- Any Automobile or Owned, Hired and Non-Owned Vehicles.** Manager must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on Manager owned, hired, and non-owned vehicles assigned to or used in the performance under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be “follow form” equal or broader in coverage scope than underlying insurance.

3. **Workers Compensation and Employers Liability Insurance:** Manager must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Manager employees engaged in the performance of Work under this Agreement and must also maintain Employers’ Liability insurance of not less than \$500,000 for each accident and \$500,000 disease for each employee.

**C. Additional Policy Provisions Required.**

1. **Self-Insured Retentions Or Deductibles.** Any self-insured retentions must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.

2. The Manager's insurance must contain broad form contractual liability coverage.

3. The Manager's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the Manager and must not contribute to it.

4. The Manager's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Coverage provided by the Manager must not be limited to the liability assumed under the indemnification provisions of this Contract

6. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the Manager for the City.

7. The Manager, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of 3 years following completion and acceptance of the Work. The Manager must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 3 year period containing all the Agreement insurance requirements, including naming the required Additional Insureds set forth herein.

8. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement.

9. Insurance Cancellation During Term of Agreement.

(a) If any of the required policies expire during the life of this Agreement, the Manager must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the required insurance provisions.

(b) Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to Chandler Law-Risk Management Department, Post Office Box 4008, Mailstop 628, Chandler, Arizona 85225. If any insurance company refuses to provide the require notice, the Manager or its insurance broker shall notify the City of any cancellation, suspension, non-renewal of any insurance within seven (7) days of receipt of insurers' notification to that effect.

10. **City as Additional Insured.** The above-referenced policies are to contain, or be

endorsed to contain, the following provisions:

(a) The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the Manager including the City's general supervision of the Manager; Products and Completed Operations of the Manager; and automobiles owned, leased, hired, or borrowed by the Manager.

(b) The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the Manager even if those limits of liability are in excess of those required by this Agreement.

**Section 8.1 Minimum Requirements of City Insurance.**

In addition to its self-insured retention coverage of \$2,000,000, the City shall purchase and continuously maintain, at its own expense, insurance covering the Premises in an amount that shall not be less than one hundred percent (100%) of the full replacement cost, subject to customary deductibles, and the City's personal property contained therein. The insurance policy shall be broad in terms of perils covered, and shall in all events cover losses from fire, vandalism, malicious mischief, and loss or damage from lighting, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles and smoke.

**Section 8.2 Failure to Maintain Insurance.** If, after fifteen (15) calendar days' written notice and failure to cure, either City or Manager as applicable, shall fail to obtain or maintain insurance as required in this Agreement, the other party may, at its option, obtain and maintain such insurance and shall be entitled to prompt reimbursement by the other party for all amounts expended in connection with obtaining and maintaining such insurance. If either City or Manager as applicable, does not exercise this option, nothing in this Section shall relieve the other party of the duty to provide insurance or restrict either City or Manager as applicable, in the remedy it may obtain as a result of the other party's failure to obtain or maintain insurance.

**Section 8.3 Adjustment of Losses.** City and Manager shall adjust losses under their respective insurance policies related to the Site 6 Garage as promptly as practicable and with due regard to the interests of the other party.

**Section 8.4 No Release of Liability.** No acceptance or approval of any insurance policy by Manager or City shall relieve or release the other party from any liability, duty, or obligation under the provisions of this Agreement.

**Section 8.5 Casualty.** If the Site 6 Garage is damaged by fire or other casualty, and the fire or casualty results in only a portion of the Site 6 Garage being usable for its intended purpose, then this Agreement shall remain in full force and effect with respect to the portion of the Site 6 Garage that is still usable and the payments and obligations of the parties hereunder shall be equitably adjusted based upon the portion of the Site 6 Garage that is in operation. If the fire or other casualty results in the Parking Garage being unusable for its

intended purpose, then the rights and obligations of City and Manager hereunder shall be suspended until such time as the Site 6 Garage is rebuilt or restored, and City shall promptly restore or rebuild the Site 6 Garage to substantially the same condition in which it existed prior to the casualty. Upon substantial completion of such restoration, Manager shall manage the Site 6 Garage in accordance with the provisions of this Agreement; provided, however, that if any such reconstruction requires materially more or less services of Manager than those described herein, then the Management Fee shall be equitably adjusted as a result of Manager providing materially more or fewer services. If the fire or casualty results in the Site 6 Garage being unusable for its intended purpose and it is not rebuilt, restored or repaired prior to the expiration of the Term, then this Agreement shall be deemed terminated as of the date of such casualty. Nothing in this Section 8.5 or elsewhere in this Agreement shall, or shall be construed as, excusing City from any of its rebuilding or reconstruction obligations set forth in the Parking Lease.

## **ARTICLE IX**

### **DEFAULT AND REMEDIES**

**Section 9.1 Defaults.** The following events shall be deemed a default by Manager under this Agreement:

- a) Manager's failure to make any payment when it shall become due to the City under this Agreement;
- b) The entry of an order of relief for Manager by a court of competent jurisdiction under any bankruptcy or insolvency laws;
- c) The entry of an order of appointment by any court or under any Law of a receiver, trustee, or other custodian of the property, assets, or business of Manager
- d) The assignment by Manager of all or any part of its property or assets for the benefit of creditors other than its stock or other equity interest in an unregulated subsidiary or joint venture; or
- e) The levy of execution, attachment, or other taking of property (other than Manager's stock or other equity interest in an unregulated subsidiary or joint venture), assets, or interest under this Agreement of Manager by process of law or otherwise in satisfaction of any judgment, debt, or claim, unless postponed by appeal, furnishing of bond, or other contest by Manager as permitted by law.
- f) If Manager is an Affiliate of the Tenant under the Parking Lease, the occurrence of an Event of Default of the Parking Lease as such term is defined in the Parking Lease, where such default is continuing beyond applicable notice and cure periods.

**Section 9.2 Opportunity to Cure.**

Upon the occurrence of any of the defaults contained in Section 9.1(a) and material

breaches of the provisions of this Agreement, the non-defaulting party shall provide to defaulting party written notice of such default, and the defaulting party shall have thirty (30) calendar days after the date of receipt of such written notice to cure such default; provided, however, that non-defaulting party shall not be obligated to provide defaulting party with a notice of default more frequently than two (2) times in any twelve month period. If the nature of the default the defaulting party reasonably cannot cure the default within that thirty (30) day period (and such default is not in the payment of money), then the defaulting party shall have an additional fifteen (15) days to cure the default, provided that defaulting party has begun its effort to cure the default within that thirty (30) day period and it continues its efforts to cure the default. The defaulting party's failure to cure a default within the applicable time period, if any, shall be "Event of Default". In addition, non-defaulting party's rights to exercise remedies are limited by Section 10.20, including Section 10.20(i).

**Section 9.3 Remedies for Default** This Agreement shall be enforceable by actions for specific performance or injunction in addition to any other remedies available at law or in equity, including recovery of all attorneys' fees and court costs. Pursuit of any remedy under this Agreement shall not preclude the pursuit of any other remedy provided for in this Agreement or any other remedy provided in law or equity, nor shall pursuit of any remedy provided in this Agreement constitute a forfeiture or waiver of any amounts due to City under this Agreement or of any damages accruing to City by reason of the violation this Agreement. Notwithstanding any contrary provision contained in this Agreement, neither party shall be liable for any consequential, special or punitive damages. In the event this Agreement is terminated by the non-defaulting party, such termination shall not relieve the defaulting party from its obligations hereunder arising prior to the date of termination.

**Section 9.6 Failure to Perform and Self Help.** (a) In addition to other remedies provided in this Agreement, if either party fails to perform its obligations under this Agreement and such failure arises to an Event of Default, then, unless otherwise agreed, the other party may perform whatever action is reasonably necessary to cure the problem at the expense of the party that committed the Event of Default.

(b) Before either party shall be required to reimburse the other party for actions done or expenses made arising out of the failure of the non-performing party to comply with this Agreement, the other party shall provide the non-performing party an itemized invoice with reasonable supporting documentation. The non-performing party shall reimburse the other party within thirty (30) days following its receipt of such invoice. Notwithstanding the foregoing, the Manager acknowledges that its right to receive reimbursement from the City for any such costs and expenses incurred may be limited unless Manager abides by any procurement or contracting requirements that the City is required by Title 34 of the Arizona Revised Statutes to abide.

**Section 9.7 Emergency.** In the event of an emergency, either party may initiate corrective measures to prevent or mitigate any impending damage to or catastrophic effect on the Site 6 Garage or danger to natural persons resulting from the destruction or failure of any facility or component of the Site 6 Garage after (a) making reasonable efforts under the

circumstances to notify the other party of the emergency and (b) giving the other party a reasonable amount of time under the circumstances to take corrective action. The parties shall share the costs of such action in proportion to their responsibilities under this Agreement.

**Section 9.8 Force Majeure.** If either Party is delayed or prevented from the performance of any duty or obligation under this Agreement by reason of a Force Majeure Event, then the performance of such duty or obligation shall be excused for the period of the delay, and the period for the performance by such Party of any such duty or obligation shall be extended for a period equivalent to the period of such delay. The Party subject to any Force Majeure Event shall provide Notice to the other Party as soon as reasonably practicable.

**Section 9.9 Non-Waiver.** No delay or omission of either party in the exercise of any right or remedy accruing upon any default on the part of the other party shall impair such right or remedy or be construed to be a waiver thereof, nor shall such delay or omission constitute approval of or acquiescence in a breach under this Agreement.

## ARTICLE X

### MISCELLANEOUS

**Section 10.1 Survival.** All representations and warranties contained in this Agreement (and in any instrument delivered by or on behalf of any Party pursuant hereto or in connection with the transactions contemplated hereby) are true on and as of the date so made, will be true in all material respects during the term of this Agreement. In the event that any representation or warranty by a party is untrue, the other Party shall have all rights and remedies available at law, in equity, or as provided in this Agreement. The provisions of this Agreement wherein a Party has explicitly indemnified, made warranty or representations to the other Party shall survive the expiration or earlier termination of this Agreement.

#### 10.2 ARIZONA REQUIREMENT FOR WARRANTY OF IMMIGRATION STATUS.

10.2.1 Pursuant to the provisions of A.R.S. § 41-4401, Manager hereby warrants to the City that Manager and each of its subcontractors (“Subcontractors”) will comply with all Federal immigration laws and regulations that relate to the immigration status of their employees, including the Federal Immigration and Nationality Act (“FINA”), and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter “Manager Immigration Warranty”).

10.2.2 A breach of this Manager Immigration Warranty shall constitute a material breach of this Agreement that is subject to penalties up to and including termination of this Agreement.

10.2.3 The City retains the legal right to inspect the papers of any Manager or Subcontractor employee who works on this Agreement to ensure that Manager or subcontractor is complying with this Manager Immigration Warranty. Manager agrees to assist the City in the conduct of any such inspections.

10.2.4 The City may, at its sole discretion, conduct random verifications of the employment records of Manager and any subcontractors to ensure compliance with this Manager Immigration

Warranty. Manager agrees to assist the City in performing any such random verification.

10.2.5 The provisions of this Article must be included in any contract Manager enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

**Section 10.2 Good Faith.** The parties to this Agreement agree to cooperate and otherwise act in good faith with respect to the promises and duties contemplated by this Agreement and the efficient and safe operation, management, and maintenance of the Site 6 Garage.

**Section 10.3 Assignment.** Except as permitted in this Section, Manager shall not assign this Agreement or any benefit accruing under this Agreement to any party without first obtaining the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, without prior written consent by the City, Manager may assign this Agreement or any portion there or any benefit accruing under this agreement to an Affiliate. No assignment shall relieve Manager of responsibility for the Manager's duties and obligations under this Agreement, except under the following circumstance: (i) the City consents (in the exercise of its reasonable discretion) to an assignment of this Agreement by executing an instrument other than this Agreement and such written instrument expressly relieves Manager of any further liability for obligations accruing after the effective date of the assignment, (ii) Manager assigns all or part of this Agreement to an Affiliate, and (iii) the assignee expressly assumes in writing (by an instrument in form and substance reasonably satisfactory to the City) all of the obligations under this Agreement accruing after the date of the assignment. Any unauthorized assignment of this Agreement shall be null and void and shall constitute a default under this Agreement.

Manager shall have the right, without the consent of the City, to delegate its duties and responsibilities to a third party provided that no such delegation results in Manger being released from its obligations under the Agreement.

**Section 10.4 Notices.**

Except as otherwise required by law, any notice, demand or other communication required to be given by this Agreement (each, a "Notice") shall be in writing and shall be given by (i) personal delivery; (ii) by certified or registered U.S. Mail, return receipt requested; or (iii) or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid and addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this paragraph:

To Developer: RYAN COMPANIES US, INC  
3900 East Camelback Road, Suite 100  
Phoenix, Arizona 85018-2653  
Attention: Steve Jordan  
Telephone: (602) 322-6100

With a copy to: Ryan Companies US, Inc.  
50 South Tenth Street, Suite 300  
Minneapolis, Minnesota 55403-2012  
Attention: Legal Department  
Telephone: (612) 492-4000

To the City: City of Chandler  
Economic Development Office (MS 416)  
P. O. Box 4008  
Chandler, AZ 85244-4008  
Attention: Kim Moyers, Downtown Redevelopment Manager

With a copy to: City of Chandler  
City Attorney Office  
P. O. Box 4008  
Chandler, AZ 84244-4008  
Attention: Kay Bigelow

**10.4 Effective Date of Notices.** All such notices, demands or other communications will (i) if delivered personally or delivered through a same day delivery/courier service be deemed effective upon delivery or refusal to accept delivery by the addressee; and (ii) if delivered by U.S. mail in the manner described above be deemed effective upon the earlier of receipt or three (3) business days after deposit in a post office operated by the United States or with a United States postal officer; and (iii) if sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee. The Parties hereby acknowledge and agree that any Notice transmitted solely by facsimile or by electronic mail shall be deemed ineffective.

**Section 10.5 Successors.** This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and its respective successors and assigns.

**Section 10.6 Intentionally deleted.**

Section 10.7 **Limited Severability.**

A. In the unlikely event that any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect. Notwithstanding the foregoing sentence, however, this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed Agreement provides essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments, and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

B. If the Agreement cannot be retroactively reformed in such a way that it provides essentially the same rights and benefits to the Parties then either Party may terminate the Agreement without further rights or liabilities to the other Party other than those that expressly survive termination.

**Section 10.7 Execution in Counterparts.** This agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

**Section 10.8 Applicable Law; Forum.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. The exclusive forum and venue for all actions arising out of the Agreement shall be the Maricopa County Superior Court for the State of Arizona. Such actions shall not be commenced in nor removed to federal court. This Section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Section.

**Section 10.9 Covenants of City not Covenants of Officials Individually.** No covenant, stipulation, obligation, or agreement contained in this Agreement shall be deemed to be a covenant, stipulation, obligations, agreement, or personal liability of any present or future member, officer, agent, or employee of City in such person's individual capacity.

**Section 10.10 Entire Agreement.**

This Agreement and all exhibits thereto constitute the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein. In the event of a conflict between the text of this Agreement and the attached or incorporated Attachments, the text of this Agreement shall control. A conflict among the other attached or incorporated Attachments shall be resolved by the more specific Attachment over the more general Attachment, unless the context explicitly requires otherwise.

**Section 10.11 Performance of Government Functions.** Nothing contained in this Agreement shall be deemed or construed to stop, limit, or impair City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

**Sections 10.12 ADA Requirements.** After completion of the initial construction of the

Site 6 Garage, Manager shall be responsible for monitoring and managing the Site 6 Garage for compliance with the provisions of accessible parking accommodations at all times as required by Title III of Americans with Disabilities Act (the "ADA"). The Manager shall endeavor to promptly comply with all requests and complaints regarding accessibility to the City's parking facilities in accordance with the ADA. The Manager shall advise, cooperate with, and assist the City in correcting any violation of the ADA. The Manager will record and promptly report to the City in writing any request, comment, or complaint regarding accessibility to the parking facilities. Manager shall have no obligation to make any capital improvements to the Site 6 Garage that is required by applicable law, including the ADA.

**Sections 10.13 No Third Party Rights Created.** This Agreement is intended for the benefit of the City and Manager and not any other person. Nothing in this Agreement shall create any liability to third parties for Third Party Acts. A "Third Party Act" is a criminal or other act or omission by a party or entity other than Manager

**Section 10.14 Modifications.** A modification of this Agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law.

**Section 10.15 Attorney Fees.** In the event of commencement of a legal action in an appropriate forum by a Party to enforce any covenant or any of such Party's rights or remedies under this Agreement, including any action for declaratory or equitable relief, the prevailing Party in any such action shall be entitled to reimbursement of its reasonable attorneys' fees and court costs, including, but not limited to, its costs of expert witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

**Section 10.16 Construction and Headings.** The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof. When used herein, the terms "include" or "including" shall mean without limitation by reason of the enumeration. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require. The term "person" shall include a natural person or any duly formed entity. If this Agreement uses the term "day," it shall mean calendar day unless otherwise specified or modified. If the last day of any time period stated herein should fall on a Saturday, Sunday, or legal holiday as declared by the City, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday in the City. If a cross-reference within any Amendment provision cites a particular Section or Subsection number of this Agreement, it shall be a reference to the referred Section or Subsection and its subparts.

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

**CITY**

CITY OF CHANDLER, an Arizona  
municipal corporation

**MANAGER**

RYAN COMPANIES US, INC., a Minnesota  
corporation

X

Jay Tibshraeny  
Mayor

X

name  
President

ATTEST:

APPROVED AS TO FORM:

- Attachment 1 – Housekeeping and Maintenance Schedule
- Attachment 2 – Site 6 Garage Monthly Parking Revenue Report Form
- Attachment 3 –Maintenance Manual

**EXHIBIT H**

## Downtown Chandler



## Streetscape Guidelines

## Design Goal

The goal is to achieve a high degree of pedestrian comfort and intimate scale. Streetscape elements such as trees, plantings, benches, chairs, tree grates, light fixtures, signage and litter receptacles will help establish an identity and emphasize the pedestrian environment for Downtown Chandler's side streets. Ultimately, continuing to develop a true sense of place in the Downtown area with these streetscape elements and pedestrian scale as a primary objective.

### Roadway

- Minimum roadway should be 24' wide (i.e. two 12' lanes).
- With angle parking, the travel lanes should be 29' wide to provide a buffer and more driver comfort when backing out.
- Valley gutters will be permitted between the parking spaces and through lanes, except where bike lanes are provided. Valley gutters shall not be permitted to encroach into any part of the bike lane.
- Roadway easements in lieu of right-of-way may be permitted in sidewalk areas.
- Right of Way – 70 to 80 feet depending on development and existing street widths.

### Parking

- For angle parking, a 60 degree angle from curb line preferred, as it provides the best combination of maximizing the number of spaces, and ease of parking. A range of angles from 45 degrees to 90 degrees is also permissible.
- Parallel parking must include bulb-outs, maximum of every 10-12 spaces at intersections and at regular intervals to allow room for street furniture and/or landscaping.
- Sawtooth angle parking is discouraged due to maintenance difficulties
- General conformance of ADA on-street parking code

## Sidewalk Elements

- A minimum sidewalk width is 6' (8' will be preferred) and must be clear of all obstructions – total width with tree grates and utility corridors can range from 8 to 15 feet and should be consistent with adjacent streets
- Encourage encroachments such as sidewalk dining for a pedestrian friendly atmosphere.
- Utilize a variety of paving materials, ranging from Arizona Avenue materials to compatible combinations of materials.
- Hardscape pavers, multiple textured sidewalk and different roadway surfaces are encouraged.



- Planters – incorporate vibrant color and bold form, without posing a hazard to motorists or pedestrians



- Grates – incorporate a mix of styles depending on tree type and location



- Benches – provide shaded seating with well-spaced benches



- Street furniture – locate chairs, tables, art, street furniture at key nodes where pedestrians are intended to gather
- Multiple seating arrangements should be considered to give variety and encourage social seating spaces



- Bike Racks – locate close to the street and near pedestrian hubs



- Public Art – incorporate public art as a way to engage pedestrians and unite neighborhood pedestrian areas.
- Art should be lighted for night visibility



- Trash Receptacles – place at key locations and provide a coordinated system to reduce trash
- Color and theme should fit the Downtown character



### **Street Pedestrian & Bollard Lighting**

- Must use LED's
- Poles and luminaires should be a modern, contemporary style and fit with the Downtown character.
- Poles shall be powdered coated steel or brushed aluminum – painted poles will not be permitted.
- Use staggered pedestrian lighting where possible
- Post op lighting with intermediate pedestrian lighting should be incorporated
- Receptacles on pedestrian lighting and tree wells are encouraged
- Should be consistent or complimentary with adjacent lighting

Streetlights



Ped-lights



Bollard lighting – should be down lighting and occur only on private property



## Existing Plants on Arizona Avenue

### Groundcovers

- Landscape lighting should be encouraged
- All landscaping including planters should be irrigated
- Alternative, green landscaping solutions may be considered

Katie ruellia - *Ruellia britoniana*



Yellow Dot Plant – *Wedelia trilobata*



### Shrubs

Valentine Bush – *Eremophila maculate*



Gopher Plant – *Euphorbia rigida*



Thunder cloud sage – *Leucophyllum candidum*



Pink Muhly Grass – *Muhlenbergia capillaris*



Nashville Deer Grass – *Muhlenbergia rigida*



Lady's Slipper – *Pedilanthus macrocarpus*



Ruellia – *Ruellia brittoniana*



Candelilla – *Euphorbia antisiphilitica*



Squid Agave – *Agave bracteosa*



## Primary Trees

Red Push Pistache – *Pistacia x hybrid*



Sissoo Tree – *Dalbergia sissoo*



Chinese Elm – *Ulmus parvifolia*



Chaste – *Vitex angus-castus*



## Additional Plant Options

### Ground Covers

Angelita Daisy – *Hymenoxys acaulis*



Purple Heart – *Tradescantia pallida*



### Shrubs

Desert Milkweed – *Asclepias subulata*



Blue Bell – *Eremophila hygrophana*



Rabbit bush – *Chrysothamnus mexicanus*



Pink Fairy Duster – *Calliandra eriophylla*



Turpentine Bush – *Ericamaria laricifolia*



Rosemary – *Rosemarinus officinalis*



Coral Fountain – *Russella equisetiformis*



Baja Ruellia – *Ruellia peninsularis*



Red Yucca – *Hesperaleo parviflora*



Blue Elf Aloe – *Aloe hybrid*



Desmen Agave – *Agave desmettiana*



Twin Flower Agave – *Agave geminiflora*



( Next Page )

## Secondary Trees

Southern Live Oak – *Quercus virginiana*



Shoe String Acacia – *Acacia stenophylla*



Palo Blanco – *Acacia willardiana*



Mulga – *Acacia aneura*



Texas Honey Mesquite (Thornless) – *Prosopis glandulosa*



**EXHIBIT I**

## LAND AND IMPROVEMENTS GPLET LEASE

### [SITE 6]

THIS LAND AND IMPROVEMENTS LEASE (“**GPLET Lease**”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”) by and between the CITY OF CHANDLER, an Arizona municipal corporation (“**City**”), and RYAN COMPANIES US, INC., a Minnesota corporation (“**GPLET Lessee**”). City and GPLET Lessee shall be referred to in this Agreement, collectively as “**Parties**,” and individually as a “**Party**.”

### RECITALS

A. City and GPLET Lessee are entering into this GPLET Lease pursuant to that certain Development Agreement dated \_\_\_\_\_, 20\_\_ and recorded \_\_\_\_\_, 20\_\_ as Instrument No. \_\_\_\_\_ in the Official Records of Maricopa County, Arizona (the “**Development Agreement**”), and City Resolution No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_.

B. City has title of record to the real property legally described on Exhibit A attached hereto and incorporated herein by this reference, together with all rights and privileges appurtenant thereto, and all present and future improvements thereon (collectively, “**Site 6**”).

C. Site 6 consists of real property and Improvements located in Maricopa County, Arizona, specifically described in the attached Attachment 1, which consists of approximately \_\_\_\_ (\_\_) acres. The Improvements are more particularly described in the Development Agreement and are “Government Property Improvements” as defined in A.R.S. §42-6201(2), City is a “Government Lessor” as defined in A.R.S. §42-6201(1), and GPLET Lessee is a “Prime Lessee” as defined in A.R.S. §42-6201(4).

D. Site 6 is located in a single central business district in a redevelopment area established as defined in Title 36, Chapter 12, Article 3 of Arizona Revised Statutes (A.R.S. §§36-1471 et seq.) and as declared by the City in Resolutions ===== and -----.

E. Site 6 will be subject to the Government Property Lease Excise Tax as provided for under ARS §42-6202 (the “**GPLET**”). Pursuant to the Development Agreement, City will abate the GPLET for the period beginning on the Effective Date and ending eight years thereafter, all as provided in A.R.S. §42-6209(A).

F. The City acknowledges that construction of Site 6 is a redevelopment of the real property described in Attachment 1 resulting in improvements and new uses of such real property, in that the City and the general public will directly and indirectly realize substantial tangible and intangible benefits from the redevelopment of such land and the construction of improvements described herein, including, without limitation, the redevelopment of a key commercial area within the corporate boundaries of the City, the facilitation of the expansion of the employment base within the City, incentivizing the redevelopment of adjacent properties, and other benefits more particularly described in the Development Agreement. But for the GPLET

abatement described herein, GPLET Lessee would not have caused Site 6 to be redeveloped. The construction of Site 6 resulted in an increase in property value of at least one hundred percent.

G. The City desires to convey Site 6 by lease and sale to the GPLET Lessee based on the terms and conditions set forth in (i) this GPLET Lease, (ii) the Ground Lease between the City and Ground Lessee dated March \_\_\_\_\_, 20\_\_ (“Ground Lease”), (iii) the Development Agreement between the City and GPLET Lessee dated March \_\_\_\_\_, 20\_\_ (“Development Agreement”), and (iv) the Purchase and Sale Agreement between the City and GPLET Lessee dated March \_\_\_\_\_, 20\_\_ (“Purchase Agreement”).

H. This GPLET Lease is part of a transaction between the City and GPLET Lessee in which the GPLET Lessee intends to develop the Project in accordance with the terms of the Development Agreement and GPLET Lease; the GPLET Lessee shall lease the land upon which the Project is constructed (*i.e.*, Site 6) from the City in accordance with the terms of this GPLET Lease; and the GPLET Lessee may ultimately purchase Site 6 upon which the Project is constructed from the City in accordance with the Purchase Agreement. Accordingly, the Parties intend that this GPLET Lease, the Development Agreement, the Ground Lease, and the Purchase Agreement (collectively, the “Project Documents”) be construed harmoniously in order to give full effect to the intentions of the Parties with respect to the leasing, development and purchase of Site 6 as reflected by the Project Documents. Capitalized words and phrases in this GPLET Lease which are not explicitly defined herein shall have the same meaning as those in the other Project Documents. In the event of any conflict or ambiguity arising among the Project Documents, this GPLET Lease shall control the terms and conditions of the lease on the real property in Site 6 and the relevant phase Improvements during the term of the particular GPLET Lease.

## AGREEMENT

The City hereby agrees that if GPLET Lessee completes Phase \_ of the Project in compliance with the Development Agreement and GPLET Lessee has otherwise satisfied its obligations, in all material respects, under this Agreement and upon issuance of the last Certificate of Completion for Phase \_ Improvements, (i) GPLET Lessee may convey the Improvements for Phase 1 to the City by a special warranty deed in substantially the same form attached to the Development Agreement as Exhibit D, and (ii) contemporaneously with such conveyance, the City shall lease back the Improvements and the Phase \_ Property to GPLET Lessee pursuant to this GPLET Lease.

**1. Quiet Enjoyment.** City covenants and agrees with GPLET Lessee that conditioned upon GPLET Lessee’s paying the rent and other sums herein provided and performing and fulfilling, in all material respects, the covenants, agreements, conditions and provisions herein and the Project Documents to be kept, observed or performed by GPLET Lessee, GPLET Lessee may at all times during the term hereof peaceably, quietly and exclusively have, hold and enjoy Site 6.

**2. GPLET Lease Term.** The term of this GPLET Lease shall be for twenty-five (25) years, commencing at 12:00 a.m. MST on the Effective Date and ending at 11:59 p.m. MST

on the 25<sup>th</sup> anniversary of the Effective Date, , or as otherwise earlier terminated pursuant to the terms and conditions of this GPLET Lease or other Project Documents (“GPLET Lease Term” or “Term”).

### **3. Government Property Lease Excise Tax.**

3.1 As required under A.R.S. §§42-6206, GPLET Lessee is hereby notified of its potential tax liability under the GPLET provisions of A.R.S. §§42-6201 through 42-6209, as now or hereafter amended. Failure by GPLET Lessee to pay the tax after notice and an opportunity to cure could result in divesting GPLET Lessee of any interest in or occupancy of the Government Property Improvements to which this GPLET Lease applies.

3.2 City hereby abates GPLET Lessee’s GPLET obligation for Site 6 pursuant to A.R.S. §42-6209 for an eight (8) year period commencing on the Effective Date (the “**Abatement Period**”) assuming that GPLET Lessee has complied with all terms and conditions of the Project Documents. By the GPLET Lessee’s execution of the Development Agreement, it has satisfied its statutory requirement to apply for such abatement. City agrees to take any additional action as necessary for GPLET Lessee to qualify for GPLET tax treatment so that (i) the period of abatement for Site 6 will run for a period of eight (8) years from the Effective Date, and (ii) Site 6 will be taxed as “Government Property Improvements” in accordance with A.R.S. §§42-6201 through 42-6209, as now or hereafter amended from the expiration of the Abatement Period through the end of the GPLET Lease Term. Following the Abatement Period, GPLET Lessee shall pay the GPLET pursuant to the rates specified in A.R.S. §§42-6203.

### **4. GPLET Leasehold Mortgage of Site 6.**

4.1 GPLET Lessee is hereby given the absolute right without the City’s consent to create a security interest in GPLET Lessee’s leasehold interest under this GPLET Lease (and in any subleases and the rents, income and profits therefrom) by mortgage, deed of trust or collateral assignment or otherwise. Any such security interest shall be referred to herein as a “**GPLET Leasehold Mortgage**,” and the holder of a GPLET Leasehold Mortgage shall be referred to herein as a “**GPLET Leasehold Mortgagee**.”

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

4.3 The City hereby agrees that if GPLET Lessee has otherwise satisfied its obligations, in all material respects, under the Development Agreement and the GPLET Leases and has not purchased the Property at the end of the GPLET Leases, (i) City will, upon written request from the GPLET Lessee before the end of the Term of the GPLET Leases, convey the Improvements to the GPLET Lessee by means of mutually acceptable instrument in AS-IS condition of the Improvements and without any warranty or representation as to condition by the City, and (ii) contemporaneously with such conveyance, the GPLET Lessee will execute a GPLET Lease for the Property substantially in the form herein.

**4.4 GPLET LEASE ASSIGNMENT.** The GPLET Lease is not assignable by either Party, whether by operation of law or otherwise, without the prior written consent of the other party; provided, however, that GPLET Lessee may assign the GPLET Lease to GPLET Lessee's Affiliates or successors in interest upon written notice of any such assignment to the City. Any assignee shall assume all obligations of its assignor under terms and conditions of this GPLET Lease. Any assignment in violation of this provision is void. Nothing herein shall prevent GPLET Lessee from subleasing any portions of the Improvements, so long as GPLET Lessee remains primarily liable under the GPLET Lease.

**4.5 GPLET LEASE TERMINATIONS BY PURCHASE.** Upon written notice to the City, GPLET Lessee shall be entitled to terminate, by purchase as set forth in Section 4 **Error! Reference source not found.** of the Development Agreement and the Purchase and Sale Agreement, the GPLET Lease at any time for any reason or no reason.

**5. GPLET Lease Rent; GPLET Provisions.** During the Term, GPLET Lessee shall pay the following amounts to City at the times specified:

5.1 GPLET Lease Rent. The GPLET Lessee will pay \$10 per year rent for the first eight (8) years of this GPLET Lease which shall be paid in advance upon the execution of the GPLET Lease. Thereafter and for the next ten (10) years, the annual rent for the Leases will be eight percent (8%) of the Purchase Price, as set forth in Section 4 of the Development Agreement, for the portion of the Property in the relevant Phase. Beginning on the first day of the nineteenth (19<sup>th</sup>) year of the term of this GPLET Lease, the rent shall increase by twenty percent (20%).

A. The GPLET Lease Rent to be paid by Lessee is in addition to, and not in lieu of, any requirement to pay any charges or fees that may be established by virtue of the inclusion of Site 6 within the Downtown Enhanced Municipal Services District ("District"), or any subsequent amendment thereto, or any other relevant laws and regulations, and any applicable license or permit fee required pursuant to the Chandler City Code.

B. Net Lease. It is the intention of the parties that the GPLET Lease Rent shall be net to the City in each year during the term of this Lease. Accordingly, all costs, expenses and obligations of every kind relating to Site 6 (except as otherwise, specifically provided in the GPLET Lease) which may arise or become due during the term of this GPLET Lease shall be solely the responsibility of, and be paid by, GPLET Lessee.

C. Late Charges. If City does not receive any payment of GPLET Lease Rent when due, then in addition to the overdue GPLET Lease Rent, GPLET Lessee shall pay interest on the payment of GPLET Lease Rent then due at the rate of ten percent (10%) per annum. Interest commences on the date the payment of Rent is due and accrues until the payment of Rent has been made. The imposition of interest does not prevent the City from exercising any other rights and remedies under this GPLET Lease, including the termination of this GPLET Lease.

D. Application of GPLET Lease Rent Payments. All payments of GPLET Lease Rent that are received by the City from GPLET Lessee shall be applied first toward any accrued

late payment interest, then to any other charges or fees stated in this GPLET Lease that are due and owing, then to any back GPLET Lease Rent due and not yet paid, and then to the current GPLET Lease Rent.

E. Prepayment of GPLET Lease Rent. GPLET Lessee may prepay GPLET Lease Rent owing under this GPLET Lease (without penalty or discount); and in the event of each such prepayment, upon request from GPLET Lessee, the City shall provide a written statement to GPLET Lessee showing the date through which such GPLET Lease Rent has been prepaid.

## **6. ACCEPTANCE OF PREMISES.**

A. Physical Condition. GPLET Lessee has examined Site 6 and accepts it upon signing this GPLET Lease in its physical condition at that point in time, normal wear and tear excepted. There are no warranties expressed or implied as to any condition apparent or unknown except as otherwise stated in this GPLET Lease, the Ground Lease, the Development Agreement and the Purchase Agreement. GPLET Lessee agrees to make reasonable changes to Site 6 necessary to conform to any federal, state or local law applicable to the GPLET Lessee's use of Site 6.

B. Condition of Title. GPLET Lessee approves the condition of title of Site 6 as of the Effective Date. The City agrees that it shall not place or permit any additional liens, claims, encumbrances, easements or other exceptions to be placed or recorded against Site 6 during the Term without the express prior written consent of GPLET Lessee, which consent may not be unreasonably withheld or conditioned by the GPLET Lessee.

## **7. POSSESSION.**

The City agrees to deliver possession of Site 6 to GPLET Lessee upon request of GPLET Lessee by Notice, but in no event later than the Effective Date. If the City shall be unable for any reason to deliver possession of Site 6, or any portion thereof, by the Effective Date, GPLET Lessee may, at its election (i) allow the delay in delivery of possession to extend, on a day-for-day basis, all dates for payment and performance set forth in this GPLET Lease (including an extension of the Term); (ii) exercise its remedies for default set forth in Section 21 of this GPLET Lease; or (iii) terminate this GPLET Lease by giving at least thirty (30) days written Notice of such termination to the City, and this GPLET Lease shall then terminate without further act by GPLET Lessee unless the City shall deliver possession of Site 6 before the effective date of termination specified in the GPLET Lessee's Notice. If GPLET Lessee, with the City's consent, shall have taken possession of all or any part of Site 6 prior to the GPLET Lease Start Date, all of the terms and conditions of this GPLET Lease shall immediately become applicable.

## **8. USE OF PREMISES.**

Site 6 shall be used only for lawful purposes and as set forth in the Development Agreement and only in accordance with all applicable building and zoning codes and regulations. GPLET Lessee agrees that it will not disturb the City or any other lessee of the City by making

or permitting any unreasonable disturbance, noise, vibration or other condition on or in the premises.

## **9. UTILITIES AND SERVICES.**

GPLET Lessee shall pay throughout the Term all charges for all utility services furnished to Site 6, if any, including, but not limited to, light, heat, gas, garbage disposal, electricity, water, and sewer, including any connection fees.

## **10. INDEMNIFICATION.**

To the fullest extent permitted by law, GPLET Lessee, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this GPLET Lease or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by GPLET Lessee, or any of its subcontractors, sublessees, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this GPLET Lease, including but not limited to, any injury or damages claimed by any of GPLET Lessee's and subcontractors, sublessees, or their employees, except for claims arising as a result of the City's sole negligence or willful misconduct.

## **11. INSURANCE REQUIREMENTS**

### **11.1. General.**

A. At the same time as execution of this GPLET Lease, the GPLET Lessee shall furnish the City a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms reasonably satisfactory to City. Provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Worker's Compensation coverage.

B. The GPLET Lessee shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this GPLET Lease are satisfied, the insurances set forth below.

C. The insurance requirements set forth below are minimum requirements for this GPLET Lease and in no way limit the indemnity covenants contained in this GPLET Lease.

D. The City in no way warrants that the minimum insurance limits contained in this GPLET Lease are sufficient to protect GPLET Lessee from liabilities that might arise out of the

performance of the GPLET Lease services under this GPLET Lease by GPLET Lessee, its agents, representatives, employees, or subcontractors or sublessees and the GPLET Lessee is free to purchase any additional insurance as may be determined necessary.

F. Failure to demand evidence of full compliance with the insurance requirements in this GPLET Lease or failure to identify any insurance deficiency will not relieve the GPLET Lessee from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this GPLET Lease.

**11.2. Minimum Scope and Limits of Insurance.** The GPLET Lessee shall provide coverage with limits of liability not less than those stated below.

**A. Commercial General Liability-Occurrence Form.**

GPLET Lessee must maintain “occurrence” form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be “follow form” equal or broader in coverage scope than underlying insurance.

**B. Automobile Liability- Any Automobile or Owned, Hired and Non-Owned Vehicles.** GPLET Lessee must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on GPLET Lessee owned, hired, and non-owned vehicles assigned to or used in the performance under this GPLET Lease. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be “follow form” equal or broader in coverage scope than underlying insurance.

**C. Workers Compensation and Employers Liability Insurance:** GPLET Lessee must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of GPLET Lessee employees engaged in the performance of Work under this GPLET Lease and must also maintain Employers’ Liability insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease for each employee. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be “follow form” equal or broader in coverage scope than underlying insurance.

**D. Property Insurance.** Property insurance shall be written on a Covered Cause of Loss-Special Form, replacement cost coverage, including coverage for flood.

TYPE	VALUE
Coverage for Lessee’s Tenant Improvements, Fixtures replacement cost	100%
Coverage on Building (required if Lessee is sole occupant) 100% replacement cost	100%
Coverage for Loss of Rents	Amount equal to all Minimum Annual Rent

### **11.3. Additional Policy Provisions Required.**

A. **Self-Insured Retentions Or Deductibles.** All coverages herein required will not have any deductibles, with respect to the City, its officers, officials, agents, employees, and volunteers, greater than \$50,000 without City's approval, , which consent may not be unreasonably withheld or conditioned by the City.

B. The GPLET Lessee's insurance must contain broad form contractual liability coverage.

C. The GPLET Lessee's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the GPLET Lessee and must not contribute to it.

D. The GPLET Lessee's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

E. Coverage provided by the GPLET Lessee must not be limited to the liability assumed under the indemnification provisions of this Contract.

G. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the GPLET Lessee for the City.

H. The GPLET Lessee, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this GPLET Lease for a minimum period of 3 years following completion and acceptance of the Work. The GPLET Lessee must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 3 year period containing all the GPLET Lease insurance requirements, including naming the required Additional Insureds set forth herein.

I. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this GPLET Lease.

#### **J. Insurance Cancellation during Term of GPLET Lease.**

i. If any of the required policies expire during the life of this GPLET Lease, the GPLET Lessee must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the required insurance provisions.

ii. Each insurance policy required by the insurance provisions of this GPLET Lease shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to Chandler Law-Risk Management Department, Post Office Box 4008, Mailstop

628, Chandler, Arizona 85225. If any insurance company refuses to provide the required notice, the GPLET Lessee or its insurance broker shall notify the City of any cancellation, suspension, non-renewal of any insurance within seven (7) days of receipt of insurers' notification to that effect.

**K. City as Additional Insured.** The above-referenced policies are to contain, or be endorsed to contain, the following provisions:

i. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the GPLET Lessee including the City's general supervision of the GPLET Lessee; Products and Completed Operations of the GPLET Lessee; and automobiles owned, leased, hired, or borrowed by the GPLET Lessee.

ii. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the GPLET Lessee even if those limits of liability are in excess of those required by this GPLET Lease. The City shall be named as a loss payee on property coverage for tenant improvements and betterments. A waiver of subrogation applies to the City for any City-owned Property.

## **12. TAXES.**

GPLET Lessee shall pay, throughout the Term, all license fees and taxes covering or relating to Site 6 and its use, including, without limitation, (a) all taxes assessed and levied against the Minimum Improvements; (b) all amounts due and payable for general or special assessments against Site 6 during the term of this GPLET Lease (if assessed during the term of this GPLET Lease); and (c) all personal property taxes upon GPLET Lessee's fixtures, furnishings, equipment and stock in trade, GPLET Lessee's leasehold interest under this GPLET Lease or upon any other non-City owned personal property situated in or upon Site 6. GPLET Lessee, at GPLET Lessee's sole cost and expense, shall have the right to contest any ad valorem or other taxes assessed against any portion of Site 6 or the Improvements.

## **13. MAINTENANCE AND REPAIR.**

A. GPLET Lessee shall, at its own expense, keep Site 6 and the Improvements thereon maintained in a neat, clean, safe and sanitary condition. GPLET Lessee shall, at its own expense, maintain the landscape and undeveloped areas of Site 6 in a clean, sanitary, orderly and neat condition, and free from rubbish and debris. GPLET Lessee shall also, at its own expense, at all times keep Site 6 and the Improvements thereon free from infestation of pests and conditions which might result in harborage for, or infestation of, pests. (Pests shall include, without limitation, rodents, insects and birds in numbers to the extent that a nuisance is created.) GPLET Lessee shall keep the glass of all windows and doors on the Improvements clean and presentable, shall maintain and keep Site 6 in a good state of repair, shall commit no waste of any kind, and, without limiting the generality of the foregoing, shall replace all cracked or broken glass in the Improvements, shall keep the electrical system and all drains clean and in a good state of repair, shall protect all sprinkler systems and all pipes and drains so that they will

not freeze or become clogged. GPLET Lessee shall replace any of the Improvements, or any fixtures or equipment related to the use of the Improvements, which become worn out, deteriorated, unsafe or unusable and shall replace such Improvements, fixtures and equipment with at least as good a quality as was originally constructed and installed.

B. GPLET Lessee shall keep the fee title of Site 6 free and clear of any liens and encumbrances arising out of or otherwise related to the use and occupancy of Site 6 or Improvements by GPLET Lessee. GPLET Lessee shall also keep Site 6 and Improvements free and clear of all mechanics' liens incurred by or resulting from acts of GPLET Lessee. At the City's request, GPLET Lessee shall furnish the City with written proof of payment of any item that would or might constitute the basis for such a lien on Site 6 or Improvements if not paid. If any mechanics' lien is filed, GPLET Lessee at its sole cost and expense shall institute an action to cause the removal or discharge of such lien or other procedures to ensure the prompt removal thereof, after the City first orders the lienor to release the lien under Arizona law providing that public property is not subject to mechanics' liens.

C. GPLET Lessee shall also be wholly responsible to maintain and repair the structural integrity (including foundations, bearing columns, bearing walls and exterior walls) and the roof of any building or other structure that is one of the Improvements, and to maintain and repair utility services and lines, located on Site 6. GPLET Lessee shall have no right to claim any monies or charges incurred for maintenance and repair of on-site utilities as a deduction or offset against the rent or other charges GPLET Lessee is obligated to pay to the City under the GPLET Lease. GPLET Lessee acknowledges that GPLET Lessee has inspected Site 6 and accepts Site 6 "as is, where is."

#### **14. INSPECTION.**

The City, at any and all times throughout the term of this GPLET Lease, upon ten (10) days' Notice to GPLET Lessee, may inspect Site 6, provided that it shall not interfere unduly with GPLET Lessee's operations or those of its sub-lessees, employees or agents. The right of inspection reserved to the City hereunder shall impose no obligation on the City to make inspections to ascertain the condition of Site 6, and shall impose no liability upon the City for failure to make such inspections.

#### **15. RESTORATION.**

A. Notwithstanding anything to the contrary contained in the preceding section, if any building that is one of the Improvements is damaged by fire or other casualty, and if the cost of repairing or restoring the same exceeds the insurance payable for such damage, and if the damage occurs during the term so that the remaining term of this GPLET Lease is of insufficient length to allow GPLET Lessee to finance the cost in a commercially reasonable manner, the GPLET Lessee shall have the option, to be exercised within thirty (30) days after such event, to repair or restore the Improvements as herein above provided or to terminate this GPLET Lease by written notice to the City.

B. If the Improvements, or any part of any Improvements, are damaged or destroyed by fire or other casualty during the term of this GPLET Lease, GPLET Lessee may, at its option

and at its own cost and expense, repair or restore the same according to the original plans thereof or according to such modified plans as shall be previously approved in writing by the City, which approval shall not be unreasonably withheld. The repair or restoration work shall be commenced within ninety (90) days after the issuance of all applicable permits for such restoration work and shall be completed with due diligence but not longer than eighteen (18) months after the damage or loss occurred, and the work shall be done in accordance with the requirements of this GPLET Lease pertaining to construction of the Improvements upon Site 6. The date for initiating and/or completing any repair or restoration shall be extended as necessary for delays beyond GPLET Lessee's reasonable control. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration, or if GPLET Lessee elects not to repair or restore, to the cost of removing, demolishing, or clearing off the Improvements to the extent necessary to complete these tasks. If (i) there are no insurance proceeds, or (ii) the available insurance proceeds are insufficient for purposes of repair, restoration or removal of the Improvements, then GPLET Lessee shall make up the deficiency out of GPLET Lessee's own funds. If GPLET Lessee fails, refuses or makes no reasonable effort to make the repair or restoration of the Minimum Improvements, as hereinabove provided, then the failure, lack of reasonable effort, or refusal shall constitute an event of default under the covenants and conditions hereof. If GPLET Lessee chooses to remove, demolish or clear off the damaged Minimum Improvements as hereinabove provided, then the GPLET Lessee shall purchase Site 6 in accordance with the Development Agreement and Purchase Agreement within six (6) months of the date on which the damage or loss occurred.

## **16. DEFAULTS.**

A. **Events of Default.** It shall be a default hereunder if either Party fails to perform any of its obligations hereunder, or under either the Lease or the Purchase Agreement and such failure continues for a period of thirty (30) days after written notice from the non-defaulting Party specifying in reasonable detail the nature of the failure; provided that if the nature of the default is such that it cannot reasonably be cured within a thirty-day period, no default shall be deemed to exist if the defaulting Party commences a cure within that thirty-day period and diligently and expeditiously pursues such cure to completion within forty-five (45) days after notification by the non-defaulting Party. If the City issues a Notice of default for the nonpayment of GPLET Lease Rent, in order to cure such default, GPLET Lessee must pay the overdue GPLET Lease Rent, together with interest as set forth in Section 4 above, plus a Fifty Dollar (\$50.00) lease reinstatement fee.

B. If upon such re-entry there remains any personal property of GPLET Lessee or of any other person upon Site 6, the City may, but without the obligation to do so, remove said personal property and hold it for the owners thereof or may place the same in a public garage or warehouse, all at the expense and risk of the owners thereof, and GPLET Lessee shall reimburse the City for any expense reasonably incurred by the City in connection with such removal and storage. The City shall have the right to sell such stored property, without notice to GPLET Lessee, after it has been stored for a period of thirty (30) days or more, the proceeds of such sale to be applied first to the cost of such sale, second to the payment of the charges for storage, and third to the payment of any other amounts which may then be due from GPLET Lessee to the City, and the balance, if any shall be paid to GPLET Lessee. Notwithstanding any such re-entry, the liability of GPLET Lessee for the full rental provided for herein shall not be extinguished for

the balance of the term of this GPLET Lease, and GPLET Lessee shall make good to the City any deficiency arising from a reasonable, good-faith reletting of Site 6 at a lesser rental than that chargeable to GPLET Lessee. GPLET Lessee shall pay such deficiency each month as the amount thereof is ascertained and invoiced by the City. Payment by GPLET Lessee to the City of interest on rents and/or any other charges due and owing under this GPLET Lease shall not cure or excuse GPLET Lessee's default in connection with rents and/or other charges. All remedies of the City hereunder are cumulative and not alternative.

C. Notwithstanding a default by GPLET Lessee, in the event that a subtenant agrees to attorn to the City and thereafter makes timely its payment of rent (and other sums required to be paid to GPLET Lessee by the terms of such subtenant's sublease with GPLET Lessee) to the City, the City will not disturb the tenancy of such subtenant and shall assume the rights and obligations of GPLET Lessee under such subtenant's sublease.

D. It is a default of this GPLET Lease (i) in the event GPLET Lessee has defaulted on any of its obligations with respect to the Development Agreement, the Ground Lease or the Purchase Agreement.

#### **17. ADVANCES BY CITY FOR GPLET LESSEE.**

If GPLET Lessee shall fail to do anything required to be done by it under the terms of the GPLET Lease, except to pay GPLET Lease Rent, the City may, at its sole option, do such act or thing on behalf of GPLET Lessee, and upon Notice to GPLET Lessee of the cost thereof to the City, GPLET Lessee shall promptly pay the City the amount of any such cost to the extent it has been reasonably incurred. However, if the City shall pay any monies on GPLET Lessee's behalf, GPLET Lessee shall repay such monies, together with interest thereon commencing on the date the City paid such monies and calculated at the rate of ten percent (10%) per annum.

#### **18. HOLDING OVER.**

If GPLET Lessee shall, without the consent of the City, hold over after the expiration or sooner termination of this GPLET Lease, the resulting tenancy shall, unless otherwise mutually agreed, be on a month-to-month basis. During such month-to-month tenancy, GPLET Lessee shall pay monthly GPLET Lease Rent to the City at the rate of three (3) times the then-current GPLET Lease Rent under the terms of the GPLET Lease, unless a different rate shall be agreed upon in writing, and the GPLET Lessee shall be bound by all of the additional provisions of this GPLET Lease.

#### **19. ASSIGNMENT AND SUBLEASING.**

19.1 GPLET Lessee certifies, represents, warrants, covenants and agrees that, for itself and its contractors, subcontractors and agents, GPLET Lessee will comply with all applicable local, state and federal environmental laws, regulations, ordinances and administrative and judicial orders relating to the generation, recycling, treatment, use, sale, storage, handling, transport and disposal of any Hazardous Substances by any person on Site 6. GPLET Lessee will not, without the City's prior written consent, keep on or around Site 6, for use, disposal, treatment, generation, storage, or sale, any Hazardous Substances.

19.2 GPLET Lessee shall be responsible for applying for and obtaining all necessary federal, state or local governmental permits or approvals for the use of Site 6; shall not commence any activity on Site 6 until all permits or approvals required for such activity have been issued; and shall conduct all of its activities on Site 6 in full compliance with all applicable permits and approvals.

19.3 “Hazardous Substances” shall mean those chemicals, compounds and other substances whose use and disposal are regulated by federal or state law and are understood (if improperly used or disposed of) to pose a risk to the environment or to the health of individuals or animals.

## **20. INSPECTIONS AND NOTICE OF CHANGE.**

Upon at least ten (10) business days’ Notice to GPLET Lessee, the City may inspect Site 6, and the improvements on Site 6, in the event that the City reasonably and in good faith determines that a default exists with respect to the physical condition of the improvements or with the use or occupancy of the improvements. No such inspection shall materially or adversely interfere with the business or operations of any sub-tenant of GPLET Lessee.

## **21. INSOLVENCY.**

If GPLET Lessee shall solicit acceptances of a plan of reorganization to be filed in any subsequent case under the United States Bankruptcy Code, 11 U.S.C. Secs. 101-1330, as hereafter amended or any successor statute thereto (the "Bankruptcy Code"); negotiate with one or more creditors for any workout, including, but not limited to, an extension agreement, composition agreement, standoff, standby, or standstill agreement whereby the creditors agree to forbear in any fashion from their rights to collect a debt of GPLET Lessee; cease to pay GPLET Lessee's debts as they come due; admit in writing the inability to pay its debts as they come due; make an assignment for the benefit of creditors; become a party to any liquidation or dissolution action or proceeding; have appointed (voluntarily or involuntarily), a trustee, custodian, receiver, conservator, or liquidator for GPLET Lessee or for a significant portion of GPLET Lessee's assets; have entered against it any order by a district court or bankruptcy court of the United States or any of its territories that dismisses a voluntary petition under the Bankruptcy Code because the bankruptcy petition was filed in bad faith; have entered against it an order, judgment, or decree; have any of its assets levied against by writ of execution, attachment (including pre-judgment attachment), garnishment, recording of a judgment or any similar process whereby a creditor seeks to obtain a legal right to dispose of particular assets of GPLET Lessee to satisfy to any extent a debt of the GPLET Lessee to the creditor; file a voluntary petition under the Bankruptcy Code or have filed against it an involuntary petition under the Bankruptcy Code creating any automatic stay or other injunctive force protecting the assets of GPLET Lessee from the immediate collection actions of a creditor (where such involuntary petition is not subsequently dismissed within 60 days in response to pleadings filed by the GPLET Lessee by entry of an order of any district court or bankruptcy court of the United States or any of its territories); have appointed voluntarily or involuntarily, a trustee, custodian, or examiner with special powers by any district court or bankruptcy court in the United States or any of its territories; admit in answer filed in response to an involuntary petition filed under the

Bankruptcy Code that GPLET Lessee is insolvent because GPLET Lessee's assets are exceeded by GPLET Lessee's debts or that GPLET Lessee is unable to pay GPLET Lessee's debts as they come due; then, in the event any of the foregoing shall occur, the City may, at its option, terminate this GPLET Lease.

## **22. MISCELLANEOUS.**

**22.1 Reasonable Attorney's Fees and Costs.** If a dispute arises between the parties as to the effect of any provision herein and the dispute is referred to an attorney and legal proceedings are commenced, whether for enforcement in court or for decision under arbitration, the non-prevailing party shall pay the prevailing party's actual and reasonably incurred attorneys' fees; costs of court or arbitration, including such fees and costs of any appeal; other reasonable legal expenses; and collection costs, provided that the amount of such fees, costs or expenses taken separately or in the aggregate, shall not be unreasonable. If such dispute arises and is later settled by the parties, such settlement shall include a specific allocation of disposition of attorney's fees on both sides.

**22.2 Joint and Several Liability.** Each and every party who signs this GPLET Lease, other than in a representative capacity, as GPLET Lessee, shall be jointly and severally liable hereunder.

**22.3 Invalidity Of Particular Provisions.** In the unlikely event that any provision of this GPLET Lease is declared void or unenforceable, such provision shall be deemed severed from this GPLET Lease and this GPLET Lease shall otherwise remain in full force and effect. Notwithstanding the foregoing sentence, however, this GPLET Lease shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed contract provides essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments, and consents necessary to accomplish and to give effect to the purposes of this GPLET Lease, as reformed.

If the GPLET Lease cannot be retroactively reformed in such a way that it provides essentially the same rights and benefits to the Parties then either Party may terminate the GPLET Lease without further rights or liabilities to the other Party other than those that expressly survive termination.

**22.4 Force Majeure.** If either party is delayed or prevented from the performance of any duty or obligation under this GPLET Lease by reason of acts of God, strikes, lockouts, labor troubles, failure or refusal of governmental authorities to timely issue permits or approvals or conduct reviews or inspections, civil disorder, inability to procure materials, restrictive governmental laws or regulations, or other causes beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing herein shall excuse GPLET Lessee from the prompt payment of rent or any other sum or the City from tendering Site 6 upon execution of this GPLET Lease.

### **22.5 Notices.**

A. Except as otherwise required by law, any notice, demand or other communication required to be given by this Agreement (each, a "Notice") shall be in writing and shall be given

by (i) personal delivery; (ii) by certified or registered U.S. Mail, return receipt requested; or (iii) or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid and addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this paragraph:

To City: City of Chandler  
Downtown Redevelopment, MS 416  
P. O. Box 4008  
Chandler, AZ 85244-4008  
Attention: Kim Moyers, Downtown Redevelopment Manager  
Phone: 480-782-3035  
Facsimile: 480-782-3040

With a copy to: City of Chandler  
City Attorney's Office  
P. O. Box 4008  
Chandler, AZ 84244-4008  
Attention: Kay Bigelow  
Phone: 480-782-4642  
Facsimile: 480-782-4652

To GPLET Lessee: RYAN COMPANIES US, INC  
3900 East Camelback Road  
Suite 100  
Phoenix, Arizona 85018-2653  
Attention: Steve Jordan  
Phone: (602) 322-6100

With a copy to: RYAN COMPANIES US, INC.  
50 South Tenth Street  
Suite 300  
Minneapolis, Minnesota 55403-2012  
Attention: Legal Department  
Phone: (612) 492-4000

B. Effective Date of Notices. Any Notice will (i) if delivered personally or delivered through a same day delivery/courier service be deemed effective upon delivery or refusal to accept delivery by the addressee; and (ii) if delivered by U.S. mail in the manner described above be deemed effective upon the earlier of receipt or three (3) business days after deposit in a post office operated by the United States or with a United States postal officer; and (iii) if sent by a recognized national overnight delivery service be deemed effective one (1) business day after deposit with such service. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee. The Parties hereby acknowledge and agree that any Notice transmitted solely by facsimile or by electronic mail shall be deemed ineffective.

**22.6 Waiver.** The acceptance of GPLET Lease Rent by the City for the period or periods after a default by GPLET Lessee hereunder shall not be deemed a waiver of such default unless the City shall so indicate in writing. No waiver by either Party of any default hereunder by the other party shall not be construed to be or act as a waiver of any subsequent default by the defaulting Party.

22.7. Arizona Law. This GPLET Lease shall be construed in accordance with the laws of the State of Arizona, without reference to principles of conflict of laws.

22.8 No Partnership or Joint Venture. Nothing contained in this GPLET Lease shall be deemed to create any relationship other than that of landlord (the City) and tenant (GPLET Lessee).

22.9 Amendments. No alteration, amendment, change or addition to this GPLET Lease shall be binding upon the City or GPLET Lessee unless reduced to writing and signed by the party or parties to be charged.

22.10 Exhibits. Exhibits attached hereto shall by this reference be deemed a part of this GPLET Lease as if set forth herein.

22.11 Captions. The various headings and numbers herein and the grouping of the provisions of this GPLET Lease into separate articles and sections are for the purpose of convenience only and shall not control the meaning or construction of any of the provisions.

22.12 Time. Time is of the essence. If any time period provided for herein expires on a Saturday, Sunday, legal holiday or holiday of the City, such time period shall be extended to the next succeeding day that is not a Saturday, Sunday, legal holiday or holiday of the City.

22.13 No Third-Party Rights. Except as expressly provided herein for a mortgagee and as to binding effect upon successors and assigns, no term of this GPLET Lease is intended to or shall be for the benefit of any person not a party to this GPLET Lease, and no such other person shall have any right or cause or action hereunder.

22.14 Authority to Execute. Any individual executing this GPLET Lease on behalf of or as representative for a corporation, limited liability company or other person, partnership or entity, is deemed to have represented and warranted that he or she is duly authorized to execute and deliver this GPLET Lease on behalf of such party and that this GPLET Lease is binding upon such party in accordance with its terms.

22.15 Binding on Successors and Assigns. Each of the provisions of this GPLET Lease shall be binding, extend to and inure to the benefit of the respective heirs, legal representatives, and successors and assigns of both the City and GPLET Lessee, subject to any restrictions on transfers set forth herein.

. 22.16 Impartial Interpretation. This GPLET Lease is the result of limited negotiations between the City and GPLET Lessee, and therefore the language contained in this GPLET Lease shall be construed as a whole according to its fair meaning and not strictly for or against either the City or GPLET Lessee.

22.17. Memorandum of Agreement. In accordance with ARS 42-6202 (C)(1), the parties shall record a memorandum of GPLET Lease in the office of the Maricopa County Recorder that includes the names of the parties, a legal description of the leased property, the GPLET Lease term (including the beginning and ending dates), and any options to renew the GPLET Lease or to purchase any of the government property improvement or government real property.

22.18 Early Termination. This GPLET Lease shall automatically terminate upon the full performance of the Purchase Agreement.

GPLET LESSOR:  
City of Chandler, an Arizona municipal  
Arizona corporation

GPLET LESSEE:  
Ryan Companies US, Inc., a Minnesota  
corporation

By: \_\_\_\_\_  
Its: Mayor

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

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
City Attorney

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing GPLET Lease was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the Mayor of the City of Chandler, an Arizona municipal corporation, for the municipal corporation, being authorized so to do.

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

My Commission Expires:



## **Attachment 1**

Phase 1 or Phase 2 Legal Description  
*(to be created with civil plans for relevant phase)*

EXHIBIT J-1

PHASE 1 RENT RATES

**Chandler Site 6 Parking Analysis**

Phase 1 45000 rsf 2-Story Office Building

	Bldg RSF	No. of Stalls at 5:1000	Rent \$/stall	CoCh Prkg Rev/Yr	Ryan Maint Fee Participation	Total CoHandler Benefit
Phase 1 Multi-Tenant	44,650	225	\$10	\$27,000	\$72,630	\$99,630

**Assumptions:**

Note (1): The parking structure is built to 6:1000 market requirement. Ryan’s leased parking stalls are based on 5:1000 due to average tenant requirements.





EXHIBIT J-2

PHASE 2 RENT RATES

**Chandler Site 6 Parking Analysis**

Phase 1 45,000 rsf 2-Story Office Building

Phase 2 120,000 rsf 5-Story Office Building (Hypothetical Projection)

	Bldg RSF	No. of Stalls at 5:1000	Rent \$/stall	CoCh Prkg Rev/Yr	Ryan Maint Fee Participation	Total CoChandler Benefit
Phase 1 Multi-Tenant	44,650	225	\$10	\$27,000	\$37,375	\$64,375
Phase 2 Multi-Tenant	119,605	600	\$15	\$108,000	\$99,668	\$207,668
Phase 1 & 2 Total						<u>\$272,043</u>

**Assumptions:**

Note (1): The parking structure is built to 6:1000 market requirement. Ryan’s leased parking stalls are based on 5:1000 due to average tenant requirements.

