

CITY COUNCIL REPORT



Meeting Date: February 3, 2015
 General Plan Element: ***Growth Areas***
 General Plan Goal: ***Coordinate infrastructure funding and financial planning with development activity***

ACTION

Authorization to Execute Lease and Option Agreement 2014-179-COS Adopt Resolution No. 9941 authorizing the execution of Lease and Option Agreement 2014-179-COS with Equity Partners Group, LLC, an Arizona limited liability company, on city property located south of Stetson Drive between Wells Fargo Avenue and Civic Center Plaza in the northeast quadrant of downtown Scottsdale.

BACKGROUND

The purpose of this action is to consider authorization of a Lease and Option Agreement (LOA) for city-owned property located in the vicinity of Stetson Drive and Wells Fargo Avenue. The intent of the agreement is to use private investment to build additional public parking on a City-owned property currently used for surface parking. This item was previously considered by Council on November 18, 2014. At that time Council voted 4-3 to continue the item for 60 to 90 days to allow staff to further review the downtown parking situation.

The subject property is currently used for public parking and the intent of the LOA is to increase the available number of parking stalls in the area and to provide a publicly accessible restroom facility. The proposed new parking and restroom facilities will be constructed and operated by the successful respondent to a Request for Proposals (RFP) issued by the city and title to the land will pass to him (at his option and with payment of the option price) upon completion of the project. The city will not incur any costs for construction or operation of the proposed facility.

The two city parcels affected by this agreement were deeded to the city in 1959 and 1962. The combined area of the lots is 42,067 square feet (about 0.97 acres). They are currently in use as surface parking lots containing an aggregate of 105 public parking spaces. The current zoning of the parcels is P-2 DO (Parking District 2, with Downtown Overlay). Future development of the site will likely require rezoning consistent with the Downtown Character Plan.

On June 28, 2014, staff issued an RFP seeking organizations interested in entering into a contract for the design, construction, and operation of a public parking structure and related improvements on

city property. The RFP required provision of a minimum of 150 public parking spaces (an increase of 43% over currently available stalls), with a minimum of 105 spaces being available to the public at no charge. The RFP also required an option deposit of \$100,000.

Respondents to the RFP were required to provide, as part of their proposal response, the following items or information:

- Option exercise price (in dollars)
- Number of proposed parking stalls above the 150 minimum
- Whether a public restroom will be provided
- Proposer's affidavit
- Fully executed copy of the Lease and Option Agreement
- Proposal deposit in the amount of \$100,000

A pre-proposal meeting held on August 5, 2014 was attended by 21 persons and final responses to the RFP were submitted on September 30, 2014. One response was received by the submittal deadline which met all of the submission requirements of the original RFP.

ANALYSIS & ASSESSMENT

Recent Staff Action

A selection panel, representing Planning, Economic Development, Transportation, Tourism/Downtown, and CPM/Real Estate, evaluated and scored the response received. The competitive factors upon which the response was scored were quantitative based on a point system. The sole respondent prepared the following proposal:

- Option Exercise Price: \$100,000 = 100,000 points
- Parking spaces available to the public in excess of the required 150 spaces: 25 additional spaces at 18,500 points per public space = 462,500 points
- Public restrooms (including construction and on-going maintenance): 250,000 points

Upon evaluation of the response by the selection panel, the recommendation was made by the panel to approve the proposal of Equity Partners Group, LLC.

The key agreement between the city and the respondent takes the form of a Lease and Option Agreement (LOA) which spells out the terms and conditions by which the respondent (Equity Partners Group, LLC.) will lease and ultimately purchase the property. The LOA provides significant protection to the city and shifts a majority of the development and operating risk of the project to the respondent. It also provides for construction timing requirements, financial surety requirements and lease payments. Key elements of the agreement are summarized below (Lessee

is the RFP respondent, Equity Partners Group, LLC.):

- Key performance dates:
 - Term of agreement: 30 years
 - Commencement of construction deadline – 18 months after LOA approval
 - Commencement deadline for steel work for entire project – 27 months after LOA approval
 - Deadline for improvements to be open to the public – 36 months after LOA approval
 - Completion deadline – 48 months after LOA approval (12-month extension available with a \$100,000 nonrefundable payment)
- Security deposit on lease agreement (refundable): \$100,000
- Lessee builds new public improvements to include at least a 175 space parking structure and a public restroom. Parking spaces and restroom facility have specific performance standards such as size, accessibility, etc.
- Risk of zoning and other required agreements is the Lessee's.
- City maintains a permanent easement over the parking stalls and may time-restrict and otherwise regulate the parking at its own discretion.
- Lessee shall use signage, fines, and other commercially reasonable methods to discourage occupants and employees at the Property from using public parking spaces
- Lessee makes lease payments of \$2,100 per month until the completion deadline (48 months after the LOA approval) after which the rent is adjusted to \$6,300 per month with a 10% annual escalator thereafter.
- Lessee maintains the existing surface parking until construction of the new structure commences
- Option Exercise Price is \$100,000

Policy Implications

The single respondent provided additional material concerning a possible future development proposal for the two parcels which has been included as Attachment 5 to this report. This extra material took the form of a brief narrative and a set of renderings of a proposed office/commercial building including an indication of a portion of the building spanning 6th Avenue between the two parcels. The material provided was not required by the RFP and does not constitute a development proposal for the City Council to consider. The type of development envisioned by the respondent would require rezoning of the property and require additional agreements between the city and the

respondent to address air rights over the street, site planning and development review. The respondent has indicated a desire to pursue these possibilities if the LOA is approved. The respondent retains all risk of approval of the various entitlement requests and other requests that would be required.

Significant Issues to be Addressed

Community input over the last several years has highlighted the need for additional daytime and nighttime public parking to support the businesses in the northeast quadrant of downtown Scottsdale. In particular, the increase in call-center office uses in the area has created a significant daytime demand for parking. Approximately 2 years ago, staff issued an RFP similar to this one covering the two tracts, but no responses were received. In 2013, an attempt to fund the construction of a public parking structure through a proposed general obligation bond failed in the election. Although a parking structure dedicated entirely for public use (as proposed in the bond election) would create a significantly greater number of spaces, this LOA reflects a solution that increases availability of public parking while eliminating the need for public funding. This project may not provide enough additional parking to satisfy everyone's expectation for readily-accessible spaces at all times.

There will be times during the excavation and construction of either a public or private structure on these parcels that the existing surface parking spaces will not be available. The required completion dates for various phases of this development reflect the need to have the existing spaces replaced and the additional spaces constructed in a timely manner.

Subsequent to the City Council November 18 meeting, the Transportation Department and Public Works Division investigated potential short-term and long-term parking solutions. These two divisions collaborated with the Police Department, Attorney's Office, Planning and Development Division, and Economic Development Department.

In mid-January, approximately 60% of the parking structure west of Scottsdale Road between 3rd Avenue and 5th Avenue was posted for three-hour maximum parking. The posted spaces are those on the lower levels. Additionally, the parking area east of Drinkwater Boulevard between 6th Avenue and Stetson Avenue is now posted for no parking between 3 AM and 9 AM. Most of the Galleria employees who had previously been parking in this area begin work before 7 AM. The parking area east of Drinkwater Boulevard and south of 6th Avenue was similarly posted several months ago. Both changes result in more parking spaces available for area businesses.

Additionally, the Galleria in January began providing a shuttle van to transport employees from their parked vehicles in the parking structure west of the Civic Center Library and east of Drinkwater Boulevard. The City is not providing additional signs, and is not directly involved in this parking and shuttle service. The parked vehicles will utilize the lowest level and highest level in the structure. The parking will be on a first-come, first-serve basis. The middle level will remain restricted to three-hour maximum parking.

For long-term potential solutions, a nationally experienced parking consultant will be hired in the spring to comprehensively analyze the current parking supply and develop potential solutions. The solutions may include a parking district similar to that utilized near Mill Avenue in Tempe, improvement districts, and capital improvement program projects. The investigation will also consider parking ordinance requirement modifications and a variety of paid parking systems. Recommendations are anticipated for fall 2015.

Community Involvement

Community involvement will be essential to the review process for any development proposed by the respondent. The respondent will be responsible for community outreach as required by Current Planning for all applicable cases, such as abandonments, air rights, development review and rezoning. Adoption of this LOA does not commit the city to any development plan or proposal for the project that the developer would build under LOA that is currently before the city council, or to any development plan or proposal under any revised project concept that may be presented for future consideration.

RESOURCE IMPACTS

Available funding

The LOA requires that all construction, on-going maintenance/utility costs, and future restoration costs of public improvements shall be borne by the Lessee. Accordingly, city funding is not required.

Staffing, Workload Impact

The LOA requires that the city designate a contract administrator upon execution of the agreement. Contract administration is expected to be guided by the Senior Real Estate Manager.

Maintenance Requirements

The city currently incurs expenses of approximately \$15,000 annually for maintenance of the two parking lot parcels which includes weekly sweeping and the annualized cost of asphalt maintenance. Under terms of the RFP, the developer will take over all operation and maintenance of the lots upon execution of the LOA. It is anticipated that no further expenses will be incurred by the city to operate these lots.

Future Budget Implications

Annual lease payments for the property as well as the option exercise price will be deposited into the General Fund. No other budget impacts are expected at this time.

OPTIONS & STAFF RECOMMENDATION

Option A: Approve the lease and option agreement. Under the terms of the RFP, the response was binding until December 29, 2014. The respondent has communicated with staff that he has voluntarily agreed to honor his proposal through February 6 in order to allow Council to

consider it at this meeting. If Council chooses this option, the Mayor will sign the lease agreement and it will take effect immediately. The respondent would then be responsible to make appropriate applications for zoning and other approvals needed to further the project and comply with the timelines in the lease agreement.

Option B: Deny approval of the lease and option agreement. If Council chooses this option staff will still conduct the parking study to analyze the current parking supply and develop potential solutions. If, at some future time, Council wishes to use an arrangement the same as or similar to the lease and option agreement currently under consideration, then a new contracting process would be required. There is no guarantee that the new process would be successful in attracting a valid response.

Option C: Continue the item for eight to nine months to allow completion of the parking study. If Council chooses this option staff will immediately begin the process to award a contract for the study to analyze the current parking supply and develop potential solutions. The lease and option agreement under consideration tonight may or may not still be an available alternative in nine months. While the respondent has voluntarily agreed to honor his proposal through February 6 to allow it to be considered tonight, he has not yet agreed to honor his proposal for another eight to nine months. If the respondent chooses not to keep his proposal in effect, and Council wishes to use an arrangement the same as or similar to the agreement currently under consideration, then a new procurement would be required.

Recommended Approach:

Staff recommends Option C, continuing the item pending the completion of the downtown parking study.

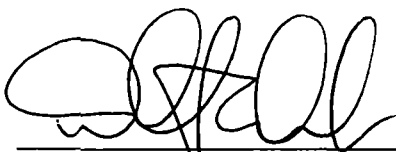
RESPONSIBLE DEPARTMENT(S)

Public Works Division, Capital Project Management; Transportation Department

STAFF CONTACT (S)

Derek Earle, City Engineer, dearle@scottsdaleaz.gov

APPROVED BY

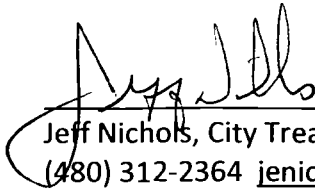


Daniel J. Worth, Executive Director, Public Works

1-20-15

Date

(480) 312-5555, dworth@scottsdaleaz.gov



Jeff Nichols, City Treasurer

(480) 312-2364 jenichols@scottsdaleaz.gov

1/20/15

Date

ATTACHMENTS

1. Resolution No. 9941
2. Location Map
3. Lease and Option Agreement 2014-179-COS
4. RFP Response from Equity Partners Group LLC
5. Additional materials provided by Respondent

RESOLUTION NO. 9941

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, APPROVING A LEASE AND OPTION AGREEMENT WITH EQUITY PARTNERS GROUP, LLC FOR PUBLIC PARKING AND RESTROOMS TO BE DEVELOPED ON PROPERTY LOCATED SOUTH OF STETSON DRIVE BETWEEN WELLS FARGO AVENUE AND CIVIC CENTER PLAZA ON THE SOUTH SIDE OF STETSON DRIVE AND NORTH AND SOUTH OF 6TH AVENUE BETWEEN WELLS FARGO AVENUE AND CIVIC CENTER PLAZA

(Stetson parking lots)

WHEREAS:

A. The City of Scottsdale ("City") values its downtown as an important community asset providing significant economic, tourism, recreation, entertainment, social, cultural and lifestyle amenities for Scottsdale's citizens, businesses and visitors.

B. Public parking and restrooms are important to the health and vitality of downtown.

C. City owns certain land (the "Property") located at the south side of Stetson Drive between Wells Fargo Avenue and Civic Center Plaza and at the north and south sides of 6th Avenue between Wells Fargo Avenue and Civic Center Plaza.

D. The Property's location, accessibility for visitors, and integration with downtown make it an attractive location for public parking and restrooms, and also possible private future improvements as well.

E. In order to provide public parking and restrooms in downtown Scottsdale, City desires to grant a Lease and Option Agreement (the "Agreement") No. 2014-179-COS for construction and operation of public parking and restrooms upon the Property.

F. City has conducted a request for proposals process satisfying applicable laws to grant the Agreement.

G. Equity Partners Group, LLC ("Developer") has submitted the highest and best bid to enter into the Agreement.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Mayor is authorized and directed to execute the Agreement on behalf of City in the form presented at the meeting at which this resolution was adopted.

2. The City Council has considered the City expenditure authorized by this resolution and the direct consideration that City will receive and finds that there is a clearly identified public purpose for City's expenditure and that City will receive direct consideration substantially equal to its expenditure.

PASSED AND ADOPTED by the Council of the City of Scottsdale this ____ day of _____, 20____.

CITY OF SCOTTSDALE, an Arizona
municipal corporation

W. J. "Jim" Lane, Mayor

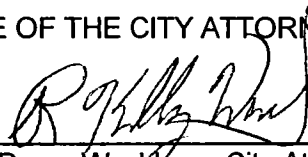
ATTEST:

By: _____
Carolyn Jagger, City Clerk

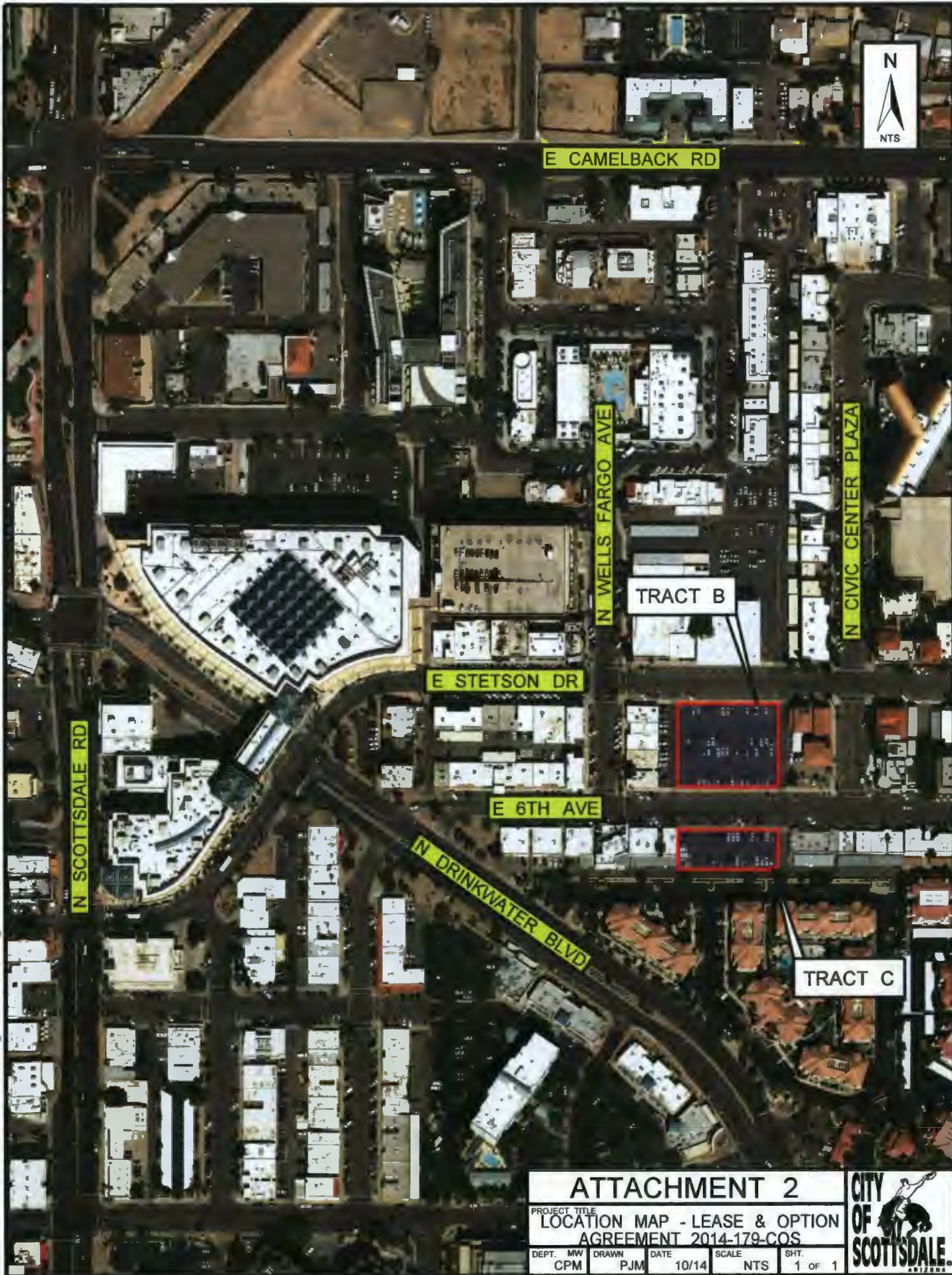
APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

By:

 R Kelly Ward
for

Bruce Washburn, City Attorney



ATTACHMENT 2

PROJECT TITLE
LOCATION MAP - LEASE & OPTION
AGREEMENT 2014-179-COS

DEPT.	MW	DRAWN	DATE	SCALE	SHT.
CPM		PJM	10/14	NTS	1 OF 1



WHEN RECORDED RETURN TO:
CITY OF SCOTTSDALE
ONE STOP SHOP/RECORDS
(Maria Muiser)
7447 East Indian School Road, Suite 100
Scottsdale, AZ 85251

City of Scottsdale Contract No. 20 14 - 179 -COS.
res. no. 9941
(Stetson parking lots)

LEASE AND OPTION AGREEMENT

THIS LEASE AND OPTION AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 20____, by and between the City of Scottsdale, an Arizona municipal corporation ("Lessor"), and EQUITY PARTNERS, an ARIZONA LIMITED ("Lessee").
GROUP LLC LIABILITY COMPANY

RECITALS

A. Lessor owns certain real property (the "Premises") comprising approximately 42,067 square feet of land as shown on the drawing attached hereto as **Exhibit "A"** (the "Site Plan"). The Premises consist of two parcels (the "North Parcel" and the "South Parcel").

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ATTACHMENT 3

B. The North Parcel consists of approximately 28,462 square feet and is labeled on the Site Plan as "North Parcel" and is described on **Exhibit "B"** attached hereto.

C. The South Parcel consists of approximately 13,602 square feet and is labeled on the Site Plan as "South Parcel" and is described on **Exhibit "C"** attached hereto.

D. Lessor holds fee title or other interests in the Premises pursuant to various documents (collectively, the "Site Documents").

E. The Premises are currently improved with 105 full size parking spaces (the "Old Parking Spaces"), together with related curbs, maneuvering areas and other related improvements (collectively the "Old Parking Improvements"), all of which are owned by Lessor. Seventy Two of the Old parking Spaces are located on the North Parcel and 33 of the Old Parking Spaces are located on the South Parcel.

F. Lessee desires to construct certain improvements (collectively the "Project") upon the Premises, subject to the requirements of this Agreement.

G. The Project includes:

1. Certain improvements for public use (the "New Public Improvements") consisting of the following:

a. A new multi-level public parking structure with at least ONE HUNDRED SEVENTY FIVE (175) full size parking spaces (the "New Public Parking Spaces") and related curbs, ramps, maneuvering areas and other related improvements (collectively the "New Public Parking Improvements").

b. A new public men's restroom and a new public women's restroom (collectively the "Restrooms").

2. Such additional improvements as Lessee may elect to construct as part of the Project (the "Private Improvements"), subject to the requirements of this Agreement.

H. Lessee shall complete the entire Project no later than Forty Eight (48) months after the date of this Agreement (the "Completion Deadline").

I. Lessor desires to grant to Lessee a lease to use the Old Parking Improvements for a public parking lot until the date (the "Construction Commencement Date") that Lessee actually commences constructing the Project and for construction, maintenance, repair and operation of the Project thereafter (collectively, the "Permitted Uses") subject to the requirements of this Agreement.

J. Lessor and Lessee desire to provide a means whereby Lessee may elect to purchase Lessor's interests in the Premises after the date Lessee actually completes constructing the Project (the "Actual Completion Date").

NOW, THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Lessee, and the covenants and agreements contained herein to be kept and performed by Lessee, and other good and valuable consideration, Lessor and Lessee agree as follows:

I. PREMISES

1. Premises. Lessee's use of the Premises shall be as follows:

1.1 Limitations. The Premises includes and is limited to the North Parcel and the South Parcel.

1.2 Rights in Adjacent Land. This Agreement excludes any land dedicated or used for public street right-of-way. Lessee rights are expressly limited to the real property defined as the Premises in this Agreement. Without limitation, if any public right-of-way or other public or private property at or adjacent to the Premises is owned, dedicated, abandoned or otherwise acquired, used, improved, acquired by or disposed of by Lessor, such property shall not accrue to this Agreement but shall be Lessor's only. In addition, and severable from the preceding sentence, upon any such event, Lessee shall upon Lessor's request execute and deliver to Lessor without compensation a quit-claim deed of such right-of-way or other property.

1.3 Variation in Area. If the Premises or any improvements consist of more or less than any stated area, this Agreement shall nevertheless continue and Lessee's obligations hereunder shall not be increased or diminished.

1.4 Reservations. Notwithstanding anything in this Agreement to the contrary, Lessor specifically reserves to itself and excludes from this Agreement a non-exclusive delegable easement (the "Reserved Right") over the entire Premises as follows:

1.4.1 The Reserved Right is for the exercise of all of Lessor's rights under this Agreement and for any and all purposes that do not in Lessor's reasonable discretion materially and substantially interfere with Lessee's lawful conduct of the Permitted Uses under this Agreement. Without limitation, the Reserved Right includes:

1.4.1.1 An easement for any and all pipes, wires, cables or other utilities existing upon the Premises as of the date of this Agreement and any replacements thereof or improvements thereto.

1.4.1.2 The right to permit all manner of other public agencies and utility providers to enter the Premises. Such entries may occur at all reasonable times, for the purposes of construction, reconstruction, maintenance, repair or service of any improvements or facilities located within or without the Premises from time-to-time. Except in an emergency, any such entry shall be made only after reasonable notice to Lessee. Any damage or injury to the Premises resulting from such entry shall be promptly repaired at the sole expense of the person so entering. Such other public agencies' rights do not include the interior leasable space of any buildings in Private Improvements that Lessee may construct upon the Premises.

1.4.2 All of Lessor's reserved rights under various provisions of this Agreement shall be cumulative to each other.

1.5 Condition of Title. The Site Documents are all covenants, conditions, restrictions, easements, agreements, liens, reservations and encumbrances upon or affecting the Premises, along with all other recorded or unrecorded matters or conditions of title to or agreements or documents regarding the Premises. Without limitation:

1.5.1 Lessee has obtained any title insurance or information Lessee deems appropriate. Lessor does not warrant its own, Lessee's or any other person's title to or right to use the Premises or any other property.

1.5.2 Lessee's rights hereunder are further subject to all present and future building restrictions, zoning laws, and all other ordinances, resolutions, regulations, rules and orders of all bodies, bureaus, commissions and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction over the Premises or Lessee's use thereof. Lessee shall comply with all of the foregoing. It is Lessee's responsibility to resolve any issues related to any applicable homeowners' association or similar organization.

1.5.3 Lessee shall pay, indemnify, defend and hold harmless Lessor and its agents and representatives from and against any and all claims, demands, damages, expenses, interest or penalties of any kind or nature whatsoever, including attorneys', arbitrators' and experts' fees and court costs that arise from or relate to the Site Documents.

1.6 Condition of Premises. Having made an extensive study of the Premises, Lessee is familiar with their condition, and all other property associated with this Agreement and its environs. All of such property is being made available in an "as is" condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to their condition or fitness for any use. Lessee has obtained such information and professional advice as Lessee has determined to be necessary related to this Agreement and this transaction.

II. TERM OF AGREEMENT

2. Term of Agreement. Lessor hereby grants to Lessee a leasehold in the Premises subject to and conditioned upon Lessee's full, timely, complete and faithful performance of all performances and things to be performed or done hereunder by Lessee, and Lessee hereby accepts the Premises and this Agreement.

2.1 Original Term. The term of this Agreement shall be for a period of thirty (30) years commencing on the date of this Agreement unless sooner terminated as set forth in this Agreement.

2.2 No Extensions. Lessee has no right for any reason to extend this Agreement beyond its original term. Any holdover shall be terminable by either party on thirty (30) days notice.

2.3 Lessee's Option. Lessee shall have a unilateral right (the "Option") to purchase Lessor's interest in the Premises as follows:

2.3.1 Lessee's exercise of the Option shall take effect at the end of the third full calendar month following the date Lessee gives Lessor notice (the "Option Notice") of Lessee's election to exercise the Option (the "Option Closing Date").

2.3.2 Lessee shall not give an Option Notice unless and until all of the following are true:

2.3.2.1 Lessee has completed construction of the Project in compliance with all timing and other requirements of this Agreement and the New Public Improvements are in full operation open to the public.

2.3.2.2 No event of default by Lessee exists (and no circumstance exists that would become a default by Lessee after passage of time or giving of notice).

2.3.3 Any Option Notice by Lessee must be accompanied by full payment of all amounts payable under this Agreement through the Option Closing Date.

2.3.4 At the Option closing, Lessor shall convey the Premises to Lessee using the form of special warranty deed (the "Deed") attached hereto as **Exhibit "D"**.

2.3.5 At the Option closing, Lessee shall deliver to Lessor the Option exercise price, which is ONE HUNDRED THOUSAND Dollars (\$ 100,000⁰⁰).

2.3.6 During the period before closing under the Option, Lessee shall continue performing under this Agreement.

III. LESSEE'S PAYMENTS

3. Lessee's Payments. Lessee shall make payments to Lessor as follows:

3.1 Rent Categories. Lessee shall pay to Lessor each of the following separate and cumulative amounts (collectively the "Rent"):

3.1.1 A fixed annual amount (the "Base Rent").

3.1.2 All other amounts required by this Agreement.

3.2 Base Rent Amount. The amount of the Base Rent shall be as follows:

3.2.1 The amount of the Base Rent shall be Two Thousand One Hundred Dollars (\$2,100.00) per month from the date of this Agreement until a certain date (the "Rent Change Date"). The Rent Change Date is the beginning of the first month that begins after the earlier of the Completion Deadline or the Actual Completion Date.

3.2.2 The amount of the Base Rent beginning on the Rent Change Date shall be Six Thousand Three Hundred Dollars (\$6,300.00) per month.

3.3 Adjustment Methods. Certain amounts shall be adjusted as follows:

3.3.1 Fixed Rate Adjustment. Certain amounts shall be adjusted (the "Fixed Rate Adjustment") upward by adding to the amount ten percent (10%) of the amount applicable prior to the Fixed Rate Adjustment.

3.3.2 Fixed Rate Adjustment Timing and Applicability. The Fixed Rate Adjustment shall occur on the third January 1 after the earlier of the Completion Deadline or the Actual Completion Date and on each subsequent January 1. The Fixed Rate Adjustment shall apply to the Base Rent.

3.3.3 Adjustment Effectiveness. All adjustments shall be retroactive to the first day of the month in which the adjustment occurs (or should have occurred, in the case of any delayed adjustment). Any correction due to an error in Lessor's estimate or for any other reason shall be paid by Lessee to Lessor (or by Lessor to Lessee, as the case may be) within thirty (30) days after notice of the correction by either party to the other.

3.4 Payments Cumulative. All categories of Rent and all amounts payable by Lessee hereunder or under any tax, assessment, fee or other existing or future ordinance or other law of the City of Scottsdale or the State of Arizona shall be cumulative and payable in addition to each other, and such amounts shall not be credited toward, substituted for, or set off against each other in any manner.

3.5 Rent Payment Date. Rent shall be payable one month in advance on the first day of each month. For example, the Base Rent for September shall be payable on or before September 1.

3.6 First Rent Payment. The first installment of Rent is due immediately upon execution of this Agreement. If the date of this Agreement is after the tenth (10th) day of the month in which this Agreement is executed, then Base Rent for the remainder of the month in which this Agreement is executed shall be prorated based on a thirty (30) day month. Otherwise the first Rent payment shall include a full month's Base Rent.

3.7 Place of Payment. Unless and until Lessor gives notice otherwise, Lessee shall hand deliver all Rent Payments to Lessor's asset management coordinator at Suite 205, 7447 East Indian School Road, Suite 205, Scottsdale, Arizona 85251.

3.8 Security Deposit. Upon execution of this Agreement, Lessee shall provide to Lessor, and maintain with Lessor at all times during the term of this Agreement, a cash security deposit in the amount equal to One Hundred Thousand and No/100 Dollars (\$100,000.00) to guarantee the faithful performance of this Agreement. Any prepaid Rent or other funds or property of Lessee held by or available to Lessor or any issuer of a letter of credit, receiver, escrow agent or other third party under or related to this Agreement shall also stand as a security deposit guaranteeing Lessee's faithful performance of this Agreement. Any portion of any security deposit to which Lessee may then be entitled, net of any setoff or other obligation of Lessee, shall be paid to Lessee without interest by the owner of the fee title to the Premises within sixty (60) days after the later of termination of this Agreement and completion of all of Lessee's obligations related to this Agreement. Notwithstanding the preceding sentence, if the Option closes, then such amount shall instead be retained by Lessor and an equal amount credited toward Lessee's payment of the Option exercise price.

3.9 Letter of Credit. No later than thirty (30) day prior to the Construction Commencement Date, Lessee shall deliver to Lessor a letter of credit as follows:

3.9.1 The amount of the letter of credit shall be Two Hundred Fifty Thousand Dollars (\$250,000.00).

3.9.2 The letter of credit is an additional security deposit for Lessee's performance of all of its obligations under this Agreement.

3.9.3 The letter of credit shall meet the requirements listed on **Exhibit "E"** attached hereto.

3.9.4 Developer shall provide and maintain the letter of credit until sixty (60) days after this Agreement terminates.

3.9.5 No later than thirty (30) days before a letter of credit is required, Lessee shall give Lessor notice containing a copy of the proposed form of letter of credit, along with a copy to Lessor's city treasurer.

3.9.6 Lessee shall cause the original letter of credit to be delivered to Lessor's city treasurer.

3.9.7 Lessee shall pay all fees and other costs associated with the letter of credit, regardless of the reason or manner such costs are required.

3.9.8 Within ten (10) days after Lessor gives Lessee notice that Lessor has drawn on the letter of credit, Lessee shall cause the letter of credit to be replenished to the required amount.

3.9.9 Lessor may draw on the letter of credit upon any breach by Lessee of this Agreement, and in the following circumstances whether or not they are a breach by Lessee of this Agreement:

3.9.9.1 Lessee fails to cause the letter of credit to be renewed, extended, increased in amount or otherwise maintained as required by this Agreement.

3.9.9.2 Lessee fails to make monetary payments required by this Agreement.

3.9.9.3 The issuer of the letter of credit fails to immediately honor a request for payment under the letter of credit or otherwise repudiates or fails to honor the letter of credit.

3.9.10 Lessor shall also have such additional rights regarding the letter of credit as may be provided elsewhere in this Agreement.

3.10 Late Fees. Rent is deemed paid only when Lessor actually receives good cash payment or a check that is honored when first presented by Lessor for payment. Should Lessor not receive any Rent on or before the date due, a late fee shall be added to the amount due in the amount of the greater of ten percent (10%) of the amount due, or One Hundred Dollars (\$100.00). Any Rent that is not timely paid shall also accrue simple interest at the rate of one and one-half

percent (1 ½ %) per month from the date the amount first came due until paid. Lessee expressly agrees that the foregoing represent fair and reasonable estimates by Lessor and Lessee of Lessor's costs (such as accounting, administrative, legal and processing costs, etc.) caused by a delay in payment of Rent. Lessor shall have the right to allocate payments received from Lessee among Lessee's obligations.

3.11 Holdover Rent. In the event of a holdover, all Rent, and every element thereof, shall be increased by an additional fifty percent (50%) over the amount of Rent that would otherwise be payable under this Agreement.

3.12 No Rent Refunds. Rent is not refundable for any reason.

IV. USE RESTRICTIONS

4. Use Restrictions. Lessee's use and occupation of the Premises shall in all respects conform to all and each of the following cumulative provisions (collectively the "Restrictions"):

4.1 Actions by Others. Lessee shall be responsible to ensure compliance with this Agreement by all persons using the Premises claiming through or under Lessee or this Agreement. Lessee shall cause all such persons to not do anything that this Agreement prohibits Lessee from doing. The Restrictions do not apply to Lessor.

4.2 Permitted Uses. Lessee shall use the Premises solely for the Permitted Uses and shall conduct no other activity at or from the Premises. The Permitted Uses are limited to the following:

4.2.1 Prior to the Construction Commencement Date, the Permitted Uses are limited to free public parking and inspection of the Premises in preparation for constructing the Project and performing Lessee's duties under this Agreement.

4.2.2 Between the Construction Commencement Date and the Actual Completion Date the Permitted uses are limited solely and exclusively to construction of the Project.

4.2.3 After the Actual Completion Date the Permitted uses are all lawful uses of the Premises, subject to the requirements of this Agreement.

4.3 Lessee's Agent. Lessee shall at all times while occupying the Premises and at all time after the Construction Commencement Date retain on call available to Lessor by telephone an active, qualified, competent and experienced person to supervise all activities upon and operation of the Premises and who shall be authorized to represent and act for Lessee in matters pertaining to all emergencies and the day-to-day operation of the Premises and all other matters affecting this Agreement. Lessee shall also provide notice to Lessor of the name, street address, electronic mail address, and regular and after hours telephone and telefax numbers of a person to handle Lessee's affairs and emergencies at the Premises.

4.4 Hazardous Substances. Lessee's activities upon or about the Premises shall be subject to the following regarding any hazardous or toxic substances, waste or materials, or any substance now or hereafter subject to regulation under the Comprehensive Environmental

Response and Liability Act, 42 U.S.C. §§ 9601, et seq., the Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., or the Toxic Substances Control Act, 15 U.S.C. 2601, et seq., or any other federal, state, county, or local law pertaining to hazardous substances, waste or toxic substances and their reporting requirements (collectively "Toxic Substances"):

4.4.1 Lessee shall not produce, dispose, transport, treat, use or store any Toxic Substances upon or about the Premises. The prohibitions of the preceding sentence only shall not apply to:

4.4.1.1 Ordinary gasoline, diesel fuel or other fuels or lubricants necessary for ordinary use in motor vehicles and ordinary construction or landscaping service vehicles or machinery permitted upon the Premises. Such materials must be properly and lawfully contained in ordinary quantities in ordinary tanks and receptacles that are permanently installed in such vehicles and machinery.

4.4.1.2 Ordinary chemicals necessary for ordinary use in conducting the Permitted Uses. Such materials must be properly and lawfully contained and labeled in proper tanks and receptacles.

4.4.1.3 Janitorial supplies and similar materials in the minimum quantities reasonably necessary for first class modern use of the Premises for the Permitted Uses.

4.4.2 Lessee shall dispose of any materials as required by law and as reasonably required by Lessor.

4.4.3 Lessee shall not use the Premises in a manner inconsistent with regulations issued by the Arizona Department of Environmental Quality, or in a manner that would require a permit or approval from the Arizona Department of Environmental Quality or any other governmental agency. The preceding sentence does not apply to ordinary permits required for routine dust control measures during construction permitted by this Agreement.

4.4.4 In addition to and without limitation of any other indemnities or obligations, Lessee shall pay, indemnify, defend and hold Lessor harmless against any loss or liability incurred by reason of any Toxic Substance on or affecting the Premises.

4.4.5 Lessee shall immediately notify Lessor of any Toxic Substance at any time discovered or existing upon the Premises.

4.4.6 Lessee understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. Lessee acknowledges the possibility that the Premises may contain actual or presumed asbestos and other Toxic Substances containing materials.

4.4.7 Within twenty-four (24) hours after any violation by Lessee of this Agreement pertaining to Toxic Substances, Lessee shall give Lessor notice reporting such violation.

4.5 Required Operation. Before the Construction Commencement Date, Lessee shall operate the Premises as a free public parking lot at all hours. After the earlier of the Actual Completion Date or the Completion Deadline, Lessee shall operate the Parking Structure and the remainder of the Premises and operate the New Public Improvements in compliance with all provisions of the Deed.

V. IMPROVEMENTS BY LESSOR

5. Improvements by Lessor. Lessor has not promised to and is not obligated in any manner to make any improvements or perform any construction at the Premises or nearby lands.

VI. LESSEE'S IMPROVEMENTS GENERALLY

6. Lessee's Improvements Generally. All of Lessee's improvements and other construction work to the Premises (collectively "Lessee's Improvements") shall comply with the following:

6.1 Lessee's Improvements. Lessee's Improvements include, without limitation all modification, replacement, repairs, installation, construction, grading, structural alterations, utility, lighting, plumbing, sewer or other alterations, parking or traffic alterations, removal, demolition or other cumulatively significant construction or similar work of any description and all installation or alteration of existing or future improvements upon or related to the Premises or environs, all whether or not specifically described herein.

6.2 Review Scope. Notwithstanding anything in this Article to the contrary, the scope of Lessor's design and architectural review authority created by this Article shall be limited to work that affects the structure, configuration, functionality, operation or appearance of the New Public Improvements.

6.3 Zoning and Similar Approval Process. The zoning processes, building permit processes, and similar regulatory requirements that apply to Lessee's Improvements are completely separate from the plans approval processes under this Agreement. Lessee's satisfaction of any requirement of this Agreement does not count toward any compliance with any regulatory requirement. Lessee's satisfaction of any regulatory requirement does not count toward compliance with any requirement of this Agreement. Lessee must make all submittals and communications regarding the requirements of this Agreement through Lessor's contract administrator for this Agreement, and not through planning, zoning, building safety or other staff. Lessee must make all submittals and communications regarding planning, zoning, building safety, and other regulatory requirements through planning, zoning, building safety or other applicable staff and not through Lessor's contract administrator for this Agreement. Lessee shall be responsible to directly obtain all necessary permits and approvals from any and all governmental or other entities having standing or jurisdiction over the Premises. Lessee bears sole responsibility to comply with all stipulations and conditions that are required in order to secure such rezoning and other approvals.

6.4 Relationship of Plans Approval to Regulatory Processes. Lessee's submission of plans under this Agreement, Lessor's approval of plans for purposes of this Agreement, and the plans approval process under this Agreement, shall be separate and independent of all development, zoning, design review and other regulatory or similar plans submittal and approval

processes, all of which shall continue to apply in addition to the requirements of this Agreement and its approvals. BUILDING PERMITS, ZONING CLEARANCES, OR ANY OTHER GOVERNMENTAL REVIEWS OR ACTIONS DO NOT CONSTITUTE APPROVAL OF ANY PLANS FOR PURPOSES OF THIS AGREEMENT.

6.5 Design Requirements. All Lessee's Improvements shall comply with the following design and construction requirements:

6.5.1 All Lessee's Improvements shall conform to the standards of the Maricopa Association of Governments and of the City of Scottsdale Design Standards and Practices Manual, as either may be amended from time to time.

6.5.2 All Lessee's Improvements shall be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other buildings and improvements located at the Premises.

6.5.3 Lessee shall perform any and all construction work on the Premises in a workman-like manner as reasonably determined by Lessor and in conformance with all building codes and similar rules.

6.5.4 Lessee's construction work must not interfere with normal operation of the Adjacent Right-of-Way.

6.5.5 All Lessee's Improvements shall be designed in a way that upon termination of this Agreement the Premises functions as stand-alone space contained entirely within the Premises and without any encroachment or dependence upon any other property. Notwithstanding the foregoing:

6.5.5.1 Lessee's Improvements shall include construction of related curbs, gutters, pavement, and other street, infrastructure, landscaping and similar improvements Lessor determines to be appropriate to adjacent public property.

6.5.5.2 Lessor's city manager may elect in his sole and absolute discretion to allow encroachment or dependence on other land if Lessee first causes the owner of such land (and lienholders and other interest holders) to convey to Lessor such perpetual rights and interests as the city manager and city attorney may specify ensuring that Lessor shall continue to have use of such land and improvements at no expense to Lessor (for maintenance, repairs or otherwise).

6.6 Approval Required. Lessee shall not perform any Lessee's Improvements (including work on adjacent public lands, if applicable) without having first received written plans approval from Lessor. Lessor may withhold approval to the extent in Lessor's reasonable discretion the proposed Lessee's Improvements fail to comply with the requirements of this Agreement. Such consent requirement shall apply to design, aesthetics, functionality, land use and materials for all improvements, equipment, fixtures, paint, wall treatments, utilities of every description, decorations, lighting and other construction work of any description as described in all plans heretofore or hereafter delivered by Lessee to Lessor. Such consent requirement does not apply to work that does not affect the New Public Improvements.

6.7 Effect of Plans Approval. Lessor's approval of plans submitted shall be for purposes of this Agreement only and shall constitute irrevocable approval (but only at the level of detail of the applicable stage of the review process) of the matters plainly shown on the plans approved. Lessor shall not reject subsequent plans to the extent the matter to which Lessor objects was plainly shown on plans previously approved by Lessor. However, Lessor is not precluded from objecting to matters not previously approved, matters not previously clearly disclosed on approved plans, changes to plans, or refinements or implementation of matters previously approved.

6.8 Plans Required. Lessee's design of all Lessee's Improvements shall occur in three stages culminating in final working construction documents for the Lessee's Improvements (the "Final Plans"). The three stages are, in order of submission and in increasing order of detail, as follows:

6.8.1 Conceptual plans showing the general layout, locations, elevations, configuration, and capacities of all significant improvements, topographical features, pedestrian and vehicular ways, buildings, utilities, and other features significantly affecting the appearance, design, function or operation of each element of Lessee's Improvements. The conceptual plans must also show general locations and dimensions of all ways, access areas, parking spaces and other areas together with the number of square feet of building and other areas that all significant uses and facilities will respectively occupy. Notwithstanding anything in this Agreement to the contrary, Lessee is not required to obtain Lessor's approval of conceptual plans for the Private Improvements.

6.8.2 Preliminary plans showing all surface finishes and treatments, finished elevations, general internal and external building design and decoration schemes (including without limitation colors, textures and materials), mechanical, communications, electrical, plumbing and other systems, building materials, landscaping and all other elements necessary prior to preparation of final working construction documents and showing compliance with all requirements of this Agreement. The preliminary plans shall show all detail necessary prior to preparation of Final Plans. Notwithstanding anything in this Agreement to the contrary, Lessee is not required to obtain Lessor's approval of:

6.8.2.1 Preliminary plans for the Private Improvements.

6.8.2.2 Preliminary plans for the New Public Parking Improvements after the New Public Parking Improvements are initially constructed.

6.8.3 Final Plans. Notwithstanding anything in this Agreement to the contrary, Lessee is not required to obtain Lessor's approval of any Final Plans.

6.9 Approval Process. The following procedure shall govern Lessee's submission to Lessor of all plans for Lessee's Improvements, including any proposed changes by Lessee to previously approved plans:

6.9.1 All plans Lessee submits under this Agreement shall show design, appearance, capacity, views, and other information reasonably deemed necessary by Lessor for a

complete understanding of the work proposed, all in detail reasonably deemed appropriate by Lessor for the level of plans required by this Agreement.

6.9.2 All plans must comply with all requirements of law, any applicable insurance policies and this Agreement.

6.9.3 Lessee shall deliver all plans submissions under this Agreement directly to Lessor's contract administrator and shall clearly label the submissions to indicate that they are submitted pursuant to this Agreement and not for building permits, zoning or other approvals. Lessee shall submit for Lessor's review five (5) complete sets of the plans on paper together with one (1) copy of the plans in an electronic form.

6.9.4 Within ninety (90) days after completion of any Lessee's Improvements, Lessee shall deliver to Lessor one (1) copy of "as-built" plans for the Lessee's Improvements on paper and one (1) copy in electronic form showing that the construction is completed according to the approved plans.

6.9.5 All plans in electronic form shall include vector line drawings of the improvements and such other information as this Agreement requires, all in a machine readable and manipulable form. The format of electronic data and the media upon which such data is supplied shall be such then reasonably common data format and media as Lessor may specify from time to time. The initial data format shall be AutoCad 2007 or newer or Microstation v8i or newer.

6.9.6 Lessee shall resolve significant design issues with Lessor prior to preparing plans to be submitted.

6.9.7 In addition to other submissions required under this Agreement, Lessee shall simultaneously deliver to Lessor's contract administrator copies of all applications and approvals and supplemental, supporting and related materials for all zoning, development review, building permits, and similar processes for the Lessee's Improvements (excluding building permits).

6.9.8 All construction and plans preparation for Lessee's Improvements from initial proposals through final construction documents and completion of construction shall be performed by professionals selected and paid by Lessee. All of Lessee's design and construction contractors shall have substantial experience in timely and successfully constructing projects similar to Lessee's Improvements.

6.9.9 The design professional shall place these words on each sheet of engineering work for Lessee's Improvements: "The design professional has performed this work for the benefit and reliance of the City of Scottsdale and assures the City of Scottsdale that the design professional's work is properly performed and that it complies with any engineering requirements set out in Lease and Option Agreement (No. 20 14-179-COS) dated _____, 20____."

6.9.10 All Lessor plans reviews, inspections, standards and other rights and actions with relation to Lessee's Improvements are for Lessor's sole and exclusive benefit and neither Lessee nor any other person shall rely thereon or have any rights related thereto.

6.9.11 Lessor has the right to require Lessee to obtain approval for any Lessee Improvements from the City of Scottsdale Development Review Board and any similar body.

6.9.12 Submission dates shall be such dates as are necessary for Lessee to timely obtain the approvals required by this Agreement. Lessee is responsible to allow adequate time for all communications and plans revisions necessary to obtain approvals and shall schedule its performances hereunder and revise its plans as necessary to timely obtain all approvals.

6.9.13 No plans shall be deemed approved by Lessor for purposes of this agreement until Lessor's contract administrator stamps them "APPROVED ONLY FOR PURPOSES OF THE PLANS APPROVED REQUIREMENTS OF ARTICLE 6 OF LEASE AND OPTION AGREEMENT NO. 20 14-179-COS", and Lessor's contract administrator initials and dates the stamp (collectively "Stamped").

6.9.14 Within thirty (30) days after Lessor receives plans from Lessee, Lessor shall make available to Lessee one (1) copy of the plans Lessee submitted either Stamped or marked to indicate the reasons that Lessor does not approve the plans.

6.9.15 If changes are required, Lessee shall revise the plans incorporating the changes requested by Lessor and shall within thirty (30) days after Lessor returns the marked up plans to Lessee submit revised plans to Lessor. Within twenty-one (21) days after Lessor's receipt of the revised plans, Lessor shall make available to Lessee one (1) copy of the revised plans either Stamped or marked to indicate the reasons that Lessor does not approve the plans.

6.9.16 The parties shall endeavor to resolve design and construction issues to their mutual satisfaction but, if an impasse arises for any reason, in light of Lessor's reserved rights, Lessor's rights in the New Public Improvements, and Lessor's reversion in the Premises, and as a condition of Lessor's entering into this Agreement, final decision authority regarding all design and construction issues shall rest with Lessor.

6.9.17 Lessee shall provide to Lessor copies of any and all designs or plans for improvements upon the Premises for Lessor's unrestricted use at the Premises or elsewhere.

6.10 Minor Changes. Lessor's consent shall not be required for minor changes discovered by Lessee during the course of construction to be necessary to complete construction as contemplated by the latest plans approved by Lessor. For purposes of the preceding sentence, "minor changes" are those that do not materially alter the structure, size, layout, location, quality, appearance, functionality, maintenance cost or other aspects of any room, area, feature, structure, or other aspects of any improvements upon the Premises. Lessee shall give to Lessor as much advance notice of any minor changes as is reasonably possible. In the event advance notice to Lessor is not possible, Lessee shall as soon as possible, and in no event later than three (3) days after the change, give Lessor notice of any such minor change. Such notice shall refer specifically to this paragraph.

6.11 Cost of Lessee Improvements. All Lessee's Improvements shall be designed and constructed by Lessee at Lessee's sole cost and expense. In no event, including without limitation termination of this Agreement for any reason, shall Lessor be obligated to compensate Lessee in any manner for any of Lessee's Improvements or other work provided by Lessee during or related

to this Agreement. Lessee shall timely pay for all labor, materials, work, and all professional and other services related thereto and shall pay, protect, indemnify, defend and hold harmless Lessor and Lessor's employees, officer's, contractors and agents against all claims related thereto. Lessee shall bear the cost of all work required from time to time to cause the Premises and other nearby property owned by Lessor to comply with local zoning rules, the Americans with Disabilities Act, building codes and all similar rules, regulations and other laws. Lessee shall also bear the cost of all work required from time to time to cause any nearby property owned by Lessor to comply with all such laws if such work is required because of work performed by Lessee, by Lessee's use of the Premises, or by any exercise of the rights granted to Lessee under this Agreement.

6.12 Improvement Quality. Lessee shall perform any and all work on the Premises in a workman-like manner as reasonably determined by Lessor and shall be diligently pursued to completion and in conformance with all building codes and similar rules. All of Lessee's Improvements shall be high quality, safe, fire resistant, modern in design, and attractive in appearance, all as approved by Lessor through the plans approval processes described in this Agreement in addition to any zoning, building code or other regulatory processes that may apply.

6.13 Ownership of Lessee's Improvements. All Lessee's Improvements shall be and become part of the real property of Lessor as constructed or installed. Notwithstanding Lessor's ownership of the land and of improvements upon the land, during the term of this Agreement, Lessee and its permitted successors and assignees shall have the right to occupy and use the land and improvements as set forth in this Agreement including the right to impose liens upon Lessee's leasehold interest to the extent permitted by this Agreement.

6.14 Damage During Removal. Upon removal of any item installed in or attached to the Premises at any time (including without limitation, upon termination of this Agreement if applicable), Lessee shall simultaneously restore the Premises to their prior condition, or to a condition matching Lessor's surrounding improvements, as directed by Lessor, and repair any holes, mounting surfaces or other damage whatsoever to the Premises. Such work shall include revegetation and appropriate irrigation systems for revegetated areas. All such work shall be subject to the plans approval and other requirements of this Agreement. Lessee shall not remove any item at any time without first submitting to Lessor at least fourteen (14) days in advance a notice describing the item to be removed. Said notice shall describe the work to be done to restore the Premises and be accompanied by a cash bond in an amount determined by Lessor to completely protect Lessor and the Premises from any failure by Lessee to fully and timely perform its obligations under this Agreement relating to said items or their removal.

6.15 Disturbance of Toxic Substances. Prior to undertaking any construction or other significant work, Lessee shall cause the Premises to be inspected to prevent disturbance of potential asbestos or other Toxic Substances. Prior to any work of any description that bears a material risk of disturbing potential asbestos or other Toxic Substances, Lessee shall cause the contractor or other person performing such work to give to Lessor notice by the method described in this Agreement to the effect that the person will inspect for such materials, will not disturb such materials, and will indemnify, defend and hold Lessor harmless against any disturbance in such materials in the course of the contractor's or other person's work. Lessee shall cause any on-site or off-site storage, inspection, treatment, transportation, disposal, handling, or other work involving Toxic Substances by Lessee in connection with the Premises to be performed by persons, equipment, facilities and other resources who are at all times properly and lawfully trained,

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authorized, licensed, permitted and otherwise qualified to perform such services. Lessee shall promptly deliver to Lessor copies of all reports or other information regarding Toxic Substances.

6.16 Contract Administrators. Upon execution of this Agreement, Lessor and Lessee shall each designate a contract administrator to coordinate the respective party's participation in designing and constructing the Project and otherwise administering this Agreement. Each contract administrator shall devote such time and effort to the Project as may be necessary for timely and convenient coordination among the parties and their representatives involved with the Project and compliance with this Agreement. Lessor's contract administrator will not be exclusively assigned to this Agreement or the Project.

6.17 Time for Completion. Lessee shall diligently and expeditiously pursue to completion the construction of all approved Lessee's Improvements. Lessee shall complete initial construction of the Project no later than the Completion Deadline. Lessee shall complete construction of all of other Lessee's Improvements no later than the earlier of one (1) year after the date of plans approval, or ii) any earlier date required by this Agreement. The time period for completing restoration work in the event of damage to the Premises is the time reasonably necessary to complete the work, but in no event longer than twenty-four (24) months after the damage.

6.18 Funding Assurances. In addition to any security deposit and any other payment or performance required under this Agreement, Lessee shall at least two weeks prior to the commencement of any construction work by Lessee having an estimated cost of more than One Hundred Thousand Dollars (\$100,000.00) provide to Lessor the following assurances that Lessee will timely pay for the work to be completed (the "Funding Assurances") as follows:

6.18.1 Funding Assurances Amount. The Funding Assurances shall be in an amount (the "Funding Assurances Amount") equal to eighty percent (80%) of the full contract amounts payable directly or indirectly to all persons for the construction work together with an additional surplus cushion in the amount of ten percent (10%) of said amount.

6.18.2 Funding Assurances Alternatives. All Funding Assurances shall consist of one of the following:

6.18.2.1 A fully executed construction loan commitment or agreement (the "Loan Commitment") in the Funding Assurances Amount legally obligating a reputable federally insured financial institution to fund construction.

6.18.2.2 An additional letter of credit in favor of Lessor (the "Construction Letter of Credit") in the Funding Assurances Amount meeting the requirements of this Agreement.

6.18.2.3 A cash deposit in the Funding Assurances Amount paid to and held by Lessor in Lessor's name.

6.18.2.4 Written confirmation from a federally insured financial institution chosen by Lessor having offices in Maricopa County, Arizona to the effect that said institution is holding for Lessor funds (the "Construction Account") in the Funding Assurances Amount. Such funds shall be held in an interest bearing account in Lessor's name only. All interest shall remain in the Construction Account. All funds shall be owned by Lessor upon deposit in the Construction

Account. Funds shall be disbursed to anyone other than Lessor only upon Lessor's notice to the institution that Lessor has received unrelated third party invoices for actual hard costs of construction labor or materials together with notice from Lessee that such funds may be disbursed. The invoices must be accompanied by a certificate from the third party that the third party has actually supplied the labor or materials to the Premises and by such additional information and things as Lessor may reasonably deem necessary to determine compliance with this Agreement. All distributions from the Construction Account shall be by check payable to Lessor or jointly payable to Lessee and the third party. Lessee shall provide to Lessor no later than the tenth day of each month a detailed statement of Construction Account activity during the preceding month. All funds will be immediately available to Lessor upon demand. At no time is Lessor required to pay or advance any funds not previously deposited by Lessee.

6.19 Contractor Assurances. In addition to the Funding Assurances and any other payment, deposit or performance required under this Agreement, Lessee shall at least two weeks prior to the commencement of any construction work by Lessee having an estimated cost of more than One Hundred Thousand Dollars (\$100,000.00) provide to Lessor the following assurances in favor of Lessee that Lessee's contractors will timely and properly complete and pay all suppliers and subcontractors for the work completed (the "Contractor Assurances") as follows:

6.19.1 Contractor Assurance Amount. Each Contractor Assurance shall be in an amount (the "Contractor Assurance Amount") equal to one hundred percent (100%) of the full contract amount payable directly or indirectly to all persons for the construction work.

6.19.2 Contractor Assurances Required. Lessee's obligation to cause its contractors to provide Contractor Assurances includes both of the following:

6.19.2.1 A payment bond in favor of Lessee covering all of the contracted work.

6.19.2.2 A performance bond in favor of Lessee covering all of the contracted work.

6.19.3 Contractor Assurance Qualifications. Each Contractor Assurance shall be in form and substance acceptable to Lessor. The issuer of each Contractor Assurance must be qualified to do business and in good standing in the State of Arizona and in its home state and must have a net worth of at least three times the Contractor Assurance amount. Each Contractor Assurance shall be issued by a person acceptable to Lessor and shall also at a minimum meet the requirements of A.R.S. Title 34 that would apply if Lessor were engaging a contractor and paying for the work.

6.20 Rules Applicable to Both Funding Assurances and Contractor Assurances. The following rules shall be applicable to both all Funding Assurances and all Contractor Assurances (collectively "Improvement Assurances"):

6.20.1 Issuer's Information. Prior to obtaining each Improvement Assurance, Lessee shall deliver a copy of this Agreement to the issuer of the Improvement Assurance.

6.20.2 Amount Adjustment. If the required amount of an Improvement Assurance increases from time to time by more than ten percent (10%) above the amount of the Improvement Assurance previously required, Lessee shall, from time to time, on or before the date of the increase, deliver to Lessor an additional Improvement Assurance in the amount of such increase (together with a proportionate increase in the surplus cushion), or cause the existing Improvement Assurance held by Lessor to be amended to so increase its amount. Following initial completion of the Project, Lessor's city manager or designee shall have authority to reduce the amount of construction assurances as circumstances warrant in the city manager's (or designee's) sole and absolute discretion. Any such reduction is void if not contained in formal written notice to Lessee.

6.20.3 Improvement Assurance Form. Each Improvement Assurance must be in form and substance acceptable to Lessor. The scope of Lessor's approval is to assure that the Improvement Assurance provides the assurance required by this Agreement. Lessee shall deliver directly to Lessor's legal department (together with a copy to Lessor as provided for notices under this Agreement) a full and complete draft form of each Improvement Assurance and all related and supporting documentation at least thirty (30) days prior to the date the actual Improvement Assurance is required. All Improvement Assurances shall contain provisions specifically recognizing and authorizing Lessor's rights provided by this Agreement. Lessor shall give its comments concerning the draft form no later than twenty-one (21) days after receiving the draft form. All Improvement Assurances shall be accompanied by or shall include a statement by the issuer to Lessor to the effect that the Improvement Assurance is intended by the issuer to provide to Lessor at a minimum the protection described in this Agreement as follows:

This _____ is intended to conform to the requirements for a _____ Assurance set forth in paragraph _____ of the _____ Agreement between _____ and the City of Scottsdale dated _____, 20____ and provides to the City of Scottsdale the protections described therein. Issuer warrants that it meets the requirements thereof for issuing of this _____.

6.20.4 Improvement Assurance Term. Each Improvement Assurance shall require the issuer to give Lessor not less than thirty (30) days nor more than sixty (60) days advance notice of expiration. Any replacement Improvement Assurance must be delivered to Lessor at least thirty (30) days before expiration of the Improvement Assurance being replaced. Any replacement Improvement Assurance must meet all requirements of this Agreement. No Improvement Assurance may be modified without Lessor's consent.

VII. LESSEE'S INITIAL PROJECT CONSTRUCTION

7. Lessee's Initial Project Construction. Lessee shall complete construction of the Project in accordance with all requirements of this Agreement, including without limitation those governing Lessee's Improvements, and the following:

7.1 Project Definition. The Project shall meet all of the following requirements (which listing of requirements is not intended to be exhaustive of the improvements required to construct the improvements this Agreement requires Lessee to construct):

7.1.1 Parking Design Requirements. As of the date of this Agreement, the New Public Parking Improvements have not been designed. Unless otherwise agreed by the parties, the New Public Parking Improvements shall at a minimum meet the requirements of the Deed.

7.1.2 Restroom Design Requirements. As of the date of this Agreement, the Restrooms have only been partially designed. Unless otherwise agreed by the parties, the Restrooms shall at a minimum meet the requirements of the Deed and the requirements listed on **Exhibit "F"** attached hereto.

7.2 Project Construction Schedule. Lessee shall design and construct the entire Project according to the following schedule:

7.2.1 Lessee shall commence constructing the entire Project no later than Commencement Deadline. The Commencement Deadline is the date thirty (30) months prior to the Completion Deadline.

7.2.2 Lessee shall complete any below-grade structural work and commence above-grade steel work for the entire Project no later than Twenty One (21) months prior to the Completion Deadline.

7.2.3 Lessee shall complete the New Public Improvements and open them to the public no later than Twelve (12) months prior to the Completion Deadline.

7.2.4 Lessee shall complete the entire Project no later than the Completion Deadline.

7.3 Construction Deadline Extensions. If Lessee determines that, despite diligent effort, Lessee will not be able to complete the Project within the allotted completion deadlines, Lessee shall have the right to give to Lessor notice that Lessee claims a onetime extension of the Completion Deadline for a period of twelve (12) months. Such notice shall be accompanied by an additional payment from Lessee to Lessor in the amount of One Hundred thousand Dollars (\$100,000.00).

VIII. MAINTENANCE AND UTILITIES

8. Maintenance and Utilities. Lessee shall provide maintenance and utilities for the Premises. Without limitation Lessee shall operate, maintain, repair and replace the Old Parking Improvements until the Construction Commencement Date. Commencing at the earlier of the Construction Deadline or the Actual Completion Date, Lessee shall maintain and repair the Premises and supply utilities to the Premises in compliance with the requirements of the Deed, which requirements and provisions are incorporated here by reference. This Agreement requires Lessee to comply with such provisions regardless of whether the Deed is in effect or for whatever reason may not require Lessee to do so.

IX. BREACH BY LESSEE

9. Breach by Lessee. Lessee shall comply with, perform and do each performance and provision required of Lessee herein and shall cause all persons using the Premises or claiming

through or under Lessee or this Agreement to do the same. Lessee's failure to do so shall be a material breach by Lessee of this Agreement.

9.1 Events of Default. This entire Agreement is made upon the condition that each and every one of the following events shall be deemed an "Event of Default" by Lessee of Lessee's material obligations under this Agreement:

9.1.1 If Lessee shall be in arrears in the payment of Rent and shall not cure such arrearage within ten (10) days after Lessor has notified Lessee of such arrearage.

9.1.2 If Lessee shall fail to operate the New Public Improvements (except during specific periods expressly excused by this Agreement) for a period of three (3) consecutive days or a total of five (5) days within any twelve (12) month period.

9.1.3 If Lessee or any other person or entity having liability for all or part of Lessee's obligations under this Agreement shall be the subject of a voluntary or involuntary bankruptcy, receivership, insolvency or similar proceeding, or if any assignment of any of Lessee's or such other persons' property shall be made for the benefit of creditors or if Lessee or such other person is not regularly paying its debts as they come due (collectively a "Lessee Insolvency").

9.1.4 If Lessee does not commence and diligently pursue to completion construction of the Project within the times required by this Agreement. The times specified for concluding each stage of required construction have been established far enough in advance, have taken into account the likelihood of construction delays and have provided extension periods in certain circumstances so that no cure period is provided.

9.1.5 If any representation or warranty made by Lessee in connection with this Agreement or the bids or proposals leading to this Agreement shall prove to have been false in any material respect when made or as of the date of this Agreement. Any representations or warranties made by Lessee in connection with said bids or proposals are in addition to the provisions of this Agreement.

9.1.6 If the issuer of any guaranty, letter of credit, bond, insurance policy or similar instrument shall fail for any reason to timely and fully honor any request by Lessor for funds or other performance under the instrument within ten (10) days after such request.

9.1.7 If Lessee shall fail to timely pay taxes or other amounts herein required to be paid by Lessee to any person other than Lessor. Such failure to pay an amount shall not be an event of default if Lessee gives immediate notice to Lessor of Lessee's intent to challenge the amount claimed to be due to the third person, Lessee does in fact promptly challenge said amount, and Lessee delivers to Lessor with said notice, bonds or other financial security in Lessor's discretion adequate to assure Lessee's ability to pay the disputed amount and adequate to protect Lessor and the Premises from adverse consequences of Lessee's failure to pay.

9.1.8 If Lessee shall fail to obtain or maintain any licenses, permits, or other governmental approvals pertaining to the Premises or timely pay any taxes pertaining to the Premises and shall not cure such failure within thirty (30) days.

9.1.9 If Lessor shall be exposed to any liability, obligation, damage, cost, expense, or other claim of any description relating to this Agreement, whether or not asserted, unless Lessee gives immediate notice to Lessor that Lessee shall indemnify, defend and hold Lessor harmless against such claim, Lessee does in fact promptly commence and continue to indemnify, defend and hold Lessor harmless against such claim and, Lessee delivers to Lessor with said notice bonds or other financial security in Lessor's reasonable discretion adequate to assure that Lessee will indemnify, defend and hold Lessor harmless against such claim and adequate to protect Lessor and the Premises from adverse consequences of such claim.

9.1.10 If Lessee shall engage in a pattern of repeated failure (or neglect) to timely do or perform or observe any provision contained herein. After Lessor has once given notice of any failure by Lessee to comply with any provision of this Agreement, the following shall constitute a repeated failure by Lessee to comply with such provision:

9.1.10.1 Another failure to comply with the provision during the following thirty (30) day period.

9.1.10.2 Three (3) or more failures to comply with the provision during any ninety (90) day period.

9.1.11 If Lessee shall fail to or neglect to timely and completely do or perform or observe any other provisions contained herein and such failure or neglect shall continue for a period of thirty (30) days after Lessor has notified Lessee in writing of such failure or neglect.

9.2 Lessor's Remedies. Upon the occurrence of any Event of Default or at any time thereafter, Lessor may, at its option and from time to time, without further demand or notice, exercise at Lessee's expense any or all or any combination of the following cumulative remedies in any order and repetitively at Lessor's option:

9.2.1 Terminate this Agreement. Termination of this Agreement due to Lessee's breach or for any other reason does not terminate Lessee's obligations arising prior to or simultaneous with, or attributable to, the termination or in any way terminate any of Lessee's liability related to any breach of this Agreement.

9.2.2 Terminate or suspend any and all of Lessee's rights under this Agreement.

9.2.3 Enter into and upon all or part of the Premises and repossess the same, and expel Lessee and those claiming by, through or under it, and remove their effects, if any, forcibly if necessary, without being deemed guilty of trespass and without prejudice to any other remedy.

9.2.4 Reuse or relet all or part of the Premises or otherwise use, manage, operate or allow another party to use, manage or operate all or part of the Premises and undertake at Lessee's expense any construction, legal, re-leasing, brokerage, advertising, remodeling or other work or preparations of any description related thereto.

9.2.5 Enforce a lien (which Lessee hereby grants to Lessor in addition to any statutory or other lien that may exist) upon all of Lessee's real or personal property now or at any time hereafter at or pertaining or related to the Premises securing all of Lessee's obligations

hereunder. Lessee appoints Lessor as its agent to execute and file any instrument Lessor deems necessary to perfect said interest.

9.2.6 Cause a receiver to be appointed for all or part of the Premises and for the continuing performance of Lessee's obligations at the Premises and operation of Lessee's business thereon.

9.2.7 Pay or perform, for Lessee's account, in Lessee's name, and at Lessee's expense, any or all payments or performances required hereunder to be paid or performed by Lessee.

9.2.8 Abate at Lessee's expense any violation of this Agreement.

9.2.9 Notwithstanding anything in this Agreement to the contrary, unilaterally and without Lessee's or any other person's consent or approval, draw upon, withdraw or otherwise realize upon or obtain the value of any letter-of-credit, escrowed funds, insurance policies, or other deposits, sureties, bonds or other funds or security held or obligated by Lessee, Lessor or any third party pursuant to this Agreement (whether or not specifically mentioned herein) and use the proceeds for any remedy permitted by this Agreement. Lessee hereby irrevocably grants to Lessor a power of attorney coupled with an interest to act for Lessee in all respects with respect to any of the foregoing.

9.2.10 Be excused without any liability to Lessee therefor from further performance of any or all obligations under this Agreement.

9.2.11 Insist upon Lessee's full and faithful performance under this Agreement and upon Lessee's full and timely payment of all amounts during the entire remaining term of this Agreement.

9.2.12 Require an additional security deposit adequate in Lessor's sole discretion to protect Lessor and the Premises.

9.2.13 Assert, exercise or otherwise pursue at Lessee's expense any and all other rights or remedies, legal or equitable, to which Lessor may be entitled.

9.3 Power of Attorney. Lessee hereby irrevocably appoints Lessor as Lessee's true and lawful attorney in fact for the purpose of exercising any of Lessor's rights or remedies hereunder. Such power of attorney shall be deemed to be a power coupled with an interest that cannot be revoked for any reason, to pay or perform at any time, for Lessee's account and at Lessee's expense, any or all payments or performances required hereunder to be paid or performed by Lessee, to terminate of record this Agreement, to enter into and upon the Premises or any part thereof, and to perform any act upon the Premises or otherwise deemed necessary by Lessor to exercise its rights under this Agreement.

9.4 Notice of Lessee's Breach. Lessee shall promptly give notice to Lessor of any event or circumstance, that is (or that with the passing of time or the giving of notice or both will become) an Event of Default under this Agreement. Lessee shall also promptly give to Lessor notice of any notice or claim given by any third party alleging that an event or circumstance has

occurred that is (or that with the passing of time or the giving of notice or both will become) an Event of Default under this Agreement.

9.5 Non-waiver. Lessee acknowledges Lessee's unconditional obligation to comply with this Agreement. No failure by Lessor to demand any performance required of Lessee under this Agreement, and no acceptance by Lessor of any imperfect or partial performances under this Agreement, shall excuse such performance or impair in any way Lessor's ability to insist, prospectively and retroactively, upon full compliance with this Agreement. No acceptance by Lessor of Rent payments or other performances hereunder shall be deemed a compromise or settlement of any right Lessor may have for additional, different or further payments or performances. Any waiver by Lessor of any breach of condition or covenant herein contained to be kept and performed by Lessee shall not be deemed or considered as a continuing waiver and shall not operate to bar or otherwise prevent Lessor from declaring a default for any breach or succeeding or continuing breach either of the same condition or covenant or otherwise. No statement, bill or notice by Lessor or Lessee concerning payments or other performances due hereunder, or failure by Lessor to demand any performance hereunder, shall excuse Lessee from compliance with this Agreement nor estop Lessor (or otherwise impair Lessor's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this Agreement. No waiver of any description (INCLUDING ANY WAIVER OF THIS SENTENCE OR PARAGRAPH) shall be effective against Lessor unless made in writing by a duly authorized representative of Lessor specifically identifying the particular provision being waived and specifically stating the scope of the waiver. LESSEE EXPRESSLY DISCLAIMS AND SHALL NOT HAVE THE RIGHT TO RELY ON ANY SUPPOSED WAIVER OR OTHER CHANGE OR MODIFICATION, WHETHER BY WORD OR CONDUCT OR OTHERWISE, NOT CONFORMING TO THIS PARAGRAPH. Notwithstanding the foregoing, a person to whom Lessor may issue a formal estoppel certificate pertaining to this Agreement may rely on such estoppel certificate. Any such estoppel certificate must be formally addressed to the person relying on it and shall not be binding on Lessor unless it bears the signature of Lessor's legal counsel approving such estoppel certificate as to form.

9.6 Reimbursement of Lessor's Expenses. Lessee shall pay to Lessor upon demand any and all amounts expended or incurred by Lessor in performing Lessee's obligations together with interest thereon at the rate of ten percent (10%) per annum from the date expended or incurred by Lessor.

9.7 Inspection. Lessor shall have access to all portions of the Premises during normal business hours upon reasonable notice (and at all times and without notice if there is an emergency) for the purpose of examining, inspecting, evaluating, planning, repairing, designing, maintaining or showing the Premises or exercising Lessor's other rights hereunder. Lessee shall promptly undertake appropriate action to rectify any deficiency (identified by Lessor during such inspections or otherwise) in Lessee's compliance with this Agreement. This paragraph does not limit Lessor's other rights of access to the Premises elsewhere in this Agreement or otherwise. This right of access is in addition to access rights for Lessor inspectors or other employees and officers acting within their legal authority. Lessee shall at all times and without request provide to Lessor a set of keys to all equipment and to all buildings, rooms or other enclosures of the New Public Improvements.

9.8 Breach by Lessor. Notwithstanding anything in this Agreement to the contrary, in the event Lessor at any time is required to pay to Lessee any amount or render any performance, such amount or performance is not due until thirty (30) days after notice by Lessee to Lessor that the amount has become payable or that the performance is due. If a cure cannot be effected during that period, Lessor shall not be in default so long as Lessor commences cure during the period and diligently prosecutes the cure to completion provided such cure must be completed within sixty (60) days after the notice. To the extent permitted by law, Lessee expressly waives any right pursuant to any law now existing or which may be effective during the term hereof to make repairs at Landlord's expense.

X. TERMINATION

10. Rights at Termination. The following provisions shall apply at the expiration of the term hereof or upon any other termination of this Agreement:

10.1 Surviving Obligations. Termination of this Agreement in any manner or for any reason, including without limitation by expiration, does not terminate Lessee's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or events leading to or occurring before termination.

10.2 Delivery of Possession. Lessee and all persons using the Premise under contracts with Lessee or otherwise claiming under this Agreement shall cease using the Premises. Lessee shall without demand, peaceably and quietly quit and deliver up the Premises to Lessor thoroughly cleaned, in good repair, and with all utilities operating, with the Premises maintained and repaired and also in as good order and condition, reasonable use and wear excepted, as the Premise now are or in such better condition as the Premises may hereafter be placed. Upon termination, Lessee shall deliver to Lessor any security deposits, prepaid rents, or other amounts for which Lessor deems a claim may be made respecting the Premises.

10.3 Confirmation of Termination. Upon expiration or termination of this Agreement for any reason, Lessee shall provide to Lessor upon demand recordable quit claim deeds covering the Premises executed and acknowledged by Lessee and by all persons who claim that they have been received from or through Lessee any interest in or right to use the Premises.

10.4 Abandoned Property. Any personal property of Lessee or persons claiming through Lessee that may be located at the Premises thirty (30) days after termination of this Agreement shall be deemed to be abandoned and shall automatically become the property of Lessor and Lessor shall be free to use, sell or otherwise dispose of the property at Lessor's discretion without accounting to Lessee or any other person.

XI. INSURANCE AND INDEMNITY

11. Insurance and Indemnity. During the entire term of this Agreement, Lessee shall provide to Lessor the insurance, indemnities and other risk management programs and protections described in the Deed, which descriptions and provisions (including defined terms) are incorporated here by reference. Without limitation:

11.1 This Agreement requires Lessee to provide to Lessor all of such programs and protections during the entire term of this Agreement, regardless of whether the Deed is in effect.

11.2 Lessee shall comply with all of the insurance and other risk management structures required by the Deed. Without limitation, Lessee shall comply with all requirements of the Deed concerning coverage required, policy forms, policy amounts, issuers, endorsements, insureds, certificates, proceeds, notices and deductibles. All of the provisions of the Deed imposing and defining such requirements are hereby incorporated into this Agreement by reference.

XII. CONDEMNATION

12. Condemnation. Lessor has not relinquished any right of condemnation or eminent domain over the Premises. The proceeds of any condemnation shall be distributed as follows:

12.1 To Lessor, the amount of the award attributable to the fair market value of the land and the New Public Improvements.

12.2 To Lessee, the amount of the award attributable to the fair market value of the remainder of the Project.

12.3 To Lessor, the balance of the total award.

XIII. DAMAGE TO OR DESTRUCTION OF PREMISES

13. Damage to or Destruction of the Premises. Lessee promptly shall repair at its expense any damage to or destruction of the Premises by fire, explosion, the elements, the public enemy, or other casualty.

XIV. LESSEE'S RECORDS

14. Lessee's Records. During the term of this Agreement and for three (3) years thereafter, Lessee shall make available to Lessor upon request for inspection and copying at the Premises at Lessor's offices, or at another location within five (5) miles of the Premises, all records and other materials pertaining to whether Lessor and Lessee are complying with this Agreement.

XV. COMPLIANCE WITH LAW

15. Compliance with Law. Lessee shall perform its obligations under this Agreement and all activities at the Premises in accordance with all federal, state, county and local laws, ordinances, regulations or other rules or policies as are now in effect or as may hereafter be adopted or amended. Without limiting in any way the generality of the foregoing, Lessee shall comply with all and each of the following:

15.1 Applicability of Municipal Law. Without limitation, Lessee shall comply with municipal laws as follows:

15.1.1 Lessee acknowledges that this Agreement does not constitute, and Lessor has not promised or offered, any type of waiver of, or agreement to waive (or show any type of

forbearance, priority or favoritism to Lessee with regard to) any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Scottsdale or any other governmental body upon or affecting Lessee, the Premises, or Lessee's use of the Premises.

15.1.2 All of Lessee's obligations hereunder are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of), all existing or future laws and regulations applicable to Lessee.

15.1.3 This Agreement is not intended to diminish any performances that would be required of Lessee by law if this Agreement had been made between Lessee and a private citizen.

15.1.4 This Agreement does not impair the City of Scottsdale's power to enact, apply or enforce any laws or regulations, or exercise any governmental powers affecting in any way Lessee, or the Premises.

15.1.5 Lessor's rights and remedies hereunder for Lessee's failure to comply with all applicable laws supplement and are in addition to and do not replace otherwise existing powers of the City of Scottsdale or any other governmental body.

15.2 Government Property Lease Excise Tax. Lessee shall be responsible for any and all property taxes and all government property lease excise taxes described in A.R.S. § 42-6201 *et seq.* or similar laws in force from time to time, if any, that are lawfully assessed against the Premises or against Lessor or Lessee with respect to the Premises. Pursuant to A.R.S. § 42-6206, failure by Lessee to pay the taxes after notice and an opportunity to cure is an event of default that could result in divesting Lessee of any interest in or right of occupancy of the Premises.

15.3 Taxes, Liens and Assessments. In addition to all other amounts herein provided, Lessee shall pay, when the same become due and payable, all taxes and general and special fees, charges and assessments of every description that during the term of this Agreement may be levied upon or assessed upon or with respect to Lessee's use of the Premises, the operations conducted therein, any amounts paid or other performances under this Agreement by either party, and all possessory interest in the Premises and improvements and other property thereon, whether belonging to Lessor or Lessee. Lessee shall pay, indemnify, defend and hold harmless Lessor and the Premises and all interests therein and improvements thereon from any and all such obligations, including any interest, penalties and other expenses that may be imposed, and from any lien therefor or sale or other proceedings to enforce payment thereof. Lessor shall have the right from time to time to require that all of the foregoing payments be made by Lessee through Lessor.

15.4 Building and Other Permits. Lessee shall obtain at its own expense all building or other permits in connection with all construction performed by Lessee, shall comply with all zoning, building safety, fire and similar laws and procedures of every description and shall pay all fees, charges and other amounts pertaining thereto.

15.5 Regulatory Applications. Subject to Lessee's compliance with all other provisions of this Agreement, Lessor's contract administrator shall have authority to authorize Lessee to file applications with the City of Scottsdale for the Premises to the extent necessary to

obtain zoning and similar approvals for construction and uses of the Premises as required by this Agreement.

XVI. ASSIGNABILITY

16. Assignability. This Agreement is not assignable by Lessee unless the assignment is made in strict compliance with the following:

16.1 Assignments Prohibited. Every assignment of any of Lessee's interest in the Premises or this Agreement or any of Lessee's rights or interests hereunder is prohibited (and any assignment shall be void and vest no rights in the purported assignee) unless Lessee first receives from Lessor notice of Lessor's consent to the assignment.

16.2 Assignments Affected. All references in this Agreement to assignments by Lessee or to assignees shall be deemed also to apply to all of the following transactions, circumstances and conditions and to all persons claiming pursuant to such transactions, circumstances and conditions:

16.2.1 Any voluntary or involuntary assignment, conveyance, transfer or sublease of the Premises or any interest therein or any rights under this Agreement, in whole or in part.

16.2.2 Any voluntary or involuntary pledge, lien, mortgage, security interest, judgment, claim or demand, whether arising from any contract, any agreement, any work of construction, repair, restoration, maintenance or removal, or otherwise affecting the Premises (collectively "Liens"). The preceding sentence does not apply to a "twenty day notice" or similar notice of a potential mechanics lien for construction work or materials supplied to the Premises for construction permitted by this Agreement so long as no actual mechanic's lien attaches to the Premises. In this article, a foreclosure of a Lien means a judicial foreclosure sale, a trustee's sale, or a deed in lieu of foreclosure.

16.2.3 The use, occupation, management, control or operation of the Premises or any part thereof by others. The preceding sentence does not include Lessee's hiring and discharging of employees.

16.2.4 If Lessee's rights are held by a business entity, then any transaction (or series of related or unrelated transactions) transferring a majority of the corporate stock (or other evidence of ownership, as applicable), or any other direct or indirect transfer of the majority of the ownership, management or control of Lessee not caused by the death of a shareholder or other owner.

16.2.5 Any assignment by Lessee for the benefit of creditors, voluntary or involuntary.

16.2.6 A Lessee Insolvency.

16.2.7 The occurrence of any of the foregoing by operation of law or otherwise.

16.2.8 The occurrence of any of the foregoing with respect to any assignee.

16.3 Pre-approved Assignments. Subject to certain conditions hereafter stated, Lessor hereby consents to certain assignments (the "Pre-approved Assignments"). Only the following assignments are Pre-approved Assignments:

16.3.1 Related Entity. A single one time assignment by Lessee of all of its rights, duties and obligations under this Agreement to any entity that is and at all times while this Agreement is in effect remains controlled by, controlling, or under common control with the original Lessee.

16.3.2 Complete Sale of Project. Lessee's complete assignment of all of Lessee's rights and Interests in the Premises and this Agreement after the Project is completed to a single assignee who assumes all of Lessee's obligations relating thereto and has in Lessor's opinion experience, management, credit standing, regulatory approvals, financial capacity and other resources and obligations equal to or greater than Lessee's and adequate to successfully perform under this Agreement.

16.3.3 Lessee's Principals. A single one time assignment to one or more of the principals in Lessee on the date of this Agreement.

16.3.4 Primary Lien Creation. The creation, extension or modification of a single mortgage or deed of trust (the "Primary Lien") upon Lessee's leasehold interests under this Agreement to secure a loan obtained by Lessee to construct the Project or to pay Rent. A foreclosure of a Primary Lien must include Lessee's entire interest in the Premises and this Agreement.

16.3.5 Primary Lien Foreclosure. The sale of all of Lessee's interests in this Agreement and the Premises at a single foreclosure of the Primary Lien to the Primary Lienholder or to a single foreclosure purchaser who has experience developing and operating projects similar to the Project and who in Lessor's reasonable discretion has the necessary resources to perform Lessee's obligations under this Agreement and is otherwise reasonably acceptable to Lessor.

16.3.6 Retail Leases. Arms length subleases of space within the completed Project on commercially reasonable terms in the ordinary course of Lessee's business.

16.4 Assignment Remedies. In addition to all other remedies under this Agreement, the following shall apply if an assignment occurs without Lessor's consent:

16.4.1 Any assignment without Lessor's consent shall be void and shall not result in the assignee obtaining any rights or interests in, under or related to this Agreement.

16.4.2 Lessor may, in its sole discretion and in addition to all other remedies available to Lessor under this Agreement or otherwise, and in any combination, terminate this Agreement, collect Rent from the assignee and/or declare the assignment to be void, all without prejudicing any other right or remedy of Lessor under this Agreement. No cure or grace periods shall apply to assignments prohibited by this Agreement or to enforcement of any provision of this Agreement against an assignee who did not receive Lessor's consent.

16.5 Effect of Assignment. No action or inaction by Lessor shall be deemed a waiver of the prohibition on assignments or any other provision of this Agreement, or the acceptance of the assignee, sublessee or occupant as Lessee, or a release of Lessee from the further performance by Lessee of the provisions of this Agreement. No action or inaction by Lessor regarding an assignment shall relieve Lessee from obtaining Lessor's consent to any further assignment. No assignment shall release Lessee from any liability hereunder.

16.6 Enforceability after Assignment. No consent by Lessor shall be deemed to be a novation. This Agreement shall control any conflict between this Agreement and the terms of any assignment or any document related to any assignment. Lessor's consent to any assignment does not in any way expand or modify this Agreement or waive, diminish or modify any of Lessor's rights or remedies under this Agreement. Lessor shall not be bound by any provision of any instruments relating to any Assignment. This Agreement shall be enforceable personally and in total against Lessee and each successor, partial or total, and regardless of the method of succession to Lessee's interest hereunder. Each successor having actual or constructive notice of this Agreement shall be deemed to have agreed to the preceding sentence. Prior to each assignment, Lessee shall provide a complete copy of this Agreement and any amendments to each sublessee or other assignee.

16.7 Performance after Assignment. Lessor has no obligation to evaluate or reconcile overlapping, redundant or conflicting curative acts or measures or demands or notices among Lessee and any other person having or claiming any interest in Lessee's interest under this Agreement. All such persons shall establish and enforce among themselves, by intercreditor agreement or otherwise, such provisions as may be necessary to cause Lessee's obligations under this Agreement to be timely performed. Lessor shall have no liability or responsibility as a result of accepting a cure or attempted cure from any such person or any acts related thereto.

16.8 Grounds for Refusal. Except for the Preapproved Assignments, no assignment of this Agreement by Lessee is contemplated or bargained for. Lessor has the absolute right for any reason or for no reason in its sole and absolute discretion to give or withhold consent to any Assignment or to impose any conditions whatsoever upon Lessor's consent to any Assignment. Without limitation, Lessor has the right to impose upon any consent to assignment any conditions and requirements Lessor may deem appropriate and also to refuse to consent to any assignment for any of the following reasons in Lessor's opinion:

16.8.1 Lessee's or the proposed assignee's failure to perform or history of failure to perform this Agreement or any other obligations to Lessor or others.

16.8.2 The unfavorable financial statement, credit, responsibility, stability, ability or resolve of any proposed assignee to meet the obligations, terms, and conditions of this Agreement.

16.8.3 The assignee's experience and demonstrated abilities in developing and operating facilities similar to the Premises.

16.8.4 The assignee's apparent ability and disposition to perform all of Lessee's obligations under this Agreement, and the likelihood that it will do so.

16.9 Form of Assignment. Any assignment shall be by agreement in form and content acceptable to Lessor. Without limitation, any assignment shall specify and require that each assignee acquiring any interest under this Agreement shall assume and be bound by, and be obligated to perform the terms and conditions of this Agreement and that if Lessor terminates this Agreement because of default by Lessee, Lessor at Lessor's sole option may succeed to the position of Lessee as to any assignee of Lessee without liability for any prior breaches or performances by persons other than Lessor. As to sublessees, the preceding sentence is limited to the portion of the premises or term covered by the sublessee. Prior to each sublease or other assignment, each sublessee or other assignee shall execute and deliver to Lessor an assumption agreement in form and content acceptable to Lessor.

16.10 Title Priority. No Lien or other interest created by or deriving through Lessee (whether arising before, concurrent with, or after the date of this Agreement) shall at any time cover, affect or have any priority higher than or equal to any of Lessor's rights in the Premises or any of Lessor's rights under this Agreement.

16.11 Consent to Assignments. Lessee shall attach to each Pre-approved Assignment a copy of Lessee's notice to Lessor of the Pre-approved Assignment and any other documents this Agreement may require. Lessee shall attach to each other assignment, a copy of Lessor's notice to Lessee of Lessor's consent to the assignment. This Agreement shall continue to be enforceable according to its terms in spite of any provisions of any documents relating to an assignment.

16.12 Assignment Fee. Lessee shall pay to Lessor in advance the sum of Two Thousand Five Hundred Dollars (\$2,500.00) as a nonrefundable fee for legal, administrative and other expenses related to every assignment and every request for consent to an assignment, whether or not Lessor grants such request.

16.13 Lien Payment. Lessee shall pay all Liens as the same become due, and in any event before any foreclosure and before commencement of any foreclosure proceeding. Lessee shall pay, indemnify, defend and hold Lessor and the Premises free and harmless for, from and against any and all Liens, together with all liability, costs and expenses in connection therewith, including attorney's fees. Lessor shall have the right at any time to post and maintain on the Premises such notices, pay such amounts, file or record such notices, or take such other actions as Lessor may deem necessary to protect Lessor and its property interests against all Liens.

16.14 Lessor's Right to Purchase Lien. Prior to foreclosure of a Lien, Lessor shall have the right at any time to purchase any Lien, by payment to the holder of the Lien the amount of the unpaid debt, plus any accrued and unpaid interest.

16.15 Primary Lien. In order to qualify as the Primary Lien, a lien must comply with all of the following provisions:

16.15.1 Until the Project is completed, the maximum amount of the Primary Lien shall not exceed Lessor's estimate of the actual hard costs of constructing the Project plus Five Hundred Thousand Dollars (\$500,000.00).

16.15.2 Until the Project is completed, the proceeds of the loan secured by the Primary Lien shall be used only for:

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16.15.2.1 The initial design and construction of the Project.

16.15.2.2 Purchasing personal property for Lessee to use at the Premises.

16.15.2.3 Operating losses during the first five (5) years of Project operation.

16.15.3 Until the Project is completed, no portion of the proceeds of the Primary Lien may be paid directly or indirectly to Lessee or any affiliate of Lessee. The preceding sentence does not prohibit money passing through Lessee's hands from the Primary Lienholder to pay Project costs.

16.15.4 The Primary Lien shall not be cross collateralized or cross defaulted with any debt or lien related to property other than the Premises and adjoining land developed as an integrated development with the Premises. The Primary Lien shall cover no interests in any real property other than Lessee's interests in the Premises and adjoining land developed as an integrated development with the Premises (including without limitation all appurtenant easements or other appurtenances) and the rents and profits under any permitted assignments.

16.15.5 The holder of the Primary Lien (the "Primary Lienholder") must be at all times one or more of the following:

16.15.5.1 Lessee's principals.

16.15.5.2 An FDIC insured financial institution having offices in Maricopa County, Arizona

16.15.5.3 A pension fund or insurance company authorized to do business in Arizona.

16.15.5.4 Sophisticated investors qualified under federal securities law to purchase unregistered securities in private placements.

16.15.5.5 One of the fifteen (15) largest banking institutions doing business in the State of Arizona.

16.15.5.6 One of the thirty (30) largest lending institutions in the United States that is also qualified to do business in the State of Arizona.

16.15.6 The Primary Lienholder shall promptly give notice to Lessor of the creation of the Primary Lien and any modification, renewal, termination, assignment, release, default or enforcement of the Primary Lien, and any notices to Lessee related to the Primary Lien. Such notices shall be accompanied by true copies of the Primary Lien documents (if a Primary Lien is being created or modified) and of the correspondence or instruments pertaining to the notice. Primary Lienholder's notice shall state the address to which notices to Primary Lienholder shall be sent.

16.15.7 The Primary Lien shall contain no provisions inconsistent with or purporting to alter in any way the provisions of this Agreement. This Agreement shall control any inconsistent terms or provisions in the Primary Lien or in any document of any description related to the Primary Lien.

16.15.8 Primary Lienholder shall have a limited right to cure deficiencies in Lessee's performance under this Agreement (the "Cure Right") as follows:

16.15.8.1 The Cure Right is that, if there is an Event of Default:

16.15.8.1.1 Lessor shall not terminate this Agreement or expel Lessee from the Premises without first giving Primary Lienholder notice of the Event of Default.

16.15.8.1.2 Upon Lessor's giving such notice, Primary Lienholder shall have a limited opportunity to cure the Event of Default as specifically described herein.

16.15.8.1.3 To the extent and during the allowed time period that Primary Lienholder is diligently pursuing a cure pursuant to a proper exercise of the Cure Right, Lessor shall not exercise non-monetary remedies that would interfere with the day-to-day operation of the Premises or use of the Premises by non-defaulting subtenants.

16.15.8.2 The Cure Right only applies to Events of Default that are capable of cure by Primary Lienholder within the time periods hereinafter specified for Primary Lienholder to cure. If an Event of Default cannot be cured within that time period, Primary Lienholder and/or Lessee shall have the right to call for a meeting to consult with Lessor's city manager or designee to explore possibilities for a plan for curing the Event of Default. Lessor's city manager or designee shall have authority to consider such a plan and give notice on behalf of Lessor extending the time period for curing the particular Event of Default in accordance with the plan. Except for Lessor's obligation to attend the required meeting, Lessor and Lessee have no obligation to consider, develop, propose, negotiate or approve any such plan or cure.

16.15.8.3 If an event or circumstance occurs that will become an Event of Default with the passage of time or giving of notice or both, Lessor may elect to provide Primary Lienholder's notice of the Event of Default prior to, after, or simultaneously with any notice Lessor may give to Lessee, and prior to, after, or simultaneously with the expiration of any applicable cure or grace period. Lessor's exercise of its remedies against Lessee shall not prevent Primary Lienholder from curing to the extent provided by the Cure Right.

16.15.8.4 Primary Lienholder may elect to exercise the Cure Right only by giving Lessor notice (a "Cure Notice") of such election not later than fourteen (14) days after Lessor's notice to Primary Lienholder. Primary Lienholder's failure to timely give a Cure Notice shall be Primary Lienholder's rejection and waiver of the Cure Right. The giving of a Cure Notice by Primary Lienholder shall constitute Primary Lienholder's promise to Lessor that Primary Lienholder shall immediately undertake and diligently pursue to completion on Lessee's behalf all payments and performances necessary to cure all Events of Default and otherwise cause Lessee's performance to comply in all respects with the requirements of this Agreement. Each Cure Notice shall include payment of any and all amounts then payable to Lessor under this Agreement and any related agreements.

16.15.8.5 If Primary Lienholder exercises the Cure Right, Primary Lienholder shall immediately commence and thereafter diligently prosecute the cure to completion no later than thirty (30) days after Primary Lienholder's Cure Notice to Lessor. If the cure cannot be completed within thirty (30) days, Primary Lienholder shall complete the cure within the shortest period that may be possible, but in no event later than one hundred twenty (120) days after Lessor's notice to Primary Lienholder.

16.15.9 This Agreement's provisions relating to the Primary Lien are for the sole benefit of Lessor and Primary Lienholder, and are not for the benefit of Lessee.

16.15.10 Lessee shall immediately give notice to Lessor and Primary Lienholder of any notice Lessee may give or receive relating to this Agreement or to the Primary Lien.

16.15.11 Primary Lienholder shall immediately give notice to Lessor and Lessee of any notice Primary Lienholder may give or receive relating to this Agreement or to the Primary Lien.

16.15.12 The provisions of this Agreement permitting the Primary Lien shall apply to any subsequent refinancing of the Primary Lien so long as the following requirements are satisfied:

16.15.12.1 Any replacement Primary Lien must satisfy all requirements of this Agreement.

16.15.12.2 No new Primary Lien may be created while a Primary Lien exists or is of record.

16.15.12.3 Only one Primary Lien may exist or appear of record at a time.

16.15.13 Primary Lienholder shall become personally liable to perform Lessee's obligations hereunder only if and when Primary Lienholder gives a Cure Notice, becomes the owner of all or part of Lessee's interests in the Premises or this Agreement pursuant to foreclosure, assignment or otherwise, or takes possession of all or part of the Premises. The occurrence or existence of any of the foregoing shall constitute an assumption by Primary Lienholder of Lessee's obligations under this Agreement.

16.16 Estoppel Certificate. By notice to the other party (an "Estoppel Request"), Lessor or Lessee (the "Requesting Party") may request that the other party provide written confirmation of certain matters (an "Estoppel Certificate") as follows:

16.16.1 The Estoppel Request shall specifically refer to this paragraph of this Agreement.

16.16.2 Lessee may give an Estoppel Request when a Primary Lien is being created or assigned, or when Lessee's entire interest in the Premises is being assigned or sold.

16.16.3 An Estoppel Request by Lessee shall be executed and joined in by the prospective Primary Lienholder or other assignee (the "Estoppel Assignee").

16.16.4 An Estoppel Request by Lessee shall describe the proposed transaction between Lessee and the Estoppel Assignee in sufficient detail to allow Lessor to understand the proposed assignment and its affect on Lessee, the Premises, the Project and Lessor.

16.16.5 An Estoppel Request by Lessee must include warranties and representations by Lessee that the matters to be confirmed are true and that the information contained in the Estoppel Request is complete and true.

16.16.6 An Estoppel Request by Lessee must include warranties and representations by the Estoppel Assignee to the best of its knowledge that the matters to be confirmed are true and that the information contained in the Estoppel Request is complete and true.

16.16.7 If a Primary Lien is being created or assigned, the Estoppel Request must include warranties and representations by Lessee and the Primary Lienholder that the proposed Primary Lienholder and its Lien satisfy in every way the requirements for Primary Lien status under this Agreement.

16.16.8 The Estoppel Request must specify the matters the other party is requested to confirm. The Estoppel Request may request only that the other party confirm whether or not the following matters are true, to the best of the actual knowledge of the party giving the Estoppel Certificate. Lessor's knowledge refers to actual knowledge of Lessor's contract administrator and city manager without investigation. Estoppel Certificates are limited to the following matters:

16.16.8.1 This Agreement is in effect and has not been amended except as stated in the Estoppel Request.

16.16.8.2 If a Primary Lien is being created, that upon Primary Lienholder's providing to Lessor copies of the recorded instrument creating Primary Lienholder's Primary Lien and a recorded instrument releasing any prior Primary Lien, Lessor will acknowledge Primary Lienholder as the Primary Lienholder under this Agreement.

16.16.8.3 Lessor consents to the proposed transaction between Lessee and the Estoppel Assignee as disclosed by the Estoppel Request.

16.16.8.4 The copies of this Agreement and any amendments recorded in the office of the Maricopa County recorder are true and complete copies of this Agreement.

16.16.8.5 An Event of Default by the Requesting Party does not exist (except that Estoppel Certificates shall exclude matters of zoning, regulatory compliance or other governmental or regulatory issues).

16.16.9 The party receiving the request shall provide the Estoppel Certificate to the Requesting Party not less than thirty (30) days after receipt of a proper and complete Estoppel Request and such additional information as the receiving party may reasonably request relating to the proposed assignment. The Estoppel Certificate may contain such limits, conditions and other statements as may be necessary to reflect the true status of the Project and this Agreement. An Estoppel Certificate does not amend or otherwise modify this Agreement. An Estoppel Certificate

does not bind Lessor to any provisions of any agreement among Lessee and the Estoppel Assignee or other persons.

16.17 Assignment by Lessor. Lessor's interests in this Agreement shall be automatically deemed to be assigned to any person who acquires fee title to Lessor's interests in the Premises. Upon any such assignment, Lessor's or its assigning successor's liability with regard to this Agreement shall terminate.

XVII. MISCELLANEOUS

17. Miscellaneous. The following additional provisions apply to this Agreement:

17.1 Amendments. This Agreement may not be amended except by a formal writing executed by all of the parties. An amendment shall not be binding against a Primary Lienholder unless the Primary Lienholder consents to the amendment, which consent shall not be unreasonably withheld or delayed.

17.2 Time of Essence. Time is of the essence of each and every provision of this Agreement.

17.3 Survival of Liability. All obligations of Lessee hereunder and all warranties and indemnities of Lessee hereunder shall survive termination of this Agreement for any reason.

17.4 Severability. If any term, condition, covenant, stipulation, agreement or other provision herein contained is held to be invalid or unenforceable for any reason, the invalidity of such provision shall in no way affect any other provision herein contained. Further, this Agreement shall be deemed automatically reformed to secure to Lessor the legal, equitable, practical and other benefits of the provisions of this Agreement as written to the very maximum extent permitted by law.

17.5 No Partnership. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.

17.6 Nonliability of Officials and Employees. No official, representative or employee of Lessor shall be personally liable or otherwise responsible to any party, or to any successor in interest to any party, for any default or breach by Lessor or for any amount or other obligation of Lessor or otherwise under the terms of this Agreement or related to this Agreement.

17.7 Notices. Notices hereunder shall be given in writing delivered to the other party or mailed by registered or certified mail, return receipt requested, postage prepaid addressed to:

If to Lessor: Maria Muiser
Asset Management Coordinator
7447 E. Indian School Road, Suite 205
Scottsdale, AZ 86251

Copy to: City Attorney
City of Scottsdale
3939 N. Drinkwater Blvd.
Scottsdale, AZ 85251

If to Lessee: EQUITY PARTNERS GROUP, LLC
4501 N SCOTTSDALE RD, STE 201
SCOTTSDALE, AZ 85251

Copies to: Holder of Primary Lien only if specifically required by this Agreement.

By notice from time to time, a person may designate any other street address within Maricopa County, Arizona as its address for giving notice hereunder. After the Project is completed, notices to Lessee may also be hand delivered to Lessee's management office at the Premises. Service of notice by mail shall be deemed to be complete three (3) days (excluding Saturday, Sunday and legal holidays) after the notice is deposited in the United States mail.

17.8 Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior understanding, negotiation, or discussion regarding the Premises.

17.9 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was entered into on the basis that it shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, that might otherwise favor Lessee.

17.10 No Setoffs. All amounts payable by Lessee hereunder shall be paid in full directly to Lessor without setoff or deduction of any description. Lessee expressly waives any right of setoff.

17.11 Paragraph Headings. The paragraph headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.

17.12 No Third Party Beneficiaries. Except for limited provisions, if any, expressly stated to be "for the benefit of" a Primary Lienholder or other third party, if any, no person or entity shall be a third party beneficiary to this Agreement or shall have any right or cause of action hereunder. Lessor shall have no liability to third parties for any approval of plans, Lessee's construction of improvements, Lessee's negligence, Lessee's failure to comply with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by Lessee) or otherwise as a result of the existence of this Agreement.

17.13 Exhibits. All exhibits that are specifically stated to be attached to this Agreement are hereby incorporated into and made an integral part of this Agreement for all purposes.

17.14 Attorneys' Fees. If Lessor brings any action, suit or other proceeding to collect Rent, to take possession of the Premises, or to vindicate, enforce or exercise any other rights or remedies under this Agreement, Lessee shall pay all costs of such proceeding and all expenses of such proceeding together with such sum as the court (and not a jury) may adjudge reasonable as attorneys' fees and other litigation expenses and costs. Lessee shall provide evidence to Lessor of the rate of payment of Lessee's attorneys' fees to its counsel and Lessor shall be entitled to recover payment for attorneys employed by Lessor (including attorneys who are regular employees of Lessor) at the same rate of payment.

17.15 Choice of Law and Court. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules. Lessor has not waived its claims procedures as respects this Agreement. Exclusive proper venue for any action regarding this Agreement shall be the Maricopa County Superior Court or the Federal District Court in the District of Arizona sitting in Maricopa County. Lessor and Lessee consent to personal jurisdiction in such courts. Claims by Lessee shall comply with time periods and other requirements of Lessor's claims procedures from time to time.

17.16 Approvals and Inspections. All approvals, reviews and inspections by Lessor under this Agreement or otherwise are for Lessor's sole benefit and not for the benefit of Lessee, its contractors, engineers or other consultants or agents, or any other person.

17.17 Recording. Within ten (10) days after the date of this Agreement, Lessee shall cause this Agreement to be recorded in the office of the Maricopa County Recorder.

17.18 Statutory Cancellation Right. In addition to its other rights hereunder, Lessor shall have the rights specified in A.R.S. § 38-511.

EXECUTED as of the date first given above.

LESSEE: Equity Partners Group, L.L.C.
an Arizona limited liability company

By: [Signature]
Its: MANAGER

LESSOR: CITY OF SCOTTSDALE,
an Arizona municipal corporation

By: _____
W. J. "Jim" Lane, Mayor

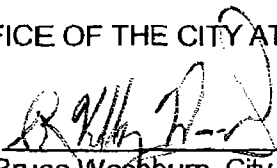
ATTEST:

Carolyn Jagger, City Clerk

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APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

By:  R. Kelly Ward
For
Bruce Washburn, City Attorney



Maria Muiser, Asset Management Coordinator

Jeff Nichols, City Treasurer

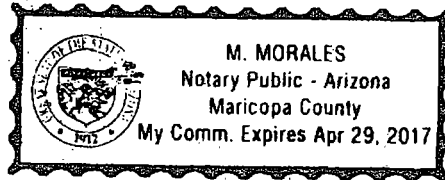
Katherine Callaway, Risk Management Director

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 29th day of September, 2014, by Shahrood Yari, Manager of Equity Partners an Arizona limited liability company.
Group, LLC.

M. Morales
Notary Public

My Commission Expires: _____



STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by W. J. "Jim" Lane, mayor of the City of Scottsdale an Arizona municipal corporation.

Notary Public

My Commission Expires: _____

TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Paragraph</u>	<u>Description</u>
A	A	Drawing of premises to be used by Lessee indicating all items mentioned in the recitals.
B	B	Legal description for North Parcel.
C	C	Legal description for South Parcel.
D	2.4.4	Form of deed.
E	3.9.3	Standards for letters of credit.
F	7.1.2	Description of public restrooms to be constructed by Lessee.

SITE PLAN

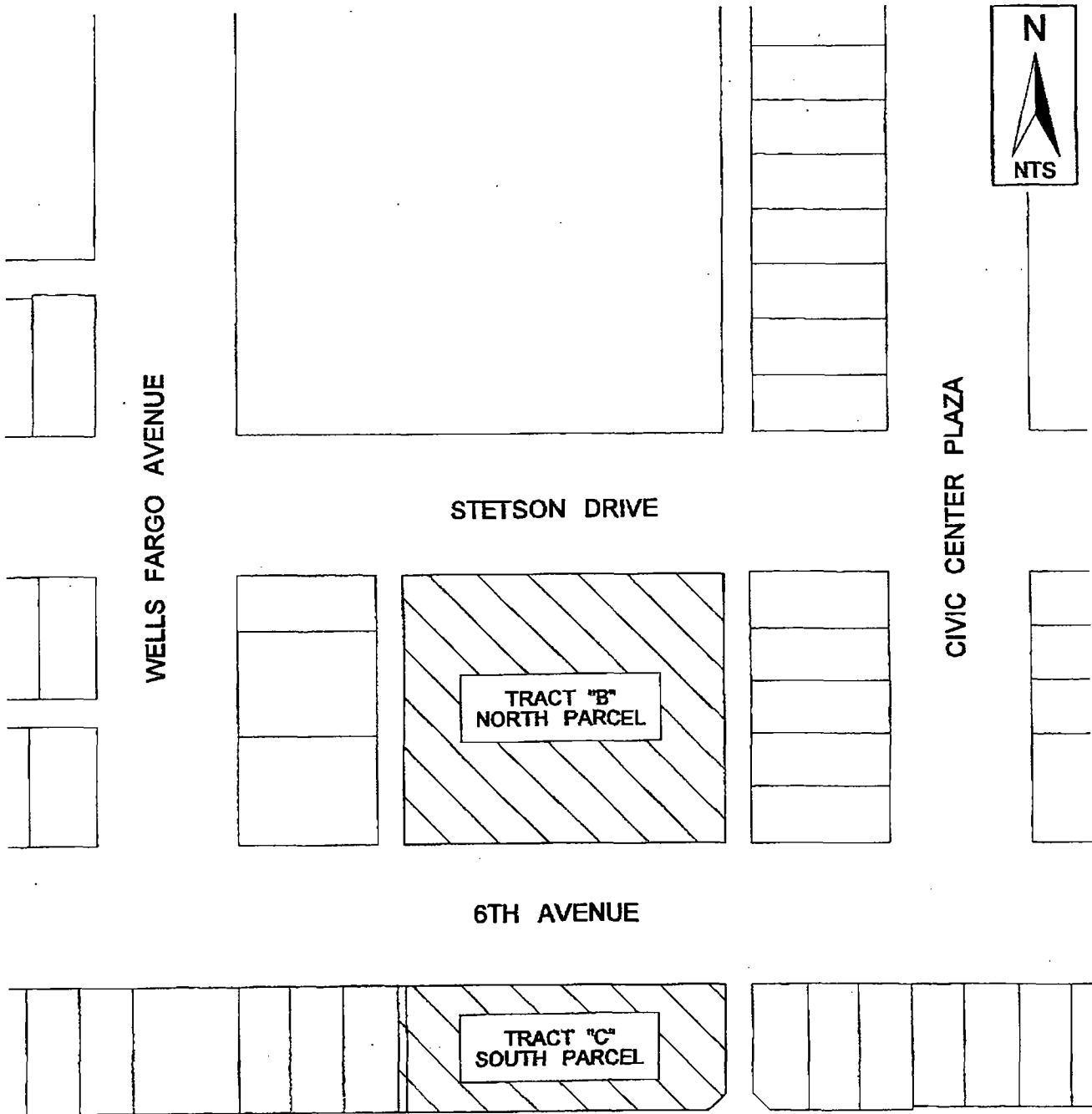


Exhibit " A "

Legal Description

North Parcel

Parcel #1: Tract "B", WINFIELD SCOTT PLAZA UNIT FOUR, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in book 70 of Maps, page 28 and amendment to Plat recorded in Docket 3009, page 200.

Legal Description

South Parcel

Parcel #2: Tract "C", WINFIELD SCOTT PLAZA UNIT FOUR, according to the plat of record in the office of the county Recorder of Maricopa County, Arizona, in book 70 of Maps, page 28 and amendment to Plat recorded in Docket 3009, page 200;

Except the West 5 feet of said Tract "C"

Parcel #3: The West 5 feet of Tract "C", WINFIELD SCOTT PLAZA UNIT FOUR, according to the plat of record in the office of the county Recorder of Maricopa County, Arizona, in book 70 of Maps, page 28 and amendment to Plat recorded in Docket 3009, page 200.

Exhibit "C"
Page 1 of 1

WHEN RECORDED RETURN TO:

(Maria Muiser)
CITY OF SCOTTSDALE
7447 E. Indian School Road, Suite 100
Scottsdale, AZ 85251

Exempt from Affidavit of Value
under A.R.S. § 11-1134(A)(3)
(Stetson parking lots)

SPECIAL WARRANTY DEED
WITH RESERVATIONS

THIS SPECIAL WARRANTY DEED WITH RESERVATIONS (the "Deed") is made this _____ day of _____, 20____, by City of Scottsdale, an Arizona municipal corporation ("Grantor") to _____, a _____ ("Grantee") as follows:

1. Conveyance. Grantor hereby conveys to Grantee in fee title the real property described on **Exhibit "A"** and **Exhibit "B"** attached hereto (the "Property").

2. Warranties. Grantor conveys the Property in an "as is" condition, with no warranties, express or implied. Without limitation, Grantor makes no warranties as to the condition of title, the condition of improvements, the condition of the soil, or geology, or the presence of known or unknown contaminants or other faults or defects of any description. Grantee has inspected the Property and its environs and obtained such information and professional advice as Grantee has determined to be necessary related to the Property. Grantee shall indemnify defend and hold Grantor harmless from and against any and all damages, claims, liability, liens and expenses, including attorneys' fees, related to or involving the foregoing.

3. Safety. Grantee shall maintain the Property in a good and safe condition and shall indemnify, defend and hold harmless Grantor against any harm, injury, death, damages, or other loss of any description arising out of use of the Property.

4. Title. Grantor binds itself and its successors to warrant and defend the title, as against all acts of Grantor herein and no other, subject to all matters of record and all matters that would be shown by a survey or inspection of the property. Grantor specifically disclaims any warranty or representation as to the Property's fitness, suitability or title for any particular use. Grantee shall indemnify, defend and hold Grantor harmless against any damages, claims, liability, liens and expenses, including attorneys fees related to the Property's title or fitness for any use Grantee or its successors may make of the Property.

5. Acceptance. By accepting or claiming through this Deed, Grantee and its successors and assigns confirm and agree to all provisions of this Deed.

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6. Covenants. Grantor reserves and imposes upon the Property perpetual restrictive covenants, easements and other matters and requirements as set out in the following:

6.1 The provisions regarding a parking structure (the "Parking Structure") and other matters set out in **Exhibit "C"** attached hereto.

6.2 The provisions regarding a restroom facility (the "Restrooms") and other matters set out in **Exhibit "D"** attached hereto.

6.3 The provisions regarding insurance, indemnity, and other matters set out in **Exhibit "E"** attached hereto.

6.4 The provisions regarding miscellaneous matters set out in **Exhibit "F"** attached hereto.

7. Utilities. Grantor reserves public utility easements for all existing utilities that serve the Parking Structure, the Restrooms, or other real property outside the Property.

IN WITNESS WHEREOF, Grantor has caused this Deed to be executed as of the date first above stated.

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

By: _____
W. J. "Jim" Lane, mayor

ATTEST:

Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

By: _____
Bruce Washburn, City Attorney

Maria Muiser, Asset Management Coordinator

Katherine Callaway, Risk Management Director

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STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by W. J. "Jim" Lane, Mayor of the City of Scottsdale, an Arizona municipal corporation.

Notary Public

My Commission Expires:

Table of Exhibits

<u>Exhibit</u>	<u>Paragraph</u>	<u>Description</u>
A	1	Legal Description for the property being conveyed
B	1	Drawing of the property being conveyed
C	6.1	Parking provisions
D	6.2	Restroom provisions
E	6.3	Insurance provisions
F	6.4	Other provisions

Legal Description

North Parcel

Parcel #1: Tract "B", WINFIELD SCOTT PLAZA UNIT FOUR, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in book 70 of Maps, page 28 and amendment to Plat recorded in Docket 3009, page 200.

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Except the West 5 feet of said Tract "C"

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Exhibit "A"
Page 1 of 1

Exhibit D

SITE PLAN

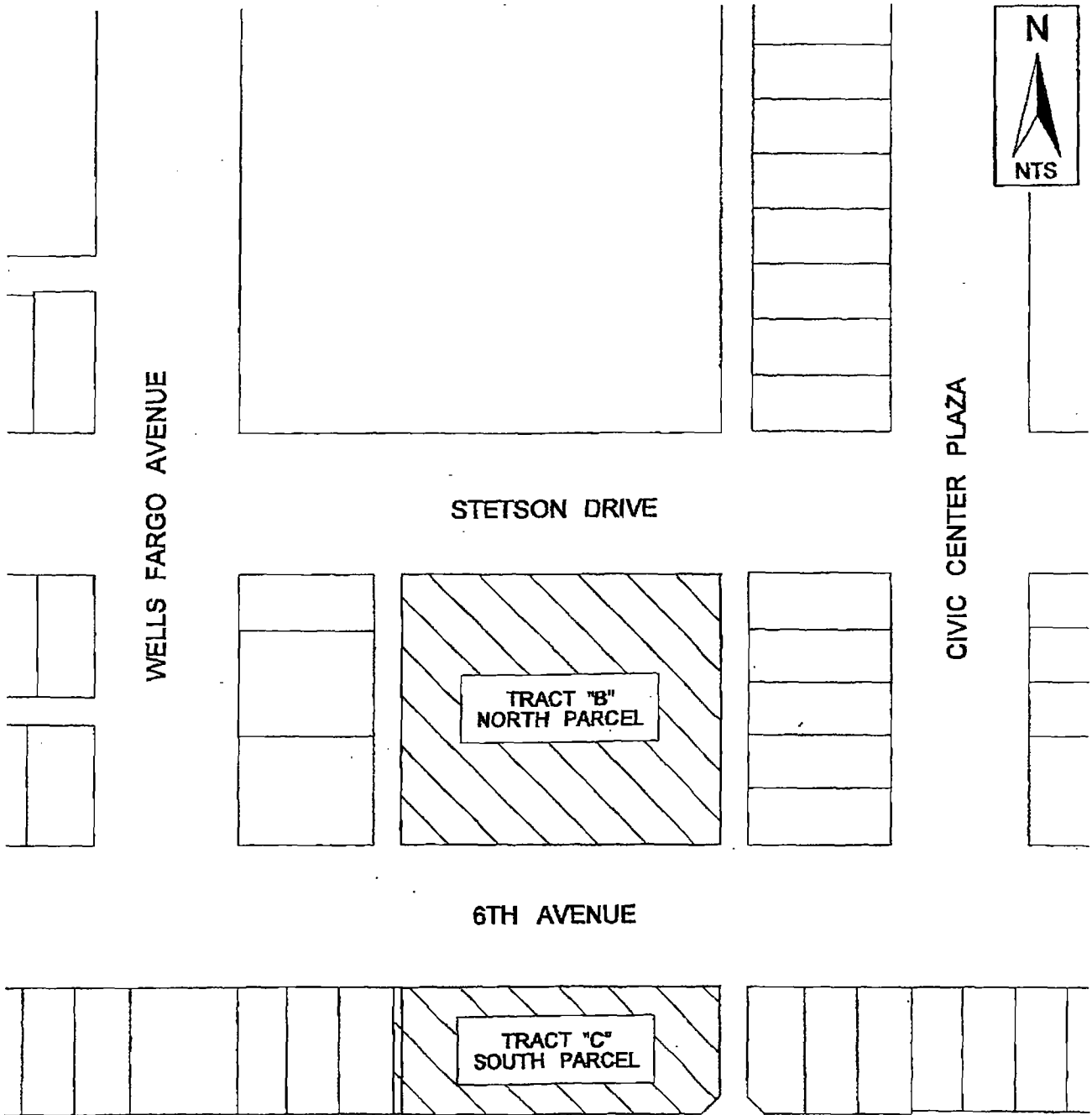


Exhibit " B "

Page 1 of 1

Exhibit D

Contract No. 2014- 179 -COS

PARKING STRUCTURE PROVISIONS

1 Parking Structure Provisions. Grantee shall comply with the following additional Parking Structure requirements:

1.1 Parking Structure Characteristics. The Parking Structure shall have the following characteristics:

1.1.1 The Parking Structure shall include at least 175 standard full size parking spaces (the "Public Use Spaces") consisting of at least 105 spaces (the "Free Public Use Spaces") and at least 70 additional spaces (the "Paid Public Use Spaces").

1.1.2 The Parking Structure shall include access and maneuvering areas for the Public Use Spaces.

1.1.3 The Public Use Spaces shall be located in the Parking Structure in a manner that:

1.1.3.1 Each Public Use Space can be reached by cars entering the Parking Structure from the street without passing by any parking spaces that are not Public Use Spaces.

1.1.3.2 All Free Public Use Spaces are contiguous to each other.

1.1.3.3 All Paid Public Use Spaces are contiguous to each other.

1.1.3.4 The Free Public Use Spaces and the Paid Public Use Spaces are contiguous to each other.

1.1.4 The Parking Structure may include additional parking spaces (the "Private Use Spaces") not for public use.

1.1.5 The Private Use Spaces shall be adequate in number to provide all legally required parking for all private uses of the Property.

1.2 Public Use Spaces. Grantee shall make all of the Public Use Spaces available to the public for free parking twenty-four (24) hours a day, seven (7) days a week, except:

1.2.1 Grantee may elect to charge a fee for public parking in the Paid Public Use Spaces. The fee shall not exceed market rates for such parking as reasonably determined

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by Grantor, subject to Grantor's annual approval, taking into account such factors as Grantor may deem to be relevant.

1.2.2 Grantee may elect to prohibit all public parking from 3:00 a.m. to 6:00 a.m. on any day.

1.2.3 Grantee may elect to prohibit public parking during any period not to exceed one year when the Parking Structure is being demolished and reconstructed. Grantee shall provide ninety (90) days advance written notice to Grantor before such work. Such period may not occur within ten (10) years after the Parking Structure is initially constructed nor more than once in any twenty (20) year period. Grantee shall provide such deposits and other assurances as Grantor may request to assure successful and timely completion of the work.

1.3 Private Use Spaces. Grantee shall make available to each tenant or other occupant of the Property unconditional and unrestricted use of sufficient Private Use Spaces to satisfy all legally required parking requirements for their respective portions of the Property. Such availability shall be stated in each lease or other document granting occupancy in any portion of the Property.

1.4 Variation in Operation Time. Any variation from the required times of Parking Structure operation shall require Grantor's written consent, which Grantor may grant, withhold or retract from time to time, upon such conditions as Grantor may elect to impose.

1.5 Parking Structure Operation and Maintenance. Grantee, at Grantee's sole expense, shall operate, repair, rebuild, and maintain the Parking Structure, including all improvements, fixtures and furnishings thereon or therein, in good condition and repair, including all repairs and replacements necessary to preserve and operate the Parking Structure in a decent, safe, sanitary and well maintained condition, and in conformance with all applicable laws and regulations. Without limitation, such responsibility includes utilities and janitorial service. Grantee shall repair and maintain the Parking Structure in a first-class, sound, clean, safe and attractive manner, properly operating as designed, meeting or exceeding the manner of maintenance at first class comparable facilities in Maricopa County, Arizona as determined in Grantor's reasonable discretion. Grantor is not required to perform any maintenance, operation or repair work for the Parking Structure. Grantor is not obligated to provide any utilities or other resources.

1.6 Valet Parking. Valet parking is prohibited for Public Use Spaces.

1.7 Parking Rules. Use of portions of the Parking Structure that are available to the public may be time restricted and otherwise regulated by Grantor. Other use of the Parking Structure shall be subject to such rules and regulations as may be adopted from time to time by Grantee.

1.8 Remodeling. Without Grantor's consent, Grantee shall not relocate, alter or otherwise modify the Parking Structure from its condition as originally constructed or thereafter reconstructed as approved by Grantor. Grantee may change fixture design and decoration without Grantor consent so long as the Parking Structure complies with all applicable codes and regulations (including plans review), does not change in number of Free Public Use Spaces or Paid Public Use Spaces provided, or otherwise change in features, functionality or configuration.

1.9 Public Parking Signs. Grantee shall not install any signs or other indications at the Parking Structure or elsewhere suggesting in any way that the Free Public Use Spaces are not available for free use by the public or that the Paid Public Use Spaces are not available for paid use by the public. Grantee shall install and maintain signs approved by Grantor at all vehicular entrances to the Parking Structure indicating that the public is able to use the Public Use Spaces at all times when this Deed requires the Public Use Spaces to be available to the public.

1.10 Employee Parking Signs and Information. To encourage occupants of the Property not to use Public Use Spaces on or off the Property, Grantee shall do the following:

1.10.1 Grantee shall install and maintain signs approved by Grantor at all vehicular entrances to the Parking Structure indicating that occupants of the Property and their employees shall not park at any time in the Public Use Spaces, on neighboring streets, or at public parking lots or structures in the neighborhood.

1.10.2 Grantee shall also periodically provide such information to its occupants and their employees not less often than twice each calendar year using such methods as Grantee uses to communicate other matters to its occupants and their employees.

1.10.3 Grantee upon notice from Grantor shall use fines and other commercially reasonable efforts to cause occupants and their employees park in compliance with this Deed.

1.11 Compliance With Law. The design, construction and operation of the Parking Structure shall comply with all applicable laws and regulations.

RESTROOM PROVISIONS

1. Restrooms Provisions. Grantee shall comply with the following additional Restrooms requirements:

1.1 Restrooms Construction. The Restrooms must meet the following requirements:

1.1.1 The Restrooms shall include a men's restroom and a women's restroom.

1.1.2 The Restrooms shall use the same street entrance as the main pedestrian street entrance to the Parking Structure.

1.1.3 The Restrooms shall include access from the street by a passageway not more than fifty feet (50') in length.

1.1.4 The Restrooms shall comply with all applicable laws and regulations.

1.2 Restrooms Hours. Grantee shall keep the Restrooms open to the public for free public use at all times, at no expense to Grantor, except during the following times:

1.2.1 Grantee shall have the right to temporarily close the Restrooms between 3:00 a.m. and 6:00 a.m. on any day.

1.2.2 Grantee shall have the right to temporarily close the Restrooms during actual Restroom repair or renovation work commenced promptly and pursued diligently to completion. Grantee shall provide seven (7) days advance written notice to Grantor (or such shorter notice as may be practical for unexpected work that cannot reasonably be postponed) before any such work that would close either Restroom for more than twenty-four (24) hours.

1.2.3 Grantee shall have the right to temporarily close the Restrooms during any period not to exceed one year when the Restrooms are being demolished and reconstructed. Grantee shall provide ninety (90) days advance written notice to Grantor before such work. Such period may not occur within ten (10) years after the Restrooms and Parking Structure are initially constructed nor more than once in any twenty (20) year period.

1.3 Variation in Operation Time. Any variation from the required times of the Restrooms operation shall require Grantor's consent, which Grantor may grant, withhold or retract from time to time, upon such conditions as Grantor may elect to impose.

1.4 Restrooms Operation and Maintenance. Grantee, at Grantee's sole expense, shall operate, repair, rebuild and maintain the Restrooms, including all improvements, fixtures

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and furnishings thereon or therein, in good condition and repair, including all repairs and replacements necessary to operate and preserve and operate the Restrooms in a decent, safe, sanitary and well maintained condition, and in conformance with all applicable laws, ordinances and regulations. Without limitation, such responsibility includes utilities and janitorial service. Grantee shall repair and maintain the Restrooms in a first-class, sound, clean, safe and attractive manner, properly operating as designed, meeting or exceeding the manner of maintenance at first class comparable facilities in Maricopa County, Arizona as determined in Grantor's reasonable discretion. Grantor is not required to perform any maintenance, operation or repair work for the Restrooms. Grantor is not obligated to provide any utilities.

1.5 Substitute Restrooms. If the Restrooms will be closed more than seven consecutive days or more than ten (10) days in any thirty (30) day period, Grantee shall provide during the entire period alternative public restroom facilities with sinks and with the same number of stalls located within three hundred (300) feet of the Restrooms. Such substitute facilities may be portable. All of the requirements of this Deed apply to the substitute facilities.

1.6 Remodeling. Without Grantor's consent, Grantee shall not relocate, alter or otherwise modify the Restrooms from their condition as originally constructed or thereafter reconstructed as approved by Grantor. Grantee may change fixture design and decoration without Grantor consent so long as the Restrooms comply with all applicable codes and regulations (including plans review), include at least the fixtures and equipment previously included, and do not otherwise change in features or configuration.

1.7 Signs. Grantee shall not install any signs at the Restrooms or elsewhere suggesting in any way that the Restrooms are not available for free use by the public. Grantee shall install and maintain reasonably prominent signs approved by Grantor on each street frontage of the Property facing the street, indicating the route to the Restrooms, indicating that the Restrooms are wheelchair accessible, stating the hours the Restrooms are open, and stating that the Restrooms are for public use.

INSURANCE PROVISIONS

1. Insurance Required. Grantee shall at all times provide insurance and indemnification as follows:

1.1 Commercial General Liability. Commercial general liability insurance with an limit of Five Million Dollars (\$5,000,000) for each occurrence, Five Million Dollars (\$5,000,000) products and completed operations annual aggregate, and a Five Million Dollar (\$5,000,000) general aggregate limit per policy year. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, bodily injury, advertising injury, and liability assumed under an "insured contract" including this Deed. The policy will cover Grantee's liability under the indemnity provisions of this Deed. The policy shall contain a "separation of insureds" clause.

1.2 Automobile Liability. Automobile liability insurance with a combined single limit of One Million Dollars (\$1,000,000) for each accident covering any and all owned, hired, and non-owned vehicles assigned to or used in any way in connection with Grantee's use of the Property. Without limitation, such insurance shall cover hazards of motor vehicle use for loading and off-loading.

1.3 Special Risk Property. Special Risk Causes of Loss Property coverage, as defined by Insurance Services Office, Inc., in an amount per occurrence equal to full replacement cost of the Property and all personal property used in connection with the Property. Property coverage shall include Pollutant Clean Up and Removal with minimum limits of coverage of \$50,000.

1.4 Boiler and Machinery Insurance. Boiler and machinery insurance in the amount of the full replacement cost of all machinery and mechanical equipment.

1.5 Contractor's Protective. With respect to any construction involving the Property, owner's and contractor's protective insurance covering the interests of contractors, Grantor and Grantee, with a minimum limit of One Million Dollars (\$1,000,000) for each occurrence and a Two Million Dollars (\$2,000,000) general aggregate limit per policy year. This coverage may be included with the commercial general liability coverage.

1.6 Builder's Risk Property Insurance. Builder's risk property insurance as follows:

1.6.1 Builder's risk insurance must take effect no later than the time covered property comes under Grantee's control or responsibility.

1.6.2 Builder's risk insurance must continue in effect without interruption until all of the following have occurred, whether or not the covered property is occupied:

1.6.2.1 All work is completed and accepted by Grantor and Grantee.

1.6.2.2 Final payment for the construction work and materials has been made.

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1.6.2.3 No person or entity other than Grantor and Grantee has an insurable interest in the work.

1.6.2.4 Any and all property insurance required for the work is in place.

1.6.3 The amount of builder's risk insurance shall be the amount of the entire cost of the work as well as subsequent modifications thereto.

1.6.3.1 Builder's risk insurance is required for all construction and similar work except construction having a total value less than Fifty Thousand and no/100 Dollars (\$50,000.00).

1.6.3.2 Builder's risk insurance must cover at least the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, collapse and flood.

1.6.3.3 Builder's risk insurance shall cover false work and temporary buildings. Builder's risk insurance must cover covered property that is being transported to the construction site or on the construction site awaiting installation.

1.6.3.4 Builder's risk insurance shall be on a special causes of loss (all risk) policy form.

1.6.3.5 Builder's risk insurance shall insure the interests of Grantor, Grantee and all subcontractors and sub-subcontractors involved in any construction work.

1.6.3.6 As between Grantor and Grantee, Grantee bears full responsibility for loss or damage to all work being performed and to works under construction.

1.6.3.7 Builder's risk insurance shall cover reasonable compensation for architect's service and expenses required as a result of an insured loss and other "soft costs". Builder's risk insurance shall insure against risks of direct physical loss or damage from external causes including debris removal and demolition occasioned by enforcement of any applicable legal requirements.

1.7 Policy Adjustment. Policy limits and coverages shall increase as reasonably necessary in Grantor's discretion to account for inflation, changes in risk, or other factors based on accepted industry standards.

1.8 Form of Insurance. All insurance policies shall meet the following requirements:

1.8.1 All liability policies (excluding workers' compensation) must name Grantor as an additional insured via endorsement.

1.8.2 If Grantee receives notice that any required policies are materially reduced or canceled, Grantee shall immediately give Grantor notice, unless such coverage is immediately replaced.

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1.8.3 "Occurrence" coverage is required. "Claims made" insurance is not permitted.

1.8.4 Policies must also cover and insure Grantee's activities relating to the business operations and activities conducted from the Property.

1.8.5 Grantee must clearly show by providing copies of insurance policies, certificates, formal endorsements or other documentation acceptable to Grantor that all insurance coverage required by this Deed is provided.

1.8.6 The insurer's duty to notify Grantor of changes in coverage shall not include phrases such as "endeavor to" or "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives".

1.8.7 All policies must clearly show by formal endorsement or otherwise that all coverage required by this Deed is provided.

1.8.8 All policies shall contain provisions that neither Grantee's breach of a policy requirement or warranty, nor failure to follow claims reporting procedures, shall affect coverage provided to Grantor.

1.8.9 No deductibles, retentions, or "self insured" amounts shall exceed One Hundred Thousand Dollars (\$100,000) in the aggregate per year. Grantee shall be solely responsible for any self-insurance amount or deductible.

1.8.10 No deductible shall be applicable to coverage provided to Grantor.

1.8.11 All policies except workers' compensation must name Grantor and Grantor's employees, officials, representatives, officers, directors, and agents (collectively "Additional Insureds") as additional insureds. Grantee shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement. Grantor may give Grantee notice of Grantor's election from time to time that any or all of the Additional Insureds not be named as Additional Insureds with respect to specific insurance coverages.

1.8.12 All applicable policies must name Grantor as a loss payee as respects proceeds relating to the Property.

1.8.13 All policies shall require that notices be given to Grantor in the manner specified for notices to Grantor under this Deed.

1.8.14 All insurance policies shall contain a waiver of any transfer rights of recovery (subrogation) against Grantor and all other Additional Insureds.

1.9 Insurance Certificates. Grantee shall evidence all insurance by furnishing to Grantor certificates of insurance annually and with each change in insurance coverage as follows:

1.9.1 Certificates must evidence that the policy referenced by the certificate is in full force and effect and that the policy satisfies each requirement of this Deed applicable to the

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policy. For example, certificates must evidence that Grantor and the other Additional Insureds are additional insureds and that insurance proceeds will be paid as required by this Deed. Certificates must be in a form acceptable to Grantor.

1.9.2 All certificates are in addition to the actual policies and endorsements required. Grantee shall provide updated certificates at Grantor's request.

1.10 Acceptable Insurers. All insurance policies shall be issued by insurers acceptable to Grantor. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurer) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++ 6.

1.11 Primary Insurance. Grantee's insurance shall be primary insurance. Any insurance or self insurance maintained by Grantor shall not contribute to Grantee's insurance.

1.12 Insurance Proceeds. All insurance proceeds shall be paid to Grantee and Grantor jointly shall be allocated among Grantor, Grantee and other interested parties as their interests may appear and to insure compliance with this Deed.

1.13 Risk of Loss. Grantor is not required to carry insurance covering or affecting the Parking Structure, the Restrooms or the Property. Grantee assumes the risk of any and all loss, damage or claims of every description involving the Property. Grantor expressly disclaims any representation that required insurance is adequate to protect any person or property against any risks related to the Property or any activities, uses or improvements related to the Property. Grantee's obligations to indemnify do not diminish in any way Grantee's obligations to insure; and Grantee's obligations to insure do not diminish in any way Grantee's obligations to indemnify. Grantee's obligations to indemnify and provide insurance are in addition to, and do not limit, any and all other liabilities or obligations of Grantee under or connected with this Deed. Grantee shall be responsible for any and all damage to its property and equipment related to this Deed and shall hold harmless and indemnify Grantor for the same regardless of the cause of such damage.

1.14 Insurance to be Provided by Grantees, Sublessees and Others. Any sublessees, contractors or other persons occupying, working on or about, or using the Property pursuant to this Deed must also provide for the protection of Grantor all of the insurance and indemnification required by this Deed. The preceding sentence does not require such persons to provide insurance that duplicates insurance coverage that has already been provided.

2. Indemnity. In addition to all other obligations hereunder, to the fullest extent permitted by law Grantee shall indemnify, defend and hold harmless Grantor for, from and against any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") related to the actions or the omissions of Grantee, its employees, contractors, or agents, including but not limited to claims arising out of any intentional or criminal act or omission of persons other than the

Grantor, its employees or agents and claims arising out of the care, custody, control and/or maintenance of the Parking Structure, regardless of whether the Grantor has a non-delegable duty with regard to such acts or omissions (the "Indemnity"). Notwithstanding the foregoing, the Indemnity does not apply to Claims to the extent that such Claims arise from intentionally wrongful acts by Grantor, its employees, contractors, or agents or to the extent the Indemnity may impose obligations in excess of those allowed by applicable law.

OTHER DEED PROVISIONS

1. Damage to or Destruction of the Parking Structure and Restrooms. Grantee promptly shall repair any damage to or destruction of the Parking Structure and Restrooms by fire, explosion, the elements, the public enemy, or other casualty.
2. Grantee's Records. Grantee shall make available to Grantor upon request for inspection and copying at the Property, at Grantor's offices, or at another location within five (5) miles of the Property, all records and other materials pertaining to whether Grantor and Grantee are complying with this Deed.
3. Compliance with Law. Grantee shall perform its obligations under this Deed and all activities as the Premises in accordance with all federal, state, county and local laws, ordinances, regulations or other rules or policies as are not in effect or as may hereafter be adopted or amended.
4. Term. The term of the requirements of this Deed shall be perpetual.
5. Applicable to Successors. The provisions of this Deed shall be incorporated by reference, and whether or not actually incorporated by reference shall be deemed incorporated by reference, in favor of Grantor in each deed, lease, sublease or other agreement for use of any portion of the Property.
6. Amendments. This Deed may not be amended except by a formal writing executed and recorded by Grantor and (a) the owners of not less than a two-thirds (2/3) majority of the Property by gross interior floor space (or by gross square footage of the surface of the Property, if the Property is not improved with a building) if the Property is not subject to a condominium declaration or owners association, or (b) the owners association if the Property is subject to a condominium declaration or owners association.
7. Binding Nature. This Deed shall run with and be appurtenant to the title to the Property, shall bind all successor owners and other holders of interests in the Property and benefit all successors of Grantor. This Deed shall also be enforceable by Grantor personally.
8. Non-Merger. The obligations contained herein shall not terminate by merger of title.
9. Nature of Restrictions. The requirements of this Deed are unconditional, irrevocable and legally binding and enforceable covenants, conditions, restrictions and easements running with the land against Grantee and all future owners of the Property as a burden on the Property for the benefit of Grantor.
10. Title Priorities. In no event shall any interest in the Property created by or deriving through Grantee (whether arising before, concurrent with, or after the date of this Deed) cover, affect or have any priority higher than or equal to any of Grantor's rights in the Property or under this Deed.
11. Time of Essence. Time is of the essence of each and every provision of this Deed.
12. Integration. This Deed constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, draft agreements, discussion outlines, correspondence and memoranda or representation regarding the Property.

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13. Construction. Whenever the context of this Deed requires, the singular shall include the plural, and the masculine shall include the feminine. This Deed shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Deed. The terms of this Deed were established in light of the plain meaning of this Deed and this Deed shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, which might otherwise favor either party.
14. No Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this Deed or shall have any right or cause of action hereunder.
15. Exhibits. All Exhibits attached to this Deed as specified in this Deed are hereby incorporated into and made an integral part of this Deed for all purposes.
16. Attorneys' Fees. If an action or suit or proceeding is brought by any party to enforce compliance with this Deed or for failure to observe any part of this Deed or to vindicate or exercise any rights or remedies hereunder, the non-prevailing party shall pay the prevailing party's costs of such action or suit and the prevailing party's attorneys' fees and other litigation costs, all as determined by the court and not a jury.
17. Choice of Law. This Deed shall be governed by the internal laws of the State of Arizona without regard to choice of law rules.
18. Institution of Legal Actions. In addition to any other rights or remedies, any party may institute legal action to cure, correct or remedy any default or to obtain any other remedy consistent with this Deed. Such legal actions shall be instituted in the Superior Court of the County of Maricopa, State of Arizona, or in the Federal District Court in the District of Arizona sitting in Maricopa County. Each person who accepts a real estate interest in the Property agrees to the exclusive jurisdiction of such courts. Claims against Grantor shall comply with time periods and other requirements of Grantor's claims procedures from time to time.
19. Approvals and Inspections. All approvals, reviews and inspections by Grantor under this Deed or otherwise are for Grantor's sole benefit and not for the benefit of Grantee or its successors or their contractors, engineers or other consultants or agents, or any other person.
20. Statutory Cancellation Right. In addition to its other rights hereunder, Beneficiary shall have the rights specified in A.R.S. § 38-511.
21. Injunctive Relief; Remedies. The violation by Grantor or Grantee of any of the restrictions contained herein may be enjoined in any court of competent jurisdiction. Upon any default hereunder by Grantor or Grantee, the other party shall be entitled to exercise all available remedies at law or in equity.
21. No Dedication. This Deed does not grant any rights to any individual member of the public or to the general public. The right of the public or any person to make any use whatsoever of the Property or any property interest therein is by permission and subject to control of the owner of the respective property interest involved.
22. Waiver and Breach. No breach of this Deed shall justify any further or additional breach, or entitle the other owner or any other person or entity to cancel, rescind or otherwise terminate this Deed.

23. Compliance with Law. This Deed does not in any way impair Grantor's power to enact, apply, or enforce any laws or regulations, or exercise any governmental powers affecting Grantee or the Property.

24. Severability. If any clause, sentence or other portion of this Deed shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, then such portion shall be deemed to be reformed to carry out as much as may be possible the intent of this Deed and the remaining portions thereof shall remain in full force and effect.

25. Notice. Notices given by the parties pursuant hereto must be made in writing and shall be served personally or by depositing the notice in the United States mail, postage prepaid, certified or registered mail, return receipt requested, addressed as follows:

Grantor: Maria Muiser
Asset Management Coordinator
CITY OF SCOTTSDALE
7447 E. Indian School Rd.
Scottsdale, AZ 85251

Copy to: City Attorney
CITY OF SCOTTSDALE
3939 N. Drinkwater Blvd.
Scottsdale, AZ 85251

Grantee: _____

Copy to: _____

26. Headings and Captions. The headings and captions of this Deed are for convenience only and do not define, contract or expand any provision hereof.

Standards for Letters of Credit

In addition to any other requirements imposed upon a letter of credit (the "Letter of Credit") issued pursuant to this Agreement, each Letter of Credit shall meet and be governed by the following additional standards and requirements:

1. Approved Forms. The form of the Letter of Credit and of drafts upon the Letter of Credit shall be as follows:

1.1 Except as approved in writing by City's Chief Financial Officer or designee, the form of the Letter of Credit shall be in the form set out below. The Letter of Credit shall be printed on Bank Safety Paper.

1.2 Except as approved in writing by City's Chief Financial Officer or designee, the form of drafts upon the Letter of Credit shall be in the form set out below.

2. Issuer Requirements. The issuer of the Letter of Credit shall meet all of the following requirements:

2.1 The issuer shall be a federally insured financial institution with offices in Maricopa County, Arizona, at which drafts upon the Letter of Credit may be presented.

2.2 The issuer shall be a member of the New York Clearing House Association or a commercial bank or trust company satisfactory to City.

2.3 The issuer shall have a net worth of not less than \$1 billion.

Form of Letter of Credit
(print on bank safety paper)

Date _____, 20__

Letter of Credit No.: _____

Financial Services General Manager
City of Scottsdale
Suite 210
7447 E. Indian School Road
Scottsdale, AZ 85253

Dear Sir or Madam:

We hereby establish our clean, unconditional and irrevocable Letter of Credit in your favor at the request of _____ in the aggregate amount of _____ (\$_____).

We will honor and immediately pay to you each draft presented to us in compliance with the terms of this Letter of Credit. Drafts shall be in substantially the form attached hereto as **Schedule 1**. Partial draws are permitted. Each draft must be accompanied by a copy of this Letter of Credit. Within ten (10) days after we honor your draft, you must make the original of this Letter of Credit available to us in Maricopa County, Arizona upon which we may endorse our payment. If we fail to honor any draft, we will inform you (and your counsel) of the particular reason by telephone and in writing no later than 1:00 p.m. Arizona time on the first business day following presentation of the draft. Drafts may be presented by any of the following means:

1. By telefax to (____) _____.
2. By email to _____.
3. By hand or overnight courier service delivery to:

This address must be in Maricopa County, Arizona.

4. By hand or overnight courier service delivery to:

This address need not be in Maricopa County, Arizona.

This Letter of Credit is valid until the first annual anniversary of its issuance and shall thereafter be automatically renewed for successive one (1) year periods, unless at least one hundred twenty (120) days prior to the expiration date we notify you in writing, by either registered or certified mail, that we elect not to renew the Letter of Credit for such additional period. In the event of such notification, any then unused portion of the Letter of Credit shall be available upon your presenting to us your draft on or before the then current expiration date.

This Letter of Credit is subject to the most recent edition as of the date of this Letter of Credit of the Uniform Customs and Practices for Documentary Credits published by the International Chamber of Commerce. This Letter of Credit is not assignable.

_____ [bank name] _____, a _____
By _____ [bank officer's signature] _____
_____ [bank officer's name printed] _____
Its _____ [bank officer's title] _____
Phone: _____ [bank officer's phone number] _____
Email: _____ [bank officer's email address] _____

Form of Draft on Letter of Credit

To: _____

From: Financial Services General Manager
City of Scottsdale
Suite 210
7447 E. Indian School Road
Scottsdale, AZ 85253

Date: _____, 20____

Ladies and Gentlemen:

Pursuant to your Letter of Credit No. _____, the City of Scottsdale hereby demands immediate cash payment in the amount of _____ (\$_____).

Please make your payment to the City of Scottsdale in the form of a wire deposit to:

If such deposit cannot be accomplished immediately for any reason, please make your payment in the form of a cashier's check issued by your institution and delivered to me at the address listed above.

I certify that I am the Financial Services General Manager of the City of Scottsdale.

If there is any imperfection or defect in this draft or its presentation, or you do not for any reason completely promptly pay the entire amount herein requested, please inform me of the reason immediately at 480-312-2427 and in writing at the address given above so that I can correct any issue that may exist. Also, please immediately notify the City Attorney at 480-312-2405 and in writing at 3939 N. Drinkwater Boulevard, Scottsdale, AZ 85251.

Thank you.

City of Scottsdale, Financial Services General Manager

Public Restrooms

Initial physical design and construction requirements

Women's restroom shall contain:

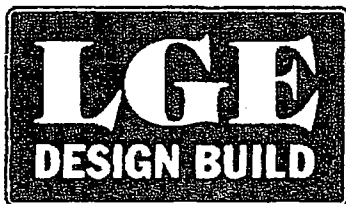
- One (1) ADA stall
- One (1) regular stall
- One (1) sink
- One (1) hand dryer

Men's restroom shall contain:

- One (1) ADA stall
- One (1) urinal
- One (1) sink
- One (1) hand dryer

General restroom construction

- The design and construction of the public restrooms shall comply with all applicable laws and regulations.
- The restrooms shall use the same street entrance as the main pedestrian street entrance to the Parking Facility
- The restrooms shall include access from the street by a passageway not more than 50 feet (50 ft.) in length.



September 30, 2014

Capital Project Management
RFP Evaluation Group
City of Scottsdale
7447 E Indian School Road, Suite 205
Scottsdale, Arizona 85251

Re: Stetson Parking Lots Request for Proposals (RFP)

To Whom It May Concern:

Thank you for taking the time to consider this response to the City-issued Stetson Parking Lots Request for Proposals ("RFP"). Before reviewing the enclosed documents, we believe it is vital to illustrate two key advantages to the selection of this response, termed "**Stetson Commons**", which may not be abundantly clear given the strict framework of the RFP-required Lease and Option Agreement and the point evaluation method.

1. Office Tenant in Place:

At the heart of this response is a commercial-office use component and, more importantly, the Respondent provides a successful and growing, high-tech firm poised to execute a lease for the entire proposed space. This type of use, the highly-skilled workforce and higher-wage jobs they encompass, are perfectly suited for Downtown Scottsdale's continued push for an increased presence as a technology and employment hub. This reality, while not significant from a strict review of the RFP point-evaluation method, should nonetheless be considered in choosing the response providing the highest utility to the City.

2. Additional Parking Spaces:

The submission includes 175 public parking spaces – (25 more than the required 150 public space) – and an additional 419 parking spaces for building tenants and visitors. However, due to the commercial-office primary use, virtually all of the 419 parking spaces can be made available for public use on nights and weekends – when the demand for parking is highest in the area. A residential project on the other hand, cannot afford this advantage to the City, depriving it of potential additional, flexible parking available to the general public – and responsive to the desired purpose of the RFP. Again, another advantage of this response, not abundantly clear from the required guidelines.

ATTACHMENT 4

September 30, 2014

Page 2

If judging purely on a point-based system, no project may be able to compete with a residential project providing an inflated Option Exercise Price due to the market reality of said use. The language of the Request put forth by the City, however, seeks the highest and best use for the site, while providing parking for the general area. The Respondent contends that **Stetson Commons** provides the best combination of long-term term financial benefit and land use / parking benefit to the City. The Respondent provides a ready, willing and desirable tenant coupled with a track record of attracting and maintaining such companies (*see Galleria Corporate Centre*). Lastly, the commercial-office component provides flexibility for the provision of additional public parking spaces beyond those credited in a strict reading of the response documents.

Again, thank you for your time and consideration. We look forward to working with the City to bring an ideal tenant and a stellar new project to Downtown!

Very truly yours,

WITHEY MORRIS P.L.C.
on behalf of the Respondent
Equity Partners Group, LLC

By


Jason B. Morris

cc: Shawn Yari, Equity Partners Group
Bob Agahi, Equity Partners Group
David E. Sellers, LGE

REQUEST FOR PROPOSALS

FOR THE GRANT OF A LEASE AND OPTION AGREEMENT FOR
CONSTRUCTION AND OPERATION OF A PUBLIC PARKING STRUCTURE
ON CITY PROPERTY LOCATED SOUTH OF STETSON DRIVE
BETWEEN WELLS FARGO AVENUE AND CIVIC CENTER PLAZA
IN DOWNTOWN SCOTTSDALE, ARIZONA

BID SHEET

(Stetson parking lots)

Fill out this sheet completely. Read the Request carefully. Your bid must provide all information required by the Request, whether or not it is listed on this bid sheet. Your bid must include all other materials and information required by the Request. Your bid must comply with minimum bid amounts and other requirements of the Request.

1. Proposer's contact information is:

Mailing address: EQUITY PARTNERS GROUP, LLC
4501 N. SCOTTSDALE RD, STE 201
SCOTTSDALE, AZ 85251

Contact person:

Name: SHAWN YARI
Title: MANAGER
Phone: 602.748.8888
Email: SYARI@STOCKDALECAPITAL.COM
Fax: N/A

2. Indicate how many of the parking spaces that are required to be available to the public will be available to the public for free. 105 (Do not indicate a number lower than 105.)

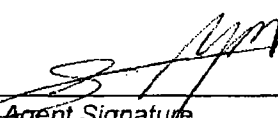
3. Complete the following table:

	FACTOR	YOUR BID	FACTOR WEIGHT	YOUR POINTS
A	Option amount.	<u>\$100,000.00</u>	one point per dollar	<u>100,000</u>
B	The 150 parking spaces that are required to be available to the public.	150	zero points	-0-

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C	Additional parking spaces above and beyond the 150 parking spaces that are required to be available to the public.	<u>25</u>	18,500 points per parking space	<u>462,500</u>
D	Public restrooms.	<input checked="" type="radio"/> Yes <input type="radio"/> No	250,000 points if yes. zero points if no.	<u>250,000</u>
TOTAL				<u>812,500</u>

Equity Partners Group, LLC
Proposer Name Printed

By: 
Authorized Agent Signature

Shahrod Yari
Authorized Agent Name Printed

Manager
Authorized Agent Title Printed

PROPOSAL AFFIDAVIT

(Stetson parking lots)

STATE OF ARIZONA

CITY OF SCOTTSDALE

As of SEPTEMBER 24 2014, for himself or herself personally, and on behalf of EQUITY PARTNERS GROUP, LLC, an ARIZONA LIMITED LIABILITY COMPANY (the "Proposer"), the person who signs this affidavit covenants, warrants, represents and certifies to the City of Scottsdale ("City") for its reliance all of the following with respect to the Request for Proposals (the "Request"):

1. Proposer's contact information is:

Mailing address:

EQUITY PARTNERS GROUP LLC
4501 N SCOTTSDALE RD, STE 201
SCOTTSDALE, AZ 85251

Contact person:

Name: SHAWN YARI
Phone: 602 748 8888
Email: SHYARI@STOCKDALECAPITAL.COM
Fax: N/A

2. Proposer has read and understands and agrees to be bound by all of the provisions of the Request.

3. Proposer's proposal fully complies with the Request and meets or exceeds the specifications contained in the Request.

4. Proposer has received the listed addenda to the Request and understands that they are part of the Request.

Addendum # <u>1</u>	Dated: <u>JULY 7</u> , 20 <u>14</u>
Addendum # _____	Dated: _____, 20____
Addendum # _____	Dated: _____, 20____
Addendum # _____	Dated: _____, 20____

5. Proposer has submitted all information requested by the Request and it is true, accurate, and complete.

6. Proposer has investigated and analyzed title information and formed its own opinions as to its effect on the project site and its proposed development and has not relied on any information from City regarding those issues.

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7. If the proposal is selected, Proposer covenants to immediately enter into the contract and commence to fully perform thereunder.

8. I am and will remain authorized to prepare and submit the proposal for Proposer, execute for Proposer the contracts arising from and related to the Request, and otherwise represent Proposer in every way relating to the Request and any resulting contracts.

9. The proposal was made only in the interest of Proposer and not in the interest or behalf of any other person, partnership, company, association, corporation, organization, or entity. The proposal is genuine and not a sham or collusive.

10. Neither Proposer nor any of Proposer's officers, partners, owners, shareholders, agents, representatives, employees, or parties in interest has in any way done any of the following:

10.1 Colluded, conspired, agreed or otherwise communicated, directly or indirectly, with any person, firm, corporation or other proposer or potential proposer in regard to the amount, terms, or conditions of the proposal. No such communication shall occur prior to the official opening of the proposal.

10.2 Paid, agreed to pay or been required to pay to anyone directly or indirectly, any money or other valuable consideration for assistance in procuring or attempting to procure the contract or influence in any way the prices or other contents of the proposal or the proposal of any other proposer. No such money or other consideration will be paid.

11. This affidavit is effective as of the date of this affidavit and as of the date the proposal is submitted. Unless Proposer informs City in writing prior to the proposal opening or contract execution, this affidavit shall also be effective and deemed repeated and executed anew in its entirety as of the date proposals are opened and as of the dates the contract is executed and becomes effective.

Equity Partners Group L.L.C.
Proposer Name Printed

By: _____

Authorized Agent Signature

Shahrad Yari
Authorized Agent Name Printed

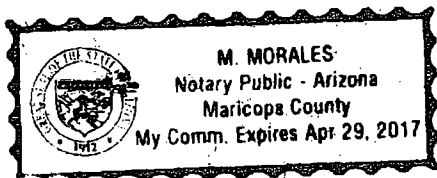
Manager
Authorized Agent Title Printed

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 29th day of September, 2014, by Shahrood Yari, manager of Equity Partners Group, LLC, an Arizona limited liability company.

[Signature]
Notary Public

My Commission Expires:



ATTACHMENT 5

STETSON COMMONS

A Response to: *Request for Proposals for the Grant of a Lease and Option Agreement for Construction and Operation of a Public Parking Structure on City Property*

September 30, 2014



STETSON COMMONS

INTRODUCTION

Equity Partners Group, LLC (the "Respondent") is pleased to submit this response to the *Request for Proposals for the Grant of a Lease and Option Agreement for Construction and Operation of a Public Parking Structure on City Property* (the "Request for Proposals"). As outlined in the documents provided, this response, termed **Stetson Commons**, meets and exceeds the City's stated goals by providing a high quality, first class public parking structure under a turnkey solution that maximizes city revenue.

Of paramount consideration in evaluating this submittal is the Respondent's willingness to contribute adjacent property into the proposed development. As seen in the exhibit on this page, the Respondent is fee simple owner of the property fronting on Wells Fargo Avenue, immediately west of the City's "North Parcel". The inclusion of this "additional property" provides a unique opportunity for the development of a truly cohesive project integrated into the larger urban context. **Given this unique set of circumstances, this is the only response that truly maximizes the full potential of the site.**

In summary, we believe you will find this response accomplishes several goals, including:

1. Meets the requirements of the City issued Response for Proposals;
2. Provides for the design, construction, and operation of a high quality, first class public parking structure;
3. Provides a turnkey solution with no risk to the City;
4. Presents a uniquely qualified Respondent, and;
5. Provide the best solution to maximize long-term revenue for the City.

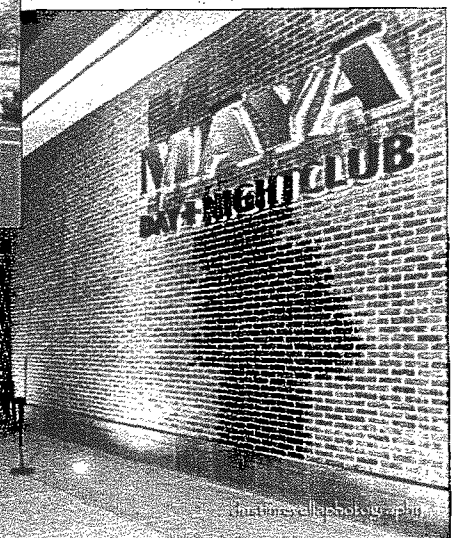
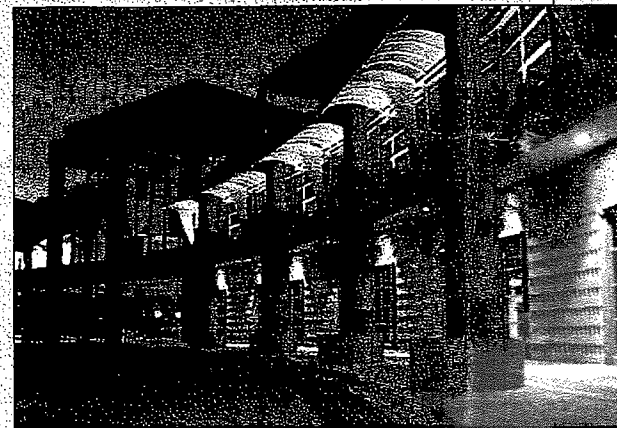
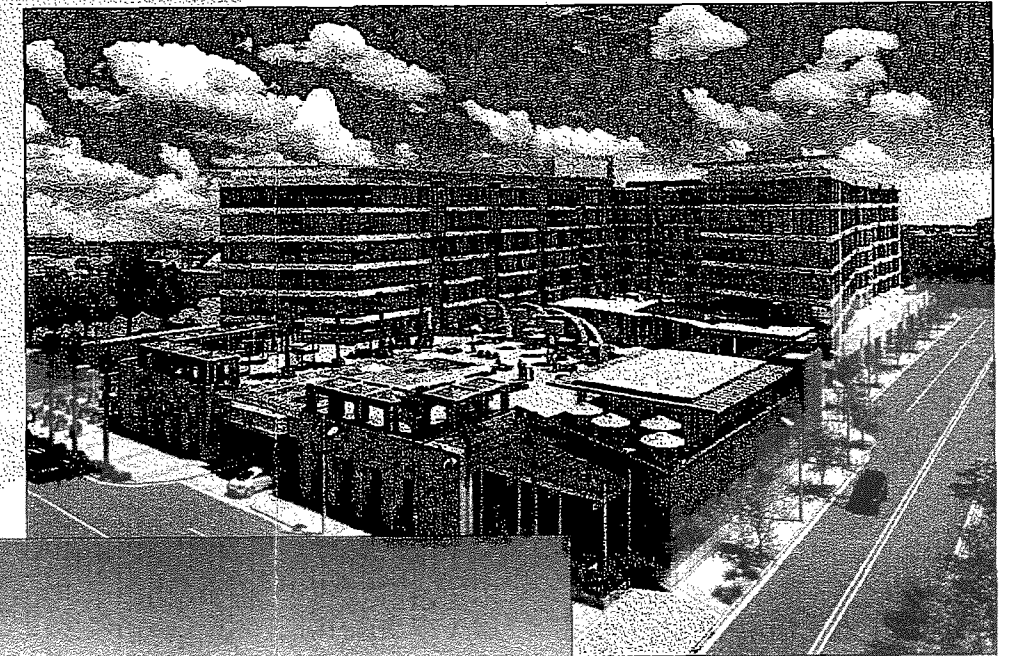
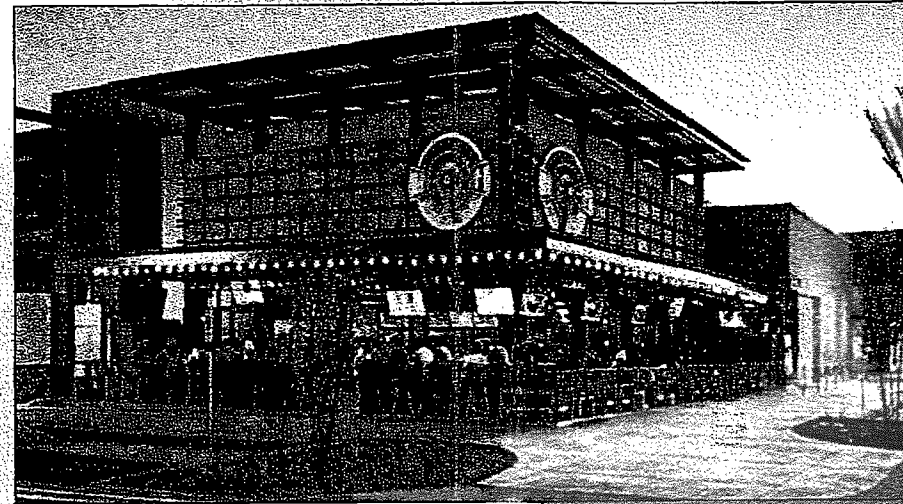


STETSON COMMONS

A WELL QUALIFIED TEAM

The Respondent's assembled team has a long and proven track record of building and operating high quality, successful projects throughout the southwest and, more specifically, has extensive experience in Downtown Scottsdale. The team includes:

- Equity Partners Group, LLC** – As one of the largest single private investors in Downtown Scottsdale, Equity Partners Group has a vested interest in the long term success of the area. Equity Partners Group has a proven track record of high quality retail, office, and hospitality projects that continue to provide Scottsdale residents with entertainment and leisure options while keeping Downtown Scottsdale on the international destination map. A sampling of projects and properties include: The W Hotel Scottsdale, Scottsdale Renaissance Specialty Retail, Aloft Tempe, Talley Plaza, Maya Day + Nightclub, Majerle's Sports Grill, Hi-Fi Kitchen & Cocktails, and the Scottsdale Galleria Corporate Centre.
- LGE Design Build** – LGE is a full service design/build general contractor based in Phoenix, Arizona. Since 1994 they have constructed over 700 projects totaling nearly 17 million square feet. Their work and design has received numerous accolades including Top Retail Project by the Red Awards for the Scottsdale Entertainment District and they have been honored as one of Arizona's Top General Contracting firms.
- Withey Morris, PLC** – As noted in the RFP Section 2.4.3, development of the site for a use other than the existing surface parking will require a public entitlement process. As Arizona's leading and most experienced land use law firm, Withey Morris has provided services for numerous successful projects throughout the City of Scottsdale and is especially attuned to the distinct issues affecting Downtown development. Withey Morris is well-versed in the City's processes, aware of the City's goals, and sensitive to the concerns of Scottsdale citizens.

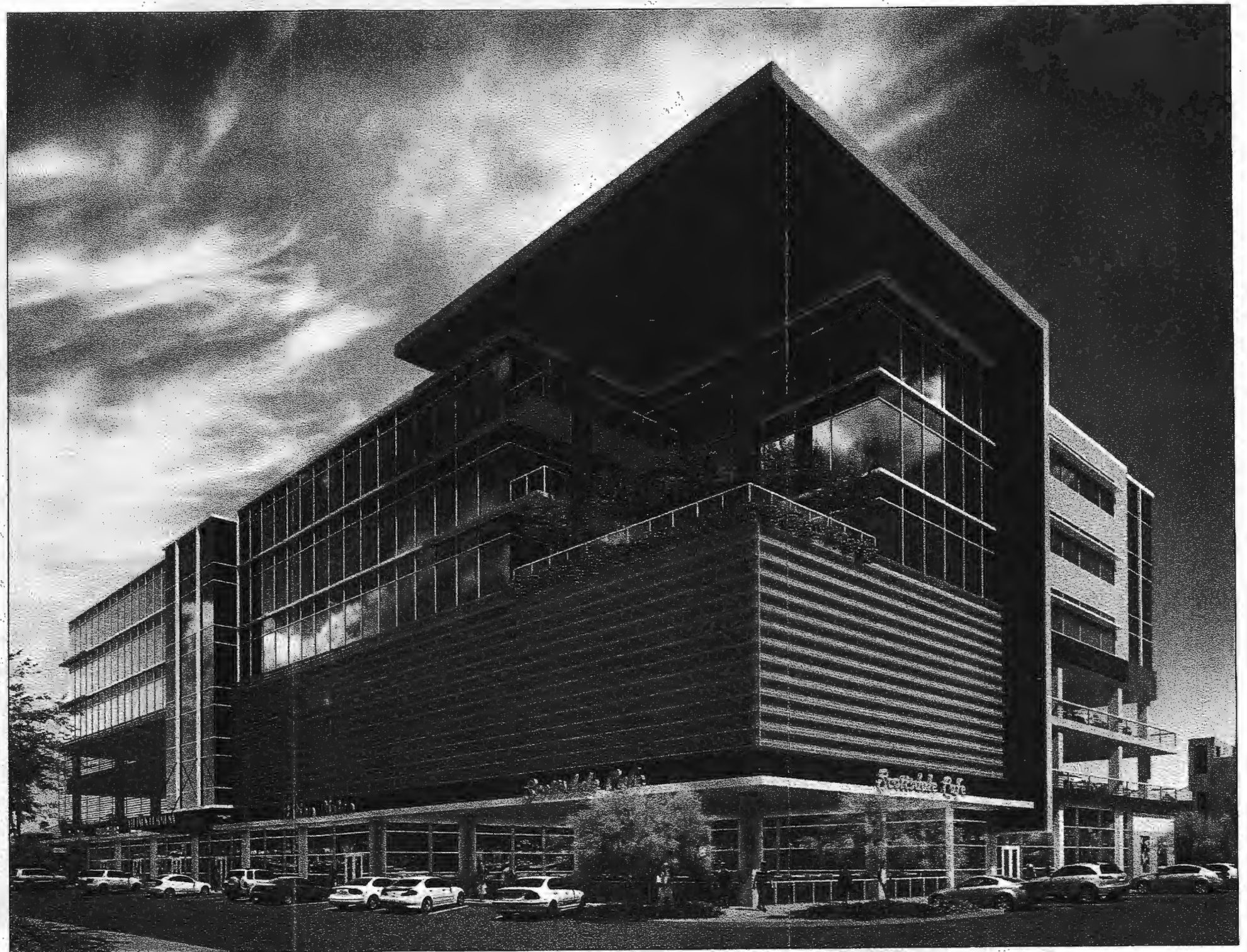
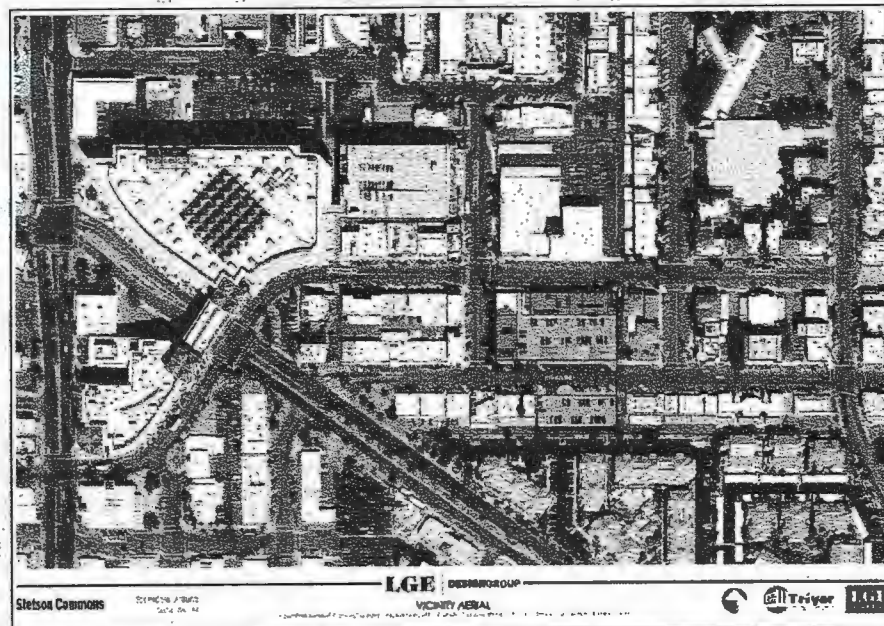


STETSON COMMONS

PROJECT DETAILS

Welcome to **Stetson Commons** - a dynamic, 6 story, mixed-use, infill project that meets Scottsdale's growing need for high-quality office space while providing street level retail and a first-class, public parking garage. The project is designed to fully utilize the small, infill sites by vertically integrating the mix of uses and creatively wrapping them around the new public parking garage. The overall configuration of the project and mix of uses will greatly contribute to the live/work/play environment desired for this urban, downtown location. Key project components include:

- Retail Space 12,000 sqft
- Office Space 120,000 sqft
- Public Restrooms 600 sqft
- Public Parking Spaces 175
- Tenant Parking Spaces 419
- Total Parking Spaces 594



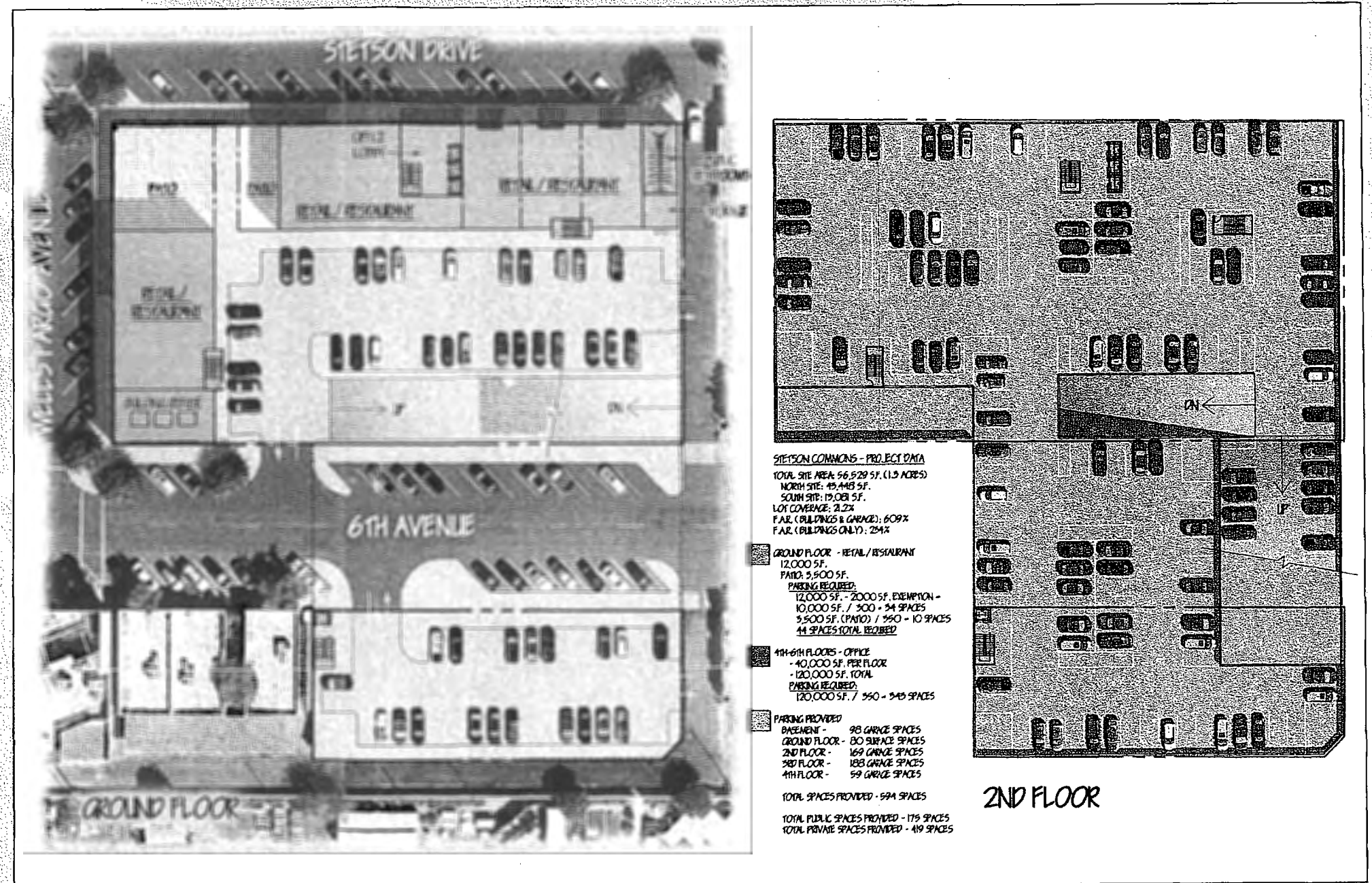
STETSON COMMONS

The Parking Structure

The distinct building internalizes the parking structure and screens it from primary public views through a combination of wrapped, occupiable space and creative architectural features. The garage, which stretches from 1 level below grade up to the 4th floor, is accessed from 6th Avenue or from the alleyway abutting the east edge of the City properties. To further maximize the efficiency of the two separate City parcels, the design includes a bridged connection over 6th Avenue at the 2nd, 3rd, and 4th floors. This layout unifies the two sites, creates a more efficient parking garage layout, and provides an opportunity for more public parking spaces. The garage is available to the public for both daytime and evening use.

The Retail Space

The project retail space is positioned at ground level along Stetson Drive and along Wells Fargo Avenue, creating an active, pedestrian oriented street frontage currently lacking on the block. Roughly 12,000 sqft of retail space is provided and large, shaded patio space is envisioned near the intersection of Stetson and Wells Fargo for use by the adjacent retail suites. Public restrooms are also provided at street level and are easily accessed from the Stetson Avenue frontage.



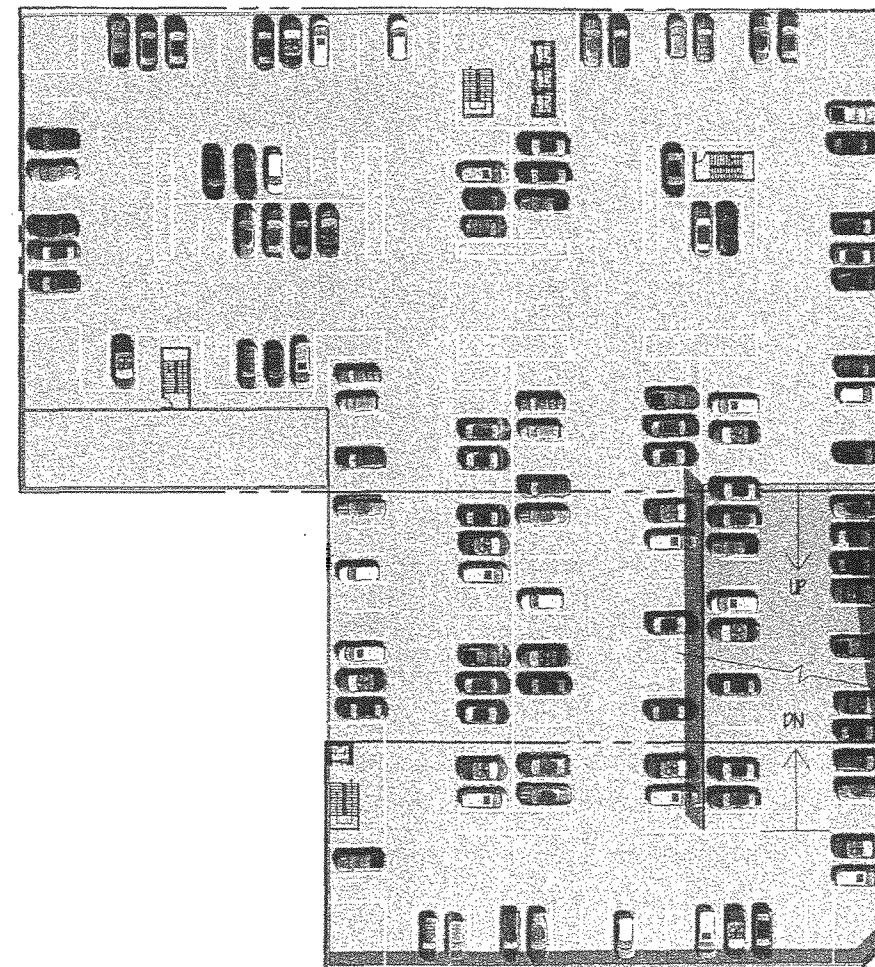
STETSON COMMONS

Class-A Office Space

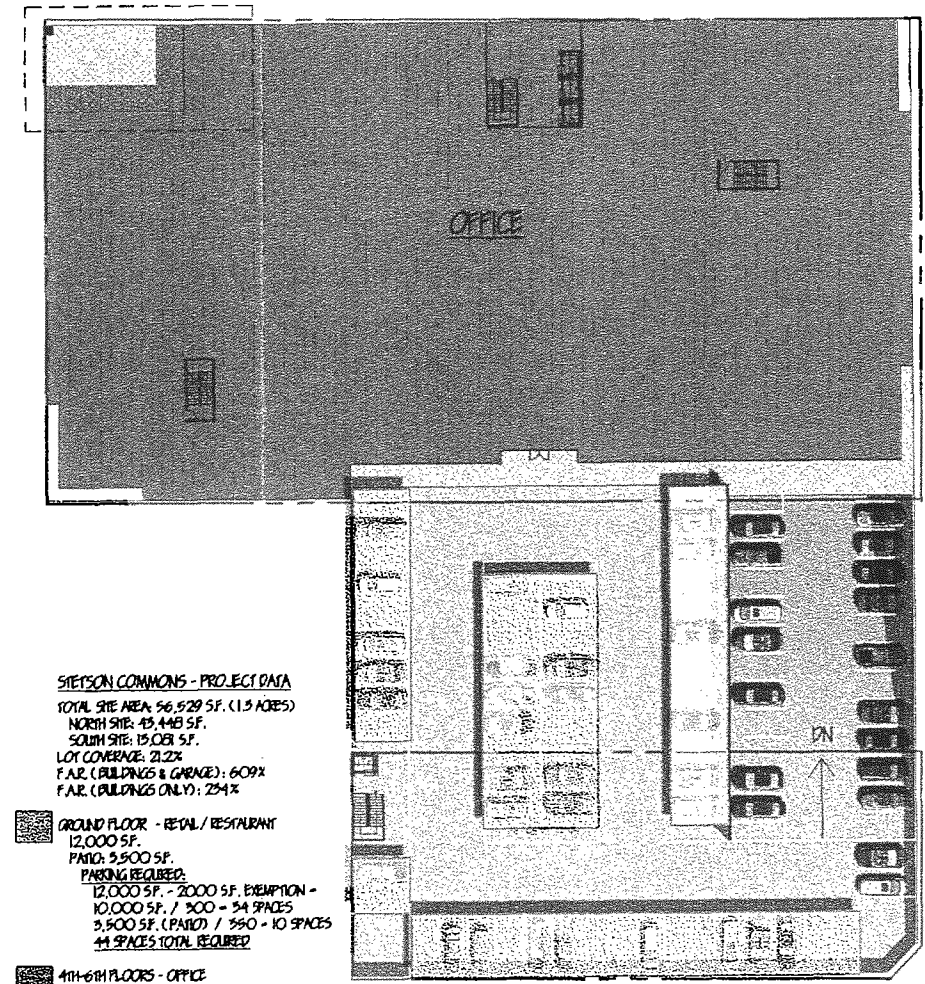
The office component represents the greatest opportunity for Scottsdale to capture the highly sought-after technology and software tenants that crave flexible office space in an urban, walkable environment. As an owner of office property within the Downtown Scottsdale submarket, including the flourishing Scottsdale Galleria Corporate Centre, the Respondent has firsthand knowledge of the pent up demand for such tech-ready office space. More importantly, the Respondent is skilled in attracting these tenants, their highly skilled workforce, and the higher paying jobs they bring.

At **Stetson Commons**, the office space occupies levels 4 through level 6 and sits upon the north portion of the parking garage. The layout enables contiguous and flexible floor plates of roughly 40,000 sqft on 3 levels for a total office component of roughly 120,000 sqft. The large, contiguous floor plates - (which are only possible at this site with the inclusion of the Respondent's additional property) - will be highly sought-after office space for innovative and growing companies. A large "sky garden" veranda at the Stetson and Wells Fargo corner creates a signature architectural feature while providing an outdoor amenity for the office tenants.

The office component of **Stetson Commons** is truly a win-win situation that will continue to pay dividends to the City for years to come.



3RD FLOOR



4TH FLOOR

STETSON COMMONS - PROJECT DATA
 TOTAL SITE AREA: 56,529 SF. (1.3 ACRES)
 NORTH SITE: 45,448 SF.
 SOUTH SITE: 15,081 SF.
 LOT COVERAGE: 21.22%
 F.A.R. (BUILDINGS & GARAGE): 609%
 F.A.R. (BUILDINGS ONLY): 294%

GROUND FLOOR - RETAIL/RESTAURANT
 12,000 SF.
 PATIO: 9,500 SF.
 PARKING REQUIRED:
 12,000 SF. / 2000 SF. EXEMPTION -
 10,000 SF. / 300 = 34 SPACES
 9,500 SF. (PATIO) / 950 = 10 SPACES
 44 SPACES TOTAL REQUIRED

4TH-6TH FLOORS - OFFICE
 40,000 SF. PER FLOOR
 120,000 SF. TOTAL
 PARKING REQUIRED:
 120,000 SF. / 950 = 345 SPACES

PARKING PROVIDED
 BASEMENT - 98 GARAGE SPACES
 GROUND FLOOR - 80 SURFACE SPACES
 2ND FLOOR - 168 GARAGE SPACES
 3RD FLOOR - 168 GARAGE SPACES
 4TH FLOOR - 59 GARAGE SPACES

TOTAL SPACES PROVIDED - 594 SPACES

TOTAL PUBLIC SPACES PROVIDED - 175 SPACES
 TOTAL PRIVATE SPACES PROVIDED - 419 SPACES

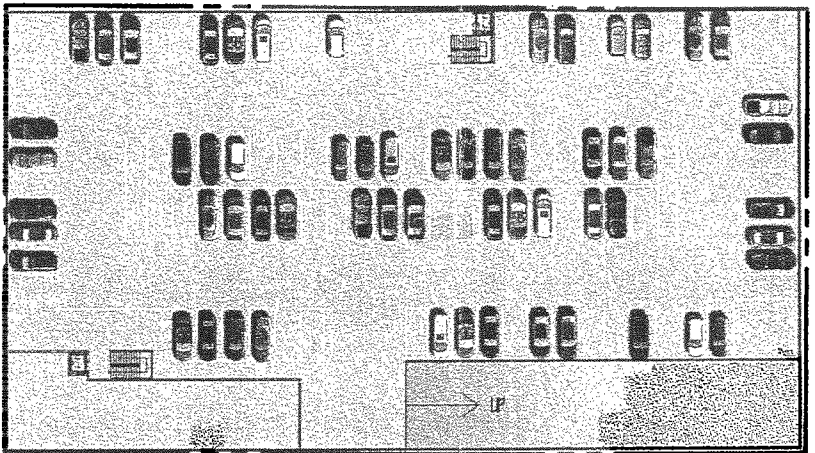


STETSON COMMONS

SUMMARY

This response meets and exceeds the City's stated goals by providing a high quality, first class public parking structure under a turnkey solution that minimizes City risk, while maximizing city revenue. Additionally, the Respondent's concept provides an iconic, mixed-use development aligned with the stated goals of numerous City documents including the General Plan, the Downtown Character Plan, and the recommendations of the Downtown Task Force. Lastly, the Respondent's ability to contribute additional land to the project creates a truly unique opportunity to maximize the potential of the sites while minimizing the need for additional height.

Thank you for your consideration. We hope you will agree that this is the most deserving response and we look forward to working with the City in the successful completion of this important and exciting project.



BASEMENT

STETSON COMMONS - PROJECT DATA
TOTAL SITE AREA: 56,529 SF. (1.5 ACRES)
NORTH SITE: 45,448 SF.
SOUTH SITE: 15,081 SF.
LOT COVERAGE: 21.2%
F.A.R. (BUILDINGS & GARAGE): 6.09X
F.A.R. (BUILDINGS ONLY): 2.54X

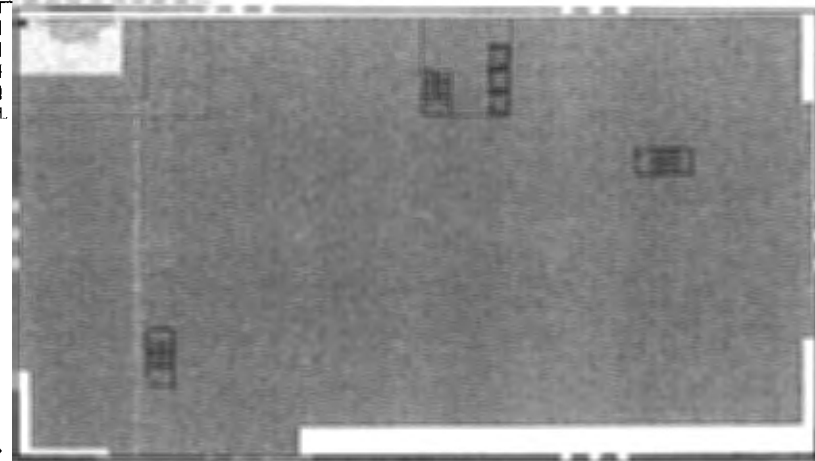
GROUND FLOOR - RETAIL / RESTAURANT
12,000 SF.
PARKING: 5,500 SF.
PARKING REQUIRED:
12,000 SF. / 2,000 SF. EXEMPTION =
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5,500 SF. (PARKING) / 550 = 10 SPACES
44 SPACES TOTAL REQUIRED

4TH-6TH FLOORS - OFFICE
- 40,000 SF. PER FLOOR
- 120,000 SF. TOTAL
PARKING REQUIRED:
120,000 SF. / 550 = 545 SPACES

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BASEMENT - 98 GARAGE SPACES
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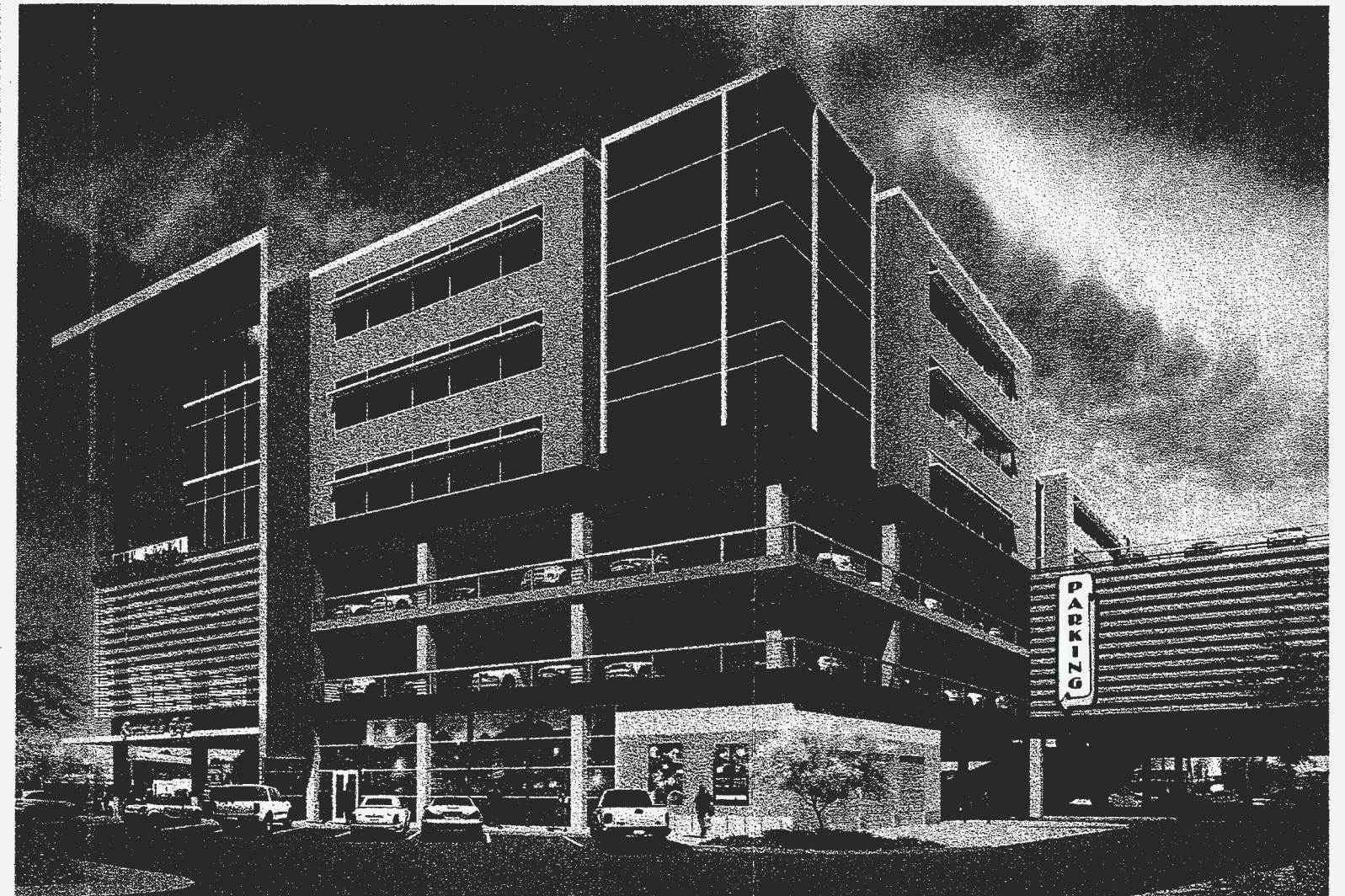
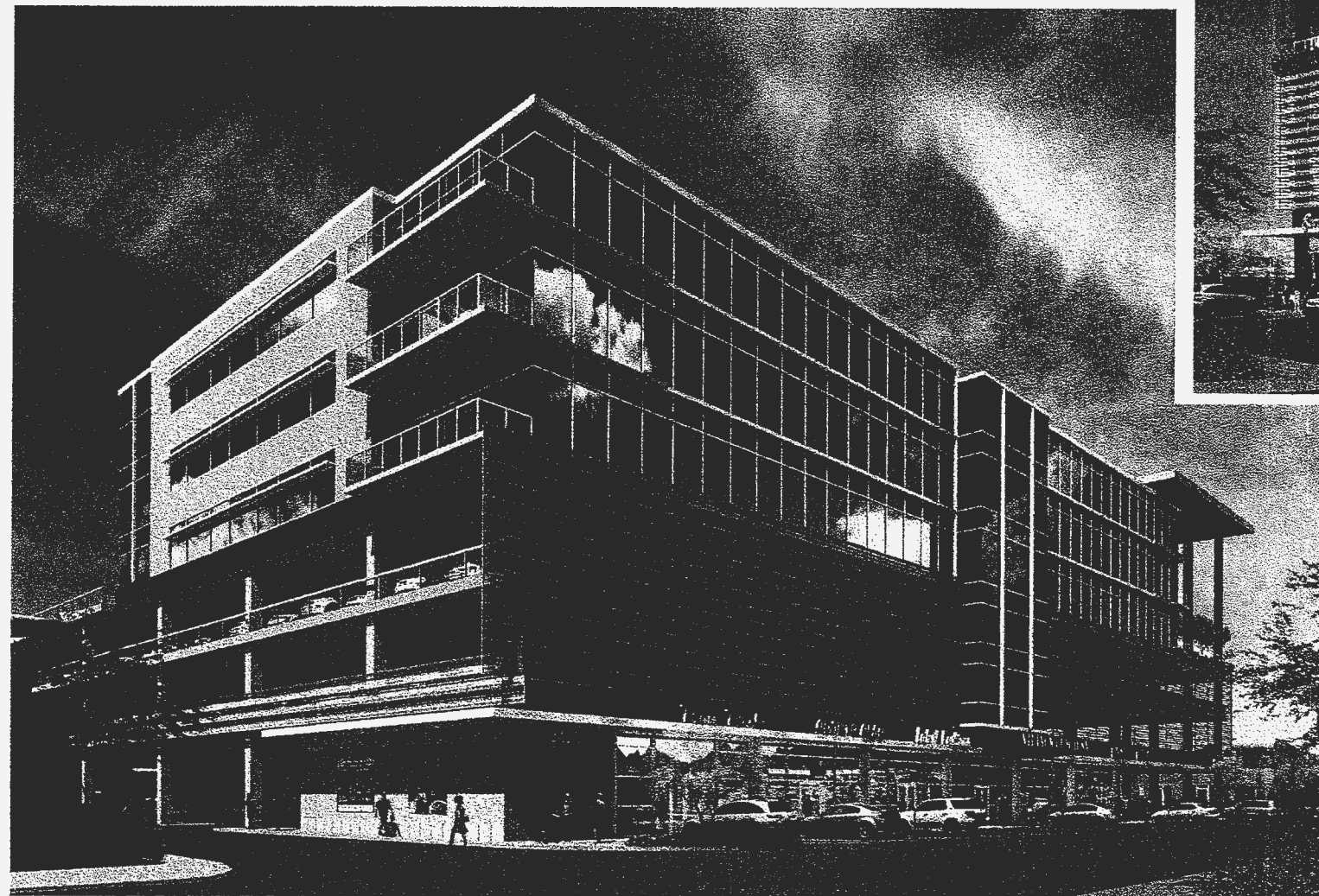


5TH & 6TH FLOORS



STETSON COMMONS

The end



Artist renderings and square footages
provided are for conceptual purposes only



Lease and Option Agreement

Stetson/6th Avenue Parking Lots



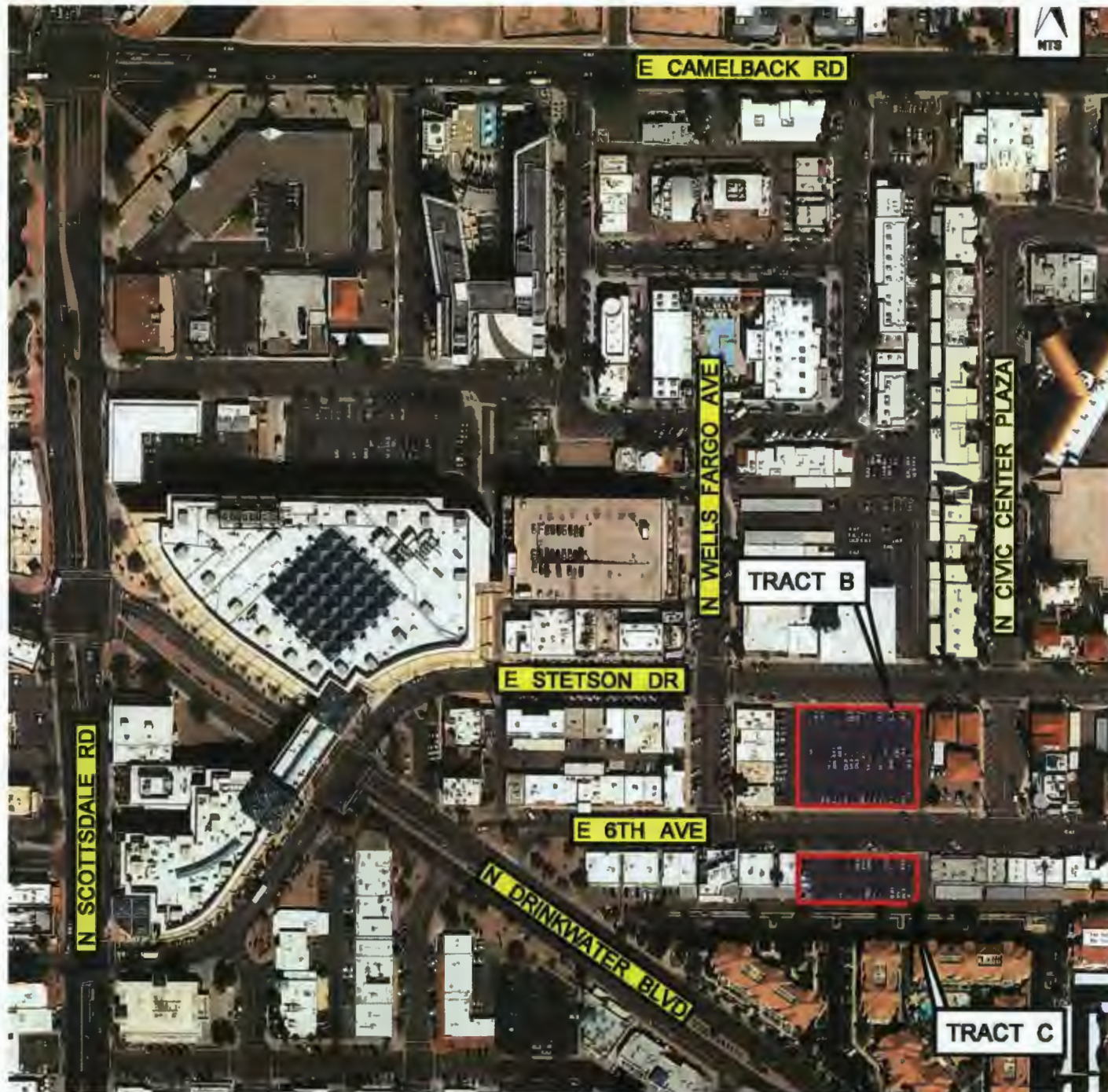
City Council

February 3, 2015

Purpose of Tonight's Request

Consider authorizing a Lease and Option agreement with Equity Partners Group, LLC for the construction of a public parking structure and public restroom facilities on two city parcels south of Stetson Drive in the northeast quadrant of downtown.





History

- Land originally deeded to city in 1959 (south parcel) and 1962 (north parcel)
- Zoned “Parking District 2, Downtown Overlay”
- RFP issued in October, 2012 for construction of parking structure and public restroom
 - No responses received
- Parking garage included in unsuccessful 2013 bond election (\$8.0M)
- New RFP reissued in 2014
 - 150 parking spaces minimum
 - Restroom optional
 - Minimum of \$100,000 option exercise amount



Response to 2014 RFP

- One response received from Equity Partners Group, LLC
- Respondent proposes:
 - 175 public parking spaces
 - Public restroom facility
 - Option exercise payment: \$100,000
- Respondent provided proper RFP deposit (\$100,000)
- Respondent provided proper affidavit
- Respondent provided signed *Lease and Option Agreement (LOA)*
- Additional development proposal material provided by respondent but is NOT considered part of response



Key Elements of LOA Agreement

- Key Performance Dates (keyed on approval date):
 - Term of agreement: 30 years
 - Commencement deadline: 18 months
 - Commencement of structure: 27 months
 - Open to public: 36 months
 - Final completion: 48 months (12 month extension possible)
- Security Deposit: \$100,000
- Construction security (LOC): \$250,000
- Rent Payments:
 - \$2,100/month for initial 48 months
 - \$6,300/month after completion deadline
(escalated at 10% annually thereafter)
- Option Exercise Payment: \$100,000



Other Business Points

- Lessee takes full risk of zoning and other entitlements
- Lessee maintains the existing parking lots until construction commences
- City retains a permanent easement for parking spaces
- City may regulate the parking spaces (e.g. time restrict)
- Lessee shall actively discourage tenant parking in public spaces with signs, fines or other methods
- All operation and maintenance of the facility (both public and private portions) is the responsibility of the lessee – city has not agreed to provide any operating costs



Downtown Parking Initiatives

- Short term
 - Increased 3-hour restrictions in 3rd Ave Garage
 - Early morning closure of Stetson surface lot
 - Galleria tenant shuttle from other garages
- Long term
 - Parking Study, 8-9 months
 - Will evaluate wide range of options: Other funding for a structure, parking districts, paid parking, etc



Possible Actions

- Option A: Approve the lease/option agreement
 - Effective immediately
 - Tenant begins entitlement process at their risk
- Option B: Disapprove the lease/option agreement
 - Continue with parking study
 - Similar lease/option arrangement may or may not be possible in future; may need a separate contracting process
- Option C: Continue pending results of parking study
 - Continue with parking study
 - Similar lease/option arrangement may or may not be possible in future; may need a separate contracting process



Questions/Discussion



Item 25

Lease and Option Agreement

Stetson/6th Avenue Parking Lots



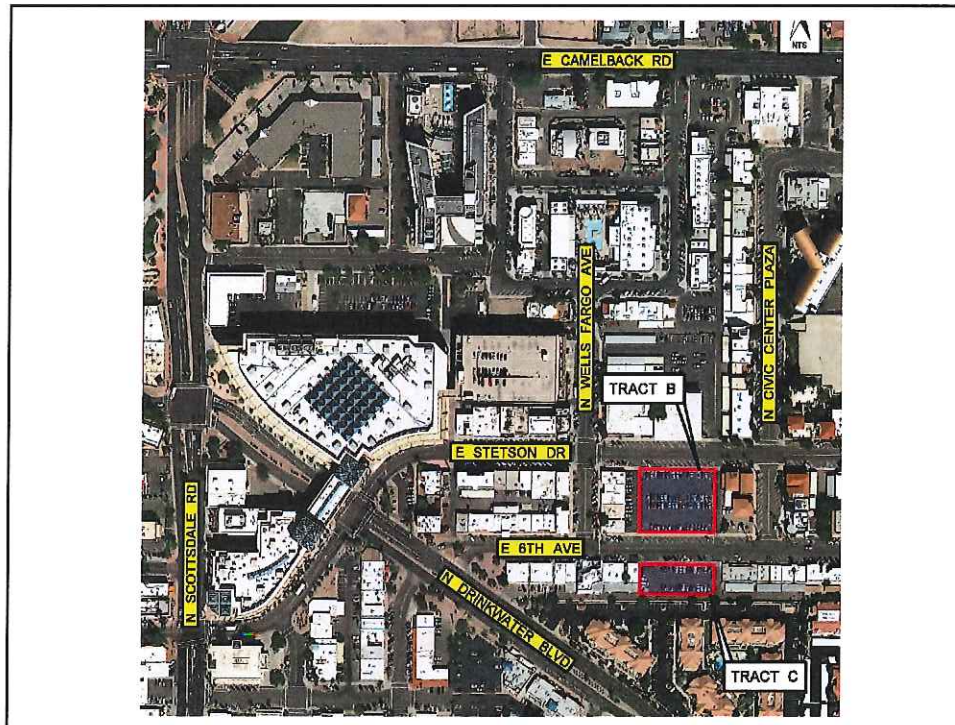
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Questions/Discussion

