

(Stetson parking lots)



# City of Scottsdale, Arizona

## REQUEST FOR PROPOSALS

FOR THE GRANT OF A GROUND 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

**Issued by: Capital Projects Management Department  
City of Scottsdale  
Arizona  
Date: June 21, 2016**

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# REQUEST FOR PROPOSALS

FOR THE GRANT OF A GROUND 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

(Stetson parking lots)

## I. OVERVIEW

1. Overview. The City of Scottsdale (“City”) issues this request for proposals (the “Request”) to invite proposals from experienced and qualified organizations to enter into a Lease and Option Agreement contract for the finance, design, construction, operation and maintenance of a public parking structure and related improvements.

1.1 Nature of Project. The proposed project is to be a modern, first-class privately operated parking structure open to the public. The parking structure must contain parking spaces available to the public as required by the contract. There will be no additional private improvements on the subject site. However, the RFP respondent may propose limited retail at the ground level, provided that the structure would accommodate parking for the retail component, exclusive of public parking being provided in the parking structure.

1.2 Turnkey Approach. City requests proposals **only** for a turnkey approach to include financing, design, construction operation and maintenance of the parking structure. Proposers must present a complete proposal to finance, design, construct, operate, and maintain the parking structure on a long-term basis under a lease from City. City will not accept any proposal that does not include a complete turnkey package.

1.3 Project Site Location. The proposed project site is located south of Stetson Drive between Wells Fargo Avenue and Civic Center Plaza in downtown Scottsdale.

1.4 Contract. The submitter of the proposal that City selects will enter into a lease and option agreement with City subject to certain reservations and other requirements as hereafter described.

1.5 Deadline. Proposals must be delivered to City no later than the deadline stated below.

1.6 Contacts. Proposers will address and deliver their proposals to City at the following address (the “Submittal Address”):

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Martha West  
City of Scottsdale Capital Project Management  
One Civic Center  
7447 E. Indian School Road, Suite 205  
Scottsdale, AZ 85251  
(480) 312-7042  
[mwest@scottsdaleaz.gov](mailto:mwest@scottsdaleaz.gov)

## II. DESCRIPTION OF PROJECT SITE AND ENVIRONS

2. Description of Project Site and Environs. City provides the following information, without warranty, about the Project Site and its environs:

2.1 Scottsdale Market. Downtown Scottsdale is located within the City of Scottsdale. The City of Scottsdale is a vibrant western city, and a world class tourist destination. The City of Scottsdale enjoys the following characteristics that may be relevant to this Request:

2.1.1 Regionally and nationally, Scottsdale's downtown has been recognized for over half a century as a special destination for visitors and residents. With a 20-minute access to Phoenix Sky Harbor International Airport and easy freeway access to the entire metropolitan area downtown, Scottsdale occupies a unique place in the Greater Phoenix area. For instance, it is home to the Southwest's most successful regional mall, Scottsdale Fashion Square which is anchored by Nordstrom's, Macy's, Barney's of New York, Neiman Marcus, and Dillard's department stores, and it is the location of Old Town a widely recognized Scottsdale shopping area designed to reflect the western heritage of the area. Each year the mall generates nearly two-thirds of a billion dollars in sales and the rest of Downtown over a third of a billion dollars in sales. Each serves local and regional customers as well as thousands of tourists and visitors.

2.1.2 Within a thirty-minute drive are Westworld (home of the internationally recognized Scottsdale Arabian Horseshow and Barrett Jackson Classic Car Auction), the Heard Museum, Chase Field in downtown Phoenix, the McDowell Sonoran Preserve (with over 11,000 acres of protected desert lands and 16,000 additional acres proposed for purchase), Mayo Clinic, and the Tournament Players Club (home of the Waste Management Open). Major regional entertainment venues, the Scottsdale Airport and Scottsdale Airpark (the third largest employment center in the state) are within the same travel time. There is also excellent access to Scottsdale Community College and Arizona State University, each of which is about a ten-minute drive from the site.

2.1.3 The 101 Freeway (Pima Freeway) is located approximately two miles to the east providing easy access to the Scottsdale Airpark's extensive business neighborhood and the East Valley communities of Tempe, Mesa, Chandler and Gilbert, and the rest of the metropolitan area.

2.2 Downtown Scottsdale Market. The project site is located within Downtown Scottsdale. Downtown Scottsdale enjoys the following characteristics that may be relevant to this Request:

2.2.1 Downtown Scottsdale is one of the most acclaimed areas in Arizona and

is enjoyed by locals and tourists alike. The area features an eclectic mix of art galleries, specialty retail, upscale dining, nightlife and cultural attractions.

2.2.2 City has concentrated public investment in Downtown Scottsdale for the past several years with the goal of triggering substantial reinvestment and new investment. Much of this development fits into the long range Downtown Character Plan that has been in effect since the mid-1980's and was further modified and updated in 2009. Interest in investing in downtown has been growing steadily during the past several years, notwithstanding the challenges of the nationwide economic climate.

2.2.3 To encourage stabilization and expansion of retail businesses, City is investing and encouraging investment through infrastructure improvements and zoning and policy changes. Examples include: public open space along the Arizona Canal, parking structures, and infrastructure associated with the Waterfront project.

2.2.4 A graphic showing the general layout of downtown Scottsdale is located online at [www.scottsdaleaz.gov/Assets/ScottsdaleAZ/Planning/character-area/downtown/DTPlan2009boundary.pdf](http://www.scottsdaleaz.gov/Assets/ScottsdaleAZ/Planning/character-area/downtown/DTPlan2009boundary.pdf).

2.2.5 More information about Downtown Scottsdale can be found at [www.scottsdaleaz.gov/downtown](http://www.scottsdaleaz.gov/downtown), [www.scottsdaledowntown.com](http://www.scottsdaledowntown.com), and [www.choosescottsdale.com/employment-centers/downtown-corridor](http://www.choosescottsdale.com/employment-centers/downtown-corridor).

2.2.6 In 2009 the city council adopted an update to the Downtown Character Plan. The Downtown Character Plan identifies a vision, values, goals and policies for the area. The document is online at [www.scottsdaleaz.gov/Assets/ScottsdaleAZ/Planning/DTPlan2009Complete.pdf](http://www.scottsdaleaz.gov/Assets/ScottsdaleAZ/Planning/DTPlan2009Complete.pdf).

2.2.7 On March 29, 2011, the Downtown Task Force recommendations were presented to City's city council. The recommendations included a list of physical improvements, one of which was a public parking structure.

2.2.8 On February 17, 2015, the City Council adopted an Economic Development Strategic Plan which includes reference to a future vision of Downtown Scottsdale.

2.2.9 On December 17, 2015, the Transportation Commission received the 2015 Scottsdale Downtown Parking Study prepared by Walker Parking Consultants. The document is online at [www.scottsdaleaz.gov/Asset61953.aspx](http://www.scottsdaleaz.gov/Asset61953.aspx).

2.2.10 On May 10, 2016, the City Council received an in-depth Downtown Parking Solution Analysis at the Work Study Session and directed staff to move forward with the issuance of an RFP for a parking structure in the northeast quadrant of Downtown Scottsdale.

2.2.11 Additional information about the City of Scottsdale may be available from [www.ScottsdaleAZ.gov](http://www.ScottsdaleAZ.gov).

2.3 Project Site Characteristics. The project site enjoys the following characteristics that may be relevant to this Request:

2.3.1 An aerial photograph showing the general location and internal layout of the project site are attached hereto as **Exhibit “A”**.

2.3.2 The project site consists of three parcels (the “North Parcel”, the “South Parcel” and the “Street Parcel”) as follows:

2.3.2.1 The North Parcel, the South Parcel, and Street Parcel together total approximately 1.34 acres or 56,972 square feet of land. They are located east of Drinkwater Boulevard, one block east of the Galleria Corporate Centre.

2.3.2.2 The North Parcel consists of 0.65 acres or 28,462 square feet of land and is located at 7375 E. Stetson Drive. The North Parcel is bounded on the north by Stetson Drive and on the south by 6<sup>th</sup> Avenue. Dedicated public alleys abut the North Parcel on the east and west boundaries.

2.3.2.3 The South Parcel consists of 0.31 acres or 13,605 square feet of land and is located at 7365 E. 6<sup>th</sup> Avenue. The South Parcel is bounded on the north by 6<sup>th</sup> Avenue, on the south and east by dedicated public alleys and on the west by private property.

2.3.2.4 The Street Parcel consists of existing 6<sup>th</sup> Avenue right-of-way located immediately south of the North Parcel, abutting the South Parcel (0.34 acres or 14,905 square feet).

2.3.2.5 The North Parcel consists of a single platted lot currently paved and marked for 72 public parking spaces.

2.3.2.6 The South Parcel consists of a single platted lot currently unpaved and marked for 33 public parking spaces. A private refuse enclosure that can be relocated is located at the southwest corner of the South Parcel. (See the Refuse Enclosure Easement recorded April 30, 1998 at document No. 98-0355595.)

2.3.2.7 The North Parcel is listed by the Maricopa County Assessor as parcel number (APN) 173-41-115. The South Parcel is listed by the Maricopa County Assessor as parcels 173-41-116A and 116B.

2.3.3 Existing utilities in the area include water, sewer, electric, phone, cable and gas. Proposers are responsible to determine location, capacity and extension requirements and associated fees to accommodate their specific projects.

2.3.4 Preliminary research shows that the Street Parcel contains at minimum the following city utilities: (1) 48 inch storm water line in the south half of 6<sup>th</sup> Avenue; (2) storm water line in the north half of 6<sup>th</sup> Avenue; (3) water line 26 feet south of the center line of 6<sup>th</sup> Avenue; and (4) street lighting.

2.3.5 The area is served by easy vehicular access. Access to the project site is

provided by Stetson Drive on the north and 6th Avenue on the south. The alleys adjacent to the east and west boundaries of the North Parcel and on the south and east boundaries of the South Parcel also provide public access.

2.4 Project Site Regulatory Status. The project site is affected by the following regulatory issues that may be relevant to this Request:

2.4.1 Use of the project site is subject to City of Scottsdale codes, ordinances, policies and other rules. All proposals will be subject to full regulatory review and approval processes.

2.4.2 The city plans to initiate a rezoning application, a Municipal Use Master Site Plan application, and an abandonment application for that portion of 6<sup>th</sup> Avenue within the project site, to facilitate the development of a parking structure open to the public on the project site. These applications will be initiated prior to the RFP due date.

2.4.3 On March 29, 2011 the Downtown Task Force recommendations were presented to the City Council. The recommendations included a list of physical improvements, as well as an overall evaluation of downtown parking. The report is online at [www.scottsdaleaz.gov/asset39395.aspx](http://www.scottsdaleaz.gov/asset39395.aspx).

2.4.4 On December 17, 2015, the Transportation Commission received the 2015 Scottsdale Downtown Parking Study prepared by Walker Parking Consultants. The report identified the development of parking structures as a long-term solution to provide conveniently accessible parking for downtown employees. This document is online at [www.scottsdaleaz.gov/Asset61953.aspx](http://www.scottsdaleaz.gov/Asset61953.aspx).

2.4.5 The project site is currently zoned P-2 DO (Parking P-2 District, Vehicle Parking, Downtown Overlay). Permitted uses include surface parking lots and parking structures. The project site will be the subject of a city-initiated rezoning application to the Downtown Multiple Use – Type 2 Planned Block Development. Downtown Overlay (D/DMU-2-PBD DO) zoning category and a Municipal Use Master Site Plan (MUMSP) consistent with the City of Scottsdale zoning ordinance and with policy documents that guide growth and development in Downtown Scottsdale (including but not limited to, the 2001 General Plan, the Downtown Character Plan, and the Downtown Urban Design and Architectural Guidelines). The Downtown Character Plan designates the project site and the majority of land within the overall Downtown Plan boundary as being a Downtown Multiple Use Urban Neighborhood. The Downtown Character Plan also identifies various visions, values, goals and policies for the area and includes recommendations concerning the downtown parking supply. The document is online at [www.scottsdaleaz.gov/Assets/Public+Website/Planning/DTPlan2009Complete.pdf](http://www.scottsdaleaz.gov/Assets/Public+Website/Planning/DTPlan2009Complete.pdf).

2.4.6 Information about the regulatory status of the project site may be available from the following sources:

2.4.6.1 The City of Scottsdale planning department, city clerk and other departments.

2.4.6.2 [www.ScottsdaleAZ.gov](http://www.ScottsdaleAZ.gov).

2.5 Project Site Ownership Status. The project site is affected by the following ownership status issues that may be relevant to this Request:

2.5.1 Title to the project site is “as-is”.

2.5.2 A copy of a preliminary title report issued on is attached as **Exhibit “B”**. An updated report will be added as an addendum to this RFP upon receipt and prior to the pre-proposal meeting.

2.5.3 Additional information about the project site’s legal status may be available from the office of the Maricopa County Recorder and other public records repositories.

2.5.4 Proposers must investigate and analyze title information and form their own opinions as to its effect on the project site and their proposed development and must not rely on any information from City regarding those issues.

### III. CITY GOALS

3. City Goals. City's purpose is to encourage design, construction and operation of a quality first class public parking structure for daytime and evening use. To accomplish this, proposals should meet the following goals:

3.1 Service and Operation Goals. City has a goal to provide the public with a first-class parking structure.

3.2 Financial Goals. City wishes to have no financial cost or risk in the design, construction, operation or maintenance of the parking structure, infrastructure development or relocation or in meeting any revenue shortfall to service construction or operating expenses.

3.3 Design and Construction Goals. City has a goal to see the project site developed in conformance with all applicable rules and regulations.

### IV. PROCESS

4. Process. This Request will be conducted in the following manner:

4.1 Timeline. This Request will be conducted according to the following schedule:

- |       |  |                    |
|-------|--|--------------------|
| 4.1.1 | Issue Request                              | June 21, 2016      |
| 4.1.2 | Pre-proposal meeting at 11:00 a.m.         | July 18, 2016      |
| 4.1.3 | Proposer written questions due             | July 26, 2016      |
| 4.1.4 | Proposer written question answers provided | August 2, 2016     |
| 4.1.5 | Proposals due at 10:00 a.m.                | September 13, 2016 |

4.1.6 Selection panel recommendation to City Council September 23, 2016

4.1.7 Action by City Council October 25, 2016

4.2 Pre-proposal Meetings. Unless otherwise specified by City in writing, pre-proposal meetings shall be conducted as follows:

4.2.1 Attendance at pre-proposal meetings is optional, but highly recommended.

4.2.2 Meetings will be held at Scottsdale City Hall, which is located at 3939 N. Drinkwater Boulevard. Check in with the security guard at the west entrance to city hall.

4.3 Proposer Questions. The timeline calls for potential proposers to provide questions regarding the requirements of this Request as follows:

4.3.1 Proposer questions must be in writing and submitted in the same manner as set out for proposals. Only one copy of the questions need be submitted. Mark envelopes containing questions "Stetson Parking Lots RFP Questions".

4.3.2 City may elect to make proposer questions public at the time of City's response to the proposer input or at any other time.

4.3.3 Proposers may ask questions on any aspect of this request, such as the proposed contract. City anticipates that City may issue an addendum incorporating any proposer question concepts that City deems desirable.

4.3.4 Proposer questions should consist of the following:

4.3.4.1 The name of the proposer.

4.3.4.2 The date.

4.3.4.3 A succinct, numbered bullet point list of the questions.

4.4 Proposal Delivery. Proposals must be hand delivered or sent by US Mail or commercial courier. Telephone, email or facsimile proposals will not be accepted. Late proposals will not be accepted. Proposals delivered by mail or courier may be delayed in City's mail screening process. Proposers using these methods should allow several extra days leeway to ensure that their proposals arrive at the stated address before the deadline. City will not be responsible for delay or for premature opening of a proposal that is not properly addressed and identified.

4.5 Copies. Submit 8 copies of your proposal in a sealed package marked "Stetson Parking Lots RFP Response".

4.6 Opening of Proposals. Shortly after the deadline, City will open the

proposals and announce the names of the proposers. The confidentiality of proposals will be maintained until the earlier of formal award of the contract by the City Council or public discussion of the proposals by the City Council or another public body. Thereafter, proposals submitted shall not be considered confidential and no information contained therein shall be treated by City as confidential, proprietary, or trade secret information. All materials and documents submitted by the proposer in response to this Request will become City's property and will not be returned.

4.7 Proposal Consideration. Proposals will be processed and considered in the following manner:

4.7.1 City staff will review the proposals and select a proposal to recommend. The selection and evaluation process will be managed by Capital Project Management Department staff. Capital Project Management Department staff may invite other City staff, private consultants, citizen board members, and other resources to participate in evaluating the proposals.

4.7.2 City reserves the right to condition consideration, recommendation or selection of a proposal upon any of the following:

4.7.2.1 The proposer submitting additional and revised information and materials, whether or not specified in this Request.

4.7.2.2 The proposer participating in oral interviews and presentations.

4.7.2.3 The proposer making improvements and other changes to the proposal.

4.7.3 The City Attorney's Office will finalize the contract for presentation to the City Council implementing the staff proposal.

4.7.4 The preferred proposer shall re-execute the contract (if necessary).

4.7.5 City staff will make a recommendation to the City Council.

4.7.6 The City Council will decide in a public meeting whether to award the contract. If the City Council decides to award the contract, then the City Council will select a proposal. Only the City Council has authority to select a proposal or award the contract.

4.8 Contract Effectiveness. City has made no promises to enter into any contract with any proposer. City is free to withdraw or modify this Request at any time for any reason or for no reason. Proposers proceed at their own risk as to any expenditures, commitments, forbearances, or other actions in anticipation of a possible contract with City. City will not be bound by any contract or other duty relating to this Request unless and until a final written contract is executed and delivered to the proposer by City's agent pursuant to a specific resolution formally approved by the City Council.

4.9 Binding Proposals. Submission of a proposal shall be the proposer's legally binding covenant to enter into the contract if the City Council approves it. All proposals

submitted remain in effect as irrevocable offers to enter into the contract with City for a period of ninety (90) days after the submission deadline. Proposals may remain as binding offers beyond that time with the proposer's consent. Without limitation, the bidder selected shall execute the contract prior to formal City Council award, if requested by City.

4.10 Withdrawing or Modifying a Proposal. At any time prior to the deadline for submitting proposals, a proposer may modify or withdraw its proposal. Any proposal modification or withdrawal must be in writing, executed by the proposer, and submitted prior to the submission deadline.

4.11 Disqualification. City reserves the right to disqualify a proposer as follows:

4.11.1 The following are grounds for disqualification whether disclosed by the proposal submitted or any other information available to City, or otherwise:

- 4.11.1.1 Any real or apparent conflict of interest.
- 4.11.1.2 Failure to comply with this Request.
- 4.11.1.3 The proposer's record of non-performance of its obligations to City or any third party.
- 4.11.1.4 The proposer's apparent likely inability to perform as proposed.
- 4.11.1.5 Any other impropriety or weakness in the proposer or the proposal.

4.11.2 Disqualification is at the City's sole discretion.

4.12 Addenda and Other Changes to this Request. City expressly reserves the right to:

4.12.1 Amend, modify or cancel this Request without incurring any contractual or other obligations. A formal written addendum is the only official method of modifying this Request. Each addendum shall be a part of this Request as if the addendum were set out here in its entirety. Addenda will be published at [www.scottsdaleaz.gov/purchasing/leases-concessions](http://www.scottsdaleaz.gov/purchasing/leases-concessions). Proposers are responsible to inform themselves about addenda. City shall not be responsible for oral or other informal interpretation, clarification or additional information given by any elected or appointed official, by any employee or by any other person or group purporting to speak for City.

4.12.2 Waive any defect or informality in any proposal or proposal procedures.

4.12.3 Reject any or all proposals.

4.12.4 Issue a new Request.

4.12.5 Obtain or dispose of any property or services or pursue other aspect of the project by any other means.

4.13 Governing law. Any and all disputes arising under this Request or out of the proposals shall be governed according to the laws of the State of Arizona. The venue for any such action shall be in Maricopa County, Arizona.

4.14 Information from City and Others. While City has attempted to supply correct information in this Request, all information herein and all information City may have heretofore provided or may yet provide is provided entirely without warranty. All proposers should perform their own investigation of the project and all other relevant information and independently confirm for themselves any information provided by City. City is not responsible for any information that proposers may obtain from third parties, including without limitation information from any source mentioned in this Request. City does not warrant that any information City or others may provide is accurate or complete. City also strongly recommends that proposers retain and seek advice from competent professional planners, engineers, attorneys and other advisors regarding this Request and the contract.

4.15 Indemnity. Each proposer shall hold harmless and indemnify City, its officers, employees, agents, and representatives against all losses, claims, actions, judgments, and all liability for injury to persons, including without limitation wrongful death and damage to property, occurring, related to, during, or in consequence of this Request or any proposal. Proposers release and shall have no rights, claims or remedies against City's officers, employees, agents or other representatives in connection with this Request or the contract.

4.16 Waiver of Objections. Persons interested in this Request waive objections as follows:

4.16.1 By submitting a proposal, each proposer agrees to be bound by this Request and unconditionally and irrevocably waives the following:

4.16.1.1 Any objection to the proposal and contracting process as set out in or contemplated by this Request.

4.16.1.2 Any objection to the requirements or other provisions of this Request, including without limitation the submission requirements, the proposal evaluation criteria, the selection process, and the contract.

4.16.1.3 Any objection to the manner in which the proposal and contracting process has been carried out through the time the proposals are opened.

4.16.2 All other objections by proposers and all others (including without limitation those related to the proposed evaluation and recommendation process) are unconditionally and irrevocably waived if not raised at the earliest possible time.

4.17 Any objection must be made at least 48 hours prior to City Council action (or, in the case of objections to matters occurring after that deadline, prior to City Council action.)

4.17.1 All objections must be described in particular and delivered in writing with supporting evidence to City at the address for submitting proposals. Objections must be conspicuously and boldly marked "URGENT OBJECTION TO REQUEST FOR PROPOSALS

FOR STETSON PARKING LOTS". An additional copy must be simultaneously delivered to:

City Attorney's Office  
City of Scottsdale  
3939 N. Drinkwater Boulevard  
Scottsdale, AZ 85253

4.17.2 Objections are also subject to all applicable claims processes. City does not waive any claims process.

## V. PROPOSER EVALUATION

5. Proposals will be evaluated and scored on the basis of non-competitive factors and competitive factors, as follows:

5.1. Non-competitive factors will be individually scored as a "Pass" or "Fail". A proposal that receives a "Fail" score for any one or more non-competitive factors will be eliminated from further consideration. For each non-competitive factor, proposers must show that the factor is met.

5.2. Competitive factors are those that allow the proposals to be ranked to determine how well each proposal advances City's goals.

## VI. NON-COMPETITIVE FACTORS.

6. Non-competitive Factors. All proposals must comply with the following:

6.1. Form of Contract. The proposer will be required to enter into a contract with City as follows:

6.1.1. The contract will be a lease and option agreement in the form attached as **Exhibit "C"**. The contract includes its exhibits. One of its exhibits is a special warranty deed with requirements which are applicable during the entire term of the lease/option agreement.

6.1.2. The final contract will be prepared by the City Attorney's Office modified as necessary to incorporate the terms of the successful proposal. The City Attorney's Office will remove irrelevant terms and add new terms as necessary to implement specific business points in the proposal selected.

6.1.3. Proposers should be prepared to execute the contract in its current form subject only to modifications essential to reflect the business terms proposed. Contract language changes will be limited to those purposes.

6.1.4. The contract text shall control the relationship between City and the proposer selected. All proposers must read the contract in its entirety before submitting a proposal. If the contract is inconsistent with anything in the remainder of this Request or the proposal selected, then the contract shall control. Do not rely on this Request to explain the contract requirements.

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6.1.5. No change to the form of the contract will occur except as described in this Request or by formal addendum issued before the proposals are due. The proposer whose proposal is selected will not have an opportunity to negotiate changes to the contract form.

6.2. Complete Proposals. Proposals must be complete.

## **VII. COMPETITIVE FACTORS**

7. Competitive Factors. Proposals will be ranked according to the following criteria:

7.1. Ranking Proposals by Points. The qualifying proposal with the highest number of points, a “Pass” ranking for the submitted conceptual plan, elevation(s) and narrative, and a “Pass” ranking for the submittal of Letter(s) of Intent will be selected. The relative importance of competitive factors is indicated by the number of points specified for the factor. Point values for different competitive factors have been set to include weighting of the competitive factors. For example, if purchase price is twice as important to City as another factor, then the total number of points available for the purchase price has been set at twice the number of points available for the other factor.

7.2. Points Allocations. Points will be awarded as follows:

7.2.1. Begin with zero points.

7.2.2. Add one point for each dollar you offer for the option exercise price. (See, inter alia, paragraph 2.3.5 of the lease and option agreement.) The lowest amount you may offer is One Hundred Thousand and No/100 Dollars (\$100,000.00).

7.2.3. Add 25,000 points for each parking space available to the public. Parking spaces that are required to be available to the public exclude those which support a retail component within the Project if any. These public parking spaces shall be subleased to area property owners, businesses, and/or employers, (Public Use Spaces). These parking spaces must be available Monday through Friday from 5am to 6pm. (See, inter alia, the parking structure provisions attached as an exhibit to the deed.)

7.3. The conceptual plan, elevation(s), and narrative will be scored by the City’s Planning Director. The submittals will receive a “Pass” score if the submittals are acceptable to the Planning Director as generally conforming to the Downtown Urban Design and Architectural Guidelines.

7.4. The Letter(s) of Intent submitted will receive a “Pass” score if the submitted Letter(s) of Intent represent 40% or more of the parking space available to the public, and excluding parking to support a retail component within the Project, if any. These spaces shall be leased to area property owners, businesses or employers (Public Use Spaces).

## **VIII. PROPOSAL CONTENTS**

8. Proposal Contents. Submit proposals as follows:

8.1 Proposer Information. Provide the following information about the proposer:

8.1.1. In 200 words or less introduce the proposer. List at least 3 strengths and 3 weaknesses of the proposer.

8.1.2. Explain proposer qualifications and experience in designing, financing, constructing, operating, and maintaining a similar parking structure. Include the roles and responsibilities of all identified team or joint venture members. Provide examples of similar project(s).

8.1.3. Demonstrate proposer's financial strength and viability to design, finance, construct, operate, and maintain the proposed parking structure.

8.2 Bid Sheet. Each proposal must include a fully completed bid sheet in the form attached hereto as **Exhibit "D"**.

8.3 Affidavit. Each proposal must include a fully completed affidavit in the form attached hereto as **Exhibit "E"**.

8.4 Signed Original Contracts. Each proposal must include two original contracts with original acknowledged signatures by the proposer as follows:

8.4.1 Write only the following information in the contract by hand with a blue pen:

8.4.1.1 The proposer's name, state of organization, and type of business entity. (E.g., "Tom's Development Company, Inc., an Arizona corporation".) Write this information in the appropriate blanks in the introductory language at the top of the first page and in the appropriate blanks in the signature lines at the end of the contract.

8.4.1.2 In the blank in recital (H)(1) of the contract, write the total number of parking spaces you offer to provide in the new public parking structure.

8.4.1.3 In the blank in recital (H)(2) of the contract, write the number of parking spaces you offer to make available to area property owners, businesses and/or employers, exclusive of any parking required for any retail component of the Projects.

8.4.1.4 In the blank in paragraph 2.3.5 of the contract, write the amount of the option exercise price that you offer.

8.4.1.5 In the blank in paragraph 7.1.1 of the contract write the date of your response to the Request for Proposals.

8.4.1.6 In the blank in paragraph 17.7 of the contract, write the addresses to which the proposer desires notices be sent.

8.4.1.7 A signature line is provided at the end of the contract. Write the proposer's agent's title in the "Its:" line. Have the proposer's agent sign the "By:" line.

8.4.1.8 In the first blank in paragraph 1.1.1 of the deed, write the total

number of parking spaces you offer to make available to the public.

8.4.2 Do not write anything else on the contract. If the City Council awards the contract to you, then City will complete the remaining blanks on both of the copies of the contract, otherwise update the contract as described in this RFP, and return one original to you. Sign the contract as-is.

8.4.3 If the City Council does not award a contract to a proposer, then City will shred, mark void, or otherwise deface both copies of the contract that bear the proposer's signatures.

8.4.4 City will execute and date the contract after the date of the formal City Council award to the winning proposer or as otherwise directed by the City Council or the city manager or designee.

8.5 Proposal Deposit. Each proposal must include a proposal deposit as follows:

8.5.1 The amount of the proposal deposit is One Hundred Thousand and No/100 Dollars (\$100,000.00). The deposit must be submitted in the form of a certified cashier's check payable to City issued by an FDIC insured institution with offices in Maricopa County, AZ. Personal checks are not acceptable.

8.5.2 City shall retain the proposal deposit of the successful proposer as liquidated damages if the proposer fails or refuses to execute the contract or otherwise fails to comply with this Request.

8.5.3 City will retain the successful proposer's proposal deposit as the security deposit under paragraph 3.8 of the Lease and Option Agreement. City shall return proposal deposits provided by unsuccessful proposers within approximately fifteen (15) working days after the contract has been awarded and fully executed.

8.5.4 In addition, the proposal deposit secures the proposer's timely, faithful and complete performance of all of the proposer's obligations related to this Request.

8.6 Conceptual Site Plan, Elevations(s) and Narrative. Proposals must include a conceptual site plan, elevation(s), and narrative with sufficient detail to support city-filed rezoning, municipal use master site plan, and right-of-way abandonment applications for city consideration and approval.

8.7 Letters(s) of Intent. Each proposal must include Letter(s) of Intent from one or more prospective licensees of the parking structure indicating the number of parking spaces to be licensed from the proposer.

Request Issued By:

City of Scottsdale, a municipal corporation

By: \_\_\_\_\_  
Martha West, Senior Real Estate Manager

APPROVED AS TO FORM

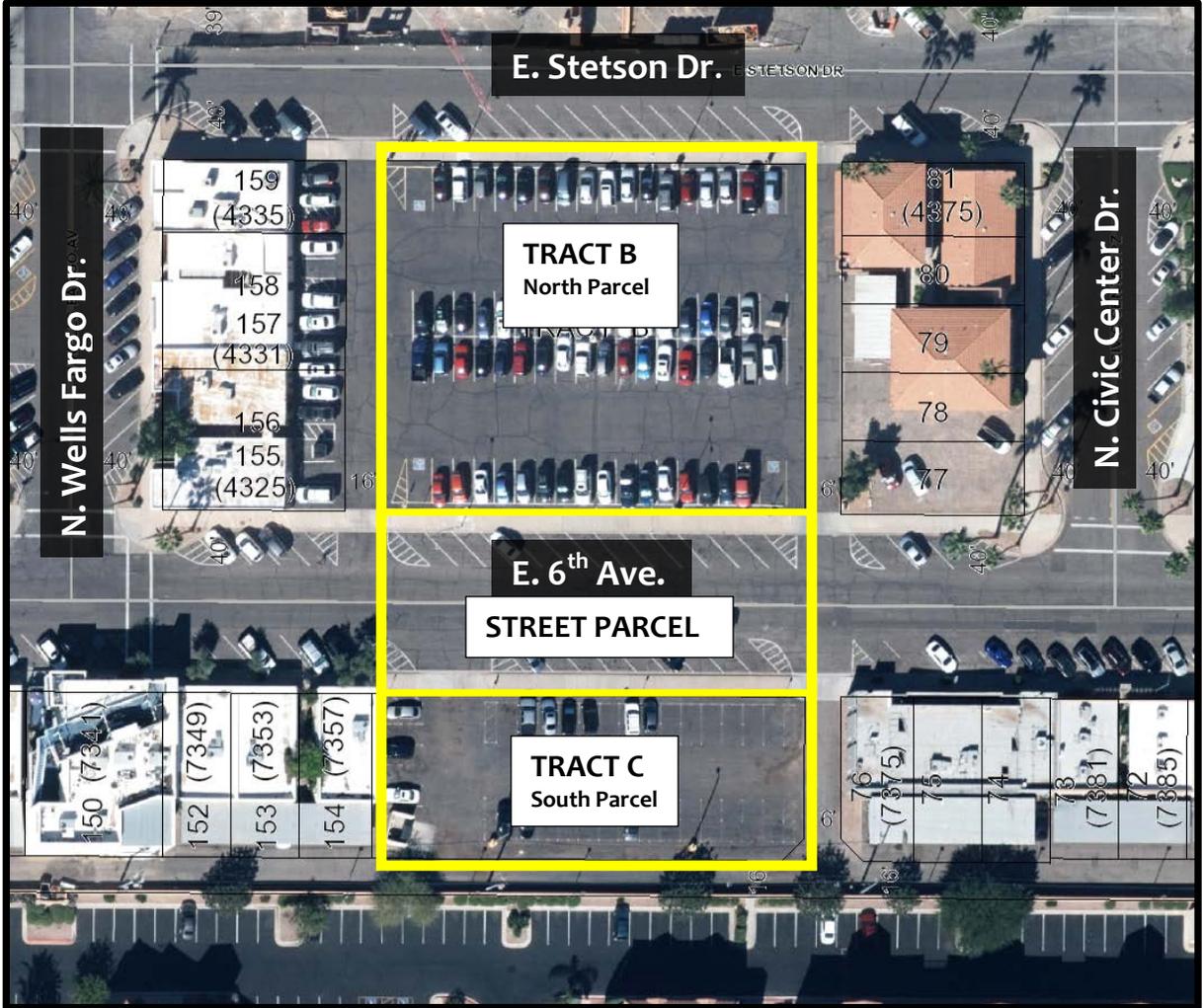
OFFICE OF THE CITY ATTORNEY

\_\_\_\_\_  
Bruce Washburn, City Attorney  
By: Margaret Wilson, Assistant City Manager

## Table of Exhibits

<u>Exhibit</u>	<u>Paragraph</u>	<u>Description</u>
		<b>ARTICLE 1. OVERVIEW</b>
		<b>ARTICLE 2. DESCRIPTION OF PROJECT SITE AND ENVIRONS</b>
A	2.3.1	Aerial photograph of general location and layout of the site.
B	2.5.2	Copy of title report for project site.
		<b>ARTICLE 3. CITY GOALS</b>
		<b>ARTICLE 4. PROCESS</b>
		<b>ARTICLE 5. PROPOSAL EVALUATION FACTORS</b>
		<b>ARTICLE 6. NON-COMPETITIVE FACTORS</b>
C	6.1.1	Form of proposed contract that the winning proposer will enter into.
		<b>ARTICLE 7. COMPETITIVE FACTORS</b>
		<b>ARTICLE 8. PROPOSAL CONTENTS</b>
D	8.2	Form of bid sheet.
E	8.3	Form of proposal affidavit.

**AERIAL VIEW OF PARCELS**



**PRELIMINARY TITLE REPORT**

**Exhibit B**  
Request for Proposal  
(see attached pages)

**Contract 2016- \_\_\_\_-COS**



CHICAGO TITLE INSURANCE COMPANY

Title No.: CTA1208193

**COMMITMENT FOR TITLE INSURANCE**

Issued by  
*Chicago Title Insurance Company*

*Chicago Title Insurance Company ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.*

*This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.*

*All liability and obligation under this Commitment shall cease and terminate 6 months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.*

*The Company will provide a sample of the policy form upon request.*

*IN WITNESS WHEREOF, CHICAGO TITLE INSURANCE COMPANY has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.*

\_\_\_\_\_  
Countersigned

**CHICAGO TITLE INSURANCE COMPANY**

6710 N. Scottsdale Rd #100  
Scottsdale, AZ 85253

**SCHEDULE A**

Title Officer: Sean Barragan  
Escrow Officer: Rose Norton  
Escrow No.: CTA1208193-CTA2949

1. Effective date: June 11, 2014 at 07:30 AM
2. Policy or Policies to be issued: Amount
  - (a) Owner's Policy ( ALTA Owner's Policy (6/17/2006) Extended Coverage )  
Proposed Insured: \_\_\_\_\_  
TO BE DETERMINED
3. The estate or interest in the land described or referred to in this Commitment is:  
A Fee
4. Title to the estate or interest in the land is at the Effective Date vested in:  
CITY OF SCOTTSDALE, AN ARIZONA MUNICIPAL CORPORATION as to Parcels 1 and 3;  
TOWN OF SCOTTSDALE as to Parcel 2.
5. The land referred to in the Commitment is described as follows:  
SEE EXHIBIT "ONE" ATTACHED HERETO AND MADE A PART HEREOF

**CHICAGO TITLE INSURANCE COMPANY**

**LEGAL DESCRIPTION**

**EXHIBIT "ONE"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MARICOPA, STATE OF ARIZONA AND IS DESCRIBED AS FOLLOWS:

Parcel No. 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..

Parcel No. 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 of Maps, page 200;

EXCEPT the West 5 feet of said Tract "C"

Parcel No. 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.

**CHICAGO TITLE INSURANCE COMPANY**  
**SCHEDULE B - SECTION I**  
**REQUIREMENTS**

1. Pay the agreed amounts for the interest in the Land and/or the mortgage to be insured.
2. Pay us the premiums, fees and charges for the policy.
3. Documents satisfactory to us creating the interest in the Land and/or the mortgage to be insured must be signed, delivered and recorded.
4. You must tell us in writing the name of anyone not referred to in this commitment who will get an interest in the Land or who will make a loan on the Land. We may then make additional requirements or exceptions.
5. Furnish satisfactory evidence to the company that all regular and special assessments levied by Salt River Project Agricultural Improvement and Power District which are now due and payable are paid.
6. Please be advised that our search did not disclose any open Deeds of Trust of record. If you should have knowledge of any outstanding obligation, please contact the Title Department immediately for further review prior to closing.

Upon confirmation by the owner of no open Deeds of Trust or Mortgages encumbering the Land described herein, furnish the Company an owner's Affidavit of no open Deed of Trust(s).

7. An inspection of said Land has been ordered; upon its completion the Company reserves the right to except additional items and/or make additional requirements.
8. Furnish a plat of a ALTA/ACSM Land Title Survey. If the owner of subject property is in possession of a current ALTA/ACSM Land Title Survey, this Company will require that said Survey be submitted for review and approval. Otherwise, a new survey, satisfactory to the Company, must be prepared by a registered land surveyor and supplied to the Company prior to the close of escrow. The Company reserves the right to except additional items and/or make additional requirements after review of such survey.

Said Plat of Survey shall include the recommended certification and at the minimum, also have shown thereon Items 1, 2, 6 through 11, 16, 19, and 20 from Table A thereof.

Note: If an ALTA 3.1 Zoning Endorsement is requested, Items 7a, 7b, 7c and 9 of Table A will also be required. The number and type of parking spaces must be shown on the survey. Property use information must also be provided to Chicago Title Insurance Company.

9. Furnish for review a full and complete copy of any unrecorded agreement, contract, license and/or lease together with all supplements, assignments and amendments thereto, prior to the close of this transaction.

The Company reserves the right to add additional items or make further requirements after review of the requested documentation.

10. Recordation of a certified copy of the Ordinance of the City of Scottsdale authorizing the execution and delivery of all instruments necessary to consummate this transaction.

**SCHEDULE B - SECTION I**

(Continued)

11. The name(s) of the proposed insured(s) was not furnished with the application for title insurance. Please provide the name(s) of the buyer(s) as soon as possible.

The Company reserves the right to add additional items or make further requirements after review of the requested information.

12. Furnish for recordation a deed as set forth below:

Type of deed: Warranty

Grantor(s): CITY OF SCOTTSDALE, AN ARIZONA MUNICIPAL CORPORATION as to Parcels 1 and 3;  
TOWN OF SCOTTSDALE as to Parcel 2.

Grantee(s): To Come

Note: ARS 11:1133 may require the completion and filing of an Affidavit of Value.

Tax Note:

Year: 2013

Tax Parcel No: 173-41-115

Total Tax: Exempt

Tax Note:

Year: 2013

Tax Parcel No: 173-41-116A

Total Tax: Exempt

Tax Note:

Year: 2013

Tax Parcel No: 173-41-116B

Total Tax: Exempt

Note: Pursuant to Arizona Revised Statutes 11-480, effective January 1, 1991, the County Recorder may not accept documents for recording that do not comply with the following:

- (a) Print must be ten-point type or larger.
- (b) Margins of at least one-half inch along all sides, including top and bottom, except the top of the first page which must be at least two inches for recording and return address information. The margin must be clear of all information including but not limited to, notaries, signatures, page numbers.
- (c) Each instrument shall be no larger than 8 - 1/2 inches in width and 14 inches in length.

Note: Any documents being executed in conjunction with this transaction must be signed in the presence of an authorized Company employee, an authorized employee of an agent, an authorized employee of the insured lender, or by using Bancserv or other approved third-party service. If the above requirement cannot be met, please call the Company at the number provided in this report.

**SCHEDULE B - SECTION I**

(Continued)

Note: The policy of title insurance will include an arbitration provision. The Company or the insured may demand arbitration. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. Please ask your escrow or title officer for a sample copy of the policy to be issued if you wish to review the arbitration provisions and any other provisions pertaining to your Title Insurance coverage.

**END OF SCHEDULE B - SECTION I**

**CHICAGO TITLE INSURANCE COMPANY**  
**SCHEDULE B - SECTION II**  
**EXCEPTIONS**

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

- A. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the Effective Date but prior to the date the Proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
  - B. Exceptions and Exclusions from coverage which will appear in the policy or policies to be issued as set forth in Attachment One attached.
1. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the year 2014.
  2. The liabilities and obligations imposed upon said Land by reason of: (a) inclusion thereof within the boundaries of the Salt River Project Agricultural Improvement and Power District; (b) membership of the owner thereof in the Salt River Valley Water Users' Association, an Arizona corporation and (c) the terms of any Water Right Application made under the reclamation laws of the United States for the purposes of obtaining water rights for said Land.
  3. Reservations, exceptions and provisions contained in the patent and in the acts authorizing the issuance thereof.
  4. Water rights, claims or title to water, whether or not disclosed by the Public Records.
  5. Easements, covenants, conditions and restrictions as set forth on the plat recorded in Book 70 of Maps, page 28 and Amendment to Plat recorded in Docket 3009, page 200.
  6. Covenants, conditions and restrictions but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document
- Recording No.: ~~Docket 686, page 307~~
7. Covenants, conditions, restrictions and easements but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

Recording No.: Docket 2096, page 3

**SCHEDULE B - SECTION II**  
(Continued)

8. Matters contained in that certain document

Entitled: Resolution No. 4698  
Executed by: City of Scottsdale  
Recording Date: February 10, 1997  
Recording No: 97-86152

Reference is hereby made to said document for full particulars.

9. Matters contained in that certain document

Entitled: Resolution No. 4988  
Executed by: City of Scottsdale  
Recording Date: April 30, 1998  
Recording No: 98-355574

Reference is hereby made to said document for full particulars.

10. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: refuse container enclosure  
Recording Date: April 30, 1998  
Recording No: 98-355575 and Assignment recorded January 04, 1999 in  
Recording No. 99-4698.

(Parcels 2 and 3)

11. Matters which may be disclosed by an inspection and/or by a correct ALTA/ACSM Land Title Survey of said Land that is satisfactory to the Company, and/or by inquiry of the parties in possession thereof.
12. Any rights of the parties in possession of a portion of, or all of, said Land, which rights are not disclosed by the Public Records.

**END OF SCHEDULE B - SECTION II**

## CHICAGO TITLE INSURANCE COMPANY

### CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. *The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <<http://www.alta.org/>>.*

## ATTACHMENT ONE (01-01-08)

### AMERICAN LAND TITLE ASSOCIATION RESIDENTIAL TITLE INSURANCE POLICY (6-1-87) EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:

- land use
- improvements on the land
- land division
- environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at policy date.

This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:

- a notice of exercising the right appears in the public records on the Policy Date
- the taking happened prior to the Policy Date and is binding on you if you bought the land without knowledge of the taking

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees, and the expenses resulting from:

1. Any rights, interests, or claims of parties in possession of the land not shown by the public records.

2. Any easements or liens not shown by the public records. This does not limit the lien coverage in Item 8 of Covered Title Risks.

3. Title Risks:

- that are created, allowed, or agreed to by you
- that are known to you, but not to us, on the Policy Date - unless they appeared in the public records
- that result in no loss to you
- that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks

4. Failure to pay value for your title.

5. Lack of a right:

- to any land outside the area specifically described and referred to in Item 3 of Schedule A
  - or
  - in streets, alleys, or waterways that touch your land
- This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

3. Any facts about the land which a correct survey would disclose and which are not shown by the public records. This does not limit the forced removal coverage in Item 12 of Covered Title Risks.

4. Any water rights or claims or title to water in or under the land, whether or not shown by the public records.

**ATTACHMENT ONE  
(CONTINUED)**

**FORMERLY AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (10-17-92)  
WITH A.L.T.A. ENDORSEMENT-FORM 1 COVERAGE  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy); or
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
  - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgement or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage.

In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

**ATTACHMENT ONE  
(CONTINUED)**

**2006 AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (06-17-06)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.  
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not known to the Company, not recorded in the Public Records at Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
- (c) resulting in no loss or damage to the Insured Claimant;
- (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
- (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage.

In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records;  
(b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

**ATTACHMENT ONE  
(CONTINUED)**

**FORMERLY AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (10-17-92)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy, or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgement or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage.

In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

**ATTACHMENT ONE  
(CONTINUED)**

**2006 AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (06-17-06)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.  
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage.

In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

**ATTACHMENT ONE  
(CONTINUED)**

**ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (10-22-03)  
EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
  - a. building
  - b. zoning
  - c. Land use
  - d. improvements on Land
  - e. Land division
  - f. environmental protection

This Exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.  
This Exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
3. The right to take the Land by condemning it, unless:
  - a. notice of exercising the right appears in the Public Records at the Policy Date; or
  - b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.
4. Risks:
  - a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
  - b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
  - c. that result in no loss to You; or
  - d. that first occur after the Policy Date – this does not limit the coverage described in Covered Risk 7, 8.d, 22, 23, 24 or 25.
5. Failure to pay value for Your Title.
6. Lack of a right:
  - a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 18.

**LIMITATIONS ON COVERED RISKS**

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 14, 15, 16 and 18, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	<u>Your Deductible Amount</u>	<u>Our Maximum Dollar Limit of Liability</u>
Covered Risk 14:	1.00% of Policy Amount or \$ 2,500.00 (whichever is less)	\$ 10,000.00
Covered Risk 15:	1.00% of Policy Amount or \$ 5,000.00 (whichever is less)	\$ 25,000.00
Covered Risk 16:	1.00% of Policy Amount or \$ 5,000.00 (whichever is less)	\$ 25,000.00
Covered Risk 18:	1.00% of Policy Amount or \$ 2,500.00 (whichever is less)	\$ 5,000.00

**ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (01-01-08)  
EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
  - a. building;
  - b. zoning;
  - c. land use;
  - d. improvements on the Land;
  - e. land division; and
  - f. environmental protection.

This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
  - a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
  - b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
  - c. that result in no loss to You; or
  - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
5. Failure to pay value for Your Title.
6. Lack of a right:
  - a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 21.

**LIMITATIONS ON COVERED RISKS**

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 16, 18, 19 and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

<u>Your Deductible Amount</u>	<u>Our Maximum Dollar Limit of Liability</u>
Covered Risk 16:	\$ 10,000.00
1.00% of Policy Amount Shown in Schedule A	
or	
\$ 2,500.00	
(whichever is less)	
Covered Risk 18:	\$ 25,000.00
1.00% of Policy Amount Shown in Schedule A	
or	
\$ 5,000.00	
(whichever is less)	
Covered Risk 19:	\$ 25,000.00
1.00% of Policy Amount Shown in Schedule A	
or	
\$ 5,000.00	
(whichever is less)	
Covered Risk 21:	\$ 5,000.00
1.00% of Policy Amount Shown in Schedule A	
or	

\$ 2,500.00  
(whichever is less)

**ATTACHMENT ONE  
(CONTINUED)**

**ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (10/13/01)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions or location of any improvements now or hereafter erected on the Land; (iii) a separation in ownership or a change in the dimensions or areas of the Land or any parcel of which the Land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the Public Records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without Knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:  
(a) created, suffered, assumed or agreed to by the Insured Claimant;  
(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;  
(c) resulting in no loss damage to the Insured Claimant;  
(d) attaching or created subsequent to Date of Policy (this paragraph does not limit the coverage provided under Covered Risks 8, 16, 18, 19, 20, 21, 22, 23, 24, 25 and 26); or  
(e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the Land is situated.
5. Invalidity or unenforceability of the lien of the Insured Mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, except as provided in Covered Risk 27, or any consumer credit protection or truth in lending law.
6. Real property taxes or assessments of any governmental authority which become a lien on the Land subsequent to Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 7, 8(e) and 26.
7. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This exclusion does not limit the coverage provided in Covered Risk 8.
8. Lack of priority of the lien of the Insured Mortgage as to each and every advance made after Date of Policy, and all interest charged thereon, over liens, encumbrances and other matters affecting the title, the existence of which are Known to the Insured at:  
(a) The time of the advance; or  
(b) The time a modification is made to the terms of the Insured Mortgage which changes the rate of interest charged, if the rate of interest is greater as a result of the modification than it would have been before the modification. This exclusion does not limit the coverage provided in Covered Risk 8.
9. The failure of the residential structure, or any portion thereof to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at Date of Policy.

ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (01/01/08)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.

## Fidelity National Financial, Inc. Privacy Statement

Fidelity National Financial, Inc. and its subsidiaries ("FNF") respect the privacy and security of your non-public personal information ("Personal Information") and protecting your Personal Information is one of our top priorities. This Privacy Statement explains FNF's privacy practices, including how we use the Personal Information we receive from you and from other specified sources, and to whom it may be disclosed. FNF follows the privacy practices described in this Privacy Statement and, depending on the business performed, FNF companies may share information as described herein.

### Personal Information Collected

We may collect Personal Information about you from the following sources:

- Information we receive from you on applications or other forms, such as your name, address, social security number, tax identification number, asset information, and income information;
- Information we receive from you through our Internet websites, such as your name, address, email address, Internet Protocol address, the website links you used to get to our websites, and your activity while using or reviewing our websites;
- Information about your transactions with or services performed by us, our affiliates, or others, such as information concerning your policy, premiums, payment history, information about your home or other real property, information from lenders and other third parties involved in such transaction, account balances, and credit card information; and
- Information we receive from consumer or other reporting agencies and publicly recorded documents.

### Disclosure of Personal Information

We may provide your Personal Information (excluding information we receive from consumer or other credit reporting agencies) to various individuals and companies, as permitted by law, without obtaining your prior authorization. Such laws do not allow consumers to restrict these disclosures. Disclosures may include, without limitation, the following:

- To insurance agents, brokers, representatives, support organizations, or others to provide you with services you have requested, and to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure in connection with an insurance transaction;
- To third-party contractors or service providers for the purpose of determining your eligibility for an insurance benefit or payment and/or providing you with services you have requested;
- To an insurance regulatory authority, or a law enforcement or other governmental authority, in a civil action, in connection with a subpoena or a governmental investigation;
- To companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements and/or
- To lenders, lien holders, judgment creditors, or other parties claiming an encumbrance or an interest in title whose claim or interest must be determined, settled, paid or released prior to a title or escrow closing.

We may also disclose your Personal Information to others when we believe, in good faith, that such disclosure is reasonably necessary to comply with the law or to protect the safety of our customers, employees, or property and/or to comply with a judicial proceeding, court order or legal process.

**DISCLOSURE TO AFFILIATED COMPANIES** - We are permitted by law to share your name, address and facts about your transaction with other FNF companies, such as insurance companies, agents, and other real estate service providers to provide you with services you have requested, for marketing or product development research, or to market products or services to you. We do not, however, disclose information we collect from consumer or credit reporting agencies with our affiliates or others without your consent, in conformity with applicable law, unless such disclosure is otherwise permitted by law.

Effective Date: 5/1/2008

Fidelity National Financial, Inc.  
Privacy Statement  
(continued)

**DISCLOSURE TO NONAFFILIATED THIRD PARTIES** - We do not disclose Personal Information about our customers or former customers to nonaffiliated third parties, except as outlined herein or as otherwise permitted by law.

**Confidentiality and Security of Personal Information**

We restrict access to Personal Information about you to those employees who need to know that information to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard Personal Information.

**Access to Personal Information/  
Requests for Correction, Amendment, or Deletion of Personal Information**

As required by applicable law, we will afford you the right to access your Personal Information, under certain circumstances to find out to whom your Personal Information has been disclosed, and request correction or deletion of your Personal Information. However, FNF'S CURRENT POLICY IS TO MAINTAIN CUSTOMERS' PERSONAL INFORMATION FOR NO LESS THAN YOUR STATE'S REQUIRED RECORD RETENTION REQUIREMENTS FOR THE PURPOSE OF HANDLING FUTURE COVERAGE CLAIMS.

For your protection, ALL REQUESTS MADE UNDER THIS SECTION MUST BE IN WRITING AND MUST INCLUDE YOUR NOTARIZED SIGNATURE TO ESTABLISH YOUR IDENTITY. Where permitted by law, we may charge a reasonable fee to cover the costs incurred in responding to such requests. Please send requests to:

Chief Privacy Officer  
Fidelity National Financial, Inc.  
601 Riverside Avenue  
Jacksonville, FL 32204

**Changes to this Privacy Statement**

This Privacy Statement may be amended from time to time consistent with applicable privacy laws. When we amend this Privacy Statement, we will post a notice of such changes on our website. The effective date of this Privacy Statement, as stated above, indicates the last time this Privacy Statement was revised or materially changed.

Effective Date: 5/1/2008

Disclosure to Affiliated Companies – We are permitted by law to share your name, address and facts about your transaction with other FNF companies, such as insurance companies, agents, and other real estate service providers to provide you with services you have requested, for marketing or product development research, or to market products or services to you. We do not, however, disclose information we collect from consumer or credit reporting agencies with our affiliates or others without your consent, in conformity with applicable law, unless such disclosure is otherwise permitted by law.

Disclosure to Nonaffiliated Third Parties – We do not disclose Personal Information about our customers or former customers to nonaffiliated third parties, except as outlined herein or as otherwise permitted by law.

**Confidentiality and Security of Personal Information**

We restrict access to Personal Information about you to those employees who need to know that information to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard Personal Information.

**Access to Personal Information/**

**Requests for Correction, Amendment, or Deletion of Personal Information**

As required by applicable law, we will afford you the right to access your Personal Information, under certain circumstances to find out to whom your Personal Information has been disclosed, and request correction or deletion of your Personal Information. However, FNF's current policy is to maintain customers' Personal Information for no less than your state's required record retention requirements for the purpose of handling future coverage claims.

For your protection, all requests made under this section must be in writing and must include your notarized signature to establish your identity. Where permitted by law, we may charge a reasonable fee to cover the costs incurred in responding to such requests. Please send requests to:

Chief Privacy Officer  
Fidelity National Financial, Inc.  
601 Riverside Avenue  
Jacksonville, FL 32204

**Changes to this Privacy Statement**

This Privacy Statement may be amended from time to time consistent with applicable privacy laws. When we amend this Privacy Statement, we will post a notice of such changes on our website. The effective date of this Privacy Statement, as stated above, indicates the last time this Privacy Statement was revised or materially changed.

**LEASE OPTION AGREEMENT**

**Exhibit C**  
Request for Proposal  
(see attached pages)

Contract 2016- \_\_\_\_-COS

This is a non-binding draft of a lease and option agreement possibly to be awarded by City of Scottsdale through a competitive RFP process. The city has not made any promises to enter into any lease or other transaction involving any property. The city is free to cancel the RFP at any time for any reason or for no reason. Any party desiring to participate in the RFP proceeds at its own risk as to any expenditures, commitments, forbearances, negotiations or other actions in anticipation of a possible transaction involving any property. The city will not be bound by any understanding, agreement or other duty relating to this proposed transaction or any related negotiations unless and until the RFP process concludes in the final selection of a winning bidder and this document is executed and delivered by an authorized agent of the city pursuant to a formal resolution by city's city council granting such authority. Each proposer's submission of a bid shall be the proposer's covenant to accept and be bound by this document if city's city council approves it. This paragraph shall apply whether or not this notice is contained in future drafts of this document.

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

City of Scottsdale Contract No. 20\_\_\_\_\_ - \_\_\_\_\_-COS.  
res. no. \_\_\_\_\_  
(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 \_\_\_\_\_, a \_\_\_\_\_ ("Lessee").

**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 three parcels (the "North Parcel", the "South Parcel", and the "Street Parcel").

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. The Street Parcel consists of approximately 14,905 square feet and is labeled on the site plan as "Street Parcel" and is described on **Exhibit "D"** attached hereto.

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

F. The North Parcel and South Parcel 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. In addition, there are 22 street parking spaces located on the Street Parcel.

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

H. The Project includes:

1. Certain improvements for public use (the "New Public Improvements") consisting of a new multi-level public parking structure with at least \_\_\_\_\_ (\_\_\_\_\_) 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").

2. The New Public Parking Spaces shall include a total of \_\_\_\_\_ parking spaces available for lease by area property owners, businesses and/or employers (the "Public Parking Spaces").

3. May include limited ground floor retail uses.

I. Lessee shall diligently prepare and process its construction drawings for the entire Project, and shall commence construction (the "Construction Commencement Date") no earlier than upon receipt of a building permit for the above ground portion of the Project.

J. Lessee shall complete the entire Project no later than Thirty (30) months after the date of this Agreement (the "Completion Deadline").

K. Lessor will maintain, repair and operate the Old Parking Improvements as a public parking lot until the Construction Commencement Date.

L. Lessor desires to grant to Lessee a Lease to construct, maintain, repair and operate the Project (collectively, the "Permitted Uses") subject to the requirements of this Agreement.

M. 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, the South Parcel, and the Street Parcel.

1.2 Rights in Adjacent Land. This Agreement excludes any land dedicated or used for public street right-of-way other than the Street Parcel. 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 the Lessor and 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 "E"**.

2.3.5 At the Option closing, Lessee shall deliver to Lessor the Option exercise price, which is \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

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.

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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 (10<sup>th</sup>) 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 Accounts Payable Office at 7447 East Indian School Road, Suite 215, 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) days 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 "F"** 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 public parking (operated and maintained by Lessor) 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, Lessor shall operate the Premises as a public parking lot. After the earlier of the Actual Completion Date or the Completion Deadline, Lessee shall operate Lessee's New Public Parking 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 NEW PUBLIC PARKING IMPROVEMENTS GENERALLY

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

6.1 Lessee's New Public Parking Improvements. Lessee's New Public Parking 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 Lessee's New Public Parking Improvements.

6.3 Zoning and Similar Approval Process. The zoning processes, building permit processes, and similar regulatory requirements that apply to Lessee's New Public Parking 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. Except to the extent that Lessor will initiate rezoning of the Premises and an application for a Municipal Use Master Site Plan, and an application to abandon a portion of 6<sup>th</sup> Avenue, 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 New Public Parking Improvements shall comply with the following design and construction requirements:

6.5.1 All Lessee's New Public Parking 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 New Public Parking 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, excluding the Street Parcel (6<sup>th</sup> Ave Right-of-Way).

6.6 Approval Required. Lessee shall not perform any Lessee's New Public Parking 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 New Public Parking 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.

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 New Public Parking Improvements shall occur in three stages culminating in final working construction documents for the Lessee's New Public Parking 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 New Public Parking 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 retail component, if any.

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.

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 New Public Parking 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 New Public Parking Improvements, Lessee shall deliver to Lessor one (1) copy of "as-built" plans for the Lessee's New Public Parking 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 New Public Parking Improvements (excluding building permits).

6.9.8 All construction and plans preparation for Lessee's New Public Parking 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 New Public Parking Improvements.

6.9.9 The design professional shall place these words on each sheet of engineering work for Lessee's New Public Parking 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\_\_\_\_\_-\_\_\_\_\_-COS) dated \_\_\_\_\_, 20\_\_\_\_\_."

6.9.10 All Lessor plans reviews, inspections, standards and other rights and actions with relation to Lessee's New Public Parking 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\_\_\_\_\_-\_\_\_\_\_-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 Parking 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 New Public Parking 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 New Public Parking 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 New Public

Parking 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 New Public Parking Improvements. All Lessee's New Public Parking 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, 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 New Public Parking Improvements. Lessee shall complete initial construction of the Project no later than the Completion Deadline. 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 New Public Parking 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 been conceptually designed. Unless otherwise agreed by the parties, the New Public Parking Improvements shall at a minimum meet the requirements of the Deed and generally conform to the conceptual site plan and elevation(s) submitted as part of Lessee's response to the Request for Proposals dated \_\_\_\_\_, 2016.

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 twelve (12) months prior to the Completion Deadline.

7.2.2 Lessee shall complete the New Public Parking Improvements and open them to the public 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. Lessor shall operate, maintain, repair and replace the Old Parking Improvements until the Construction Commencement Date. Commencing at the Construction Commencement 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 Parking 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:

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: Martha West  
City of Scottsdale Senior Real Estate Manager  
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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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: \_\_\_\_\_  
\_\_\_\_\_

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

LESSOR: 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

\_\_\_\_\_  
Bruce Washburn, City Attorney  
By: Margaret Wilson, Assistant City Attorney

\_\_\_\_\_  
Daniel J. Worth, Senior Public Works Director

\_\_\_\_\_  
Martha West, Senior Real Estate Manager

\_\_\_\_\_  
Jeff Nichols, City Treasurer

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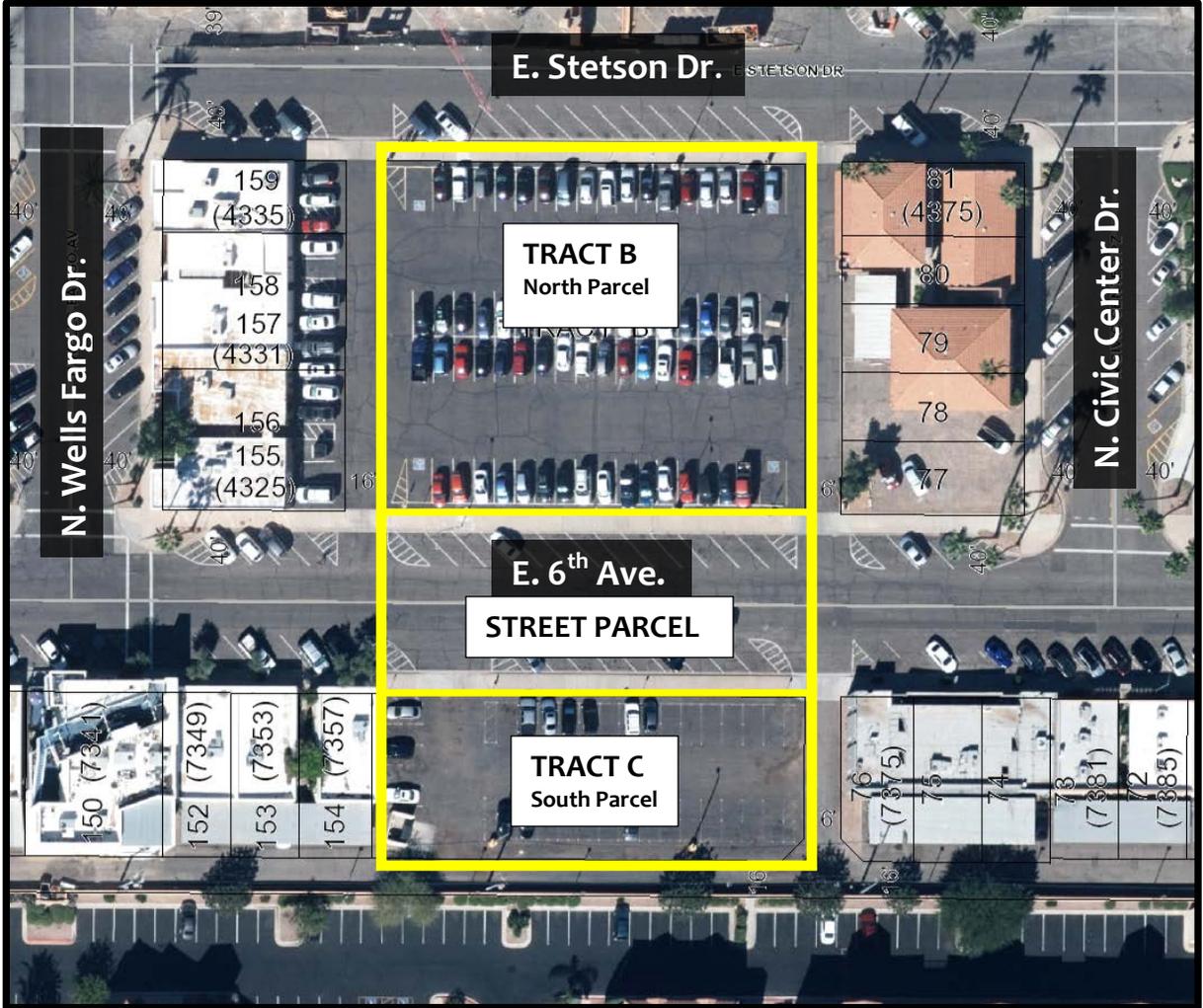
Katherine Callaway, Risk Management Director



## 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	D	Legal Description for Street Parcel
E	2.4.4	Form of deed.
F	3.9.3	Standards for letters of credit.

**AERIAL VIEW OF PARCELS**



**LEGAL DESCRIPTION**

**NORTH PARCEL**

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.

**Exhibit B**  
Lease Option Agreement

**Contract 2016- \_\_\_\_ -COS**

## **LEGAL DESCRIPTION**

### **SOUTH PARCEL**

#### Parcel 1:

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 2:

The West 5 feet of Tract "C", WINFIELD PLAZA UNIT FOUR, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 70 of Maps, Page 28 and Amendment to Plat recorded in Docket 3009, Page200.

## **LEGAL DESCRIPTION**

### **STREET PARCEL**

That portion of 6<sup>th</sup> Avenue, according to the Plat of Winfield Scott Plaza UNIT FOUR, in Book 70 of Maps, Page 28, and amendment to Plat recorded in Docket 3009, Page 200, records of Maricopa County, Arizona described as follows:

Commencing at the Southeast Corner of Tract B, of said Plat of Winfield Scott Plaza UNIT FOUR, said Corner being a point on the north right-of-way line of 6<sup>th</sup> Avenue and the POINT OF BEGINNING of this description;

Thence West along the South line of said Tract B and said north right-of-way line to the Southwest Corner of said Tract B;

Thence Southerly to the Northwest Corner of Tract C, of said Winfield Scott Plaza UNIT FOUR, said corner also being a point on the south right-of-way line of 6<sup>th</sup> Avenue;

Thence East along the North line of said Tract C and said south right-of-way line to the Northeast Corner of said Tract C;

Thence Northerly to the POINT OF BEGINNING at the Southeast Corner of said Tract B.

Containing 14,800 SF +/- (0 .33 AC +/-)

**WHEN RECORDED RETURN TO:**  
(Martha West)  
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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Lease and Option Agreement Exhibit "E"  
Page 1 of 3

Contract No. 2016-\_\_\_\_\_-COS

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 insurance, indemnity, and other matters set out in **Exhibit "D"** attached hereto.

6.3 The provisions regarding miscellaneous matters set out in **Exhibit "E"** attached hereto.

7. Utilities. Grantor reserves public utility easements for all existing utilities that serve the Parking Structure, the retail component, if any, 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

\_\_\_\_\_  
Daniel J. Worth, Public Works Director

\_\_\_\_\_  
Martha West, Senior Real Estate Manager

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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	Insurance provisions
E	6.3	Other provisions

## **LEGAL DESCRIPTION**

### **STREET PARCEL**

That portion of 6<sup>th</sup> Avenue, according to the Plat of Winfield Scott Plaza UNIT FOUR, in Book 70 of Maps, Page 28, and amendment to Plat recorded in Docket 3009, Page 200, records of Maricopa County, Arizona described as follows:

Commencing at the Southeast Corner of Tract B, of said Plat of Winfield Scott Plaza UNIT FOUR, said Corner being a point on the north right-of-way line of 6<sup>th</sup> Avenue and the POINT OF BEGINNING of this description;

Thence West along the South line of said Tract B and said north right-of-way line to the Southwest Corner of said Tract B;

Thence Southerly to the Northwest Corner of Tract C, of said Winfield Scott Plaza UNIT FOUR, said corner also being a point on the south right-of-way line of 6<sup>th</sup> Avenue;

Thence East along the North line of said Tract C and said south right-of-way line to the Northeast Corner of said Tract C;

Thence Northerly to the POINT OF BEGINNING at the Southeast Corner of said Tract B.

Containing 14,800 SF +/- (0 .33 AC +/-)

### **NORTH PARCEL**

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.

### **SOUTH PARCEL**

#### Parcel 1:

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 2:

The West 5 feet of Tract "C", WINFIELD PLAZA UNIT FOUR, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 70 of Maps, Page 28 and Amendment to Plat recorded in Docket 3009, Page200.

Exhibit "A"  
Page 1 of 1

**Exhibit E**

**Contract 2016- \_\_\_\_-COS**

# SITE PLAN

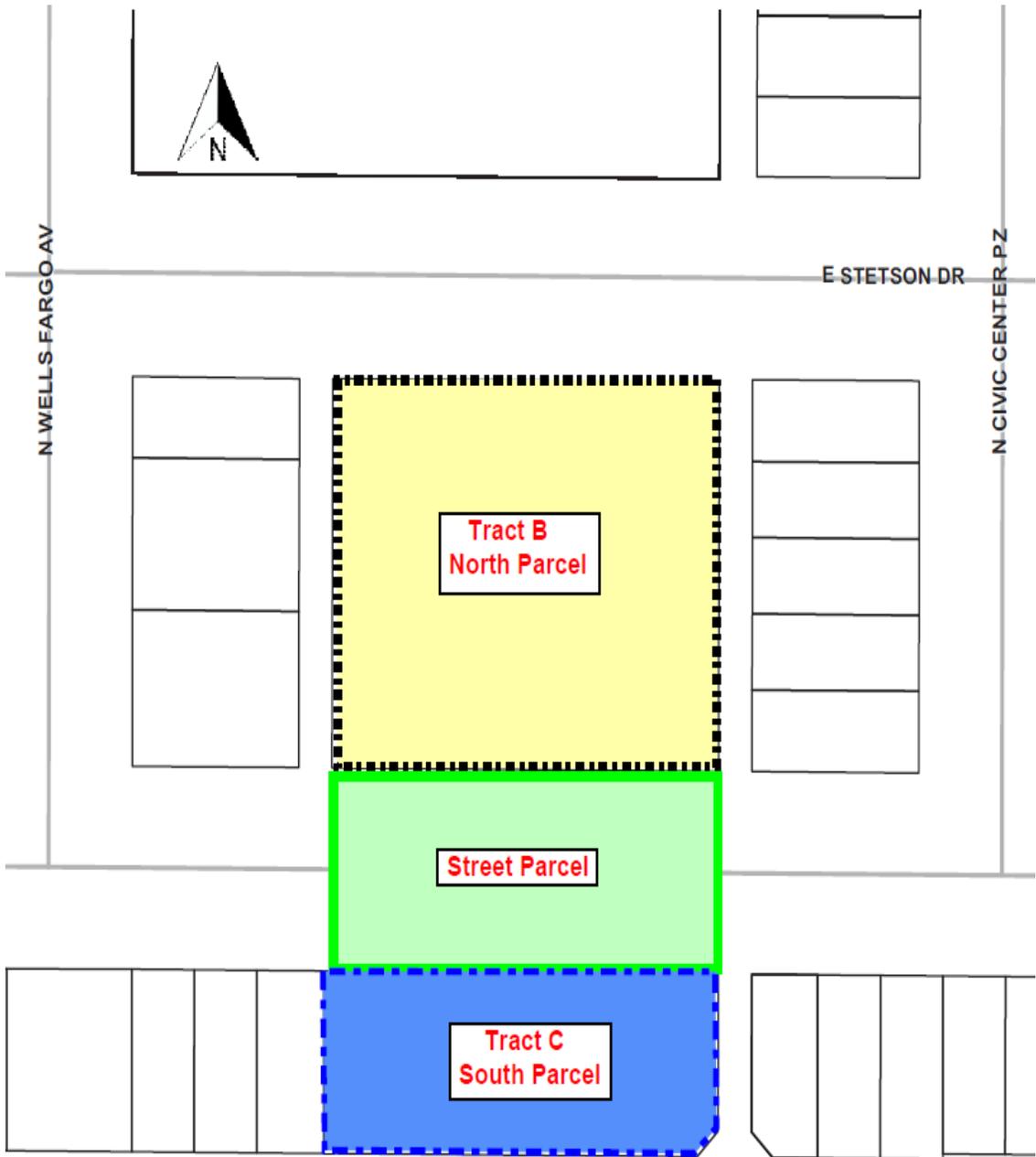


Exhibit "B"  
Page 1 of 1

**Exhibit E**

Contract 2016-\_\_\_\_-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 \_\_\_\_\_ standard full size parking spaces (the "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 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 retail uses of the Property, if any.

1.2 Public Use Spaces. Grantee shall make all of the Public Use Spaces available to the public which may include area property owners, businesses or employers parking.

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

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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 permitted for Public Use Spaces and Private Use Spaces.

1.7 Parking Rules. 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 Public Use Spaces, 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 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 employees of the licensees of the Property not to use public parking spaces 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 employees of licensees of the Property shall not park at any time, 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 licensees and their employees not less often than twice each calendar year using such methods as Grantee uses to communicate other matters to its licensees and their employees.

1.10.3 Grantee upon notice from Grantor shall use fines and other commercially reasonable efforts to cause licensees and their employees to 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.

## 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 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, 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 14571604v4

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. Grantee promptly shall repair any damage to or destruction of the Parking Structure by fire, explosion, the elements, the public enemy, or other casualty.
2. Grantor Entry Upon Premises. Grantee acknowledges there may be public utilities upon the Premises, and that Grantor has the right to enter the Premises for the purposes of construction, reconstruction, maintenance, repair or service of any improvements or facilities located within or without the Property from time to time.
3. 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.
4. 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.
5. Term. The term of the requirements of this Deed shall be perpetual.
6. 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.
7. 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.
8. 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.
9. Non-Merger. The obligations contained herein shall not terminate by merger of title.
10. 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.
11. 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.
12. Time of Essence. Time is of the essence of each and every provision of this Deed.

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13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. Choice of Law. This Deed shall be governed by the internal laws of the State of Arizona without regard to choice of law rules.

19. 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.

20. 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.

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

22. 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.

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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: Martha West  
Senior Real Estate Manager  
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:

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.

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.

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

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.

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

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

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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contact person:  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Fax: \_\_\_\_\_

2. Complete the following table:

	<b>FACTOR</b>	<b>YOUR BID</b>	<b>FACTOR WEIGHT</b>	<b>YOUR POINTS</b>
A	Option amount. (minimum \$100,000)	\$ _____	one point per dollar	_____
B	Parking spaces that are required to be available to the public, and excluding parking to support a retail component within the Project, if any. These spaces shall be leased to area property owners, businesses or employers (Public Use Spaces).	_____ (minimum 700 spaces)	25,000 points per parking space	_____
C	Conceptual Plan Elevation(s) and Narrative that are acceptable to Planning Director as generally conforming to the Downtown Urban Design and Architectural Guidelines. This approval shall not constitute approval by any other regulatory review bodies	N/A	N/A	Yes = Pass  (proposal is deemed complete)  No= Fail  (proposal is deemed not complete)
D	Letter(s) of Intent (LOI) from prospective Lessees of the parking structure indicating the number of parking spaces to be leased from the proposer (Public Use Spaces as noted in Factor B)	N/A	N/A	Yes = Pass  (LOI's represent 40% or more of the parking spaces bid under Factor B above)  No = Fail  (LOI's represent less than 40% of the parking

				spaces bid under Factor B above)
TOTAL				_____

\_\_\_\_\_  
*Proposer Name Printed*

By: \_\_\_\_\_  
*Authorized Agent Signature*

\_\_\_\_\_  
*Authorized Agent Name Printed*

\_\_\_\_\_  
*Authorized Agent Title Printed*

**PROPOSAL AFFIDAVIT**

(Stetson parking lots)

STATE OF ARIZONA

CITY OF SCOTTSDALE

As of \_\_\_\_\_ 20\_\_\_\_, for himself or herself personally, and on behalf of \_\_\_\_\_, a \_\_\_\_\_ (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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contact person: \_\_\_\_\_  
Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Fax: \_\_\_\_\_

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 # \_\_\_\_\_ Dated: \_\_\_\_\_, 20\_\_\_\_  
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.

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.

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*Proposer Name Printed*

By: 

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*Authorized Agent Signature*

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*Authorized Agent Name Printed*

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*Authorized Agent Title Printed*

