When Recorded Return to:

CITY OF SCOTTSDALE
ONE STOP SHOP/RECORDS
(Dave Roderique)
7447 East Indian School Road, Suite 100
Scottsdale, AZ 85251

City of Scottsdale Contract No. ___

LEASE AGREEMENT

THIS LEASE 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 Los Arcos Development, LLC, a Delaware limited liability company ("Lessee").

RECITALS

A. Lessor is the owner of certain real property (the "Premises") located within the City of Scottsdale, Maricopa County, Arizona, comprising approximately ___ acres located east of Scottsdale Road and south of McDowell Road and more particularly described as the Parking Structure Parcel, Northwest Parking Lot Parcel, West Parking Lot Parcel, Southeast Parking Parcel, East Parking Lot Parcel, Northeast Parking Lot Parcel, Center Road Parcel, Scottsdale North Driveway Parcel, McDowell Driveway Parcel, Southwest Driveway Parcel, 74th Street Abandonment Parcel [NOTE: 74TH STREET ABANDONMENT PARCEL WILL BE DELETED IF THE PARCEL IS NOT ABANDONED BY THE CITY OF SCOTTSDALE], Corner Dedication Parcel, and Scottsdale South Dedication Parcel as described in that certain Memorandum of New Legal Descriptions made by Lessor and Lessee dated _____, 2003 and recorded _____, 2003 at Document No. _____ of the public records of Maricopa County, Arizona.

B. This Agreement is made pursuant to that certain Redevelopment Agreement (the "Redevelopment Agreement") between Lessor and Lessee dated _____, 20___ and recorded _____, 20____ at Document No. _____ of the public records of Maricopa County, Arizona. Capitalized terms (such as Property) not established in this Agreement shall have the meanings established in the Redevelopment Agreement and the Memorandum of New Legal Descriptions.

C. As of the date of this Agreement, the Premises are improved with the following improvements:

1) The Parking Structure located upon the Parking Structure Parcel.

2) The Northeast Parking Lot located upon the Northeast Parking Lot Parcel.

3) The Northwest Parking Lot located upon the Northwest Parking Lot Parcel.

4) The West Parking Lot located upon the West Parking Lot Parcel.

5) The Southeast Parking Lot located upon the Southeast Parking Lot Parcel.

6) The East Parking Lot located upon the East Parking Lot Parcel.

7) The Street Improvements located upon the Center Road Parcel, the Southwest Driveway Parcel, the 74th Street Abandonment Parcel [NOTE: 74TH STREET ABANDONMENT PARCEL WILL BE DELETED IF THE PARCEL IS NOT ABANDONED BY THE CITY OF SCOTTSDALE], the McDowell Driveway Parcel, and the Scottsdale North Driveway Parcel.

8) The landscaping, hardscaping and related amenities placed and installed on the Corner Dedication Parcel and the Scottsdale South Dedication Parcel constructed pursuant to the Redevelopment Agreement.

D. Pursuant to the Redevelopment Agreement, Lessor and Lessee have agreed that Lessor will lease the Premises to Lessee for public parking and landscaping and for pedestrian and vehicle access (collectively the "Permitted Uses").

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 rights to use the Premises are limited as follows:

1.1. Reservation for Lessor's Use and Future Improvements. Notwithstanding anything in this Agreement to the contrary, Lessor specifically reserves to itself and excludes from this Agreement a non-exclusive easement (the "Reserved Easement") over the entire Premises for the exercise of all of Lessor's rights under this Agreement and the Redevelopment Agreement and the Related Documents and for any and all purposes that do not in Lessor's reasonable discretion materially interfere with Lessee's lawful conduct of the Permitted Uses under this Agreement. Without limitation, the Reserved Easement includes:

1.1.1. An underground utility easement.

1.1.2. A non-exclusive easement for pedestrian and vehicular access uponroads, driveways, plazas, sidewalks, and maneuvering areas.

1.1.3. A non-exclusive easement for public parking at all parking spaces at the Premises.

1.1.4. The unilateral right to construct, reconfigure, demolish, remove and otherwise modify the East Parking Lot and all other improvements located upon the East Parking Lot Parcel from time to time subject to the following:

1.1.4.1. Lessor shall have exclusive use of all new improvements hereafter placed on the East Parking Lot Parcel by Lessor (or any assignee of Lessor's rights) except for the remaining portion, if any, of the original or relocated spaces comprising the East Parking Lot.

1.1.4.2. Prior to constructing new improvements on the East Parking Lot Parcel, Lessor shall record a notice identifying the portion of the East Parking Lot Parcel upon which the new improvements will be located and such land shall thereafter be excluded from this Agreement and the Redevelopment Agreement.

1.1.4.3. In the event Lessor reduces the number of parking spaces available to the Project on the East Parking Lot Parcel, Lessor shall provide an equal number of replacement parking spaces located no farther from the front door of the East Anchor than the farthest parking spaces in the Southeast Parking lot. Lessor shall, prior to constructing new improvements on the East Parking Lot Parcel, record a notice identifying and legally describing the land upon which the replacement parking spaces will be located, and (i) such land shall thereafter be governed by this Agreement, (ii) the term East Parking Lot shall thereafter include such replacement spaces, and (iii) the term East Parking Lot Parcel shall thereafter include such land and shall thereafter not include the land formerly occupied by the replaced parking spaces. If Lessor constructs replacement parking spaces that are not surface parking spaces, any costs of maintaining, operating, repairing or replacing such spaces in excess of the costs that would have applied to surface parking spaces shall be paid by Lessor rather than Lessee.

1.1.5. The exclusive right to install antennas upon the Premises but such antennas must not materially interfere with the Permitted Uses.

1.2. Cumulative Reserved Uses. All of Lessor's reserved rights under various provisions of this Agreement shall be cumulative to each other.

1.3. Public Agency Access. Lessor reserves the right to permit other public agencies and all manner of utility providers at their sole risk and expense, and for Lessor to enter the Premises or any part thereof at all reasonable times, for the purposes of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located within or without the Premises from time to time. Any such entry shall not materially interfere with the Permitted Uses and shall be made only after reasonable notice to Lessee, and after the public agency has agreed to be responsible for any claims or liabilities pertaining to such entry. Any damage or injury to the Premises or to any part thereof resulting from such entry shall be promptly repaired at the sole expense of the public agency responsible for the entry.

1.4. Variation in Area. In the event the Premises consist of more or less than any stated acreage this Agreement shall nevertheless continue and Lessee's obligations hereunder shall not be increased or diminished.

1.5. Condition of Title. Lessee's rights hereunder are subject to all covenants, conditions, restrictions, easements, agreements, liens, reservations and encumbrances upon, and all other recorded or unrecorded conditions of title to, the Premises. Lessee has obtained any title insurance or information Lessee deems appropriate. Lessor does not warrant its own or any other person's or entity's title to the Premises or any other property.

1.6. Condition of Premises. Having recently owned the Premises and having recently constructed all improvements thereto, Lessee has examined, studied and inspected the Premises 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 or this transaction. Lessee has had extensive prior experience with the Premises and is familiar with their condition.

1.7. Lessor's Fixtures and Personalty. No fixtures or personal property owned by Lessor upon or within the Premises are included in this Agreement. Any and all of Lessor's property as may come into the possession of Lessee or be used by Lessee shall be returned to Lessor by Lessee at termination of this Agreement and shall be maintained in good working condition by Lessee from time to time at Lessee's expense and replaced by Lessee at Lessee's expense when worn out and shall be owned at all times by Lessor with Lessee being solely responsible for the condition thereof. All such personal property is provided "as is" and Lessee accepts all responsibility for its condition and shall thoroughly inspect the same before use.

II. TERM OF AGREEMENT

2. Term of Agreement. Lessor hereby leases the Premises to Lessee 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. Term. The term of this Agreement shall be for an initial period of forty (40) years commencing on the date of the Third Closing. The term of this Agreement shall automatically extend for two (2) additional ten (10) year periods, then one (1) additional fififteen (15) year period, then one (1) additional ten (10) year period, and then one (1) additional period of fourteen (14) years unless in each case Lessee gives notice to Lessor not less than six months prior to the commencement of each renewal term of Lessee's election not to extend the term of this Agreement. Upon any timely election by Lessee not to extend the term, any subsequent extension rights shall terminate.

2.2. Holding Over. In any circumstance whereby Lessee would remain in possession or occupancy of the Premises after the expiration of the term of this Agreement, such holding over shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a tenancy from month to month at the rental rate and on the terms applicable on the date of expiration of the term of this Agreement, which month to month tenancy may be terminated at any time by Lessor upon thirty (30) days notice to Lessee, or by Lessee upon sixty (60) days notice to Lessor.

III. LEASE PAYMENTS

3. Lease Payments. Lessee shall pay to Lessor all of the following payments together with all other payments required by this Agreement (all payments by Lessee to Lessor required by this Agreement for any reason are collectively the "Rent"):

3.1. Rent Payment Date. All Rent shall be payable one month in advance on the first day of each month. In the event an amount is not known in advance, Lessor shall have the right to estimate the amount, with an adjustment to be made within sixty (60) days after the actual amount becomes known. For example, the Rent for September shall be payable on or before September 1. The first installment of Rent prorated for the portion of the month remaining in the month in which this Agreement is executed is due immediately upon execution of this Agreement. Rent is deemed paid only when good payment is actually received by Lessor.

3.2. Base Rent. The rental amount (the "Base Rent") Lessee shall pay to Lessor at the beginning of each calendar month shall be as follows: (a) One Dollar ($1) per month for the initial forty (40) year term of this Agreement, (b) $33,333.33 per month for the first (ten year) extension of the term of this Agreement, (c) $37,500.00 per month for the second (ten year) extension of the term of this Agreement, (d) $41,666.67 per month for the third (fifteen year) extension of the term of this Agreement, (e) the First Adjusted Rent (hereinafter defined) for the fourth (ten year) extension of the term of this Agreement and (f) the Second Adjusted Rent (hereinafter defined) for the fifth (fourteen year) extension of the term of this Agreement. Lessee may prepay Base Rent.

3.3. Rent Adjustments. The First Adjusted Rent shall be the fair market rent for the Premises as of the date of commencement of the fourth (ten year) extension of the term of this Agreement, taking into account all applicable circumstances pertaining thereto, including without limitation the time period for which the First Adjusted Rent shall apply. The Second Adjusted Rent shall be the fair market rent for the Premises as of the date of commencement of the fifth (fourteen year) extension of the term of this Agreement, taking into account all applicable circumstances pertaining thereto, including without limitation the time period for which the Second Adjusted Rent shall apply. If Lessor and Lessee are unable to agree on the First Adjusted Rent or the Second Adjusted Rent, such amount(s) shall be determined by a qualified commercial real estate appraiser (the "Appraiser") having not less than ten years of experience. If the parties are unable to agree on an Appraiser, the Appraiser shall be selected by the American Arbitration Association upon application by Lessor or Lessee. The costs of the Appraiser shall be paid equally by Lessor and Lessee. The Appraiser shall allow Lessor and Lessee to provide information and evidence regarding the fair market rent pursuant to such procedures as the Appraiser may specify. The decision of the Appraiser shall be binding on the parties to the same extent as an arbitration award under the Arizona Arbitration Act (or successor statute) as then in effect.

3.4. Late Fees. Should any Rent not be paid 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). Furthermore, any Rent that is not timely paid shall accrue interest at the rate of one percent (1%) 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.) in the event of a delay in payment of Rent. Lessor shall have the right to allocate payments received from Lessee among Lessee's obligations.

3.5. Rent Amounts Cumulative. All amounts payable by Lessee hereunder or under any tax, assessment 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 payment required hereunder, and such amounts shall not be credited toward, substituted for, or setoff against each other in any manner.

3.6. No Setoffs. Lessee shall pay all Rent directly to Lessor without setoff or deduction of any description. Lessee expressly waives any right of setoff.

IV. USE RESTRICTIONS

4. Use Restrictions. Lessee shall cause use and occupation of the Premises to conform in all respects to all and each of the following cumulative provisions:

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

4.1.1. Free public automobile parking in all parking spaces located upon the Premises.

4.1.2. Landscaping.

4.1.3. Free public automobile and pedestrian access.

4.1.4. Such additional related uses to which Lessor may give or retract consent from time to time. Such additional uses may only be conducted following Lessor's giving to Lessee notice of such consent. Lessor may impose conditions and limitations on such consent from time to time in Lessor's sole and absolute discretion.

4.2. Related Uses Permitted. As an adjunct to its operation of the Permitted Uses, Lessee shall have the right to conduct the following uses on the Premises so long as they do not interfere with pedestrian or vehicular traffic within the Premises:

4.2.1. Janitorial and maintenance activities required by this Agreement.

4.2.2. Incidental minor office use for administration of parking operations.

4.2.3. Storage areas for shopping carts subject to the following:

4.2.3.1. The locations of such parking spaces are subject to Lessor's reasonable approval.

4.2.3.2. The design and construction of the shopping cart storage improvements are subject to the plans approval and related processes of this Agreement.

4.2.4. Seasonal display and/or sale of seasonal goods (e.g. pumpkins at Halloween) subject to the following:

4.2.4.1. The location of such display is subject to Lessor's reasonable approval.

4.2.4.2. The design of the display/sale area and all improvements are subject to Lessor's reasonable approval.

4.2.4.3. Such use for each Anchor Parcel shall be for not more than four periods per calendar year, with each period not exceeding forty (40) days.

4.2.5. Infrequent charity events subject to reasonable rules and regulations promulgated in writing by Lessor.

4.3. Prohibited Uses. The following uses are prohibited on the Premises:

4.3.1. Vending machines.

4.3.2. Parking by any recreational vehicle for more than three (3) hours during the hours beginning at 12:01 a.m. and ending at 6:00 a.m. on any given day.

4.3.3. Parking by any other vehicle for more than three (3) hours during the hours beginning at 12:01 a.m. and ending at 6:00 a.m. on any given day, except for (i) the parking of any vehicle by any party working at the Property, and (ii) the parking of any vehicle used in the maintenance or repair of any portion of the Property, the provision of utility or communications services or of any security therefor or for any event or promotion at the Property.

4.3.4. Repair or cleaning of automobiles except for towing and emergency repairs required to remove a vehicle from the Premises.

4.3.5. Sale or service of alcoholic beverages.

4.4. Employment Uses. Solicitation to employ or provide employment is prohibited. Without limitation, hiring (or offering to hire) day laborers or other temporary workers is prohibited, and being hired (or offering to be hired) as a day laborer or other temporary work is prohibited.

4.5. Animals. No animals are allowed on the Premises other than seeing eye dogs and similar animals providing health assistance to disabled persons. Pets on leashes, in cages or otherwise confined are also permitted, if allowed by applicable laws and governmental regulations from time to time.

4.6. Fueling or Vehicle Repair. No motor vehicle fueling, cleaning or repair of any description shall occur at the Premises except for towing and emergency fueling or repairs required to remove a vehicle from the Premises. No fuel facilities of any description shall be installed at the Premises.

4.7. Signs. All signage on the Premises is prohibited except in compliance with the following requirements:

4.7.1. Lessee shall install and maintain at the Premises the following signs and other markings as reasonably determined by Lessor from time to time:

4.7.1.1. Signs listing Lessee's name, permanent business address, telephone number, emergency telephone number and any other information required by law.

4.7.1.2. Signs and markings required for safe use of the Premises.

4.7.1.3. One ground mounted sign at each entry to the Premises and at each entry to each Parking Lot clearly indicating that all parking spaces therein are available for free use by the public.

4.7.1.4. Signs prohibiting oversize or overweight (each as determined by Lessee) vehicles from entering the Premises.

4.7.1.5. Signage regulating parking, deliveries and other uses to comply with this Agreement.

4.7.2. Lessee may elect to install any sign allowed under applicable law

4.7.3. The following signs are prohibited at the Premises:

4.7.3.1. Any signs that state or suggest in any way that the parking spaces at the Premises are not available for free parking by the public.

4.7.3.2. Signs including the names of businesses at the Property other than directional signs directing visitors to the Property.

4.7.3.3. Advertising signs.

4.7.3.4. Any signage not expressly allowed by this Agreement.

4.7.4. The location, size, content and style of each sign at the Premises shall be subject to the provisions of any applicable sign ordinance.

4.7.5. Lessee shall design, make, install and maintain all signage at the Premises in a first class, professional manner.

4.7.6. Lessee shall keep all exterior signs at the Premises lighted while businesses are open at the Property during dark hours.

4.7.7. Lessee shall not erect, install, apply for a permit for, or display any sign at the Premises until Lessee has submitted a written request, together with descriptions and drawings showing the intended locations, size, style and colors of such signs to Lessor, and has received notice of Lessor's approval of the sign. Proposed signs at the Premises shall be subject to the same plans review and other requirements that apply to other construction work by Lessee under this Agreement.

4.7.8. Lessee shall bear all costs pertaining to the erection, installation, operation, maintenance and removal of all signs at the Premises including, but not limited to, the application for and obtaining of any required building or other permits, regardless of the reason for any such activity, even if such activity is required by Lessor pursuant to this Agreement.

4.7.9. The requirements of this paragraph apply to all signs, designs, monuments, decals, graphics, posters, banners and other manner of signage at the Premises.

4.8. Prohibited Names. Lessee shall not use in connection with its operations at the Premises any name associated with products or purveyors of any sort of alcohol, tobacco, adult entertainment or gambling related products or services.

4.9. Noise. Other than (i) fire, security system, burglar and similar alarms, (ii) construction and reconstruction activity that complies with applicable law, (iii) the operation of ambulance and emergency vehicle sirens and equipment, (iv) safety equipment (e.g. backup alarms on forklifts and other vehicles), and (v) low volume (not discernible at a distance of one hundred (100) feet or more) music speakers on any portion of the Premises other than the Southeast Parking Lot Parcel, outdoor loud speakers, sirens or other devices for making noise are prohibited. Equipment shall be operated so that sound coming therefrom does not exceed the ambient noise level at the boundary of the Premises and cannot be heard at two hundred feet (200') outside the boundary of the Premises.

4.10. Lighting. Other than as required by applicable law or governmental approvals, exterior lighting at the Premises shall be shielded or otherwise configured in a manner that minimizes, to the extent practicable using readily available and commercially reasonable technology and consistent with prudent security practices, spillover of light from lighted areas at the Premises to areas located outside of the Property. Lighting that complies with applicable Regulatory Approvals and/or any Final Plans (as defined below) shall be deemed to be in compliance with this requirement.

4.11. Communications Operations Restriction. Lessee shall promptly discontinue the operation of any communications equipment, methodology or technology used by Lessee at the Premises, following receipt of written notice from Lessor that such equipment, methodology or technology may or would interfere with the optimum effective use or operation of Lessor's existing or future fire, emergency or other communication equipment, methodology or technology (i.e., voice or other data carrying, receiving or transmitting equipment) until Lessee takes corrective measures approved by Lessor. Any such corrective measures shall be made at no cost to Lessor.

4.12. Conduct at Premises. In entering into this Agreement, Lessor and Lessee intend to provide the public with an atmosphere that is consistent with community standards, and avoiding any gambling, unreasonably noisy, unruly, inebriated, disruptive, disorderly, lewd, nude, adult oriented or sexually oriented behavior, business or entertainment, violence or threats thereof at the Premises. Any such behavior, business or entertainment at the Premises by Lessee, any customer of Lessee or anyone else using any part of the Premises while this Agreement is in effect is strictly prohibited. Lessee specifically acknowledges that the requirements of this paragraph are a requirement of this Agreement independent of and in addition to any zoning or other governmental regulation affecting the Premises.

4.13. Sexual Matters. No materials shall be displayed, viewed, sold or produced upon the Premises depicting specified anatomical areas or specified sexual activities. No person shall exhibit, use, display or offer to sell any devices, objects or paraphernalia which are designed or typically marketed for use in connection with specified sexual activities, except that packaged condoms and other packaged birth control and disease prevention products may be sold to the extent otherwise permitted by law and this Agreement. No person shall perform specified sexual activities upon the Premises. No person shall make visible his or her specified anatomical areas. “Specified anatomical areas” shall mean less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola; and human male genitals in a discernibly turgid state, even if completely and opaquely covered; or any simulation or portrayal of any of the foregoing. “Specified sexual activities” shall mean human genitals in a state of sexual stimulation or arousal; acts of masturbation, sexual intercourse or sodomy; fondling or other erotic touching of human genitals, pubic region, buttock or female breast; or any simulation or portrayal of any of the foregoing.

4.14. Third Party Beneficiaries. The requirements of the immediately two preceding sections are for the benefit not only of Lessor but also all real property located within three hundred feet (300’) of the Property. The owners and occupants of such real property and their successors and assigns are third party beneficiaries of this paragraph throughout the term of this Agreement. Notwithstanding anything to the contrary in this Agreement, the sole remedy of any such third party beneficiary claiming any violation of such sections shall be to seek injunctive relief against the person or persons claimed to have committed such violation.

4.15. Quality. Lessee shall maintain, repair, replace and operate the Premises and all improvements thereon in a first-class, clean and sanitary condition manner; and shall meet or exceed the standards of maintenance then in effect at comparable facilities in Maricopa County, Arizona, all as reasonably determined by Lessor. Such maintenance shall include janitorial and cleaning activities and maintenance of all improvements on the Premises.

4.16. Lessee's Agent. Lessee shall at all times when the Premises are occupied retain on call available to Lessor a qualifiedperson 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. Lessee shall provide notice to Lessor of the name, street address, electronic mail address, and regular and after hours telephone and telefax numbers of a person or person(s) to handle Lessee's affairs and emergencies at the Premises.

4.17. Security Staff. If Lessor reasonably determines the same to be desirable and provides Lessee with notice of such determination, Lessee shall hire or engage one or more security guards for the Premises with such qualifications as Lessor may reasonably establish from time to time and set forth in such notice. Lessee shall allow any such security guards to respond to emergencies in the vicinity of the Premises. Lessor shall have no liability for the acts of Lessee's security guards.

4.18. Hazardous Materials. Lessee's activities upon or about the Premises shall be subject to the following regarding any hazardous toxic substances, materials, or waste or any substance now or hereafter subject to regulation under the Arizona Hazardous Waste Management Act, A.R.S. § 49-901, et seq., The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq., including without limitation 42 U.S.C. 6901(14), 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 waste or toxic substances (collectively "Toxic Substances"):

4.18.1. 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:

4.18.1.1. Gasoline, diesel fuel or other fuels or lubricants used in the operation, maintenance and repair of the Premises when such materials are properly and lawfully contained in ordinary quantities in ordinary tanks and receptacles permanently installed in such vehicles and machinery.

4.18.1.2. Janitorial supplies and similar materials in the minimum quantities reasonably necessary for first class modern parking structure uses.

4.18.2. Lessee shall dispose of any Toxic Substances away from the Premises as required by law and as reasonably required by Lessor by notice to Lessee.

4.18.3. Lessee shall not use the Premises in a manner inconsistent with regulations issued by the Arizona Department of Health Services, or in a manner that would require a permit or approval from the Arizona Department of Health Services or any other governmental agency unless such permit or approval is first obtained by Lessee and a copy thereof provided to Lessor.

4.18.4. In addition to any other indemnities or obligations set forth in this Agreement, 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. Lessee shall immediately notify Lessor of any prohibited Toxic Substance at any time discovered by Lessee upon the Premises.

4.18.5. 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 containing materials (collectively "Potential Asbestos") (such as thermal system insulation, textured ceiling paint, fire proofing material, etc.) including without limitation those, if any, mentioned in the Redevelopment Agreement or Related Documents. Lessee constructed all improvements existing on the Premises upon the date of this Agreement.

4.19. Required Operation. During the entire term of this Agreement and any renewals or extensions thereof, Lessee shall keep the entire Premises open for service to the public twenty-four (24) hours a day seven (7) days per week, with service adequate to meet public demand, provided that Lessee shall have the right to close the Premises on the following holidays: New Year's Day, Easter Sunday, Thanksgiving Day and Christmas Day, all to the end that the Premises will be fully and continuously utilized to the extent reasonably possible. The operation requirements of this paragraph shall be suspended to the extent reasonably necessary for maintenance, restriping, repair, and reconstruction of the affected portion of the Premises.

4.20. Vehicle Size. The size, weight and height of vehicles using the Premises shall be limited to the engineering design limits of the improvements to the Premises.

4.21. Emergency and Utility Vehicle Passage. Lessee shall at all times keep all vehicular ways upon the Premises open for passage by emergency and utility vehicles, including without limitation, emergency and utility vehicles passing through the Premises to access other land.

4.22. Transit Stop. Lessee shall at all times allow trolley or other transit vehicles provided or designated by Lessor to include the Premises (excluding the Parking Structure) in their transit routes and to service transit stops at the Premises (excluding the Parking Structure).

4.23. Parking on the Premises. Lessee shall provide parking on the Premises as follows:

4.23.1. To reduce effects on surrounding properties and parking, and to encourage full use of the Premises by the public, Lessee shall make no charge for parking at the Premises.

4.23.2. Vehicle parking shall be permitted at the Premises only in actual marked parking spaces complying with applicable laws and regulations.

4.23.3. Delivery vehicle loading or unloading for the Anchor Parcels shall be prohibited at the Premises. The preceding sentence does not apply to customers loading their purchases into their own vehicles.

4.23.4. No other vehicle loading or unloading shall be allowed at the Premises.

4.24. Employee Parking. Lessee shall cause its employees and all other persons working at the Premises to park in employee parking areas at the Property as designated by Lessee from time to time.

4.25. Parking Enforcement. Without request from Lessor, Lessee shall promptly cause to be removed any vehicle standing or parking at the Premises in a manner not permitted by this Agreement. Lessor shall also have the right to cause removal of any such vehicles from the Premises at Lessee's expense. Lessee shall indemnify, defend and hold harmless Lessor in connection with any such lawful removal.

4.26. Enforcement Against Third Parties. Lessee shall, upon acquiring notice of any activity by any person other than City in violation of this Agreement, promptly take reasonable steps (including without limitation contacting appropriate law enforcement officials with respect to such activity) to remove the party or parties engaged in such activity from the Premises. Nothing in the immediate preceding sentence shall require Lessee to take any action that (i) violates the constitutional or other rights of the party or parties to be removed; (ii) may reasonably be expected to expose any party or parties (including without limitation bystanders, the party or parties engaged in such activity, or any agent or employee of Lessee) to injury or death; or (iii) may reasonably be expected to expose any property to significant damage or destruction.

V. IMPROVEMENTS BY LESSOR

5. Improvements by Lessor. Lessor has not promised to and is not obligated in any manner to make, maintain, repair or replace any improvements to the Premises.

VI. LESSEE'S INITIAL CONSTRUCTION

6. Lessee's Initial Construction. As of the date of this Agreement, the Premises are already improved. Lessor has not approved or promised to approve any Lessee's Improvements (hereinafter defined). As of the date of this Agreement, Lessee is not obligated to construct any additional Lessee's Improvements.

VII. LESSEE'S FUTURE IMPROVEMENTS

7. Lessee's Improvements Generally. All of Lessee's future improvements, 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 whether or not specifically described herein upon or related to the Premises (collectively "Lessee's Improvements") shall comply with the following:

7.1. Cost of Lessee Improvements. All Lessee's Improvements shall be designed and constructed by Lessee at Lessee's sole cost and expense. In no event, including without limitation termination of this Agreement for any reason, shall Lessor be obligated to compensate Lessee in any manner for any of Lessee's Improvements or other work provided by Lessee during or related to this Agreement. Lessee shall timely pay for all labor, materials, work and all professional and other services related thereto (provided that Lessee shall have the right to challenge or otherwise contest any amount claimed to be payable therefor) and shall pay, indemnify, defend and hold harmless Lessor and Lessor's employees, officers, 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 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 (other than Lessor's construction of any improvements that Lessor elects to construct on the East Parking Lot Parcel) required from time to time to cause any nearby property owned by Lessor to comply with all such laws to the extent that the need for such work to accomplish such compliance is caused by

work performed by Lessee, by Lessee's use of the Premises, or by any exercise of the rights granted to Lessee under this Agreement.

7.2. Improvement Quality. Any and all work performed on the Premises by Lessee shall be performed 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 laws. All of Lessee's Improvements shall be high quality, safe, fire resistant, modern in design, and attractive in appearance, all as approved by Lessor through the plans approval processes described in this Agreement in addition to any zoning, building code or other regulatory processes that may apply. Lessor's approval of the plans for any Lessee's Improvements pursuant to such plans approval process shall establish the compliance of such Lessee's Improvements with the requirements of the immediately preceding sentence (but shall not establish compliance with any zoning, building code or other regulatory processes that may apply). Lessee's Improvements shall not be deemed complete until so certified in writing to Lessor by the architect or engineer who designed the Lessee's Improvements.

7.3. Disturbance of Toxic Substances. Prior to undertaking any construction or maintenance work at the Premises, 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 at the Premises 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 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 lawfully authorized, licensed, permitted and otherwise qualified to perform such services.

7.4. Time for Completion. Following commencement of construction thereof, Lessee shall diligently pursue to completion the construction of all approved Lessee's Improvements. Lessee shall complete construction of Lessee's Improvements no later than the earlier of i) one (1) year after the date of plans approval therefor, or ii) any earlier date required by this Agreement. Notwithstanding anything in this paragraph to the contrary, 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 suchdamage.

7.5. Construction Reports. Lessee shall provide to Lessor a quarterly narrative report of the progress of construction of any Lessee's Improvements that have been approved by Lessor pursuant to this Agreement.

7.6. Construction Coordination. Lessee shall conduct all of its construction activities at and about the Premises so as not to unreasonably interfere with activities, operation, and other construction upon adjacent streets or surrounding properties.

7.7. Project Managers. Upon execution of this Agreement, Lessor and Lessee shall each designate a project manager to coordinate the respective party's participation in designing and constructing any Lessee's Improvements. Each project manager shall devote such time and effort to any Lessee's Improvements as may be necessary for timely, good faith, and convenient coordination among the parties and their representatives with respect to any Lessee's

Improvements. Lessor's project manager will not be exclusively assigned to this Agreement or any Lessee's Improvements.

7.8. Lessor's Project Manager. Lessor's project manager's authority with respect to any Lessee's Improvements is limited to the administration of the requirements of this Agreement. No oral approval, consent or direction by Lessor's project manager or other persons affiliated with Lessor inconsistent with this Agreement shall be binding upon Lessor. Lessee shall be responsible for securing all zoning approvals, development review, and other governmental approvals and for satisfying all governmental requirements pertaining to any Lessee's Improvements and shall not rely on Lessor or Lessor's project manager for any of the same. Other decisions for Lessor in the course of this Agreement shall be made by Lessor's city manager or designee, but only Lessor's city council has authority to amend this Agreement.

7.9. Design Requirements. All Lessee's Improvements shall comply with the following design requirements and Lessor's approval of the plans therefor pursuant to the approval processes provided herein shall establish the compliance of such plans with such requirements (but shall not establish compliance with any zoning, building code or other regulatory processes that may apply):

7.9.1. All Lessee 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 Property.

7.9.2. Except for curbs, gutters, pavement, landscaping and similar improvements, all Lessee's Improvements shall be contained entirely within the Premises and without any encroachment or dependence upon any other property.

7.10. Approval Required. Lessee shall not construct any Lessee's Improvements (including work on adjacent public lands) without having first received the written consent of Lessor. Lessor shall not withhold consent to the extent the work is required by law or required to correct an existing safety hazard. Lessor shall not unreasonably withhold consent if the Lessee's Improvements do not adversely affect parking, vehicular or pedestrian circulation, or any structural, mechanical or other systems at the Premises. Otherwise, Lessor may withhold such consent in Lessor's sole and absolute discretion. Such consent requirement shall apply to all leasehold improvements, furnishings, equipment, fixtures, utilities of every description, communications cabling, decorations and other construction work of any description as described in all plans delivered by Lessee to Lessor. All such plans are subject to final approval by Lessor (in accordance with the standards for approval set forth herein) as to design, aesthetics, functionality, land use, accomplishment of Lessor's redevelopment goals, materials, site plan, and all other factors reasonably determined by Lessor to be relevant to the successful development of the Property and the surrounding neighborhood. All construction of Lessee's Improvements shall be subject to inspection by Lessor to verify compliance with Final Plans (as defined below) and any applicable governmental requirements.

7.11. Effect of Approval on this Agreement. 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, changes to plans, or refinements or implementation of matters previously approved.

7.12. Relationship of Approval to Regulatory Processes. Lessor's issuance of building permits or zoning clearances, or any other governmental reviews or actions, shall not constitute approval of any plans for purposes of this Agreement. 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 zoning, design review and other regulatory or similar governmental plans submittal and approval processes, all of which shall continue to apply in addition to the requirements of this Agreement. Lessor's project manager shall be reasonably available to consult with Lessee about issues that may arise in connection with such approvals and requirements.

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

7.13.1. Conceptual plans showing the general layout, locations, configuration, and capacities of all significant improvements, pedestrian and vehicular ways, buildings, and other features significantly affecting the appearance, design, function and operation of Lessee's Improvements. The conceptual plans must also show general locations , together with the approximate number of square feet of building and other area that all significant uses and facilities will respectively occupy.

7.13.2. Preliminary plans showing building finishes and treatments, elevations, general internal and external building design and decoration schemes (including without limitation colors, textures and materials), building materials, landscaping and all other elements necessary prior to preparation of working construction documents and showing compliance with all requirements of this Agreement.

7.13.3. Final Plans.

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

7.14.1. Lessee shall deliver all plans submissions under this Agreement directly to Lessor's project manager 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. Each submittal of plans by Lessee under this Agreement for Lessor's review shall include two (2) complete sets of the plans on paper.

7.14.2. Lessee shall coordinate with Lessor as necessary on significant design issues prior to preparing plans to be submitted under this Agreement.

7.14.3. In addition to other submissions required under this Agreement with respect to specific Lessee's Improvements, Lessee shall simultaneously deliver to Lessor's project manager one copy of all applications and supplemental, supporting and related materials for all zoning, development review and similar processes for such Lessee's Improvements (excluding building permits).

7.14.4. No plans submitted under this Agreement shall be deemed approved by Lessor until Lessor stamps them "APPROVED PER PARAGRAPH _____ OF THE LOS ARCOS PARKING LEASE AGREEMENT," or such similar wording as Lessor may choose from time to time and Lessor's project manager initials and dates the stamp (collectively "Stamped").

7.14.5. Construction shall not commence until Lessee delivers to Lessor a formal certification in favor of Lessor by a qualified registered engineer acceptable to Lessor to the effect that the Lessee's Improvements are properly designed to be safe and functional. Such certification shall be accompanied by and refer to such supporting information and analysis as Lessor may reasonably require by notice to Lessee. Such certification shall be on the face of the Final Plans.

7.14.6. All Lessor plans reviews, inspections, standards and other rights and actions with relation to Lessee's Improvements are for Lessor's sole and exclusive benefit and no other party or person shall rely thereon or have any rights related thereto.

7.14.7. Lessee shall hand deliver all plans submitted under this Agreement to Lessor no later than as is 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. Lessee shall be entitled to assume that Lessor will comply with its obligations in reviewing and approving submissions made by Lessee under this Agreement, but no such assumption shall apply to any zoning, building code or other regulatory processes that may apply.

7.14.8. Within thirty (30) days after Lessor's receipt of plans submitted by Lessee pursuant to this Agreement, Lessor shall make available to Lessee one (1) copy of such plans either Stamped or marked to indicate the reasons that Lessor does not approve the plans.

7.14.9. If changes are required by Lessor to plans submitted by Lessee under this Agreement, Lessee shall revise such plans incorporating the changes required by Lessor and shall within thirty (30) days after Lessor returns the marked up plans to Lessee submit revised plans to Lessor. Within twenty (20) days after Lessor's receipt of the revised plans, Lessor shall make available to Lessee one (1) copy of such revised plans either Stamped or marked to indicate the reasons that Lessor does not approve such revised plans.

7.14.10. Lessee shall, following Lessor's approval thereof, provide to Lessor one set of copies of the Final Plans for any Lessee's Improvements for Lessor's unrestricted use.

7.15. Minor Changes. Lessor's consent shall not be required for minor changes to any Lessee's Improvements discovered by Lessee during the course of construction to be necessary to complete construction as contemplated by the Final Plans therefor. For purposes of the preceding sentence, "minor changes" are those that do not materially alter the structure, size, layout, location, quality, appearance, functionality 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 reasonably possible, and in no event later than five (5) business days after the change, give Lessor notice of any such minor change.

7.16. 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 at the Premises of any construction work by Lessee having an estimated cost of

more than One Hundred Thousand Dollars ($100,000), provide to Lessor the following assurances that Lessee will timely pay for such work (the "Funding Assurances"):

7.17. Funding Assurances Amount. The Funding Assurances shall be in an amount (the "Funding Assurances Amount") equal to (a) one hundred percent (100%) of the full contract amounts (excluding any contingency line item) payable directly or indirectly to all persons for the construction work plus (b) an additional surplus cushion in the amount of ten percent (10%) of said amount.

7.17.1. Funding Assurances Alternatives. All Funding Assurances shall consist of one of the following at Lessee's option:

7.17.1.1. A fully executed construction loan commitment or agreement (the "Loan Commitment") legally obligating a reputable federally insured financial institution to fundthe costs of the improvements in an amount not less than the Funding Assurances Amount.

7.17.1.2. A letter of credit (the "Construction Letter of Credit") in the Funding Assurances Amount and meeting the requirements listed on Exhibit "A" attached hereto.

7.17.1.3. Written confirmation from a federally insured financial institution acceptable to Lessor having offices in Maricopa County, Arizona to the effect that said institution is holding for Lessor funds (the "Construction Account Funds") in the Funding Assurances Amount. The Construction Account Funds shall be held in an interest bearing account (the "Construction Account") in Lessor's name only. All interest on the Construction Account Funds shall be held in the Construction Account and shall become Construction Account Funds. All Construction Account Funds, upon deposit in the Construction Account, shall become funds of Lessor to be disbursed in accordance with the provisions of this Agreement. Except as otherwise provided below, Construction Account Funds shall be disbursed to a party or parties other than Lessor only upon (a) Lessor's notice to such financial institution stating that Lessor has received and approved third party invoices from parties not affiliated with Lessee for actual costs of construction labor or materials and authorizing the disbursement of Construction Account Funds for the payment of such costs and (b) a notice from Lessee that such funds may be so 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 fifteenth day of each month a detailed statement of Construction Account activity during the preceding month. All Construction Account Funds will be immediately available to Lessor upon demand following an Event of Default. At no time is Lessor required to pay or advance any funds for Lessee's Improvements (other than by approving disbursements of Construction Account Funds pursuant to this Agreement).

7.18. 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 at the Premises of any construction work by Lessee having an estimated cost of more than One Hundred Thousand Dollars ($100,000), 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 such work (the "Contractor Assurances"):

7.18.1. 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.

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

7.18.2.1. A payment bond in the Contractor Assurance Amount in favor of Lessee covering all of the contracted work.

7.18.2.2. A performance bond in the Contractor Assurance Amount in favor of Lessee covering all of the contracted work.

7.18.3. Contractor Assurance Qualifications. Each Contractor Assurance shall be in form and substance reasonably acceptable to Lessor, and Lessor shall, upon written request from Lessee, provide to Lessee written confirmation that a given Contractor Assurance is or is not, as the case may be, 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. § 34-222 and A.R.S. § 34-223, and other applicable laws.

7.19. Requirements Applicable to Both Funding Assurances and Contractor Assurances. The following requirements shall be applicable to both all Funding Assurances and all Contractor Assurances (collectively "Improvement Assurances"):

7.19.1. Amount Adjustment. In the event the required amount of an Improvement Assurance increases from time to time by more than five percent (5%) above the amount of the Improvement Assurance previously provided, 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 (a) 100% of such increase (together with a proportionate increase in the surplus cushion) with respect to Funding Assurances and (b) 100% of such increase with respect to Contractors Assurances, or cause the existing Improvement Assurance held by Lessor to be amended to provide for such increases. Lessor's city manager or designee shall have authority to reduce the amount of Improvement Assurances as circumstances warrant in the city manager's (or designee's) discretion. Any such reduction is void if not contained in formal written notice to Lessee.

7.19.2. 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 issued by an insurer or a surety shall be accompanied by or shall include a statement by the issuer or surety to Lessor to the effect that the Improvement Assurance is intended by the issuer or surety 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 Lease Agreement between _____ and the City of Scottsdale dated _____, 20___.

7.19.3. Improvement Assurance Claims. Lessor shall not make demand on an Improvement Assurance contrary to the provisions of this Agreement.

7.19.4. Lessor's Improvement Assurance Claim. If there is an Event of Default by Lessee, Lessor shall have the right to set-off against, deduct from and withhold from any amount any Improvement Assurance or otherwise make claim upon any Improvement Assurance an amount sufficient to cure the Event of Default and to pay all other costs and expenses related to suchEvent of Default. Additionally, in such event, Lessor shall have the right to claim an amount sufficient to pay all costs of litigation, attorneys fees and costs required by a judgment or decision relating to any contingent liability of Lessee that, in the reasonable opinion of Lessor, may be outstanding at the time of such Event of Default. Further, Lessor may draw on any Improvement Assurance at any time whatsoever to satisfy Lessee's obligations under this Agreement. This paragraph does not apply to a construction loan commitment or the Contractor Assurances.

7.19.5. 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.

7.19.6. Release of Improvement Assurance. Within thirty (30) days after the last to occur of the following, Lessor shall deliver to Lessee notice that the Improvement Assurance is released and shall take such actions as are reasonably required and requested by Lessee to implement such release: i) Lessee's completion of the Lessee's Improvements, ii) Lessee's payment of all design, construction, and all other amounts to be paid in connection with construction of the Lessee's Improvements, iii) Lessee's performance and payment of all other obligations related to the Improvement Assurance and the construction, payment and other obligations related thereto, and iv) Lessee's giving to Lessor notice requesting the release stating that the preceding conditions have been satisfied along with such supporting documentation as Lessor may reasonably require. This paragraph does not apply to a construction loan commitment or the Contractor Assurances.

VIII. MAINTENANCE AND UTILITIES

8. Maintenance and Utilities. Except as expressly provided below, Lessee shall be solely responsible for all operation, maintenance, repair, replacement and utilities for the Premises and all improvements thereon during the term of this Agreement as follows:

8.1. Maintenance by Lessor. Lessor has no maintenance, operation, repair or replacement obligations for the Premises or any improvements thereon.

8.2. Utility Service. Lessee shall contract for and pay all charges, fees, deposits and other amounts for gas, electricity, water, sewer, waste disposal services, garbage disposal, telephone and all other utilities provided to the Premises at the rates applicable thereto.

8.2.1. Utility Interruptions. Lessor is not responsible for any interruption of utilities to or upon the Premises or other difficulties related to utilities at the Premises. Without limitation:

8.2.1.1.Lessor is not responsible for utility interruptions caused outside the Premises.

8.2.1.2.Lessor is not responsible for utility interruptions not caused directly by Lessor's negligence.

8.2.1.3.Lessor is not responsible for the acts, breach, errors or omissions of any provider or consumer of electrical service or other utilities to the Premises.

8.3. Adjoining Public Property. Lessee's operation, maintenance, repair and replacement obligations extend beyond the boundaries of the Premises to the back of curb of all immediately adjacent public streets.

8.4. Trash. Lessee shall provide adequate and sanitary handling and disposal, away from the Premises, of all trash, garbage and other refuse related to the Premises. Without limitation, Lessee shall provide and use suitable covered receptacles for all trash and other refuse related to Lessee's use of the Premises. Piling of boxes, cartons, barrels, debris or other items outside the Premises or in a manner visible from outside the Premises or in a manner visible to areas open to the public is prohibited. The area in which trash containers are stored shall be kept clean and free of all trash and debris and shall be shielded from public view.

8.5. Removal of Improvements. Lessee shall not remove any improvement from the Premises except in connection with Lessee's Improvements and Lessee's performance of its obligations under this Agreement. Upon removal of any item at any time installed in or attached to the Premises, Lessee shall simultaneously restore and repair any holes, mounting surfaces or other damage whatsoever to the Premises. Lessee shall not remove any such 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, at the reasonable request of City, Developer shall provide 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. Without limitation, Lessee shall not remove any communications cables, parking bumpers, trash receptacles, floor mats or similar items.

IX. BREACH BY LESSEE

9. Breach by Lessee. Lessee shall comply with, perform and do each performance and thing 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.

9.1. Events of Default By Lessee. This entire Agreement is made upon the condition that each and every one of the following events shall be deemed an "Event of Default" and a material breach 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 thirty (30) days after Lessor has notified Lessee of such arrearage.

9.1.2. If Lessee shall fail to operate the Premises in the manner required by this Agreement (except during specific periods for which such operation is expressly excused by this Agreement) for a total of three (3) days within any twelve-month period.

9.1.3. If Lessee shall abandon the Premises.

9.1.4. If Lessee shall fail to maintain any insurance required by this Agreement. Notwithstanding the preceding sentence, such failure shall not be an Event of Default if within ten (10) days after notice from Lessor, Lessee provides to Lessor the required insurance and the required evidence thereof. Such insurance must cover the past for a period adequate that there is no gap in the insurance coverage required by this Agreement.

9.1.5. If Lessee shall be the subject of a voluntary or involuntary bankruptcy, receivership, insolvency or similar proceeding or if any assignment of any of Lessee's property shall be made for the benefit of creditors (collectively a "Lessee Insolvency").

9.1.6. If the issuer of any guaranty, letter of credit, bond, insurance policy or similar instrument required by this Agreement 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 obtain or maintain any licenses, permits, or other governmental approvals required by applicable law and pertaining to the Premises or timely pay any taxes pertaining to the Premises and shall not cure such failure within thirty (30) days after notice from Lessor.

9.1.8. If Lessee shall fail, within thirty (30) days after notice by Lessor to comply with Lessee's obligations under this Agreement to indemnify, defend and hold Lessor harmless in the manner required by this Agreement, or if Lessee shall fail within such period to deliver to Lessor such insurance, bond or other financial security as Lessor may reasonably require and describe in such written notice to assure and evidence Lessee's ability to so indemnify, defend and hold Lessor harmless.

9.1.9. If Lessee shall engage in a pattern of repeated failure (or neglect) to timely do or perform any obligation of Lessee or observe any provision contained herein (a "Repeated Failure"). 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:

9.1.9.1.A second failure to comply with the same provision of this Agreement during the following ninety (90) day period.

9.1.9.2.Four (4) or more failures to comply with any provision of this Agreement during any twelve (12) month period.

Notwithstanding the foregoing, if Lessee cures the failure or neglect that caused the occurrence of a Repeated Failure, such Repeated Failure (and the associated Event of Default) shall be deemed cured, but such cure shall not affect any subsequent Repeated Failure arising from a subsequent failure or neglect hereunder.

9.1.10. If Lessee shall fail to or neglect to timely and completely do or perform any obligation of Lessee or observe any other provision 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. Subject to specific stated limitations on certain of Lessor's remedies as hereafter provided, upon the occurrence of any Event of Default or at any time thereafter until such Event of Default is cured, Lessor may, at its option and from time to time, exercise 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 (a "Default Termination").

9.2.2. Without demand or notice, (a) 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, or (b) physically block access to all or any part of the Premises (excluding blockages resulting from emergencies, repairs, utility work, parades (on City rights of way), exercise of any City police powers, and other normal municipal operations on the Premises or on any adjacent City property), without in either case being deemed guilty of trespass and without prejudice to any other remedy (collectively "Default Reentry").

9.2.3. Reuse or relet all or part of the Premises or otherwise use or allow another party to use all or part of the Premises (a "Default Reletting").

9.2.4. 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.

9.2.5. Cause a receiver to be appointed for all or part of the Premises and for the continuing operation of the Premises.

9.2.6. 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.

9.2.7. Abate at Lessee's expense any breach of this Agreement.

9.2.8. 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 by or pledged to Lessor, or any third party for the benefit or on behalf of Lessor, 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.

9.2.9. Be excused without any liability to Lessee therefor from further performance under this Agreement until the Event of Default is cured.

9.2.10. Insist upon Lessee's full and faithful performance under this Agreement and upon Lessee's full and timely payment of all amounts that become due from Lessee during the entire remaining term of this Agreement.

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

9.2.12. 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. Postponed Remedies. Following an Event of Default, Lessor shall postpone exercising certain remedies (the "Postponed Remedies") for a period (the "Extended Cure Period") if Lessee cures such Event of Default in compliance with all of the following:

9.3.1. The Postponed Remedies are limited to Default Terminations, a Default Reentry, and/or a Default Releting.

9.3.2. The Extended Cure Period shall end upon the earlier of:

9.3.2.1. The date that is one hundred twenty (120) days after Lessor gives notice to Lessee of the occurrence of such Event of Default (the "Maximum Extension Period").

9.3.2.2. The earliest date upon which the cure is reasonably capable of being completed.

9.3.2.3. Lessee's failure to immediately commence and diligently pursue the cure.

9.3.2.4. Lessee's failure to give to Lessor a notice (the "Extended Cure Notice") within thirty (30) days after the beginning of the Extended Cure period containing all of the following:

9.3.2.4.1. An undertaking and promise to diligently pursue the cure of such Event of Default to completion prior to the end of the Extended Cure Period.

9.3.2.4.2. A detailed plan describing how such Event of Default will be cured.

9.3.2.5. Lessor's giving to Lessee notice that Lessor has reasonably determined that Lessee will not be able to timely complete a satisfactory cure.

9.3.3. No Extended Cure Period is available more than once for any Event of Default.

9.3.4. Lessee shall have the right to reject any proposed cure in Lessor's reasonable discretion.

9.3.5. The Event of Default must be capable of being cured prior to the end of the Extended Cure Period.

9.4. Power of Attorney. For the purpose of exercising any of Lessor's rights or remedies hereunder, Lessee hereby irrevocably appoints Lessor as Lessee's true and lawful attorney in fact, and such power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked for any reason, to pay or perform, 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.

9.5. Notice of Breach. Lessee shall promptly give notice to Lessor of any event or circumstance of which Lessee has or acquires knowledge which is (or which 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 to Lessee alleging that an event or circumstance has occurred which is (or which with the passing of time or the giving of notice or both will become) an Event of Default under this Agreement.

9.6. 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 performance 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 or other performances hereunder shall be deemed a compromise or settlement of any right Lessor may have for additional 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.

9.7. 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 hereunder together with interest thereon at the rate of eighteen percent (18%) per annum from the date expended or incurred by Lessor.

9.8. Inspection. Lessor shall have access to the Premises during normal business hours upon reasonable notice (and at all times and without notice in the event of 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 in writing 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.

9.9 Developer's Remedies. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, in any exhibit attached hereto, in any instrument or agreement related hereto, or existing or implied at law or in equity, and as a condition of Lessor's willingness to enter into this Agreement, , the following limits shall apply to this Agreement:

9.9.1 In no event shall Lessor be liable for any money damages, whether actual, incidental, consequential, punitive, exemplary, multiple or of any other nature.

9.9.2 Lessor shall be subject only to specific performance, injunctive or other equitable relief (which may include any order requiring Lessor to perform any obligation (not including the payment of money) required by this Agreement to be made or performed by Lessor).

9.9.3 Lessee hereby unconditionally and irrevocably waives on behalf of itself and all persons claiming through Lessee or through this Agreement any remedies inconsistent with these limitations.

9.9.4 All limitations on Lessee's remedies shall also apply to any claims against any of Lessor's officers, employees and other agents and representatives and any other person for whom Lessor may in any event be liable for any reason.

9.9.5 All limitations on Lessee's remedies shall apply to Lessee and to any person otherwise asserting against Lessor any claim whatsoever related to this Agreement.

9.10. Right to Setoff and Credit. In addition to its other rights and remedies under this Agreement, Lessor shall have the right to setoff and credit, from time to time and at any time, any and all amounts due from Lessee to Lessor, whether pursuant to this Agreement or otherwise, against any sum which may be due from Lessor to Lessee pursuant to this Agreement.

9.11. Lessee Payments Cumulative. All amounts payable by Lessee hereunder or under any tax, assessment or other existing or future obligation relating to the Premises shall be cumulative and payable in addition to each other payment required hereunder, and such amounts shall not be credited toward, substituted for, or setoff against each other in any manner.

9.12. Acceptance of Cure. Lessor shall accept performance of any timely cure of any Event of Default (or any breach or failure which, with the passage of time or notice or both may constitute an Event of Default) from any person, including any person other than Lessee.

X. TERMINATION

10. Rights at Termination. Termination of this Agreement for any reason does not terminate Lessee's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or in any way terminate any of Lessee's liability related to this Agreement.

10.1. Delivery of Possession. At the expiration or termination of this Agreement, 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 in as good order and condition, reasonable use and wear excepted, as the same now are or in

such better condition as the Premises may hereafter be placed. Upon expiration or termination of this Agreement, Lessee shall deliver to Lessor any security deposits, prepaid rents, or other amounts for which Lessor has a claim under this Agreement.

10.2. Confirmation of Termination. Upon expiration or termination of this Agreement, Lessee shall provide to Lessor upon demand written, acknowledged, recordable confirmation of termination covering the Premises executed by Lessee and by all persons claiming through Lessee any interest in or right to use the Premises.

10.3. Continuation of Business. Upon expiration or termination of this Agreement, Lessee shall aid Lessor, unless directed otherwise by Lessor, in all reasonable ways in continuing uninterruptedly the business of operating the Premises as herein described.

10.4. Removal of Lessee Items. Upon expiration or termination of this Agreement, Lessee shall not remove any item or improvement from the Premises.

10.5. Fixtures and Improvements. Upon expiration or termination of this Agreement, if the same has not occurred earlier, title to any and all fixtures and structural or permanent improvements placed upon the Premises TOGETHER WITH ALL SINKS, WATER HEATERS, PIPES, PUMPS, VALVES, COMPRESSORS, DISPENSERS, METERS, CONTROLS, MONITORS AND ALL OTHER EQUIPMENT AND PERSONAL PROPERTY OF EVERY DESCRIPTION INSTALLED, LOCATED OR AFFIXED TO THE PREMISES shall automatically vest in Lessor without any payment by Lessor or any compensation to Lessee and without requirement of any deed, conveyance, or bill of sale. However, if Lessor shall request any documents in confirmation thereof, Lessee shall promptly execute, acknowledge and deliver the same. Lessee shall provide and assign to Lessor all operating manuals, warranties and similar materials pertaining to all property transferred to Lessor pursuant to this section.

XI. INDEMNITY AND INSURANCE

11. Indemnity and Insurance. Lessee shall insure the Premises and property and activities at and about the Premises and shall provide insurance and indemnification as follows:

11.1. Insurance Required. Lessee shall obtain and cause to be in force and effect the following insurance:

11.1.1. Commercial General Liability. Lessee shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than $10,000,000 for each occurrence, $10,000,000 Products and Completed Operations Annual Aggregate, and a $10,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 01 07 98 or equivalent thereof, including but not limited to, separation of insureds clause. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

11.1.2. Automobile Liability. Lessee shall maintain Business Automobile Liability insurance with a limit of $5,000,000 for each accident for Lessee's owned, hired, and non-owned vehicles assigned to or used in the performance of the work or services under this Lease. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code "1"

“any auto” policy form CA 00 01 07 97 or equivalent thereof. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

11.1.3. Workers' Compensation. Lessee shall maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes governing Lessee’s employees engaged in the performance of work or services under this Agreement, and shall also maintain Employers’ Liability Insurance of not less than $100,000 for each accident, $100,000 disease for each employee and $500,000 disease policy limit.

11.1.4. Special Risk Property. Lessee shall maintain 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 Premises and all personal property used in connection with the Premises. Property coverage shall include Pollutant Clean Up and Removal with minimum limits of coverage of $100,000.

11.1.5. Boiler and Machinery Insurance. If applicable, boiler and machinery insurance in the amount of the full replacement cost of all machinery and mechanical equipment.

11.1.6. Contractor's Protective. With respect to any construction involving the Premises, Lessor’s and contractor’s protective insurance covering the interests of contractors, Lessor and Lessee, 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 described above.

11.1.7. Builders' Risk Property Insurance. Builders' risk insurance in the amount of the entire cost of any construction work at or related to the Premises as well as subsequent modifications thereto. Such builder's risk insurance shall be maintained until final payment for such construction work and materials has been made and until no person or entity other than Lessee and Lessor has an insurable interest in the Premises, whichever is later. This insurance shall include interests of Lessor, Lessee and all subcontractors and sub-subcontractors involved in any Lessee’s Improvements or other construction work at or related to the Premises during the course of any such construction, and shall continue until all such work is completed and accepted by Lessee and Lessor. Lessee bears full responsibility for loss or damage to all work being performed at the Premises. Builders' risk insurance shall be on special form (all-risk) policy form and shall also cover false work and temporary buildings and 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, and shall cover reasonable compensation for architect's service and expenses required as a result of such insured loss and other “soft costs”. Builders' risk insurance must provide coverage from the time any covered property comes under Lessee's control and/or responsibility, and continue without interruption during construction or renovation or installation, including any time during which the covered property is being transported to the Premises, and while on the Premises awaiting installation. The policy will continue to provide coverage when the Premises or any part thereof are occupied. Builders' risk insurance shall be primary and not contributory.

11.1.8. Other Insurance. Any other insurance Lessor may reasonably require (by notice to Lessee describing the same) for the protection of Lessor and Lessor's employees, officials, representatives, officers, directors, and agents (collectively “Additional Insureds”), the Premises, Lessee, or the activities carried on or about the Premises. Likewise, Lessor may elect by

notice to Lessee to increase the amount of any insurance to account for inflation, changes in risk, or any other factor that Lessor reasonably determines to affect the prudent amount of insurance to be provided. Such insurance shall be limited to insurance a reasonable person owning, leasing, designing, constructing, occupying, or operating similar facilities could reasonably purchase.

11.2. Form of All Insurance. All insurance required by this Agreement shall meet the following requirements:

11.2.1. All liability policies except workers' compensation must name Lessor and the other Additional Insureds as additional insureds. Lessee shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement. Lessor may give Lessee notice of Lessor'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.

11.2.2. All applicable casualty policies must name Lessor as a loss payee.

11.2.3. All policies must provide Lessor with at least thirty (30) days prior notice of any cancellation, reduction or other change in coverage.

11.2.4. All policies shall require that notices be given to Lessor in the manner specified for notices to Lessor under this Agreement.

11.2.5. The insurer's duty to notify Lessor 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".

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

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

11.3. Form of Required Insurance. All insurance policies required by this Agreement shall meet the following requirements:

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

11.3.2. Policies must also cover and insure Lessee's activities relating to the business operations and activities conducted from the Premises.

11.3.3. Lessee must clearly show by providing copies of insurance policies, certificates, formal endorsements or other documentation acceptable to Lessor that all insurance coverage required by this Agreement is provided.

11.3.4. No deductibles, retentions, or "self insured" amounts shall exceed One Hundred Thousand Dollars ($100,000) in the aggregate per year. Lessee shall be solely responsible for any self-insurance amount or deductible. Lessor may require Lessee from time to time to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

11.3.5. No deductible shall be applicable to coverage provided to Lessor.

11.3.6. Lessor shall provide forms of new or replacement policies for Lessor's review not less than thirty (30) days prior to the effective date of any new or replacement policy.

11.4. Insurance Certificates. Lessee shall evidence all insurance required by this Agreement by furnishing to Lessor certificates of insurance annually and with each change in insurance coverage. 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 Agreement applicable to the policy. For example, certificates must evidence that Lessor and the other Additional Insureds are additional insureds and that insurance proceeds will be paid as required by this Agreement. Certificates must be in a form reasonably acceptable to Lessor. All certificates shall be in addition to the actual policies and endorsements required. Lessee shall provide updated certificates at Lessor's request.

11.5. Acceptable Insurers. All insurance policies required by this Agreement shall be issued by insurers reasonably acceptable to Lessor. 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.

11.6. Primary Insurance. All insurance required by this Agreement shall be primary insurance. Any insurance or self insurance maintained by Lessor shall not contribute to Lessee's insurance.

11.7. Insurance Proceeds. All insurance proceeds (whether actually paid before or after termination of this Agreement) from any casualty insurance required by this Agreement shall be paid directly to Lessor and owned by Lessor for Lessor's use in compensating Lessor for the loss of the Premises and use of the Premises, protecting Lessor, the Premises and Lessor's property from every other loss or exposure suffered by Lessor, and satisfying and securing Lessee's obligations hereunder. Thereafter, any remaining proceeds shall be first applied as otherwise required by this Agreement and then allocated among Lessor, Lessee and other interested parties as their interests may appear.

11.8. Indemnity. In addition to all other obligations hereunder, to the fullest extent permitted by law, throughout the term of this Agreement and until all of Lessee's obligations and performances under or related to this Agreement are satisfied and all matters described in this paragraph are completely resolved, Lessee shall pay, indemnify, defend and hold harmless Lessor and all other Additional Insureds for, from and against any and all claims or harm related to the Premises and/or this Agreement (the "Indemnity"). Without limitation, the Indemnity shall include and apply to 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) which may arise in any manner out of any use or ownership of the Premises or personal property related to this Agreement or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to this Agreement, including any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the Premises or surrounding areas related to this Agreement, including without limitation, claims, liability, harm or damages caused in part by Lessor or any other

Additional Insured or anyone for whose mistakes, errors, omissions or negligence Lessee or Lessor may be liable. The Indemnity shall also include and apply to any environmental, personal injury or other liability relating to Lessor's or Lessee's acquisition, ownership or use of the Premises developed, operated, owned, used, controlled or possessed by Lessor or Lessee under this Agreement. Notwithstanding the foregoing, the Indemnity does not apply to:

11.8.1. Claims arising only from the sole gross negligence or intentional misconduct of Lessor.

11.8.2. Claims that the law prohibits from being imposed upon the indemnitor.

11.9. Consultant Indemnity. During the entire term of this Agreement, Lessee shall cause all architects, engineers, contractors, construction managers and other consultants, including itself to the extent Lessee provides any such services, (collectively "Consultants") contracted to provide professional services in the design, construction, operation or other work regarding the Premises to provide to Lessor the following protections:

11.9.1. To the fullest extent permitted by law, Consultants shall defend, indemnify and hold harmless Lessee, Lessor and their respective agents, representatives, officers, directors, officials and employees (including without limitation the Additional Insureds) from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of or resulting from the Consultant's acts, errors, mistakes or omissions relating to professional services relating to the Premises. Consultant's said duty to defend, hold harmless and indemnify shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death; or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes or omissions related to Consultant's professional services relating to the Premises including any person for whose acts, errors, mistakes or omissions the Consultant may be legally liable. This indemnity does not increase or decrease any non-contract liability that may or may not exist independent of this provision and may or may not be covered or coverable by insurance.

11.9.2. Professional liability insurance covering acts, errors, mistakes and omissions arising out of the professional services or work performed by the Consultant or any person employed by him or for whose acts he may be liable, with a limit of not less than Two Million Dollars ($2,000,000) for each claim. Any "claims made" coverage must extend not less than three (3) years after completion of the work.

11.10. Risk of Loss. Lessor is not required to carry any insurance covering or affecting the Premises or use of Lessor's property related to this Agreement. Lessee assumes the risk of any and all loss, damage or claims to the Premises or related to Lessee's use of the Premises or other property of Lessor, Lessee or third parties throughout the term hereof. Lessor expressly disclaims any representation that required insurance is adequate to protect any person or property against any risks related to the Premises or any activities, uses or improvements related to the Premises. Lessee's obligations to indemnify do not diminish in any way Lessee's obligations to insure as set forth in this Agreement; and Lessee's obligations to insure do not diminish in any way Lessee's obligations to indemnify as set forth in this Agreement. Lessee's obligations to indemnify and provide insurance as set forth in this Agreement are in addition to, and do not limit, any and all other liabilities or obligations of Lessee under or connected with this Agreement. Lessee shall be responsible for any and all damages to its property and equipment related to this Agreement and

shall hold harmless and indemnify Lessor with respect thereto regardless of the cause of such damages. In the event Lessee secures other insurance related to the Premises or any improvements, property or uses related thereto, Lessee shall effect an endorsement under such policy waiving any and all insurer's rights of subrogation against Lessor and the other Additional Insureds.

11.11. Insurance to be Provided by Sublessees and Others. Any sublessees and contractors of Lessee, and all other persons working for or on behalf of Lessee at the Premises must also provide for the protection of Lessor and all other Additional Insureds all of the liability insurance required from Consultants by this Agreement. The preceding sentence does not require such persons to provide insurance that merely duplicates insurance Lessee provides.

XII. CONDEMNATION

12. Condemnation. The following shall govern any condemnation of any part of or interest in the Premises (the "Part Taken") and any conveyance to a condemnor in avoidance or settlement of condemnation or a threat of condemnation:

12.1. Termination as to Part Taken. This Agreement shall terminate as to the Part Taken on the date (the "Condemnation Date") which is the earlier of the date title to the Part Taken vests in the condemnor or the date upon which the condemnor is let into possession of the Part Taken. Upon such termination, Lessee shall execute and deliver to Lessor deeds or other instruments reasonably requested by Lessor conveying and assigning to Lessor Lessee's entire interest in the Part Taken. In the event of a partial taking, this Agreement shall continue in full force and effect as to the part of the Premises not taken.

12.2. Determining Partial or Total Condemnation. A condemnation of the Premises which renders the Premises unsuitable for the Permitted Uses (an "Interfering Condemnation"), or which takes the entire Premises, shall be deemed to be a total condemnation. Any other condemnation shall be a partial condemnation. Within fifteen (15) days after Lessor's or Lessee's receipt of written notice of the commencement of any condemnation, the party receiving such notice shall give to the other a notice stating its respective opinion as to whether the condemnation is total or partial and the reasons for the opinion. Within fifteen (15) days thereafter, Lessor shall determine in Lessor's reasonable discretion whether the condemnation is total or partial.

12.3. Rent Adjustment. In the event of a partial condemnation, Base Rent shall not be reduced during the initial forty (40) year term of this Agreement, but (a) Base Rent during that portion of the first, second and third extension periods occurring after the condemnation shall be proportionately reduced by comparing the number of parking spaces available prior to the condemnation to the number of parking spaces available after the condemnation, (b) the calculation of Base Rent applicable during the fourth and fifth extension periods shall take into account the effect of the condemnation if the condemnation occurs prior to the calculation of Base Rent for either such period, and (c) if the condemnation occurs after calculation of the Base Rent applicable during the fourth or fifth extension period, Base Rent during the remainder of such extension period shall be proportionately reduced by comparing the number of parking spaces available prior to the condemnation to the number of parking spaces available after the condemnation.

12.4. Condemnation Proceeds. Lessee hereby assigns and transfers to Lessor Lessee's entire interest in all condemnation damages, interest, severance damages, and any other

payments or proceeds of any kind relating to the condemnation (collectively the "Condemnation Proceeds") specifically excluding any and all rights relating to any property other than the Premises in which Lessee may have an interest. Lessee shall execute and deliver to Lessor assignments or other instruments requested by Lessor confirming such assignment and transfer. Lessee shall immediately pay to Lessor any Condemnation Proceeds Lessee may receive. The Condemnation Proceeds shall not include relocation benefits awarded specifically to Lessee to cover expenses of relocating Lessee's business located at the Premises at the time of the condemnation. Such relocation benefits and separate severance damages with respect to the severance of Lessee's leasehold interest under this Agreement from the remainder of the Property shall be owned by and paid directly to Lessee only.

12.5. Lessee's Condemnation Work. In the event of a partial condemnation, if Lessor makes the Condemnation Deposit (hereinafter defined), Lessee shall restore the remainder of the Premises to its condition at the time of such condemnation less the Part Taken (the "Postcondemnation Work").

12.6. Condemnation Proceeds Deposit. Separate and apart from any condemnation action, Lessor shall deposit into an account (the "Proceeds Account") an amount (the "Condemnation Deposit") consisting of the lesser of (a) the cost of the Postcondemnation Work or (b) the Condemnation Proceeds received by Lessor after deducting Lessor's costs, legal and witness fees and other expenses of the condemnation. The following shall apply to the Condemnation Deposit:

12.6.1. Any portion of the Condemnation Deposit remaining in the Proceeds Account after the Postcondemnation Work is completely paid for and any claims by Lessor against Lessee are satisfied shall be disbursed to Lessor.

12.6.2. Lessor shall make the Condemnation Deposit within ten (10) days after Lessor receives the Condemnation Proceeds.

12.6.3. Disbursements from the Proceeds Account and administration of the Proceeds Account shall be subject to such reasonable draw request processes and requirements as Lessor may reasonably specify by notice to Lessee.

12.7. Power to Condemn. Lessee acknowledges that Lessor and others from time to time may use the power to condemn the Premises or any interest therein or rights thereto. Lessor has not relinquished any right of condemnation or eminent domain over the Premises. Lessor does not warrant that Lessor will not condemn the Premises during the term of this Agreement, but Lessor does not presently have intentions to condemn the Premises. Nothing in this Agreement shall be construed as a waiver by Lessee of any right Lessee may have to contest or challenge any condemnation.

XIII. DAMAGE TO OR DESTRUCTION OF PREMISES

13. Damage to or Destruction of the Premises. The following provisions shall govern damage to or destruction of the Premises by fire, explosion, the elements, the public enemy, or other casualty (collectively "Casualty Damage").

13.1. Damage Estimate. Following any Casualty Damage, Lessee shall make reasonable estimates (collectively the "Restoration Estimates") of the work (the "Restoration Work") necessary to restore the Premises to its condition existing prior to the Casualty Damage, of the cost (the "Restoration Cost") of performing the Restoration Work, and of the schedule (the "Restoration Schedule") for planning and completing the Restoration Work.

13.2. Notices of Casualty Damage. Lessee shall give to Lessor notices of Casualty Damage as follows:

13.2.1. If Lessee's reasonable estimate of the Restoration Cost is less than One Hundred Thousand Dollars ($100,000), Lessee need not give to Lessor notice of the Casualty Damage.

13.2.2. If Lessee's estimated Restoration Cost is One Hundred Thousand Dollars ($100,000) or more, Lessee shall give to Lessor an initial notice of Casualty Damage (the "Restoration Notice") containing a description of the Casualty Damage and the Restoration Estimates. Lessee shall give the initial Restoration Notice as soon as practical, but in no event later than twenty (20) days after the Casualty Damage. Until all Restoration Work is complete, Lessee shall continue to refine the Restoration Estimates as circumstances unfold and, no less often than once each calendar month until the Restoration Work is complete, shall give to Lessor an updated Restoration Notice explaining all material changes in the Restoration Estimates and the reason for the changes. Unless Lessor gives Lessee notice of an objection to the Restoration Estimates within thirty (30) days after receiving any Restoration Notice, Lessor shall be deemed to have acquiesced that the Restoration Estimates specified by Lessee in the Restoration Notice are reasonable estimates. All Restoration Notices shall contain such detail as Lessor may reasonably require.

13.2.3. If the Estimated Restoration cost exceeds One Hundred Thousand Dollars ($100,000), Lessee shall also give to Lessor a notice (the "Casualty Proceeds Notice"). Lessee shall give the Casualty Proceeds Notice as soon as practical after the Casualty Damage but in no event later than thirty (30) days following the Casualty Damage. The Casualty Proceeds Notice shall contain the following:

13.2.3.1. The Restoration Estimates.

13.2.3.2. Evidence and Lessee's affirmation that Lessee has submitted all applicable insurance and other all claims against insurers and other persons related to the Casualty Damage.

13.2.3.3. Lessee's estimate of the amounts available from insurance policies and all other sources related to the Casualty Damage.

13.2.3.4. Evidence and Lessee's affirmation that Lessee has the financial and other resources to complete the Restoration Work within the Restoration Schedule (assuming that the insurance proceeds related to such Casualty Damage are made available for the Restoration Work).

13.3. Restoration Work by Lessee. After any Casualty Damage, Lessee shall commence and diligently pursue to completion the Restoration Work at Lessee's expense (but using the funds in the Proceeds Account to the extent available). Lessee shall commence the Restoration Work within ninety (90) days after the Casualty Damage occurs. Lessee shall

complete the Restoration Work within the earlier of (i) one hundred eighty (180) days after Lessee obtains the permits required for the Restoration Work or (ii) two hundred forty (240) days after the Casualty Damage occurs.

13.4. Restoration Work Process. All Restoration Work by Lessee shall be subject to the plans approval process and all other requirements for Lessee's Improvements set forth in this Agreement.

13.5. Restoration Work Cost. Lessee shall perform all Restoration Work at Lessee's sole cost and expense, except that Lessor shall make available to Lessee funds from the Proceeds Account (to the extent in the Proceeds Account) for properly completed Restoration Work to the extent specifically required by this Agreement.

13.5.1. Insurance Proceeds. All property insurance proceeds (whether actually paid before or after termination of this Agreement) relating to Casualty Damage to the Premises (other than proceeds attributable to personal property) shall be paid directly to Lessor and owned by Lessor subject to the requirements of this Agreement regarding such proceeds. Lessor shall deposit said proceeds (less any reasonable expenses or attorneys fees incurred by Lessor in obtaining such proceeds) into the Proceeds Account. The Proceeds Account shall be an interest bearing account in Lessor's name only with a federally insured financial institution having offices in Maricopa County, Arizona. All interest on the Proceeds Account shall remain in the Proceeds Account. At no time is Lessor required to pay or advance any funds (other than funds held or required to be deposited in the Proceeds Account) for restoration of any Casualty Damage.

13.6. Proceeds Account Use Priorities. The Proceeds Account funds shall be used for the following purposes:

13.6.1. Funds in the Proceeds Account shall first be used for compensating Lessor for funds expended by Lessor (without any obligation by Lessor to so expend funds under any circumstances) in protecting Lessor, the Premises and Lessor's property from every loss or exposure suffered due to the damage, and satisfying any of Lessee's obligations then due hereunder.

13.6.2. Funds in the Proceeds Account shall be used only for paying for the Restoration Work until the cost of the Restoration Work has been disbursed by Lessor to Lessee or to third parties in connection with the Restoration Work. Inadequacy of funds in the Proceeds Account shall not excuse Lessee from Lessee's obligation to perform the Restoration Work.

13.6.3. Any remaining funds in the Proceeds Account after completion of the Restoration Work shall be disbursed to Lessor.

13.7. Use of Proceeds Account for Restoration Work. The following shall govern disbursement of funds from the Proceeds Account for the Restoration Work:

13.7.1. All disbursements from the Proceeds Account shall be by check payable to Lessor or jointly payable to Lessee and a third party who performed or provided materials for the Restoration Work. If Lessee provides receipts showing Lessee has already paid a third party who performed or provided materials for the Restoration Work, then checks reimbursing Lessee for funds already paid by Lessee for the Restoration Work shall name only Lessee as payee.

13.7.2. Lessee's applications for payment for reimbursements from the Proceeds Account shall be prepared according to a schedule of values for the Restoration Work prepared by Lessee's architect, subject to Lessor's reasonable approval.

13.7.3. Funds shall be disbursed from the Proceeds Account within fourteen (14) days after Lessor has received notice from Lessee requesting that such funds be disbursed. Such notice shall be accompanied by the following:

13.7.3.1. A description of the Restoration Work completed.

13.7.3.2. Unrelated third party invoices for design, engineering or related professional services rendered, or actual hard costs of demolition or construction labor or materials incurred, in connection with Restoration Work.

13.7.3.3. Certificates from any third party payee that such third party has actually supplied the labor or materials to the Premises.

13.7.3.4. Appropriate mechanics and materialmen's lien waivers.

13.7.3.5. Such additional documentation and confirmations as Lessor may reasonably deem necessary to confirm compliance with this Agreement.

13.7.4. The Proceeds Account shall qualify as a satisfactory Funding Assurance for Restoration Work to the extent of the balance available in the Proceeds Account for payment of the cost of such Restoration Work.

13.8. Accelerated Funding. In order to avoid delay in completing the Restoration Work due to time constraints relating to disbursements from the Proceeds Account, Lessee may elect to do either or both of the following:

13.8.1.1. Advance its own funds (the "Reimbursable Funds") for Restoration Work from time to time, and subsequently obtain reimbursement from the Proceeds Account subject to compliance with the requirements for disbursements from the Proceeds Account.

13.8.1.2. Request that Lessor make a one-time single disbursement to Lessee (the "Working Funds"). Lessee shall hold any Working Funds disbursed to Lessee in a separate bank account and shall use the Working Funds only during the course of the Restoration Work to make progress payments to third parties for the Restoration Work. The amount of the Working Funds shall not exceed the greater of One Hundred Fifty Thousand Dollars ($150,000) or ten percent (10%) of the estimated cost of the Restoration Work. Upon completion of the Restoration Work, Lessee shall return any excess Working Funds to the Proceeds Account.

13.9. Monthly Restoration Work Report. Lessee shall provide to Lessor, no later than the fifteenth (15th) day of each calendar month a written report of the progress of the Restoration Work, along with detailed statement of Proceeds Account, Reimbursable Funds and Working Funds activity, during the preceding calendar month.

13.10. Rent After Casualty Damage. The Base Rent payable herein shall be proportionately paid up to the time of such Casualty Damage and thereafter abate as to the untenantable portion of the Premises until such time as the Premises are restored.

13.11. Proceeds Account Variations. Lessee's city manager or designee shall have the authority to cooperate with Lessee to implement variations to the administration of the Proceeds Account. Any such variations must provide to Lessor the substantive protections of the Proceeds Account afforded by this Agreement (in said city manager or designee's sole and absolute discretion), must require insurance proceeds to be used to pay items in the priority stated in this Agreement, must not disburse money for purposes other than those stated in this Agreement, must be approved in writing in advance by said city manager or designee and by Lessor's city attorney in their sole and absolute discretion, and must otherwise be acceptable to Lessor's city manager or designee and Lessor's city attorney in their sole and absolute discretion.

XIV. LESSEE'S RECORDS

14. Lessee's Records. For a period extending at least seven (7) years after the date of creation thereof, Lessee will maintain in a secure place within Maricopa County, Arizona proper and accurate books, records, ledgers, correspondence and other papers and information, relating in any manner to Lessee's or Lessor's obligations under this Agreement, as reasonably determined by Lessor.

14.1. Standards for Records. Lessee shall maintain a reasonablesystem of accounting and shall keep and maintain all books and records pertaining to Lessee's or Lessor's obligations under this Agreement, as reasonably determined by Lessor in accordance with reasonable accounting principles.

14.2. Information. Lessee shall provide, from time to time, such information, books and records as Lessor may request and Lessee may possess or control pertaining to Lessee's and Lessor's respective obligations under this Agreement, as reasonably determined by Lessor.

14.3. Right of Inspection. Lessee will at Lessee's expense (i) permit and assist Lessor and its representatives at all reasonable times and in a reasonable manner (including reasonable accommodations) to inspect, audit, copy and examine, as applicable, Lessee's information, books and records relevant to Lessor's and Lessee's obligations under this Agreement, as reasonably determined by Lessor, and (ii) cause its employees and agents and, if Lessor reasonably determines it to be necessary, accountants to give their full cooperation and assistance in connection with the foregoing.

14.4. Media Included. Lessee's records subject to this Agreement include, but are not limited to, any and all information, materials and data described above of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, computer data, invoices, cash register tapes and similar records, contracts, logs, accounts, commitments, arrangements, notes, diaries, ledgers, correspondence, reports, drawings, receipts, vouchers, memoranda and any and all other agreements, sources and repositories of information, other than privileged information and internal communications that are distributed only to Developer's accountants, attorneys, officers, employees, members, partners, investors, lenders and/or affiliates.

XV. COMPLIANCE WITH LAW

15. Compliance with Law. Lessee shall use and occupy the Premises in accordance with all federal, state, county and local laws, ordinances, rules and regulations as are now in effect or as

may hereafter be adopted or amended. Within fifteen (15) days following Lessee's receipt thereof, Lessee shall provide to Lessor a copy of any written notice alleging any violation of any law, ordinance or regulation pertaining to the Premises. 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. Lessee acknowledges that all of Lessee's obligations hereunder are in addition and cumulative to (and not to any extent in substitution or satisfaction of), all existing or future laws and regulations applicable to Lessee. In the case of an ordinance or other law of the City of Scottsdale authorizing a credit, reduction in tax or amount assessed, or any other benefit as a result of performances rendered under this Agreement, Lessee expressly waives, relinquishes and repudiates all such benefits with respect to performances rendered under this Agreement. Lessee further agrees that this Agreement is not intended to diminish any performances to the City of Scottsdale that would be required of Lessee by law if this Agreement had been made between Lessee and a private citizen. Lessor has not relinquished or limited any right of condemnation or eminent domain over the Premises. In the event of any condemnation or eminent domain brought by Lessor involving the Premises, Lessee shall not be entitled to compensation for any value in any manner directly or indirectly attributable to this Agreement or performances related to this Agreement, specifically excluding any and all rights relating to any property other than the Premises in which Lessee may have an interest. 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. 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 all otherwise existing powers of the City of Scottsdale or any other governmental entity having jurisdiction over Lessee or the Premises. Without limiting in any way the generality of the foregoing, Lessee shall comply with all and each of the following:

15.1. Government Property Lease Excise Tax. Lessee shall be responsible for any and all applicable property taxes and all applicable government property lease excise taxes described in A.R.S. § 42-6201 *et seq.* or similar laws in force from time to time that may be imposed on the Premises or on any interest of Lessee in the Premises under this Agreement. Lessee acknowledges that, pursuant to A.R.S. § 42-6206, failure by Lessee to pay such taxes after any applicable notice and opportunity to cure provided in this Agreement is an event of default that could result in divesting Lessee of any interest in or right of occupancy of the Premises. Lessee reserves the right to challenge the amount and/or applicability of any such property taxes or government property lease excise taxes**, except that both parties acknowledge that this project is not located within a Central Business District, and therefore the provisions of ARS 42-6209 relating to the temporary abatement of Government Prpoerty Lease Excise TaxGovernment Prpoerty Lease Excise Tax payments do not apply.**

15.2. 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 which during the term of this Agreement may be levied upon or assessed against 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 such property and all interests therein and improvements thereon from any and all such taxes and assessments, including any interest, penalties and other expenses which may be imposed, and

from any lien therefore or sale or other proceedings to enforce payment thereof. Lessee shall pay all sales transaction privilege, and other taxes imposed on or with respect to transactions that occur at the Premises.

15.3. Procurement Process. Lessee shall cause all activity on at the Premises, including all construction and operations, to comply in all respects with all applicable bidding and procurement laws and shall pay, indemnify, defend and hold harmless Lessor from any suits or other claims of any description related to the application of such laws to the Premises. Lessor shall have the right, but not the obligation, to determine in Lessor's reasonable discretion how such laws apply to the Premises. In the event Lessor makes such a determination, Lessee shall comply with such determination, but such compliance shall not affect Lessee's obligation to pay, indemnify, defend and hold Lessor harmless. Lessee shall cause all construction and related activities to be accomplished pursuant to Lessor's applicable procurement laws and subject to the following:

15.3.1. Construction contracts shall be created through Lessor's normal processes in accordance with applicable law. Design contracts shall be created through Lessor's normal process in accordance with applicable law.

15.3.2. Lessor shall select and conduct the bid or other selection process in accordance with applicable law. Design contracts and construction contracts shall be entered into using such process as Lessor may reasonably select.

15.3.3. The bid or other selection processes shall result in contracts between the contractor and Lessee. Lessor shall not be party to the contracts.

15.3.4. The contracts shall be Lessor's standard form contracts edited as required to be consistent with this paragraph.

15.3.5. The contracts shall specifically refer to this paragraph of this Agreement and shall provide that:

15.3.5.1. Lessor shall be a third party beneficiary to the contracts and all warranties, certifications and similar matters related to the contracts. Without limitation, Lessor shall be an additional insured with respect to all insurance policies (except workers compensation) required by the contracts.

15.3.5.2. Lessor shall not have any obligations or liabilities under the contracts.

15.3.5.3. The contractor shall provide to Lessor the same insurance coverage, indemnities and similar protections that the contract requires the contractor to provide to Lessee.

15.3.5.4. Lessee and each architect, engineer and/or contractor shall pay, indemnify, defend and hold harmless Lessor from any loss, harm or damage of any description arising from or related to the contract signed by such person or performance thereunder, except to the extent such loss, harm or damage is attributable to the sole gross negligence of Lessor or its agents or employees.

15.3.5.5. The architects, engineers, and contractors shall deliver copies of all notices claiming breach or default under the contracts to Lessor at the same time

such architects, engineers and contractors deliver such notices to Lessee. Upon Lessor's request, copies of any deliverables provided to Lessee shall also be provided to Lessor.

15.3.5.6. The architects, engineers and contractors shall allow Lessor the same access to records as is required by the contracts to be afforded to Lessee.

15.3.5.7. The architects, engineers and contractors shall not do any of the following without having first received from Lessor written notice of Lessor's consent:

15.3.5.7.1. Delegate or assign such architect's, engineer's or contractor's duties or the contract.

15.3.5.7.2. Amend their contract terms other than expressly stated herein.

15.3.5.7.3. Approve any change orders that (a) reduce the contract amount or guaranteed maximum price, (b) materially change the size or appearance of improvements or (c) exceed Fifty Thousand ($50,000) for any one change order, provided, however, that Lessor's approval of any such change orders shall not be unreasonably withheld or delayed and change orders required to rectify life/safety or structural integrity issues need not be approved by Lessor prior to the work required to address such life/safety or structural integrity issues so long as the change order will not materially change the size or appearance of the improvements. Lessee shall provide to Lessor a copy of any change order not requiring Lessor's approval within ten (10) business days after such change order is executed.

15.3.5.7.4. Publicize the contract for advertising or any other purposes.

15.3.6. Lessor shall have the right to vary or waive any provisions of this paragraph in Lessor's sole discretion to the end that Lessor may cause work subject to procurement requirements under this Agreement to comply with applicable procurement laws and principles as determined by Lessor from time to time. Any such variance or waiver must be by notice executed by Lessor's city manager or designee referring to this paragraph.

15.4. Non-Waiver of Rights. Nothing in this Article is intended to waive, or shall be construed to waive, any right of Lessee to assert that a given law, ordinance, power, regulation, tax assessment or other legal requirement now or hereafter imposed or taken by the City of Scottsdale or any other governmental entity having jurisdiction over the Premises is invalid or ineffective or has not been properly exercised.

XVI. ASSIGNABILITY

16. Assignability. This Agreement is not assignable by Lessee (and any such assignment shall be void and vest no rights in the purported assignee) unless the assignment is made in strict compliance with the following:

16.1. Assignments Prohibited. Every assignment of Lessee's interest in the Premises or this Agreement or any of Lessee's rights or interests hereunder is prohibited unless Lessee first receives from Lessor notice of Lessor's consent to the assignment. 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 persons claiming pursuant to such transactions, circumstances and conditions:

16.1.1. 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.

16.1.2. Any voluntary or involuntary pledge, lien, mortgage, security interest, judgment, deed of trust, 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").

16.1.3. The management, control or operation of the Premises or any part thereof by others.

16.1.4. Any transfer of membership interests, corporate stock or any other direct or indirect transfer of any portion of the ownership, management or control of Lessee.

16.1.5. Any dissolution or assignment by Lessee for the benefit of creditors, whether voluntary or involuntary.

16.1.6. Any Lessee Insolvency.

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

16.1.8. The occurrence of any of the foregoing with respect to any assignee or other successor to Lessee.

16.2. Pre-approved Assignments. Lessor hereby consents to certain assignments (the "Pre-approved Assignments") for purposes of this Agreement only. Only the following assignments are Pre-approved Assignments:

16.2.1. Parking Assignment. The Parking Assignment Agreement as required by the Redevelopment Agreement.

16.2.2. Parking Operator Documents. The following assignments in connection with Parking Operator's plan to impose upon the owners (and, if so designated by an owner in a recorded instrument, the holder of a leasehold interest during the pendency of such leasehold interest) (collectively the "Members") of the North Anchor Parcel, the East Anchor Parcel, the West Anchor Parcel, the Gas Station Parcel, the Corner Shops Parcel, the South Shops Parcel, and the Restaurant Parcel (collectively the "Member Parcels") all of the membership interests in the Parking Operator and certain rights to use and occupy portions of the Premises subject to the restrictions contained in this Agreement (collectively the "Member Interests") .

16.2.2.1. Creation of Parking Declaration. Lessee's execution and recordation of a declaration and related documents (collectively the "Parking Declaration") with respect to the Member Interests. The Parking Declaration shall cover all of the Member Parcels and shall run with the land against all of the Member Parcels in favor of Parking Operator and Parking Operator's rights under this Agreement. The Parking Declaration shall be in form and substance reasonably acceptable to Lessor and shall include the following provisions:

16.2.2.1.1. The Members shall pay assessments imposed by the Parking Operator sufficient for the Parking Operator to timely meet its financial obligations, including without limitation all obligations of the Parking Operator under this Agreement.

16.2.2.1.2. The Parking Operator shall impose and collect assessments sufficient for the Parking Operator to timely meet its financial obligations, including without limitation all obligations of the Parking Operator under this Agreement.

16.2.2.1.3. The Parking Operator shall have a lien on each Member Parcel to secure the payment of assessments imposed by the Parking Operator, which lien may be foreclosed in the manner provided by law for foreclosure of liens on real property.

16.2.2.1.4. Lessor shall be a third party beneficiary of the Parking Declaration.

16.2.2.1.5. The Parking Declaration shall not be amended without Lessor's written approval, which shall not be unreasonably withheld.

16.2.2.1.6. The Members shall take no action in violation of this Agreement.

16.2.2.2. Amendment of Parking Declaration. Amendments of the Parking Declaration approved by Lessor.

16.2.2.3. Pledging of Member Interests. The creation of a Lien upon an entire Member Interest by the holder thereof.

16.2.3. Required Member Interests Assignment. The parties intend that each Member Interest shall be appurtenant to and run with the corresponding Member Parcel and deemed to be part of the ownership of such Member Parcel for purposes of liens, leases and other transactions relating to such Member Parcel. Any person or entity acquiring a real property interest in a Member Parcel or other control of a Member Parcel shall also be deemed to be an assignee of a corresponding assignment of the corresponding Member Interest. Lessor hereby gives to Lessee notice that Lessor consents to all such assignments. This paragraph is included to the end that each Member's use of the Premises under this Agreement shall at all times during this Agreement be enjoyed by the person or entity occupying and using such Member's Parcel. Lessor shall not refuse to accept any cure of a breach or Event of Default performed by any Member.

16.3. Limitations on Pre-approved Assignments. Lessor's consent to Pre-approved Assignments is not effective until the following conditions are satisfied:

16.3.1. Lessee notifies Lessor of the occurrence of any Pre-approved Assignment.

16.3.2. Each Pre-approved Assignment satisfies every requirement of this Agreement pertaining to such Pre-approved Assignment.

16.4. Assignment Remedies. Any assignment of Lessee's interest in the Premises or this Agreement or any of Lessee's rights or interests hereunder 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. 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, collect Rent from the assignee

or occupant and apply the net amount collected to the Rent required to be paid thereunder and/or void the assignment or sublease, all without prejudicing any other right or remedy of Lessor under this Agreement.

16.5. Effect of Assignment. No action or inaction by Lessor shall be deemed a waiver of the prohibition on assignments set forth herein 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. Consent by Lessor to an assignment shall not relieve Lessee from obtaining Lessor's consent to any further assignment. No assignment shall release Lessee from any liability hereunder. This Agreement shall also run with the land and continue to be a burden upon the Premises and every interest therein in favor of Lessor.

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 of this Agreement or any document related to any such assignment. No consent by Lessor to such an assignment shall be effective unless and until Lessee receives notice of Lessor's consent pursuant to this Agreement. Lessor's consent to any assignment does not in any way 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 such assignment. This Agreement shall be enforceable personally and in total against Lessee and each successor, and regardless of the method of succession, to Lessee's interest hereunder. Each successor to Lessee under this Agreement 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 assignee.

16.7. Grounds for Refusal. Except for the Pre-approved Assignments, no assignment of this Agreement 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 such assignment or to impose any conditions whatsoever upon any such assignment.

16.8. Assignment Fee. Lessee shall pay to Lessor in advance of any request for consent to an assignment of this Agreement or any interest herein during the term of this Agreement the sum of Five Hundred Dollars ($500) as a nonrefundable fee for legal, administrative and other expenses related to any request for an Estoppel Certificate (as defined below) or a consent to assignment, whether or not Lessor grants such request.

16.9. Form of Assignment. Any permitted subletting or other assignment shall be by agreement in form and content acceptable to Lessor.

16.10. Employees. Lessee's hiring and discharging of employees shall not constitute a change of management amounting to an assignment of this Agreement by Lessee.

16.11. Lien Payment. Lessee shall pay all Liens as the same become due, and in any event before any judicial or non-judicial action or proceeding is commenced to enforce a Lien. Lessee agrees to pay, indemnify, defend and hold Lessor and the Premises free and harmless for, from and against all liability and against any and all Liens, together with all 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.

16.12. Title Priorities. Unless otherwise approved in writing by Lessor, in no event shall any interest created by or deriving through Lessee (whether arising before, concurrent with, or after the date of this Agreement) cover, affect or have any priority higher than or equal to, any of Lessor's rights in the Premises or under this Agreement at any time.

16.13. Consent to Assignments. Lessee shall attach to each Pre-approved Assignment a copy of Lessee's notice to Lessor of such Pre-approved Assignment. Lessee shall attach to each other assignment, a copy of Lessor's notice to Lessee of Lessor's consent to such assignment. This Agreement shall continue to be enforceable according to its terms in spite of any provisions of any Estoppel Certificate or other documents relating to an assignment.

16.14. Multiple Users Intent. Lessor is entitled to hold Parking Operator responsible for all performances under this Agreement. Lessor and Lessee expressly do not intend that Lessee's rights under this Agreement be divisible for any reason into multiple leases or other arrangements between Lessor and numerous Premises users. Lessor and Lessee intend that Lessor only be obligated to deal with Parking Operator and not be burdened with any management, maintenance or other responsibilities related to occupation of the Premises by multiple entities, such as coordination of Lessee's performance of its duties under this Agreement, and that Lessor not be burdened by usage, financial or other issues among various persons using the Premises pursuant to this Agreement. All duties of Lessee under this Agreement are to be performed by Parking Operator who will be responsible to see that all persons using the Premises, including without limitation the Members, resolve among themselves their respective relationships and affairs and collectively enable Lessor to hold Parking Operator responsible for all performances required of Lessee under this Agreement.

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

16.16. Special Rules for Novation Upon Association Assignment. Notwithstanding anything in this Agreement to the contrary, Lessee shall continue to be fully liable and responsible for all obligations and performances by Lessee under this Agreement after the assignment to Parking Operator pursuant to the Parking Assignment Agreement, except that Lessee shall not be liable or responsible for Parking Operator defaults under this Agreement only occurring after all of the following have occurred:

16.16.1. Parking Operator has been properly formed, any developer's rights under the Parking Declaration have expired, and control of Parking Operator has passed to the Members.

16.16.2. Lessee has granted all of the Member Interests.

16.16.3. Parking Operator has demonstrated its ability to perform under this Agreement for a continuous twelve (12) month period without the occurrence of any Event of Default or any event or circumstance that, with the passing of time or giving of notice or both, would be an Event of Default.

16.17. Confirmation of Status. By notice to the other party (an "Estoppel Request"), either Lessor or Lessee (the "Requesting Party") may request that such other party provide written

confirmation (an "Estoppel Certificate") of any of the following matters subject to the following limitations:

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

16.17.2. Lessee may give an Estoppel Request when any Member Interest is being liened, assigned or sold.

16.17.3. An Estoppel Request by Lessee shall be executed and joined in by the prospective assignee of such Member Interest (the "Estoppel Assignee").

16.17.4. An Estoppel Request by Lessee shall describe the proposed assignment in sufficient detail to allow Lessor to understand the proposed assignment.

16.17.5. An Estoppel Request must include warranties and representations by the Estoppel Assignee to the its actual knowledge that the matters to be confirmed as stated in the Estoppel Request are true and that the information stated in the Estoppel Request is complete and true.

16.17.6. The Estoppel Request by Lessee must include warranties and representations by Lessee that the matters to be confirmed as stated in the Estoppel Request are true and that the information stated in the Estoppel Request is complete and true.

16.17.7. The Estoppel Request must specify the matters the party to which the Estoppel Request is submitted is requested to confirm. The Estoppel Request may request only whether or not the following matters are true, to the actual knowledge. Lessor's actual knowledge refers to the actual knowledge of Lessor's contract administrator, general manager for economic vitality and city manager without any duty to investigate. Estoppel Certificates are limited to the following matters:

16.17.7.1. That this Agreement is in effect and has not been amended except as stated in the Estoppel Request.

16.17.7.2. Lessor has consented or consents to the proposed assignement described in the Estoppel Request.

16.17.7.3. Lessee is the holder of Lessee's interests under this Agreement.

16.17.7.4. 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.

16.17.7.5. 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).

16.17.7.6. If Lessor is the Requesting Party, that Lessor has performed its obligations and is in compliance with this Agreement.

16.17.7.7. Lessor and Lessee have not given to each other any notices demanding compliance with this Agreement for which non-compliance then exists.

16.17.7.8. Plans for any Lessee's Improvements as described in the Estoppel Request have been approved by Lessor.

16.17.8. The party receiving the Estoppel 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 Premises 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 between Lessee and the Estoppel Assignee.

XVII. MISCELLANEOUS

17. Miscellaneous.

17.1. Amendments. This Agreement may not be amended except by a formal writing executed by Lessor and Lessee.

17.2. Adjustments. All fixed dollar amounts other than Base Rent stated in this Agreement, including without limitation insurance amounts, bonding amounts, and consent fees, shall be shall be automatically adjusted upward on each annual anniversary of this Agreement. The adjustment shall be made on the basis of changes in the United States Consumer Price Index for all Urban Consumers (CPI-U), U.S. City Average, all items, published by the United States Bureau of Labor Statistics (the "Cost of Living Index"). The amount of each adjusted amount (represented by the letter "R" in the formula set forth below) shall be equal to the then current Cost of Living Index number on the last adjustment date (represented by the letter "C" in the formula set forth below) divided by the Cost of Living Index number for the month during which this Agreement commences (represented by the letter "M" in the formula set forth below), and multiplied by the original amount (represented by the "$" symbol in the formula set forth below). This computation is expressed by the following formula:

$$R = \frac{C}{M} x \quad \$$$

provided, that in no event shall any amount be adjusted downward from any previous period. If the Cost of Living Index has not been published on any adjustment date, Lessor shall have the right to estimate the Cost of Living Index and to make the adjustments based on such estimate. Any correction due to an error in Lessor's estimate shall be paid by Lessee to Lessor (or by Lessor to Lessee, as the case may be) within thirty (30) days after notice by either party to the other that the Cost of Living Index has been published. If such Cost of Living Index shall, for any reason whatsoever, not be published or readily identifiable at the adjustment date, then an index published by any state or federal agency or an index, formula or table accepted generally by the real estate profession shall be used as chosen by Lessor in Lessor's reasonable discretion. Any delayed adjustment shall be effective retroactively.

17.3. Affiliate. Affiliate as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person and any subsidiary, guarantor, principal, partner, shareholder, employee, agent, franchisee, officer, director, licensor, licensee, investor, or lender. For the purposes of this definition, "control" (including with correlative meaning, the terms "controlling," "controlled by" and "under common control") as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise, and "person" (for purposes of this definition and for purposes of this Agreement generally) means and includes natural persons, corporations, limited liability companies, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

17.4. Survival of Covenants, Warranties and Indemnifications. All covenants, representations, warranties and indemnifications contained in this Agreement shall survive the execution and delivery of this Agreement and delivery of possession of the Premises to Lessee, and, to the extent incurred prior thereto, the rescission, cancellation, expiration or termination of this Agreement for any reason.

17.5. Years. Any reference in this Agreement to a year shall refer to a calendar year unless a fiscal year is specifically stated. Unless otherwise stated in or required by the context of this Agreement, references to a fiscal year refer to Lessor's fiscal year. For the purposes of this Agreement, Lessor's fiscal year shall begin on July 1 and Lessee's fiscal year shall begin on January 1.

17.6. No Additional Warranties. Each party to this Agreement has been assisted by independent counsel of its own choosing and has been fully apprised of all risks associated with this Agreement and the transactions contemplated herein. Lessor has made no representation, warranty, guaranty or inducement of any kind in connection with this Agreement. Without limitation, Lessor has made no representation, warranty, guaranty or statement of inducement regarding the value of any property, right or interest; title to any property or interest therein; the tax consequences of any transaction or the availability or the unavailability (and the benefits or lack of benefits) of any alternative transaction structure; or the enforceability of any provision of this Agreement under current or future laws. The risk that any provision of this Agreement shall be determined to be illegal, invalid or unenforceable in any respect shall rest with the party who is the intended beneficiary of any such provision.

17.7. Limited Severability. If any provision of this Agreement is declared void or unenforceable (or is construed as requiring the Lessor to do any act in violation of any constitutional provision, law, regulation, City of Scottsdale code or City of Scottsdale charter), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect.

17.8. Conflicts of Interest. No member, official or employee of Lessor shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement that is prohibited by law.

17.9. 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.

17.10. Nonliability of Lessor Officials and Employees. No member, official, representative or employee of Lessor shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by Lessor or for any amount which may become due to any party or successor, or with respect to any obligation of Lessor or otherwise under the terms of this Agreement or related to this Agreement.

17.11. 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:	David Roderique General Manager, Economic Vitality City of Scottsdale 7447 E. Indian School Road, Suite 200 Scottsdale, AZ 85251
Copy to:	City of Scottsdale 3939 Drinkwater Blvd. Scottsdale, AZ 85251 Attn: City Attorney
If to Developer:	Los Arcos Development, LLC 4040 East Camelback Road, Suite 250 Phoenix, Arizona 85018 Attn: Mr. Steve Ellman
Copy to:	Los Arcos Development, LLC 4040 East Camelback Road, Suite 250 Phoenix, Arizona 85018 Attn: Mr. Bob Kaufman
And copy to:	Squire, Sanders & Dempsey LLP 40 North Central Avenue, Suite 2700 Phoenix, Arizona 85004 Attn: Richard F. Ross, Esq.

By notice from time to time, a party may designate any other address as its address for giving notice hereunder, provided, however, that any designation of changed or additional addresses for notice hereunder by Lessee (a "Lessee Address Notice") shall not be binding or effective on Lessor unless the Lessee Address Notice is in the form attached hereto as Exhibit "B" and is recorded by Lessee with the County Recorder of Maricopa County, Arizona; no person other than the original Lessee or the single assignee of Lessee's rights and obligations hereunder shall be entitled to give a Lessee Address Notice and any alleged Lessee Address Notice given by any other person shall be void. Service of any 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.

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

17.13. Integration. This Agreement 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 Premises.

17.14. Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was negotiated 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, which might otherwise favor either party.

17.15. 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.

17.16. 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. All references in this Agreement to a "section" shall have the same meaning as a reference to a "paragraph."

17.17. No Third Party Beneficiaries. Except for the limited provisions expressly stated to be for the benefit of a third party, 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 under this Agreement, 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.

17.18. Exhibits. All exhibits attached hereto as specified herein are hereby incorporated into and made an integral part of this Agreement for all purposes.

17.19. Attorneys' Fees. Lessee shall bear all the costs, attorneys' and witness fees and other litigation costs of both Lessee and Lessor of defending or prosecuting any claim, action or suit challenging the validity or enforceability of any provision of this Agreement, each party to be represented by separate counsel of its own choosing, provided, however, that Lessee shall have no obligation to pay for costs, attorneys and witness fees and other litigation costs in any action in which Lessor takes the position that this Agreement is invalid. In the event any other action or suit or proceeding is brought by either party to enforce compliance with this Agreement or for failure to observe any of the covenants of this Agreement or to vindicate or exercise any rights or remedies hereunder, the prevailing party in such proceeding (as determined by the court (and not a jury) in such proceeding) shall be entitled to recover from the other party such prevailing party's reasonable attorneys' fees and other reasonable litigation costs, provided, however, that (a) Lessee shall, as a condition of such proceeding provide evidence to Lessor of the rate of payment of Lessee's attorneys fees to its counsel and (b) Lessor shall be entitled to recover payment for attorneys employed by Lessor (including attorneys who are regular employees of Lessor) on such proceeding at the same rate of payment if Lessor is the prevailing party.

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

17.21. 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 Agreement. 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. Lessor and Lessee agree to the exclusive jurisdiction of such courts. Claims by Lessee shall comply with time periods and other requirements of Lessor's claims procedures from time to time.

17.22. 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.

17.23. Recording. Within ten (10) days after the full execution of any amendment of this Agreement, Lessee shall cause the amendment document to be recorded.

17.24. 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: **LOS ARCOS DEVELOPMENT, LLC**, a Delaware limited liability company

By: _____
Its: _____

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

By: _____
Mary Manross, Mayor

ATTEST:

_____
Sonia Robertson, City Clerk

APPROVED AS TO FORM:

_____
David A. Pennartz, City Attorney

_____
Dave Roderique, General Manager, Economic Vitality

_____

Myron Kuklok, Risk Management Director

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ___ day of _____, 20___, by _____, _____ of Los Arcos Development, LLC, a Delaware limited liability company.

_____
Notary Public

My Commission Expires:

_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__, by Mary Manross, Mayor of the City of Scottsdale, an Arizona municipal corporation.

_____
Notary Public

My Commission Expires:

_____

EXHIBIT A

Standards for Letters of Credit

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

1. General Requirements. The Letter of Credit must:

1.1 Be clean, unconditional, and irrevocable.

1.2 Be payable to Lessor upon demand.

1.3 Have an expiration date at least sixty (60) days after the time provided herein for completion of the work or performance to which the Letter of Credit relates.

1.4 Be subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 190.

1.5 Be conditioned for payment solely upon presentation of the Letter of Credit and a sight draft.

1.6 Be transferable one or more times by Lessor without the consent of Lessee or the issuer.

2. Letter of Credit Fees. Lessee shall pay upon Lessor's demand, as additional Rent, any and all costs or fees charged in connection with the Letter of Credit, including without limitation, those that arise due to:

2.1 Lessor's sale or transfer of all or a portion of the Premises.

2.2 The addition, deletion, or modification of any beneficiaries under the Letter of Credit.

3. Issuing Bank. The issuer of the Letter of Credit shall meet all of the following requirements:

3.1 The issuer shall be a federally insured financial institution with offices in Maricopa County, Arizona.

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

3.3 The issuer shall have banking offices at which the Letter of Credit may be drawn upon in Maricopa County, Arizona.

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

4. Expiration of Letter of Credit. The Letter of Credit shall expire not earlier than 12 months after the date it is delivered to Lessor. The Letter of Credit shall provide that it shall be automatically renewed for successive 12-month periods unless written notice of nonrenewal has been given by the issuing bank to Lessor not less than 60 days prior to the expiration of the current period. If the issuing bank does not renew the Letter of Credit, and if Lessee does not deliver a substitute Letter of Credit at least 30 days prior to the expiration of the current period, then, in addition to its other rights under this Agreement, Lessor shall have the right to draw on the existing Letter of Credit.

5. Draws. Lessor may draw upon the Letter of Credit as follows:

5.1 Lessor may use, apply, or retain the proceeds of the Letter of Credit to the same extent that Lessor may use, apply, or retain any other Lessee funds or property to which Lessor may have access.

5.2 Lessor may draw on the Letter of Credit, in whole or in part, from time to time, at Lessor's election.

5.3 Within ten (10) days after Lessor gives Lessee notice that Lessor has drawn down the Letter of Credit, Lessee shall restore all amounts drawn by Lessor, or substitute cash security instead.

5.4 In the event the required amount of the Letter of Credit increases from time to time pursuant to the provisions of this Agreement, Lessee shall, from time to time, on or before the date of the increase, deliver to Lessor an additional letter of credit in the amount of such increase, or cause the existing Letter of Credit held by Lessor to be amended to increase its amount.

5.5 Lessor may draw upon the Letter of Credit as otherwise permitted by this Agreement.

6. Cooperation by Lessee. Lessee shall promptly execute and deliver to Lessor any and all modifications, amendments, and replacements of the Letter of Credit, as Lessor may reasonably request.

7. Other Provisions. Lessor shall also have such additional rights with respect to the Letter of Credit as are provided elsewhere in this Agreement.

EXHIBIT "B"

LESSEE ADDRESS NOTICE

When Recorded Return To:

Lila Madden (Dave Roderique)
ONE STOP SHOP RECORDS
CITY OF SCOTTSDALE
7447 East Indian School Road, Suite 100
Scottsdale, AZ 85251

LESSEE ADDRESS NOTICE

The undersigned Lessee (or successor Lessee) under that certain Lease Agreement recorded at Maricopa County, Arizona instrument no. _____ hereby gives notice to Lessor that all future notices (until a subsequent Lessee Address Notice is recorded) to Lessee under the Lease Agreement shall be given to the persons and addresses shown on Schedule 1 attached hereto and that such future notices need not be given to any other person or address, including any person or address specified in the Lease Agreement or in any prior Lessee Address Notice. Lessee acknowledges and agrees that Lessor shall be conclusively entitled to rely on this Notice.

Dated: _____, 20__

LESSEE:

_____,
a _____

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, _____ of _____, a _____.

_____
Notary Public

My Commission Expires:

_____