Staff Summary Report

Tempe

Council Meeting Date: 09/11/08 **Agenda Item Number:** 63

SUBJECT: Reconsideration of Resolution No. 2008.67 adopted by Council on July 22, 2008, which authorized the Mayor to execute a Development and Disposition Agreement between the City and Centerpoint Holdings, LLC.

DOCUMENT NAME: 20080911cdcm03 **COMMUNITY DEVELOPMENT ADMIN. (0406)** Resolution No. 2008.67

SUPPORTING DOCS: No

COMMENTS: At the August 14th 2008 City Council meeting, the Mayor asked that staff place Resolution No. 2008.67 on the September 11, 2008 agenda for reconsideration.

PREPARED BY: Chris Messer, Principal Planner (x 8562)

REVIEWED BY: Chris Salomone, Community Development Manager (x 8294)

LEGAL REVIEW BY: Cynthia McCoy, Assistant City Attorney (x 2187)

FISCAL NOTE: The agreement contains an 8-year property tax abatement.

RECOMMENDATION: Staff recommends that Resolution No. 2008.67 remain in effect as originally adopted.

ADDITIONAL INFO: Pursuant to Rule 18, Tempe City Council Rules of Procedure, reconsideration of a question previously approved may be moved by any Councilmember who originally voted with the prevailing side. If that motion is seconded, a 2/3 vote of the Council is required to reconsider this item. If the motion fails, no further action on this item shall be taken. If the motion carries, the Council would then rehear this item. The development agreement will provide an 8-year property tax abatement in exchange for the 24/365 rights to 100 parking spaces within the On Mill project. The agreement also contains the affordable housing provisions approved by Council during the entitlement process.

RESOLUTION NO. 2008.67

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AND DISPOSITION AGREEMENT BETWEEN THE CITY OF TEMPE AND CENTERPOINT HOLDINGS, LLC

WHEREAS, Centerpoint Holdings, LLC owns real property generally located at the southwest corner of Mill Avenue and 6th Street in Tempe, Arizona, and plans to develop the Property into a mixed-use project consisting of (i) approximately 256 hotel rooms, (ii) approximately 84,608 square feet of retail uses, and (iii) approximately 434 "for sale" residential condominium units pursuant to that PAD conditionally approved by the Tempe City Council on December 6, 2007 and the Development Plan conditionally approved by the Development Review Commission on October 23, 2007, Reference number PL060549 (the "Project"; and

WHEREAS, the City of Tempe has identified the provision of additional public parking as a significant public benefit and Centerpoint Holdings, LLC has agreed to provide the City of Tempe with the rights to 100 additional parking spaces within the Project , and;

WHEREAS, the City of Tempe and Centerpoint Holdings, LLC hereby acknowledge and agree that significant benefits will accrue to the City of Tempe from the Project

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1: That the Mayor is authorized to execute the City Development and Disposition Agreement (No. C08-_____), a copy of which is on file with the City Clerk's office and to take such further actions as are necessary to implement its terms.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2008.

_____

Hugh Hallman, Mayor

ATTEST:

_____

CITY CLERK

APPROVED AS TO FORM:

_____

CITY ATTORNEY

WHEN RECORDED, RETURN TO:

City of Tempe Basket

6TH AND MILL DEVELOPMENT AGREEMENT

City Contract Number _____

THIS DEVELOPMENT AGREEMENT ("Agreement") is made as of the _____ day of _____, 2008 (the "Effective Date"), among the **CITY OF TEMPE**, an Arizona municipal corporation (the "City"), **CENTERPOINT HOLDINGS, LLC,** a Delaware limited liability company ("Developer").

RECITALS:

A. **WHEREAS,** Developer owns real property generally located at the southwest corner of Mill Avenue and 6th Street in Tempe, Arizona, legally described in ***Exhibit "A"*** attached hereto and depicted by cross-hatching in ***Exhibit "A-1"*** attached hereto (the "Property"); and

B. **WHEREAS**, the Developer plans to develop the Property into a mixed-use project consisting of (i) approximately 256 hotel rooms, (ii) approximately 84,608 square feet of retail uses, and (iii) approximately 434 "for sale" residential condominium units pursuant to that PAD conditionally approved by the Tempe City Council on December 6, 2007 and the Development Plan conditionally approved by the Development Review Commission on October 23, 2007 (the "Project"), Reference number PL060549; and

C. **WHEREAS,** City and Developer hereby acknowledge and agree that significant benefits will accrue to the City from the development of the Property by Developer, including, without limitation, increased tax revenues, increased opportunities for employment within the City, creation of jobs in the City, increased tourism, expansion and improvement of available public parking facilities within the City in general and the University Hayden Butte Redevelopment Area, Area 1 in particular, which the parties acknowledge is a downtown redevelopment area as described in A.R.S. §36-1471, *et seq.*, and will otherwise improve or enhance the economic welfare of the inhabitants of the City; and

D. **WHEREAS,** this Agreement is a development agreement within the meaning of A.R.S. §9-500.05 and shall be construed as such.

NOW THEREFORE, in consideration of the above premises, the promises contained in this Agreement and for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties hereto agree as follows:

AGREEMENT:

1. **DEFINITIONS.** The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

1.1 "**City**." The term "City" shall mean the City of Tempe, an Arizona municipal corporation, and any successor public body or entity.

1.2 "**Conceptual Site Plan**." The term "Conceptual Site Plan" shall mean the site plan illustrated in ***Exhibit "B"*** attached hereto and incorporated herein by this reference.

1.3 "**Developer.**" The term "Developer" shall mean Centerpoint Holdings, LLC, a Delaware limited liability company, and its successors and assigns.

1.4 "**Hotel**" The term "Hotel" shall mean that portion of the Project consisting of approximately 256 hotel rooms and appurtenant meeting rooms and/or commercial/retail space.

1.5 "**Improvements**." The term "Improvements" shall mean all the improvements which may be constructed from time to time on the Property as defined in this Agreement, including, without limitation, all structures, infrastructure, utilities, buildings, roads, driveways, parking areas, walls, landscaping and other improvements of any type or kind, or any other alteration of the natural terrain to be built by the Developer.

1.6 "**PAD**." The term "PAD" shall mean that Planned Area Development conditionally approved by the Tempe City Council on December 6, 2007 with respect to the Property and which sets forth general uses, densities, features and other development matters with respect to the Property.

1.7 "**Phase**." The term "Phase" shall mean and refer to each separate component or portion of the Project which is or may be developed by Developer pursuant to this Agreement. For example, a Phase may include all or a portion of the retail components of the Project, all of the Hotel components of the Project, and/or all or any portion of the residential components of the Project.

1.8 "**Project**." The term "Project" shall mean the project planned by the Developer to be developed on and within the Property in general conformance with the Conceptual Site Plan and the PAD.

1.9 "**Property**." The term "Property" shall mean that real property legally described in ***Exhibit "A"*** attached hereto and incorporated herein by this reference.

1.10 "**Schedule of Performance**." The term "Schedule of Performance" shall mean that schedule of performance agreed to by the City and the Developer as set forth in ***Exhibit "C"*** attached hereto and incorporated herein by this reference.

2. TERM, RETAIL PROMOTION AND AFFORDABLE HOUSING

2.1 Duration of Development Agreement. The term of this Agreement shall commence on the Effective Date of this Agreement and continue until all Phase(s) of the Project have been constructed by Developer, unless sooner terminated as provided in ***Article 7*** of this Agreement.

2.2 Retail Promotion. Developer shall request and encourage all restaurant and retail tenants within the Project to participate in promotional events created by the Downtown Tempe Community (DTC) or City. Such promotional events are designed to advertise and publicize the overall Downtown Tempe district. None of the foregoing implies that individual retailers/tenants will be required to make monetary contributions for any downtown promotions or to the DTC or City. Additionally, Developer agrees to request and encourage all restaurant and retail tenants within the Project to accept Downtown Tempe gift certificates, or any successor program, as payment for goods and services provided by such restaurants and retailers.

2.3 Affordable Housing. The Developer hereby acknowledges and agrees that for every residential condominium unit constructed and sold within the Project, Developer shall pay to City an affordable housing fee in the amount of $500.00 per unit (the "Affordable Housing Fee"). The Affordable Housing Fee shall be due and payable concurrently with the close of escrow of the initial sale of each residential condominium unit constructed as part of the Project to the first purchaser thereof and, once paid, shall no longer be applicable to any subsequent resales of such units. The Affordable Housing Fee shall also be paid with respect to any residential units that are developed as part of a multi-family rental apartment project. If any Phase of the Project is developed as a multi-family apartment project, the Affordable Housing Fee shall b payable, at Developer's election, either (a) in full upon the issuance of the Certificate of Occupancy for such rental apartment project, or (b) in equal quarterly installments over a period not to exceed three (3) years from the date of issuance of the Certificate of Occupancy. Any Affordable Housing Fee not paid when due shall bear interest until paid in full at the rate of 10% per annum. City shall have the right to review or audit Developer's records relating to sales of residential units within the Project; the cost of which shall be paid by Developer if such review or audit reveals that the Developer has underpaid the amount due. If Developer has not paid the full amount due, it shall remit the underpayment to City within thirty (30) days after request for payment; if Developer has overpaid, City shall return any overpayment within thirty (30) days. Alternatively, City and Developer may mutually elect to waive the foregoing, without modification or amendment to this Agreement, and instead, enter into a separate agreement to create affordable housing units thus satisfying the requirements of this ***Section 2.3***.

3. DEVELOPMENT SCHEDULE, PROCESS AND COMPLETION

3.1 Schedule of Performance. The City and Developer intend that the development of the Project shall be achieved pursuant to, and in accordance with the milestones set forth on, the Schedule of Performance. The Developer shall use commercially reasonable efforts to ensure that the development of the Project occurs in accordance with the Schedule of Performance.

3.2 Conceptual Site Plan and PAD. The Conceptual Site Plan and PAD set forth the scope of development for the Property depicting the types of basic land uses, permissible range of the buildings and structures to be developed on the Property. Notwithstanding anything contained in the foregoing, however, the City acknowledges that, while the Developer intends that the Project

be developed in general conformance with the PAD in various Phases, in order to make the Project economically viable and otherwise feasible, Developer may request amendments to the PAD. The City hereby agrees that, in connection with all requests for any approvals relating to the development of the Project, including any amendments to the PAD, and with respect to the construction of Improvements on the Property, no extraordinary plan or review requirements will be imposed by the City or the Developer.

3.3 **Appointment of Representative**. In order to ensure continuity throughout the development of the Project, the City agrees to designate a representative ("City Representative") of the City to act as a liaison between the Developer and the City and its various departments. The City Representative shall be available at all reasonable times to serve as such liaison, it being the intention of this ***Section 3.3*** to provide Developer with one individual as the City's principal representative with respect to the Project. Developer shall also designate a representative ("Developer Representative") who shall serve as a liaison with respect to the Project and the City. The initial City Representative shall be Chris Messer, the initial Developer Representative shall be Michael Burke. Representatives may be changed at any time by the parties giving notice as provided in ***Section 7.4.***

4. USE OF PARKING

4.1 **Public Parking**. As a material part of the consideration to the City for its execution of this Agreement, Developer hereby grants to the City without cost or expense, the rights to one hundred (100) parking access cards (the "Parking Access Cards")for use in the Project parking facility. Such Parking Access Cards shall allow nonexclusive usage rights twenty four (24) hours a day, three hundred sixty five (365) days a year for one hundred (100) unreserved vehicular parking spaces within one of more of the parking facilities serving the Project (the "City Parking Rights"). The City shall have the right to assign all or any portion of the City Parking Rights to one or more third parties, so long as any such assignment does not affect the Shared Parking Model currently applicable to the Property. The parking to be made available to the City and/or its assignees of the City Parking Rights may in Developer's discretion, be specifically designated within one or more specific parking facility(ies) serving the Project and may from time to time be relocated by Developer within the Project upon thirty (30) days written notice to the City. The City Parking Rights shall be made available to the City not later than thirty (30) days after the issuance of the Certificate of Occupancy for the Hotel and shall be provided either through the use of parking access cards, or through any other means mutually agreed to by Developer and the City.

4.2 **Parking for Construction Personnel**. Prior to the start of construction of any Phase of the Project, the Developer shall submit a plan (the "Parking Plan") for the accommodation of parking for all personnel who will be working on the Property during construction, together with copies of the executed supporting documentation implementing the plan (i.e., the contracts, arrangements, or accommodations). The Parking Plan shall be submitted to and approved by the Community Development Department Manager, or designee, prior to the issuance of building permits for a given Phase of the Project. City will not allow building permits to be issued until the Parking Plan has been approved. Developer shall be responsible for submitting the Parking Plan sufficiently in advance of its anticipated construction start date to ensure that the City has adequate time to review and approve the Parking Plan. The City hereby agrees that, during the construction of any Improvements within the Project, and as part of the Developer's Parking Plan, the City shall permit the Developer, at no additional cost or expense, to utilize the parking facility owned and

operated by the City at the intersection of 5th Street and Farmer, which is depicted in ***Exhibit "D"*** attached hereto (the "City Parking Facility"), subject to availability and the priority of the City to accommodate the City's needs for employee parking or prior reservation.

5. GOVERNMENT PROPERTY LEASE EXCISE TAX

The Developer has asserted that because of the increased costs of the development of off-site and on-site infrastructure Improvements resulting from physical constraints associated with the development of the Property, the development of the Property is economically feasible only with the commitment of the City to provide the Developer with the benefit of certain statutorily-authorized government property lease excise tax abatements, currently available pursuant to the provisions of A.R.S. §§ 42-6201 through 42-6209. Therefore, with respect to each Phase of the Project which contains a use that qualifies for excise tax abatement under the provisions of A.R.S. §§42-6201 through 42-6209, the City agrees to grant to Developer the statutorily-authorized government property lease excise tax abatement pursuant to the provisions of A.R.S. §§ 42-6201 through 42-6209 for the eight (8) year period allowed by statute, which 8-year period shall commence upon the issuance of the Certificate of Occupancy by the City with respect to the Improvements constructed within the Phase with respect to which the Developer makes a request for such excise tax abatement, provided, however, that during the 8-year abatement period, the Developer shall pay to the City for remittance to the Tempe Unified School District (the "District") an annual in-lieu payment in the amount of the lesser of (a) that portion of the *ad valorem* property tax applicable to such Phase which would have been payable to the District but for such tax abatement, or (b) $50,000.00. In connection therewith, the City hereby agrees to accept, subject to the terms and provisions contained in ***Sections 5.1 and 5.2*** of this Agreement, the conveyance of the fee title to the Phase and the Improvements from the Developer and to lease-back such Phase and Improvements to the Developer upon the terms and conditions set forth in a lease substantially in the form attached hereto as ***Exhibit "E"*** subject to further City approval of the lease and subject to the following additional conditions:

5.1.1 **Insurance Provisions for Lease**. Any lease entered into with the City for the purpose of providing statutorily-authorized property tax abatement shall provide that during the term of the lease, the tenant thereunder shall, at the tenant's expense, carry and maintain, for the mutual benefit of the City and the tenant, general public liability insurance against claims for bodily injury, death or property damage occurring in, upon or about the premises, with limits of not less than $5,000,000 combined single limit per occurrence for bodily injury and property damage, including coverage for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products and completed operations. All of the tenant's policies of liability insurance shall name the City and all leasehold mortgagees as additional insureds and shall contain no special limitations on the coverage, scope or protection afforded to the City, its officials, employees or volunteers. The tenant's policy of liability insurance shall be primary as respect to the City and any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City. Full policies or certificates with respect to all policies of insurance required to be carried by the tenant shall be delivered to the City in form and with insurers acceptable to the City which shall clearly evidence all insurance required and provide that such insurance shall not be cancelled, allowed to expire or be materially reduced in coverage. City shall have the right to periodically

review the insurance limits to ensure coverage based on market and risk requirements throughout the effective term of any such lease.

5.1.2 **Indemnification Provision for Lease**. Any lease entered with the City for the purpose of providing statutorily-authorized property tax abatement shall provide that during the term of the lease, the tenant shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, volunteers, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense arising, directly or indirectly, in whole or in part, out of the performance of the lease.

6. DEFAULT; REMEDIES; TERMINATION

6.1 **Events Constituting Default**. A party hereunder shall be deemed to be in default under this Agreement if such party breaches any obligation required to be performed by the respective party hereunder within any time period required for such performance, including, without limitation, any failure to comply with the Schedule of Performance and such breach or default continues for a period of ninety (90) days after written notice thereof from the nondefaulting party, provided that no default shall be deemed to exist so long as the defaulting party shall commence to cure the default or breach within ninety (90) days and diligently pursue such cure to completion within one hundred eighty (180) days. Absent written agreement to the contrary, if such default is not cured within such one-hundred eighty (180) day period, then the nonbreaching party shall have the applicable remedies hereinafter set forth in this Agreement.

6.2 **Dispute Resolution**. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The mediator selected shall have at least five (5) years of experience in mediating or arbitrating disputes relating to commercial property development. The cost of any such mediation shall be divided equally between the City and the Developer or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation upon the conclusion of mediation.

6.3 **Developer's Remedies**. In the event that the City is in default under this Agreement and fails to cure any such default within the time period required therefore as set forth in ***Section 6.1*** above, then, in that event, the Developer may elect to either (a) terminate this Agreement by written notice delivered to the City, whereupon the Developer's obligation for the City Parking Rights shall terminate and thereafter be null and void and of no further force or effect. In no event, however, shall the City be liable or responsible for the payment of any lost opportunity, incidental or consequential damages.

6.4 **No Personal Liability**. No member, official or employee of the City shall be personally liable to the Developer, or any successor or assignee (a) in the event of any default or

breach by the City, (b) for any amount which may become due to the Developer or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

6.5 **City's Remedies**. In the event that the Developer is in breach under this Agreement by failing to develop the Property in accordance with the Schedule of Performance and the Developer thereafter fails to cure any such breach within the time period described in ***Section 6.1*** above, then the City shall have the right to terminate this Agreement immediately upon written notice to the Developer, whereupon the Developer's obligation for the City Parking Rights shall terminate and thereafter be null and void and of no further force or effect. In the event the Developer is in default under the Agreement, the Developer remains responsible for the Affordable Housing Fees as set forth in ***Section 2.3***

6.6 **Effect of Event of Termination**. Upon the termination of this Agreement as the result of the default or breach of the Developer, the Developer shall have no further rights pursuant to the terms of this Agreement or have any further rights to City-provided development incentives pursuant to this Agreement and, if applicable, such termination shall also constitute a termination of any lease entered pursuant to ***Section 5.1*** hereof and City shall be entitled to record without any consent or acknowledgement of Developer such documents as City deems appropriate to reconvey to Developer the portion of the Property and Improvements which are the subject of any such lease.

7. GENERAL PROVISIONS

7.1 **Liability and Indemnification**. The Developer unconditionally agrees to indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense arising, directly or indirectly, in whole or in part, out of the performance of this Agreement by the City.

7.2 **Conflict of Interest**. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to A.R.S. § 38-511.

7.3 **Assignment**. Developer shall have the right to assign all or part of its right, title and interest in, to and under this Agreement; provided, however, that any assignment pursuant to this ***Section 7.3*** shall be conditioned upon the delivery to the City of written notice of such assignment, together with an executed copy of the documents pursuant to which assignee assumes all of Developer's obligations under this Agreement or those portions of this Agreement which are the subject of the assignment

7.4 **Notice**. All notices which shall or may be given pursuant to this Agreement shall be in writing and transmitted by registered or certified mail, return receipt requested, addressed as follows:

To Developer:	c/o DMB Associates 7600 East Doubletree Ranch Road, Suite 300 Scottsdale, Arizona 85258-2137 Attention: Michael Burke
With a copy to:	Gammage & Burnham Two North Central, Suite 1800 Phoenix, Arizona 85004 Attention: Jeffrey J. Miller
To the City:	City of Tempe 31 East Fifth Street Tempe, Arizona 85281 Attention: City Manager
With a copy to:	City of Tempe 21 East Sixth Street, Suite 201 Tempe, Arizona 85281 Attention: City Attorney

Either party may designate any other address for this purpose by written notice to the other party in the manner described herein.

7.5 **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been made and entered into in Maricopa County, Arizona.

7.6 **Successors and Assigns**. This Agreement shall run with the land and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

7.7 **Waiver**. No waiver by either party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

7.8 **Attorneys' Fees**. In the event of any actual litigation between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

7.9 **Schedules and Exhibits**. All schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

7.10 **Recordation of Agreement**. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after the approval and execution of this Agreement by the City and Developer.

7.11 **<u>City Manager's Power to Consent</u>**. The City authorizes and empowers the City Manager to consent to any and all requests of the Developer requiring the consent of the City hereunder without further action of the City Council, except for any actions requiring City Council approval as a matter of law, such as, without limitation, any material amendment or modification of this Agreement.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the City has caused this 6th & Mill Development Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested to by the City Clerk, and the Developer has executed and sealed the same on or as of the day and year first above written.

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

"CITY"

THE CITY OF TEMPE, an Arizona municipal corporation

By_____
Hugh Hallman, Mayor

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 2008, before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of _____, a _____:

_____ whom I know personally;
_____ whose identity was proven to me on the oath of _____, a credible witness by me duly sworn;
_____ whose identity I verified on the basis of his/her _____,

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

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

NOTARY SEAL:

_____
Notary Public

"DEVELOPER"

CENTERPOINT HOLDINGS, LLC, a Delaware limited liability company

By_____
Name_____
Title_____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 2008, before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of _____, a _____:

_____ whom I know personally;
_____ whose identity was proven to me on the oath of _____, a credible witness by me duly sworn;
_____ whose identity I verified on the basis of his/her _____,

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

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

NOTARY SEAL: _____
Notary Public

List of Exhibits

Exhibit "A"	Legal Description of the Property
Exhibit "A-1"	Cross-hatched depiction of the Property
Exhibit "B"	Conceptual Site Plan
Exhibit "C"	Schedule of Performance
Exhibit "D"	City Parking Facility
Exhibit "E"	Land and Improvements Lease

EXHIBIT "A"
Legal Description of the Property

EXHIBIT "A-1"
Cross-hatched depiction of the Property

EXHIBIT "B"
Cross-hatched depiction of the Property

EXHIBIT "C"
SCHEDULE OF PERFORMANCE

Commence construction of any phase of the Project over 50,000 square feet within forty-eight months following the execution of this Agreement. Any subsequent City processing or PAD approvals will not constitute or imply an extension to the Schedule of Performance.

EXHIBIT "D"
CITY PARKING FACILITY

EXHIBIT "E"

WHEN RECORDED, RETURN TO:

City of Tempe Basket

LAND AND IMPROVEMENTS LEASE

THIS LAND AND IMPROVEMENTS LEASE ("**Lease**") is made and entered into as of the _____ day of _____, 2008 by and between the **CITY OF TEMPE**, a municipal corporation ("**Landlord**"), and _____ an _____ company ("**Tenant**").

RECITALS

A. Landlord has title of record to the real property as described in ***Exhibit A*** hereto (the "**Land**"), together with all rights and privileges appurtenant thereto and all improvements and future additions thereto or alterations thereof (collectively, the "**Premises**").

B. The Premises are located in a single central business district in a redevelopment area established pursuant to Title 36, Chapter 12, Article 3 of Arizona Revised Statutes (A.R.S. §36-1471 et seq.). Tenant's construction of the Premises resulted in an increase in property value of at least one hundred percent.

C. The Premises will be subject to the Government Property Lease Excise Tax as provided for under A.R.S. §42-6203 (A) and (B), A.R.S. §42-6201 et. seq. (the "**Tax**"). The Tax shall be payable By Resolution No._____, dated _____, Landlord abated the Tax for the period beginning upon the date (the "**Commencement Date**") of issuance of the certificate of occupancy for the Phase in question and ending eight (8) years thereafter, all as provided in A.R.S. §42-6209 (A) (the "**Abatement**") . But for the Abatement, Tenant would not have caused the Premises to be constructed.

AGREEMENT

For and in consideration of the rental and of the covenants and agreements hereinafter set forth to be kept and performed by Tenant, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises for the term, at the rental and subject to and upon all of the terms, covenants and agreements hereinafter set forth.

1. Quiet Enjoyment. Landlord covenants and agrees with Tenant that conditioned upon Tenant's paying the Total Rent herein provided and performing and fulfilling all the covenants, agreements, conditions and provisions herein to be kept, observed or performed by Tenant, Tenant may at all times during the term hereof peaceably, quietly and exclusively have, hold and enjoy the Premises.

2. Term. The term of this Lease shall be for eight (8) years, commencing on the date of issuance of a final Certificate of Occupancy for the Premises (the "Commencement Date" of the Phase in question) and ending at midnight on the eighth (8th) anniversary of the respective Commencement Date, subject to earlier termination at Tenant's option, as provided herein.

3. Rental. Tenant covenants to pay to Landlord as rental for the Premises the sum of $10.00 per year on the Commencement Date and every anniversary thereof. Tenant shall have the right to prepay the $80.00 total rent for the entire term of this Lease. The consideration for this Lease includes, without limitation: Tenant's payment of the entire cost of construction of the improvements constituting the Premises, Tenant's performance of all of the covenants and obligations under this Lease and Tenant's contribution toward fulfillment of Landlord's policy and desire to promote development within a redevelopment area, to encourage the creation of jobs within the City of Tempe, and to enhance tax revenues resulting from the operation of businesses on the Premises, including transaction privilege taxes and the government property lease excise tax. Tenant, at its option and without prejudice to its right to terminate this Lease as provided herein, may prepay the rental for the entire lease term, but upon any early termination of this Lease, Landlord shall not be obligated to refund any portion of the prepaid rental.

4. Leasehold Mortgage of Premises.

4.1 Subject to the applicable provisions of this Lease, Tenant is hereby given the absolute right without the Landlord's consent to create a security interest in Tenant's leasehold interest under this Lease (and in any subleases and the rents, income and profits therefrom) by mortgage, deed of trust or collateral assignment or otherwise. Any such security interest shall be referred to herein as a "Leasehold Mortgage," and the holder of a Leasehold Mortgage shall be referred to herein as a "Leasehold Mortgagee."

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

5. TAXES; LEASE OBLIGATIONS.

5.1 Payment. Tenant shall pay and discharge all general and special real estate and/or personal property taxes and assessments levied or assessed against or with respect to the Premises during the term hereof and all charges, assessments or other fees payable with respect to or arising out of this Lease and all recorded deed restrictions affecting or relating to the Premises. Any sales, use, excise or transaction privilege tax consequence incurred by Landlord because of this Lease or in relation to the Premises or improvements included therein may be passed on to the Tenant either directly if applicable or as "additional rent." Notwithstanding anything herein, the Tenant shall be responsible for all Downtown Tempe Enhanced Services District assessments and payments.

5.2 Protest. Tenant may, at its own cost and expense protest and contest, by legal proceedings or otherwise, the validity or amount of any such tax or assessment herein agreed to be paid by Tenant and shall first pay said tax or assessment under protest if legally required as a condition to such protest and contest, and the Tenant shall not in the event of and during the bona

fide prosecution of such protest or proceedings be considered as in default with respect to the payment of such taxes or assessments in accordance with the terms of this Lease.

5.3 Procedure. Landlord agrees that any proceedings contesting the amount or validity of taxes or assessments levied against the Premises or against the rentals payable hereunder may be filed or instituted in the name of Landlord or Tenant, as the case may require or permit, and the Landlord does hereby appoint the Tenant as its agent and attorney-in-fact, during the term of this Lease, to execute and deliver in the name of the Landlord any document, instrument or pleading as may be reasonably necessary or required in order to carry on any contest, protest or proceeding contemplated in this Section. Tenant shall hold the Landlord harmless from any liability, damage or expense incurred or suffered in connection with such proceedings.

5.4 Allocation. All payments contemplated by this Section 5 shall be prorated for partial years at the Commencement Date and at the end of the Lease term.

6. Use. Subject to the applicable provisions of this Lease and A.R.S. §42-6201(2), the Premises may be used and occupied by Tenant for any lawful purpose, including without limitation the sale of alcoholic beverages, subject to Tenant obtaining all required permits, licenses, and approvals from the Arizona Department of Liquor Licenses and Control.

7. Landlord Non-Responsibility. Landlord shall have no responsibility, obligation or liability under this Lease whatsoever with respect to any of the following:

7.1 Utilities, including gas, heat, water, light, power, telephone, sewage, and any other utilities supplied to the Premises;

a. disruption in the supply of services or utilities to the Premises;
b. maintenance, repair or restoration of the Premises;
c. any other cost, expense, duty, obligation, service or function related to the Premises.

8. Entry by Landlord. Landlord and Landlord's agents shall have the right at reasonable times and upon reasonable notice to enter upon the Premises for inspection, except that Landlord shall have no right to enter portions of any building on the Premises without consent of the occupant or as provided by law.

9. Alterations. Subject to the applicable provisions of this Lease, Tenant shall have the right to construct additional improvements and to make subsequent alterations, additions or other changes to any improvements or fixtures existing from time to time, and the Premises shall constitute all such improvements as they exist from time to time. In connection with any action which Tenant may take with respect to Tenant's rights pursuant hereto, Landlord shall not be responsible for and Tenant shall pay all costs, expenses and liabilities arising out of or in any way connected with such improvements, alterations, additions or other changes made by Tenant, including without limitation materialmen's and mechanics' liens. Tenant covenants and agrees that Landlord shall not be called upon or be obligated to make any improvements, alterations or repairs whatsoever in or about the Premises, and Landlord shall not be liable or accountable for any damages to the Premises or any property located thereon. Tenant shall have the right at any time to demolish or substantially demolish improvements located upon the Premises. In making improvements and alterations, Tenant shall not be deemed Landlord's agent and

shall hold Landlord harmless from any expense or damage Landlord may incur or suffer. During the term of this Lease, title to all improvements shall at all times be vested in Landlord.

10. Easements, Dedications and Other Matters. At the request of Tenant, and provided that no Event of Default shall have then occurred and be continuing, Landlord shall dedicate or initiate a request for dedication to public use of the improvements owned by Landlord within any roads, alleys or easements and convey any portion so dedicated to the appropriate governmental authority, execute (or participate in a request for initiation by the appropriate commission or department of) petitions seeking annexation or change in zoning for all or a portion of the Premises, consent to the making and recording, or either, of any map, plat, condominium documents, or declaration of covenants, conditions and restrictions of or relating to the Premises or any part thereof, join in granting any easements on the Premises, and execute and deliver (in recordable form where appropriate) all other instruments and perform all other acts reasonably necessary or appropriate to the development, construction, demolition, redevelopment or reconstruction of the Premises.

11. Insurance. During the term of this Lease, the Tenant shall, at Tenant's expense, maintain general public liability insurance against claims for personal injury, death or property damage occurring in, upon or about the Premises. The limitation of liability of such insurance during the first five years of the term shall not be less than $5,000,000.00 combined single limit The minimum policy limits shall be increased as of the fifth anniversary of the Commencement Date to an amount equal to $5,000,000.00 multiplied by a fraction, the numerator of which is the Consumer Price Index--All Items--All Consumers--U.S. Cities Average--(1982 - 1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics (the "CPI") for the month three months prior to such fifth anniversary and the denominator of which is the CPI for June, 2007. In the event the CPI is discontinued or substantially modified, Tenant shall substitute such alternative price index, published by the United States Government or other generally accepted source for such information, reconciled to the Commencement Date. All of Tenant's policies of liability insurance shall name Landlord and all Leasehold Mortgagees as additional insureds, and, at the written request of Landlord, certificates with respect to all policies of insurance or copies thereof required to be carried by Tenant under this Section 11 shall be delivered to Landlord. Each policy shall contain an endorsement prohibiting cancellation or non-renewal without at least thirty (30) days prior notice to Landlord (ten (10) days for nonpayment). Tenant may self-insure the coverages required by this Section with the prior approval of Landlord, which will not be unreasonably withheld, and may maintain such reasonable deductibles and retention amounts as Tenant may determine.

12. Liability; Indemnity. Tenant covenants and agrees that Landlord is to be free from liability and claim for damages by reason of any injury to any person or persons, including Tenant, or property of any kind whatsoever and to whomsoever while in, upon or in any way connected with the Premises during the term of this Lease or any extension hereof, or any occupancy hereunder, Tenant hereby covenanting and agreeing to indemnify and save harmless Landlord from all liability, loss, costs and obligations on account of or arising out of any such injuries or losses, however occurring, unless caused by the sole and gross negligence or willful misconduct of Landlord, its agents, employees, or invitees. Landlord agrees that Tenant shall have the right to contest the validity of any and all such claims and defend, settle and compromise any and all such claims of any kind or character and by whomsoever claimed, in the name of Landlord, as Tenant may deem necessary, provided that the expenses thereof shall be paid by Tenant. The provisions of this Section shall survive the expiration or other termination of this Lease.

13. Fire and Other Casualty. In the event that all or any improvements or fixtures within the Premises shall be totally or partially destroyed or damaged by fire or other insurable casualty, then, at Tenant's election, either: (i) this Lease shall continue in full force and effect, and, subject to the applicable provisions of this Lease, Tenant, at Tenant's sole cost and expense, may, but shall not be obligated to, rebuild or repair the same; or (ii) this Lease shall terminate with respect to all of the Premises or to such portions of the Premises as Tenant may elect. Landlord and Tenant agree that the provisions of A.R.S. § 33-343 shall not apply to this Lease. In the event that, subject to the applicable provisions of this Lease, Tenant elects to repair or rebuild the improvements, any such repair or rebuilding shall be performed at the sole cost and expense of Tenant. If there are insurance proceeds resulting from such damage or destruction, Tenant shall be entitled to such proceeds, whether or not Tenant rebuilds or repairs the improvements or fixtures, subject to the applicable provisions of this Lease and of any Leasehold Mortgage.

14. Condemnation.

14.1 Entire or Partial Condemnation. If the whole or any part of the Premises shall be taken or condemned by any competent authority for any public use or purposes during the term of the Lease, this Lease shall terminate with respect to the part of the Premises so taken and any other portion of the Premises as may be specified by Tenant, and, subject to the applicable provisions of this Lease, Tenant reserves unto itself the right to claim and prosecute its claim in all appropriate courts and agencies for any award or damages based upon loss, damage or injury to its leasehold interest (as well as relocation and moving costs). In consideration of Tenant's payment for all of the cost of construction of the improvements constituting the Premises, Landlord hereby assigns to Tenant all claims, awards and entitlements relating to the Premises arising from the exercise of the power of condemnation or eminent domain.

14.2 Continuation of Lease. In the event of a taking of less than all of the Premises, this Lease shall continue in effect with respect to the portion of the Premises not so taken or specified by Tenant to be removed from this Lease.

14.3 Temporary Taking. If the temporary use of the whole or any part of the Premises or the appurtenances thereto shall be taken, the term of this Lease shall not be reduced or affected in any way. The entire award of such taking (whether paid by way of damages, rent, or otherwise) shall be payable to Tenant, subject to the applicable provisions of this Lease and of any Leasehold Mortgage.

14.4 Notice of Condemnation. In the event any action is filed to condemn the Premises or Tenant's leasehold estate or any part thereof by any public or quasi-public authority under the power of eminent domain or in the event that an action is filed to acquire the temporary use of the Premises or Tenant's leasehold estate or any part thereto, or in the event that action is threatened or any public or quasi-public authority communicates to Landlord or Tenant its desire to acquire the temporary use thereof, by a voluntary conveyance or transfer in lieu of condemnation, either Landlord or Tenant shall give prompt notice thereof to the other and to any Leasehold Mortgagee. Landlord, Tenant and each Leasehold Mortgagee shall each have the right, at its own cost and expense, to represent its respective interest in each proceeding, negotiation or settlement with respect to any taking or threatened taking. No agreement, settlement, conveyance or transfer to or with the condemning authority affecting Tenant's leasehold interest shall be made without the consent of Tenant and each Leasehold Mortgagee.

15. Termination Option.

15.1 Grant of Option. In the event changes in applicable law nullify, remove, or vitiate the economic benefit to Tenant provided by this Lease or if any person or entity succeeds to Tenant's interest hereunder by foreclosure sale, trustee's sale, or deed in lieu of foreclosure (collectively, "**Foreclosure**"), or if Tenant, in its sole and absolute discretion, so elects, Tenant or Tenant's successor by Foreclosure shall have the "Option", exercisable by written notice to Landlord, to terminate this Lease as to the entire Premises or as to such portions of the Premises as Tenant may specify effective sixty days after the date of the notice. Upon default under the Leasehold Mortgage (after giving effect to all applicable notice and cure rights), Tenant or Leasehold Mortgagee shall have the option, exercisable by written notice to Landlord, to terminate this Lease effective sixty days after the date of the notice. Simultaneously with, and effective as of such termination, title to the Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant and Landlord shall comply with the obligations under Article 31.

15.2 Leasehold Mortgagees and Tenant. If there are any Leasehold Mortgagees as defined in Section 4.1, Tenant may not terminate, modify or waive its Option under this section without the written approval of the Leasehold Mortgagees, and Landlord will not recognize or consent thereto without such approval.

15.3 Condominium Release Provisions. From time to time during the term of the lease upon written request by Tenant, Landlord shall allow any Phase or portion of the Premises to be divided into legally defined condominium units ("**Units**") and, thereafter, subjected to a horizontal property regime to allow condominium sales. Tenant shall have the right to have Units released from this Lease and the fee simple interest in the Units reconveyed to the Tenant for the purpose of facilitating the sale of the Units as condominiums. Landlord and Tenant agree to cooperate in all respects to ensure that the remaining unreleased portions of the Premises shall remain subject to this Lease and the Tax.

16. Assignment; Subletting.

16.1 Transfer by Tenant. At any time and from time to time Tenant shall have the right to assign the Lease and Tenant's leasehold interest or to sublease all of or any part of the Premises to any person or persons for any use permitted under this Lease, without the consent of the Landlord.

16.2 Liability. Each assignee, other than any residential subtenant, hereby assumes all of the obligations of the Tenant under the Lease (but not for liabilities or obligations arising prior to such assignment becoming effective). Each assignment shall automatically release the assignor from any personal liability in respect of any obligations or liabilities arising under the Lease from and after the date of assignment, and Landlord shall not seek recourse for any such liability against any assignor or its personal assets. Landlord agrees that performance by a subtenant or assignee of Tenant's obligations under this Lease shall satisfy Tenant's obligations hereunder and Landlord shall accept performance by any such subtenant.

17. Default Remedies; Protection of Leasehold Mortgagee and Subtenants.

17.1 Default. The failure by Tenant to observe and perform any material provision of this Lease to be observed or performed by Tenant or a failure to pay the Tax when due, where such failure continues for one hundred eighty days after written notice thereof by Landlord to Tenant shall constitute an "**Event of Default**"; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such one hundred eighty day period, no Event of Default shall be deemed to have occurred if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.

17.2 Remedies. Upon the occurrence of an Event of Default, Landlord may at any time thereafter, by written notice to Tenant terminate this Lease, in which case Tenant shall immediately surrender possession of the Premises to Landlord. This section constitutes the provision required under A.R.S. §42-6206(2) that failure by the prime lessee to pay the Tax after notice and an opportunity to cure is an event of default that could result in divesting the prime lessee of any interest or right or occupancy of the government property improvement.

17.3 Leasehold Mortgagee Default Protections. If any Leasehold Mortgagee shall give written notice to Landlord of its Leasehold Mortgage, together with the name and address of the Leasehold Mortgagee, then, notwithstanding anything to the contrary in this Lease, until the time, if any, that the Leasehold Mortgage shall be satisfied and released of record or the Leasehold Mortgagee shall give to Landlord written notice that said Leasehold Mortgage has been satisfied, Landlord shall provide written notice of any default under this Lease to Leasehold Mortgagee and Leasehold Mortgagee shall have the rights described in Section 20 of this Lease.

18. No act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender, amend, or modify this Lease or Tenant's right to possession shall be binding upon or effective as against the Leasehold Mortgagee without its prior written consent.

19. If Landlord shall give any notice, demand, election or other communication required hereunder (hereafter collectively "**Notices**") to Tenant hereunder, Landlord shall concurrently give a copy of each such Notice to the Leasehold Mortgagee at the address designated by the Leasehold Mortgagee. Such copies of Notices shall be sent by registered or certified mail, return receipt requested, and shall be deemed given seventy-two hours after the time such copy is deposited in a United States Post Office with postage charges prepaid, addressed to the Leasehold Mortgagee. No Notice given by Landlord to Tenant shall be binding upon or affect Tenant or the Leasehold Mortgagee unless a copy of the Notice shall be given to the Leasehold Mortgagee pursuant to this subsection. In the case of an assignment of the Leasehold Mortgage or change in address of the Leasehold Mortgagee, the assignee or Leasehold Mortgagee, by written notice to Landlord, may change the address to which such copies of Notices are to be sent.

20. The Leasehold Mortgagee shall have the right for a period of sixty days after the expiration of any grace period afforded Tenant to perform any term, covenant, or condition and to remedy any Event of Default by Tenant hereunder or such longer period as the Leasehold Mortgagee may reasonably require to affect a cure, and Landlord shall accept such performance with the same force and effect as if furnished by Tenant, and the Leasehold Mortgagee shall thereby and hereby be subrogated to the rights of Landlord. The Leasehold Mortgagee shall have the right to enter upon the Premises to give such performance.

21. In case of an Event of Default by Tenant in the performance or observance of any nonmonetary term, covenant or condition to be performed by it hereunder, if such default cannot practicably by cured by the Leasehold Mortgagee without taking possession of the Premises, in such Leasehold Mortgagee's reasonable opinion, or if such default is not susceptible of being cured by the Leasehold Mortgagee, then Landlord shall not serve a notice of lease termination pursuant to Section 17.2, if and so long as:

(i) the Leasehold Mortgagee shall proceed diligently to obtain possession of the Premises as mortgagee (including possession by a receiver), and, upon obtaining such possession, shall proceed diligently to cure Events of Default as are reasonably susceptible of cure (subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession); or

(ii) the Leasehold Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire Tenant's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure and subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession).

22. The Leasehold Mortgagee shall not be required to obtain possession or to continue in possession as mortgagee of the Premises pursuant to Clause (i) above, or to continue to prosecute foreclosure proceedings pursuant to Clause (ii) above, if and when such Event of Default shall be cured. If a Leasehold Mortgagee, its nominee, or a purchaser at a foreclosure sale shall acquire title to Tenant's leasehold estate hereunder, an Event of Default that is not reasonably susceptible to cure by the person succeeding to the leasehold interest shall no longer be deemed an Event of Default hereunder.

23. If any Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant, the times specified in subparagraphs (iv) (1) and (2) above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

24. No option of Tenant hereunder may be exercised, and no consent of Tenant allowed or required hereunder shall be effective without the prior written consent of any Leasehold Mortgagee.

24.1 Protection of Subtenant. Landlord covenants that notwithstanding any default under or termination of this Lease or of Tenant's possessory rights, Landlord: (i) so long as a subtenant within the Premises complies with the terms and conditions of its sublease, shall not disturb the peaceful possession of the subtenant under its sublease, and in the event of a default by a subtenant, Landlord may only disturb the possession or other rights of the subtenant as provided in the tenant's sublease, (ii) shall recognize the continued existence of the sublease, (iii) shall accept the subtenant's attornment, as subtenant under the sublease, to Landlord, as landlord under the sublease, and (iv) shall be bound by the provisions of the sublease, including all options, and shall execute documents as may be reasonably required by such subtenants to evidence these agreements. Notwithstanding anything to the contrary in this Lease, no act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender or modify this Lease or Tenant's right to possession shall be binding upon or effective as against any subtenant without its prior written consent.

25. New Lease.

25.1 Right to Lease. Landlord agrees that, in the event of termination of this Lease for any reason (including but not limited to any default by Tenant), Landlord, if requested by any Leasehold Mortgagee, will enter into a new lease of the Premises with the most senior Leasehold Mortgagee requesting a new lease, which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of the original term of this Lease, at the rent and upon the terms, covenants and conditions herein contained, provided:

a. Such Leasehold Mortgagee shall make written request upon Landlord for the new lease within sixty days after the date such Leasehold Mortgagee receives written notice from Landlord that the Lease has been terminated;

b. Such Leasehold Mortgagee shall pay to Landlord at the time of the execution and delivery of the new lease any and all sums which would, at that time, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto all reasonable expenses, including reasonable attorneys fees, which Landlord shall have incurred by reason of such termination; and

c. Such Leasehold Mortgagee shall perform and observe all covenants in this Lease to be performed and observed by Tenant, and shall further remedy any other conditions which Tenant under the Lease was obligated to perform under its terms, to the extent the same are reasonably susceptible of being cured by the Leasehold Mortgagee.

25.2 The Tenant under the new lease shall have the same right of occupancy to the buildings and improvements on the Premises as Tenant had under the Lease immediately prior to its termination.

25.3 Notwithstanding anything to the contrary expressed or implied in this Lease, any new lease made pursuant to this Section 25 shall have the same priority as this Lease with respect to any mortgage, deed of trust, or other lien, charge, or encumbrance on the fee of the Premises, and any sublease under this Lease shall be a sublease under the new Lease and shall not be deemed to have been terminated by their termination of this Lease.

26. No Obligation. Nothing herein contained shall require any Leasehold Mortgagee to enter into a new lease pursuant to this Section 25 or to cure any default of Tenant referred to above.

27. Possession. If any Leasehold Mortgagee shall demand a new lease as provided in Section 25, Landlord agrees, at the request of, on behalf of and at the expense of the Leasehold Mortgagee, upon a guaranty from it reasonably satisfactory to Landlord, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove the original Tenant from the Premises, but not any subtenants actually occupying the Premises or any part thereof.

28. Grace Period. Unless and until Landlord has received notice from each Leasehold Mortgagee that the Leasehold Mortgagee elects not to demand a new lease as provided in Section 25, or until the period therefore has expired, Landlord shall not cancel or agree to the termination or surrender

of any existing subleases nor enter into any new leases or subleases with respect to the Premises without the prior written consent of each Leasehold Mortgagee.

29. Effect of Transfer. Neither the foreclosure of any Leasehold Mortgage (whether by judicial proceedings or by virtue of any power of sale contained in the Leasehold Mortgage), nor any conveyance of the leasehold estate created by this Lease by Tenant to any Leasehold Mortgagee or its designee by an assignment or by a deed in lieu of foreclosure or other similar instrument shall require the consent of Landlord under, or constitute a default under, this Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize the purchaser or other transferee in connection therewith as the Tenant under this Lease.

30. No Merger. In no event shall the leasehold interest, estate or rights of Tenant hereunder, or of any Leasehold Mortgagee, merge with any interest, estate or rights of Landlord in or to the premises. Such leasehold interest, estate and rights of Tenant hereunder, and of any Leasehold Mortgagee, shall be deemed to be separate and distinct from Landlord's interest, estate and rights in or to the Premises, notwithstanding that any such interests, estates or rights shall at any time be held by or vested in the same person, corporation or other entity.

31. Surrender, Reconveyance.

31.1 Reconveyance Upon Termination or Expiration. On the last day of the term of this Lease or upon any termination of this Lease, whether under Article 15 above or otherwise, title to the Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant at no cost or expense to Tenant other than as set forth in Section 33 below.

31.2 Reconveyance Documents. Without limiting the foregoing, Landlord upon request shall execute and deliver: (i) a special warranty deed reconveying all of Landlord's right title and interest in the Premises to Tenant; (ii) a memorandum in recordable form reflecting the termination of this Lease; (iii) an assignment of Landlord's right, title and interest in and to all licenses, permits, guaranties and warranties relating to the ownership or operation of the Premises to which Landlord is a party and which are assignable by Landlord, and (iv) such other reasonable and customary documents as may be required by Tenant or its title insurer including, without limitation, FIRPTA and mechanic's lien affidavits, to confirm the termination of this Lease and the revesting of title to the Premises in all respects in Tenant.

32. Title and Warranties. Notwithstanding anything to the contrary in this section, Landlord shall convey the Premises subject only to: (i) matters affecting title as of the date of this Lease, and (ii) matters created by or with the written consent of Tenant. The Premises shall be conveyed "AS IS" without representation or warranty whatsoever. Notwithstanding the prohibition on the creation of any liens by or through Landlord set forth in this Section, upon any reconveyance, Landlord shall satisfy all liens and monetary encumbrances on the Premises created by Landlord.

33. Expenses. All costs of title insurance, escrow fees, recording fees and other expenses of the reconveyance, except Landlord's own attorneys' fees and any commissions payable to any broker retained by Landlord, shall be paid by Tenant.

34. Trade Fixtures, Machinery and Equipment. Landlord agrees that all trade fixtures, machinery, equipment, furniture or other personal property of whatever kind and nature kept or installed on the Premises by Tenant or Tenant's subtenants may be removed by Tenant or Tenant's subtenants, or

their agents and employees, in their discretion, at any time and from time to time during the entire term or upon the expiration of this Lease. Tenant agrees that in the event of damage to the Premises due to such removal it will repair or restore the same. Upon request of Tenant or Tenant's assignees or any subtenant, Landlord shall execute and deliver any consent or waiver forms submitted by any vendors, Landlords, chattel mortgagees or holders or owners of any trade fixtures, machinery, equipment, furniture or other personal property of any kind and description kept or installed on the Premises by any subtenant setting forth the fact that Landlord waives, in favor of such vendor, Landlord, chattel mortgagee or any holder or owner, any lien, claim, interest or other right therein superior to that of such vendor, Landlord, chattel mortgagee, owner or holder. Landlord shall further acknowledge that property covered by such consent or waiver forms is personal property and is not to become a part of the realty no matter how affixed thereto and that such property may be removed from the Premises by the vendor, Landlord, chattel mortgagee, owner or holder at any time upon default by the Tenant or the subtenant in the terms of such chattel mortgage or other similar documents, free and clear of any claim or lien of Landlord.

35. Estoppel Certificate. Landlord shall at any time and from time to time upon not less then ten (10) days' prior written notice from Tenant or any Leasehold Mortgagee execute, acknowledge and deliver to Tenant or the Leasehold Mortgagee a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the dates to which the rental and other charges are paid in advance, if any; (ii) acknowledging that there are not, to Landlord's knowledge, any uncured defaults on the part of Tenant hereunder, or specifying such defaults if they are claimed; and (iii) certifying such other matters relating to this Lease as Tenant or the Leasehold Mortgagee may reasonably request. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the leasehold estate and/or the improvements.

Landlord's failure to deliver a statement within the time prescribed shall be conclusive upon Landlord (i) that this Lease is in full force and effect, without modification except as may be represented by Tenant; (ii) that there are no uncured defaults in Tenant's performance; and (iii) the accuracy of such other matters relating to this Lease as Tenant as may have been set forth in the request.

36. General Provisions.

36.1 Attorneys' Fees. In the event of any suit instituted by either party against the other in any way connected with this Lease or for the recovery of possession of the Premises, the parties respectively agree that the successful party to any such action shall recover from the other party a reasonable sum for its attorneys' fees and costs in connection with said suit, such attorneys' fees and costs to be fixed by the court.

36.2 Transfer or Encumbrance of Landlord's Interest. Landlord may not transfer or convey its interest in this Lease or in the Premises during the term of this Lease without the prior written consent of Tenant, which consent may be given or withheld in Tenant's sole and absolute discretion. In the event of permitted sale or conveyance by Landlord of Landlord's interest in the Premises, other than a transfer for security purposes only, Landlord shall be relieved, from and after the date specified in such notice of transfer, of all obligations and liabilities accruing thereafter on the part of the Landlord, provided that any funds in the hands of Landlord at the time of transfer in which Tenant has an interest, shall be delivered to the successor of Landlord. This Lease shall not be affected by any such sale and Tenant agrees to attorn to the purchaser or assignee provided all of Landlord's obligations hereunder are assumed in writing by the

transferee. Landlord shall not grant or create mortgages, deeds of trust or other encumbrances of any kind against the Premises or rights of Landlord hereunder, and, without limiting the generality of the foregoing, Landlord shall have no right or power to grant or create mortgages, deeds of trust or other encumbrances superior to this Lease without the consent of Tenant in its sole and absolute discretion. Any mortgage, deed of trust or other encumbrance granted or created by Landlord shall be subject to this Lease, all subleases and all their respective provisions including, without limitations, the options under this Lease and any subleases with respect to the purchase of the Premises.

36.3 Captions; Attachments; Defined Terms.

a. The captions of the sections of the Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Lease.

b. Exhibits attached hereto, and addendums and schedules initialed by the parties, are deemed by attachment to constitute part of this Lease and are incorporated herein.

c. The words "Landlord" and "Tenant", as used herein, shall include the plural as well as the singular. The obligations contained in this Lease to be performed by Tenant and Landlord shall be binding on Tenant's and Landlord's successors and assigns only during their respective periods of ownership.

36.4. Entire Agreement. This Lease along with any addenda, exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant relative to the Premises and this Lease and the addenda, exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by the party to be bound thereby. Landlord and Tenant agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing of the Premises are merged in or revoked by this Lease, except as set forth in any addenda hereto.

36.5 Severability. If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

36.6 Binding Effect; Choice of Law. The parties hereto agree that all the provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate paragraph hereof. All of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall be governed by the laws of the State of Arizona.

36.7 Memorandum of Land and Improvements Lease. The parties shall, concurrently with the execution of this Lease, complete, execute, acknowledge and record (at Tenant's expense) a Memorandum of Land and Improvements lease, a form of which is attached hereto as Exhibit B.

36.8 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or if mailed by United States certified or registered mail, return receipt requested, postage prepaid, as follows:

If to Landlord:

City of Tempe
City Manager' s Office
31 E; 5th Street
Tempe, Arizona 85281

With a copy to:

City of Tempe
City Attorney's Office
31 East 5th Street
Tempe, Arizona 85281

If to Tenant:

With a copy to:

or at such other place or to such other persons as any party shall from time to time notify the other in writing as provided herein. The date of service of any communication hereunder shall be the date of personal delivery or seventy-two hours after the postmark on the certified or registered mail, as the case may be.

36.9 Waiver. No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition.

36.10 Negation of Partnership. Landlord shall not become or be deemed a partner or a joint venturer with Tenant by reason of the provisions of this Lease.

36.11 Hold Over. If Tenant shall continue to occupy the Leased Premises after the expiration of the term hereof without the consent of Landlord, such tenancy shall be from month to month on the same terms and conditions as are set forth herein.

36.12 Leasehold Mortgagee Further Assurances. Landlord and Tenant shall cooperate in including in this Lease by suitable amendment from time to time any provision which may be reasonably requested by any proposed Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Lease, of allowing that Leasehold Mortgagee reasonable means to protect or preserve the lien of its Leasehold Mortgage upon the occurrence of a default under the terms of this Lease and of confirming the elimination of the ability of Tenant to modify, terminate or waive this Lease or any of its provisions without the prior written

approval of the Leasehold Mortgagee. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the term or rent under this Lease nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

37. Nonrecourse. Landlord's sole recourse for collection or enforcement of any judgment as against Tenant shall be solely against the leasehold interest under this Lease and the Buildings and other improvements on the Premises and may not be enforced against or collected out of any other assets of Tenant nor of its beneficiaries, joint venturers, owners, partners, shareholders, members or other related parties.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date and year first written above.

ATTEST:

By:_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

LANDLORD:

CITY OF TEMPE, a municipal corporation

By:_____
Name:_____
Title:_____

TENANT:

_____

By: _____
Name:_____
Title: _____