

When recorded, return to:
CITY OF MESA
Real Estate Services
P.O. Box 1466
Mesa, AZ 85211-1466

**CITY OF MESA
LEASE AGREEMENT**

THIS LEASE AGREEMENT (“Lease”) is executed to be effective the 1st day of July, 2022 (“Effective Date”) by and between THE CITY OF MESA, a municipal corporation, (“Landlord”) and OAKWOOD CREATIVE CARE, INC., an Arizona non-profit corporation, (“Tenant”). Landlord and Tenant may be referred to jointly as “Parties,” and each separately may be referred to as a “Party.”

RECITALS

A. Landlord owns certain real property and improvements located at 247 N. MacDonald, Mesa, Arizona, assessor parcel numbers, 138-59-001 through 138-59-007, 138-59-013 and 014, 138-59-022, 023, and 024, and further defined on attached *Exhibit A*.

B. Tenant provides comprehensive social services as an adult day care health center to improve the emotional and mental well-being of adults who experience a variety of disability.

C. Landlord desires to provide City of Mesa residents with access to social services that improve the quality of life for members of the Mesa community.

D. Landlord, based on the services provided by Tenant, is willing to lease to Tenant for the purpose of Tenant providing its services to benefit City of Mesa residents, and Tenant desires to lease the Property subject to all terms and conditions of this Lease.

AGREEMENT

In consideration of the foregoing recitals, which are incorporated herein, and the terms and conditions of this Lease, the Parties agree as follows:

**SECTION 1
LEASED PREMISES**

1.01 Leased Premises. The leased premises consist of 4,176 square feet of the property owned by Landlord located at 247 N. MacDonald, Mesa, Arizona, and are referred to as the “Leased Premises” which are further described in *Exhibit A and Exhibit B*. Landlord hereby leases the Leased Premises to Tenant subject to all of record including, but not limited to, liens, encumbrances, easements, assessments, and restrictions; and further subject to all operational and use restrictions and other terms, limitations, and conditions set forth in this Lease. Additionally, the Leased Premises are subject to: (i) all applicable present and future laws, regulations, ordinances, resolutions, building restrictions and regulations, and zoning laws of the City of Mesa, and county, state, and federal bodies having jurisdiction; (ii) the condition and state of repair of the Leased Premises as of the Effective Date; (iii) the right of access by Landlord to utility lines, telecommunication lines, cable lines, and other similar improvements when needed by the City of

Mesa for repair or replacement. Tenant acknowledges that the total square footage of the building located at 247 N. MacDonald, Mesa, Arizona is 32,559 square feet and that Tenant's lease consists of the 4,176 square feet of the building as depicted in *Exhibit B*.

1.02 Condition of Leased Premises. Tenant specifically acknowledges that Tenant, as of the Effective Date, has inspected the Leased Premises prior to entering into this Lease and agrees to accept the Leased Premises in an "AS IS, WHERE IS" condition without any warranty or representation from Landlord, either express or implied, of any kind or nature whatsoever with respect to the Leased Premises, including, but not limited to, any warranty of merchantability, habitability, or fitness for any particular or specific purpose, and all such warranties are hereby disclaimed.

1.03 Right to Use the Leased Premises. As of the Effective Date and subject to any building code requirements, compliance with the Mesa City Code, and the terms of this Lease, Landlord agrees that so long as Tenant shall perform all of its obligations under this Lease, Tenant shall peaceably have and enjoy the use of the Leased Premises without hindrance from Landlord or anyone claiming by or through them. Subject to the terms of this Lease, Tenant shall have the exclusive right to occupy and use the Leased Premises while in compliance with the terms and conditions of this Lease. All other rights granted to Tenant under this Lease are nonexclusive.

1.04 Additional Tenant at 247 N. MacDonald. Tenant acknowledges that the Landlord will also be leasing a portion of the property at 247 N. MacDonald, Mesa, AZ to another tenant ("**Additional Tenant**"). The Additional Tenant will occupy 28,383 square feet of 247 N. MacDonald, Mesa, AZ as depicted in the attached *Exhibit C* ("**Additional Tenant Premises**"). Any lease that the Landlord has with the Additional Renter will be deemed separate and distinct from this Lease; the Additional Tenant and Tenant will not be viewed as joint tenants or creating a joint venture in any way, but rather as separate entities with individual leases with the Landlord.

1.05 Parking. Subject to the terms of this Lease, the Tenant is granted a license by the Landlord to utilize the parking lot located at 247 N. MacDonald, Mesa, AZ ("**Parking Lot**") during the Term of this Lease (as defined in Section 3). The license is non-exclusive; Landlord may grant other parties a license to utilize the Parking Lot.

SECTION 2 **USE OF LEASED PREMISES**

2.01 Permitted Uses. Tenant agrees to use and operate the Leased Premises as an adult day care health center, intended solely for the benefit of the residents of Mesa unless otherwise required by state or federal funding received by Tenant. An adult day care health center is defined as: (1) a center whose principal participants are adults over the age of 50 years or who have a disability, or (2) a function sponsored by an organization that is made up predominantly of senior citizens or those with disabilities, or whose primary purpose is to serve senior citizens or those with disabilities. Tenant may use the Leased Premises as an adult day care health center or for those uses ancillary to an adult day care health center; Tenant shall not use the Leased Premises for any other purpose unless such other use has express prior approval in writing from Landlord as allowed by City of Mesa Zoning Regulations and federal Community Development Block Grant ("**CDBG**") regulations. Tenant agrees to provide senior services as described in this Subsection 2.01 including, but not limited to, daily meal services and activities, to senior citizens throughout the Term of this Lease (Term is defined in Section 3).

2.02 Landlords' Right to Use. Landlord retains the right to use the Leased Premises, with no compensation to Tenant, for Landlord-sponsored activities. Such activities shall be coordinated with and through Tenant and shall not take precedence nor interfere with Tenant's use of the Leased Premises.

2.03 Conduct of Activities. Tenant shall use the Leased Premises and conduct its activities in a manner that will in no way materially interfere and detract from the value or appearance of the Leased Premises. Tenant shall be responsible for securing the Leased Premises by locking all doors and windows at the time of closing. Should Tenant cause damage to the Leased Premises during any permitted use of the Leased Premises or fail to secure the Leased Premises in such a manner that damage results to the Leased Premises, Landlord shall have the right to repair the damage and invoice Tenant for the expenses incurred to repair the damage, whether repaired by Landlord or an independent contractor at Landlord's direction.

2.04 Compliance with Laws. Tenant, its employees, agents, contractors, customers and invitees shall comply with all provisions of this Lease, along with any and all codes, ordinances, resolutions, standards, laws and policies that may affect the Leased Premises.

2.05 Compliance with CDBG Requirements. The utility credit discussed in Section 7 is in whole or in part funded by a CDBG grant from the United States Department of Housing and Urban Development ("HUD"). As Tenant benefits from the utility credit, Tenant agrees to adhere to all federal requirements for use of the Leased Premises as governed by the CDBG regulations described in 24 CFR Part 570. To ensure compliance with this Subsection and reporting requirements of the CDBG program, Tenant will report to Landlord quarterly the demographic information on clients assisted and activities undertaken ("**Quarterly Report**"). The Quarterly Report must be submitted throughout the term of this Lease as outlined in Section 3. The Quarterly Report will be due on or before the 15th day of the month for the months of January, April, July, and October on a form that will be provided by the Landlord.

2.06 Default. Tenant's failure or inability for any reason to do any of the following shall constitute an Event of Default (as further described in Section 16) within the meaning of the Lease: (i) use the Leased Premises for the purpose set forth in Subsection 2.01; (ii) provide the services stated in Subsection 2.01; or (iii) use the Leased Premises for a period of thirty (30) consecutive calendar days.

2.07 No Sale of the Leased Premises. Tenant may not sell or convey all or any part of the Leased Premises.

2.08 Landlord Reservations. The Leased Premises are accepted by Tenant subject to any and all existing easements or other encumbrances of record or that an ALTA survey of the Leased Premises would reveal. Landlord shall have the right to install, lay, construct, maintain, repair and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, connections; water, oil and gas pipelines; telephone and telegraph power lines; and such other appliances and appurtenances necessary or convenient to use in connection therewith ("**Utility Improvements**"), over, on, across or in proximity to the Leased Premises or any part thereof, as will not unreasonably interfere with Tenant's operations hereunder, and to enter upon the Leased Premises for such purposes; provided, however, that Landlord provides Tenant with written notice of such entry no less than thirty (30) calendar days prior to any construction in the Leased Premises. Landlord also reserves the right to grant franchises, easements, rights-of-way, and permits, over, on, across or in proximity to any portions of the Leased Premises, provided, that Landlord shall not exercise such rights so as to interfere unreasonably with Tenant's activities on the Leased Premises. Landlord agrees that any rights granted to any parties by reason of this clause shall contain provisions that the Leased Premises shall be restored to its original condition, at no cost to Tenant, upon the completion of any construction.

SECTION 3 **TERM**

3.01 **Term.** The term of this Lease shall be for a period commencing on the Effective Date and ending at midnight on June 30, 2027 (“**Expiration Date**”) unless otherwise canceled or terminated as provided herein (“**Term**”). The Parties may, upon mutual agreement evidenced in writing, extend this Lease for one (1) additional, five-year term (a “**Renewal Term**”) so long as Tenant is in full compliance with all of the provisions, covenants, conditions and requirements of this Lease as the beginning of the Renewal Term. The Renewal Term shall be on the same terms and conditions as set forth herein. The use of “**Term**” in this Lease shall refer to the Term set forth in this Subsection 3.01 and the Renewal Term, if any.

SECTION 4 **CONSIDERATION**

4.01 **Minimum Rental.** Tenant, in consideration of the foregoing (including, specifically, the use and operation of the Leased Premises as an adult day care health center, intended solely for the benefit of the residents of Mesa, AZ), covenants and agrees to pay to Landlord rental in the amount of five dollars (\$5.00) annually. Any lease payment paid in full is non-refundable.

4.02 **Payment Procedures.** Tenant shall pay to Landlord, without prior notice or demand, rental for the entire Term on the first day of the Term. Said rental shall be in the amount set forth in Subsection 4.01 hereof.

4.03 **Taxes.** Tenant is responsible for payment of all applicable taxes arising out of this Lease and Tenant’s activities under this Lease. Tenant shall pay any leasehold tax, sales tax, personal property tax, transaction privilege tax, assessments, charges for public utilities, excises, levies, license or permit fee, or any other governmental or quasi-governmental taxes or charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever assessed as the result of Tenant’s occupancy/use of the Leased Premises or assessed against the Leased Premises, including any such tax assessable on Landlord. Unless otherwise directed by Landlord, Tenant shall pay to Landlord, with and in addition to the rent described in Subsection 4.01, all taxes imposed by any governmental unit on the rentals received by Landlord pursuant to the terms of this Lease. Tenant shall pay all other taxes described in this Subsection 4.03 directly to the taxing authority or authorities, unless otherwise required by any applicable law.

4.04 **Obligations Unconditional.** Tenant agrees—regardless of any event, occurrence or situation, whether foreseen or unforeseen, and however extraordinary—that it: (i) will not suspend or discontinue, or permit the suspension or discontinuance of, any payments provided for under this Lease, (ii) will perform and observe all of its other agreements contained in this Lease, and (iii) will not suspend the performance of its obligations hereunder for any cause, including, and without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction or damage to the Leased Premises, commercial frustration of purpose, any change in the tax or other laws or administrative rulings of or administrative actions by the United States of America or the State of Arizona or any political subdivision of either.

4.05 **Government Property Lease Excise Tax.** As required under A.R.S. § 42-6206, Tenant is hereby notified of its potential tax liability under the Government Property Lease Excise Tax (“**GPLET Tax**”) provisions of A.R.S. § 42-6201, et seq. Tenant is responsible for any and all applicable property taxes and all applicable GPLET Tax for the Property described in A.R.S. § 42-

6201 et seq., or similar laws in force from time to time that may be imposed on the Property or on any interest of Tenant in the Property under this Lease including any GPLET Tax required to be paid by Tenant. Tenant represents and warrants that the GPLET Tax does not apply because the Premises will be used by Tenant and Tenant is an organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code. If at any time during the Term the Tenant's tax status changes and/or Tenant or its use is no longer exempt from GPLET Tax then Tenant will, in addition to paying the GPLET Tax, provide notice to Landlord and Landlord may terminate this Lease. *It is Tenant's sole responsibility to determine the applicability of the GPLET Tax and whether Tenant's use falls within an exemption.* Tenant acknowledges that, pursuant to A.R.S. § 42-6206, failure of Tenant to pay such taxes after any applicable notice and opportunity to cure provided in this Lease, is an Event of Default (defined below) that could result in the termination of Tenant's interest in this Lease and of its right to occupy the Property.

4.06 Payment. All rent and any other payments shall be remitted to the Landlord to the address provided in Subsection 24.01 of this Lease.

SECTION 5 **IMPROVEMENTS**

5.01 Improvements. The term "**Improvements,**" as used in this Section 5, shall mean any and all additions, alterations, changes, fixtures, enhancements, or other improvements to the Leased Premises.

5.02 Initial Improvements. Tenant shall not make any temporary or permanent Improvements to the Leased Premises, with a cost of more than five thousand dollars (\$5,000.00), without the approval of the Landlord in writing. Landlord's approval shall not be unreasonably conditioned, withheld or delayed. Tenant shall submit to Landlord complete architectural, electrical and mechanical plans and specifications covering all such work, whether such work is to be done by Tenant or others. Such plans and specifications shall be prepared in such detail as Landlord may require, and Tenant agrees not to commence work upon any portion of the Leased Premises until Landlord has approved such plans and specifications. Any changes in said plans or specifications must be similarly approved by Landlord. Further, Tenant agrees to complete, at its own expense, all improvements necessary for the Leased Premises to be operated as intended and allowed under this Lease including, but not limited to, all furniture, equipment, trade fixtures, and other personal property needed by the Tenant to operate the Leased Premises as intended under this Lease.

5.03 Improvements, Construction and Maintenance. All Improvements shall be constructed and maintained in a good and workmanlike manner in compliance with all laws, code, rules, regulations, and orders of all governmental authorities having jurisdiction thereof. Tenant shall, at Tenant's own expense, promptly remove from the Leased Premises all trash and debris that may accumulate in connection with any work in or on the Leased Premises associated with Improvements. Tenant shall be responsible for determining whether it is subject to any building/construction codes or permit requirements, and for compliance with them to the extent they are applicable to Tenant's work. No such work shall be commenced without first submitting required plans and obtaining required permits from the City of Mesa (Landlord). All such work shall be permitted, inspected and approved by the City of Mesa (Landlord).

5.04 Title to Alterations and Improvements. Title to all improvements, alterations, additions, enhancements or modifications on the Leased Premises, but not personal property, shall immediately, upon completion or installation thereof, become the property of the Landlord without payment therefor by Landlord, and shall be surrendered to Landlord upon expiration or other termination of this Lease. Tenant agrees to execute and deliver to the Landlord, within fifteen (15)

calendar days after the Landlord's request therefor, a quitclaim deed confirming that title to such improvements and alterations is vested in the Landlord.

5.05 Applicability. The provisions of this Section 5 shall not apply to the repair, replacement, or maintenance of the Leased Premises where otherwise addressed in this Lease.

SECTION 6 **MECHANICS LIENS**

6.01 Mechanics Liens. Tenant agrees to keep the Leased Premises free of any mechanics' or materialman's liens or other liens of any kind or nature for work done, labor performed, or material furnished thereon at the instance or occasion of Tenant, and Tenant further agrees to indemnify and save harmless Landlord from and against any and all claims, liens, demands, costs and expenses of whatsoever nature for any such work done, labor performed, or materials furnished.

6.02 No Agency. Tenant is not an agent of the Landlord, nor an employee of the Landlord, nor are Tenant, its agents, or employees authorized to act for or on behalf of Landlord as its agent, employee, representative, or otherwise, for any purpose, including the constructing of any improvements at the Leased Premises, and neither Landlord nor Landlord's interest in the Leased Premises shall be subject to any obligations incurred by Tenant.

6.03 No Implied Consent. Nothing contained in this Lease shall be deemed or construed in any way as constituting Landlord's express or implied authorization, consent or request to any contractor, subcontractor, laborer or materialman, architect, or consultant, for the construction or demolition of any improvement, the performance of any labor or services or the furnishing of any materials for any improvements, alterations to or repair of the Leased Premises or any part thereof.

SECTION 7 **UTILITIES**

7.01 Utilities. Except as provided in Subsection 7.02 of this Lease, Tenant shall be responsible for and shall pay for all utilities supplied to, used, or consumed on the Leased Premises, including without limitation, all water, sewer, gas, electric, solid waste, and telephone installation and monthly use charge. Tenant shall make all appropriate applications to the local utility companies and pay all required deposits for meters and service for all utilities not owned by Landlord. Landlord agrees to waive all required deposits for all utility services owned by Landlord and provided to the Leased Premises. Tenant acknowledges that all Landlord owned utilities are provided in accordance with the City of Mesa Terms & Conditions for the Sale of Utilities and the applicable rates.

7.02 Utilities Credit. Tenant acknowledges that the current configuration of the Landlord's building occupying 247 N. MacDonald, Mesa, AZ, which houses both the Leased Premises and the Additional Tenant Premises, does not allow for the utility usage of the Landlord-owned utilities to be attributed to the actual usage of the individual tenants; thus the usage of Landlord-owned utilities attributable to the Tenant and the Additional Tenant are covered by City of Mesa utility *Account Number 758147-10124* ("Master Account") which is held by the Additional Tenant. The Landlord, at its sole discretion and in accordance with its lease with the Additional Tenant, agreed to provide a utility credit of **\$96,473.00** ("Credit Amount") to the Master Account annually that is used, in part, towards the cost of the Landlord-owned utilities at 45 W. University Drive, Mesa, Arizona. Landlord agrees to increase, at its sole discretion and only if necessary to cover the actual annual cost of Landlord owned utilities for the Master Account (as defined below), the Credit Amount annually to include any increases in the cost of Landlord-

owned utilities' rates beginning with the 2023/2024 fiscal year. *As set forth more fully in this Section 7.02 below, Tenant acknowledges that the Credit Amount is based upon the lease the Additional Tenant has with the Landlord and in no way is a direct benefit that is due and owing to the Tenant.*

7.02.1 Reduction of Credit. The Additional Tenant's lease sets forth all of the terms and conditions for the receipt of the Credit Amount (a copy of the terms related to the utility credit may be made available to the Tenant upon request), which includes *an option by the Landlord to reduce the Credit Amount to a value of \$0.00 (zero dollars)*. In the event the Landlord chooses to invoke its right to reduce the Credit Amount, the Landlord will provide the Tenant with forty-five (45) day written notice prior to July 1st of the fiscal year in which the Credit Amount will be reduced.

7.02.2 Utility Usage Above the Credit Amount. Tenant acknowledges and agrees that should the Credit Amount for a given fiscal year not be enough funds to cover the cost of all of the usage of Landlord-owned utilities at 247 N. MacDonald, Mesa, Arizona, the Tenant agrees to pay **11%** of the total utility bills for the Master Account above the Credit Amount; such percentage will be deemed by the Parties to be the total amount due and owed by the Tenant to satisfy the utility payment obligation for Landlord-owned utilities in at the Leased Premises. Tenant's failure to remit payment within thirty (30) calendar days of notice from the Landlord will be deemed an event of default under this Lease as further described in Subsection 16.01.

7.02.3 Liability. The Credit Amount is being provided at the sole discretion of the Landlord based upon the Landlord's willingness to provide the payment and the availability of funds. The Tenant agrees that it will not rely on the provisions of Subsection 7.02 in the payment of its obligation to acquire and maintain utilities for the Leased Premises under this Lease. The Landlord is not liable to the Tenant for any purchases, agreements, or contracts of any type or manner that the Tenant enters into in anticipation of receiving the Credit Amount.

7.03 Use of Utility Lines/Service. Landlord retains the right to the continued use for any utility lines and utility improvements and services (including, but not limited to, all uses allowed in a Public Utilities Facilities Easement under the Mesa City Code) as are presently on, under, over, or through the Leased Premises and the right to repair, maintain, and replace the same when necessary in Landlord's sole discretion including, but not limited to, any utility easements on the Leased Premises. Landlord shall conduct such repairs in such a manner and at such times as to not unreasonably interfere with Tenant's activities thereon.

SECTION 8 **MAINTENANCE AND REPAIRS**

8.01 Landlord's Maintenance. Except as provided in Subsection 8.03, Landlord, through its Facilities Maintenance Department, shall at its own expense repair, replace, and maintain the Leased Premises in a good state of repair, both interior and exterior, including, without limitation, the roof, heating, refrigeration, and ventilation improvements in and for the Leased Premises, fixtures, windows, walls, ceiling and floor covering, and Landlord will maintain utility lines (e.g. plumbing and electrical). Landlord shall not be required to make repairs necessitated by the negligence, acts, or omissions of Tenant or its agents, employees, licensees, invitees, or contractors or by reason of Tenant's failure to perform or observe any of its obligations under this Lease. In no event shall Landlord be liable to Tenant due to Landlord's failure to maintain or make repairs as provided herein unless Tenant shall have given Landlord written notice of the necessity for such and has afforded Landlord a reasonable opportunity to make the repairs after the notice. Landlord shall have access to the Leased Premises to enable Landlord to perform maintenance and repairs as necessary.

8.02 Custodial Service. Landlord, through its Facilities Maintenance Department, shall provide custodial services to the Leased Premises. The only custodial services that will be provided by the Landlord are those specifically listed in this Subsection 8.02. All other custodial service necessary for Tenant to meet its obligations under this Lease, including Subsection 8.03, are to be provided by the Tenant. The Landlord retains the option to change the custodial services provided, at the Landlord's sole discretion, so long as the Landlord provides the Tenant with thirty (30) calendar days' notice prior to any change in service. The custodial services to be provided by the Landlord will be all of the following:

- (A) Basic tasks to be performed each scheduled cleaning day; the facility shall be cleaned six (6) days a week except for holidays.
 - 1. Emptying trash and recyclables;
 - 2. Restroom/Locker room maintenance;
 - 3. Floor maintenance; and
 - 4. General cleaning.
- (B) Weekly tasks to be performed on the first or last cleaning visit of each week in accordance with a schedule determined by the Landlord.
 - 1. Vacuuming carpeted rooms; and
 - 2. Clean and buff hard floors.
- (C) Supplemental Tasks to be performed only when determined necessary by the Landlord on a maintenance schedule approved by the Landlord prior to performance of the work.
 - 1. Carpet cleaning;
 - 2. Strip and wax hard floors;
 - 3. Hard surface top scrub; and
 - 4. Restroom detailing.

8.03 Tenant's Maintenance. Subject to the maintenance and custodial requirements that the Landlord must meet in this Section 8, Tenant shall at all times keep the Leased Premises in a neat, clean, safe, sanitary and orderly condition and shall keep such area free of all trash and debris. This includes, without limitation, the prevention of the accumulation of any refuse or waste materials which might be or constitute a health or fire hazard or public nuisance. Tenant shall, at Tenant's expense, be responsible for all trash removal from the Leased Premises. Tenant shall be responsible for minor repairs, preventive maintenance, and, where applicable, repairs of all kitchen equipment (except walk-in freezer/refrigerators, which shall be the responsibility of Landlord). Tenant shall have the right at its own expense to perform additional custodial or maintenance services outside of those provided by the Landlord in accordance with Section 8.

8.04 Landlord Right to Conduct Maintenance. In the event Tenant fails to maintain the Leased Premises in accordance with Subsection 8.03, Landlord shall have the right, but not the obligation, to perform any such maintenance or services at Tenant's sole expense. Said expense shall be due and payable, as additional rent, within thirty (30) calendar days after the date of the invoice in which Landlord bills Tenant for such expense.

8.05 Damage to Landlord's Property. Any improvements, or real or personal property of Landlord's damaged or destroyed by Tenant as a result of Tenant's use or occupancy of the Leased Premises, ordinary wear and tear excepted, shall be promptly repaired or replaced by Tenant to the reasonable satisfaction of Landlord. In lieu of such repair or replacement, where required by the Landlord, Tenant shall pay to Landlord an amount sufficient to compensate for the loss.

8.06 Emergency Repairs. Within fifteen (15) calendar days of the Effective Date, each Party shall provide to the other Party a list of names and telephone numbers for 24-hour emergency contact for the Leased Premises.

SECTION 9
INSURANCE AND DAMAGE/DESTRUCTION OF LEASED PREMISES

9.01 Insurance Coverage Required. As a condition precedent to the effectiveness of this Agreement, Tenant must procure and at all times maintain the following types and amounts of insurance for its operations at, and use of, the Leased Premises:

- (A) General Liability Insurance. General Liability insurance with minimum coverage of \$1,000,000 per occurrence and \$3,000,000 in the aggregate. The City of Mesa, its agents, officials, volunteers, officers, elected officials and employees must be named as additional insureds. The policy shall include coverage for bodily injury, property damage, personal injury, products/completed operations, and blanket contractual covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement.
- (B) Workers' Compensation Insurance. Tenant must maintain workers' compensation insurance to cover obligations imposed against Tenant by federal and state statute.

9.02 Evidence and Requirements for All Insurance Coverages. Upon the Effective Date, Tenant must provide the Landlord with a Certificate(s) of Insurance (using the appropriate ACORD certificate) signed by the Issuer with applicable endorsements. Landlord reserves the right to request additional copies of any or all of the policies, endorsements, or notices relating to the policies.

- (A) Tenant's insurance will be primary of all other sources available. No policy will expire, be cancelled or materially changed to affect the coverage available without advance written notice to the Landlord.
- (B) All insurance certificates and applicable endorsements are subject to review and approval by Landlord's Risk Manager.
- (C) All policies must be from a company or companies rated A- or better, authorized to do business in the State of Arizona.

9.03 No Limits on Indemnification. The procuring of such policy of insurance cannot be construed to be a limitation upon Tenant's liability or as a full performance on its part of the indemnification provisions of this Lease. Landlord must be named as additional insured on all insurance policies issued pursuant to this clause during the entire term of this Lease and any extensions thereof.

9.04 Failure to Procure Insurance. If Tenant fails to procure insurance as required by this Section, Landlord may procure such insurance at the sole expense of Tenant. Said expense shall be due and payable, as additional rent, within thirty (30) calendar days after the date of the invoice in which Landlord bills Tenant for such expense.

9.05 Landlord Right to Adjust Insurance. The Landlord may adjust the amount and type of insurance Tenant is required to obtain and maintain under this Agreement as follows: at

least ninety (90) calendar days before the annual anniversary of the Effective Date, Landlord shall notify Tenant of the adjusted insurance requirement in accordance with Subsection 24.01.

9.06 Waiver of Subrogation. All insurance policies (whether or not required by this Lease) must contain a waiver of subrogation in favor of the City of Mesa (Landlord), its agents, officials, volunteers, officers, elected officials and employees. However, such waiver shall not apply to the event of claims caused by the Landlord's gross negligence or willful misconduct.

9.07 Tenant's Obligations to Restore. If the Leased Premises are damaged or destroyed by fire or other casualty, Tenant at its sole cost and expense shall proceed with reasonable diligence to repair, restore, or rebuild the same as nearly as possible to its value, condition, and character immediately prior to such damage or destruction; provided however that Tenant's foregoing obligations shall be limited to the amount of insurance proceeds available for such repair, restoration, or rebuild and any deductible thereto (if Tenant fails to maintain the insurance required by this Lease, Tenant shall be responsible for the amount that insurance would have provided in such circumstances). Unless otherwise agreed to by Parties in writing, Tenant shall use all insurance proceeds plus the amount of any deductible for such insurance to repair, restore, or rebuild the Leased Premises. Tenant's obligation to pay rent and any other amounts owing under this Lease shall continue regardless of any partial, substantial, or total destruction of the Leased Premises; provided, however, if the insurance proceeds and any deductible amount (and any amounts Landlord is willing to pay to restore even though it has no obligation to pay any such amounts) are not sufficient to restore the Leased Premises to a condition that would allow Tenant to use the Leased Premises as reasonably intended or if the Parties agree in writing to not use such proceeds to restore the Leased Premises, then Tenant may terminate this Lease through the following: (i) payment by Tenant to Landlord of all insurance proceeds for the Leased Premises (except proceeds to cover loss for Tenant's personal property) plus any deductible amount (or if Tenant fails to maintain the insurance required by this Lease, Tenant shall be responsible for the amount that insurance would have provided in such circumstances); and (ii) thirty (30) calendar days' written notice to Landlord. Such a termination shall be deemed to be the end of the Term of this Lease. Landlord shall have no responsibility or liability for any damage or destruction by fire or other casualty and shall have no obligation to repair, restore, or rebuild the Leased Premises in such event.

9.08 Landlord Insurance. No insurance held by Landlord shall be deemed to cover any property of the Tenant, or any other person/business, kept or stored at the Leased Premises.

SECTION 10 **INDEMNIFICATION**

10.01 Landlord Responsibility for Own Negligence; Indemnification by Landlord. Landlord shall be liable for the gross negligence or willful misconduct of Landlord, its officers, directors, officials, employees and agents while on official business at the Leased Premises or during Landlord-sponsored activities at the Leased Premises pursuant to Subsection 2.02. Landlord shall defend, indemnify, and hold harmless Tenant, its officers, directors, officials, agents, and employees, from and against any and all third-party claims, demands, losses or liability of any kind or nature which may be claimed or imposed for injury to, or death of, persons, damage to property, or any actual or special damages directly arising out of or directly connected with Landlord's use of the Leased Premises.

10.02 Indemnification by Tenant. Except as otherwise provided in Subsection 10.01, Tenant will pay, defend, protect, indemnify and save harmless individually and collectively Landlord and its officials, elected officials, employees, volunteers, and agents (collectively, the "**Indemnified Persons**"), for, from and against all liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees and costs), causes of action (whether in contract, tort, or otherwise), suits, claims,

demands, and judgments of every kind, character and nature whatsoever (collectively, the “**Liabilities**”) directly or indirectly arising from or relating to Tenant’s performance under this Lease, or due to Tenant’s, or its officers’, directors’, employees’, agents’, contractors’ or invitees’ or its sub-lessees’ occupancy, activities or operations of the Leased Premises, including, but not limited to, the following:

- (A) Any liability directly or indirectly arising out of or connected with the use, non-use, condition or occupancy of the Leased Premises or any part thereof, or any accident, injury to or death of any person or damage to property in or upon the Leased Premises, during the Term of this Lease;
- (B) Any breach or violation by Tenant of any agreement, covenant, warranty, representation, or condition of this Lease, any other documents executed in connection with this Lease;
- (C) Any violation due to Tenant, or its officers, directors, employees, agents, contractors or invitees or its sublessees of any contract, agreement or restriction relating to the Leased Premises; and
- (D) Any violation due to Tenant, or its officers, directors, employees, agents, contractors or invitees or its sublessees of any law, ordinance, or regulation affecting the Leased Premises or any part thereof or the ownership, occupancy or use thereof during the Term of this Lease.

10.03 **Security.** Tenant shall be solely responsible for the security for the Leased Premises and the Parking Lot. Tenant’s duty to indemnify, defend, and hold Indemnified Persons from Liabilities shall include any claim relating to or arising out of security (including, but not limited to, lack of security, and types of security installed) for the Leased Premises and the Parking Lot and any employee, invitee, or person in, on, or at the Leased Premises or the Parking Lot.

10.04 **No Limits on Indemnification.** The procuring of such policies of insurance shall not be construed to be a limitation upon Tenant’s liability or as a full performance on its part of the indemnification provisions of this Lease.

10.05 **Brokers.** Tenant represents and warrants that it has not had any dealings with any real estate brokers, finders or agents in connection with this Lease. To the fullest extent permitted by law, Tenant further agrees to indemnify, defend (with counsel selected by Landlord) and hold Landlord and Landlord’s successors and assigns harmless for, from and against any and all claims, costs, commissions, fees or damages by any person or firm whom Tenant authorized or employed, or acted by implication to authorize or employ, to act for Tenant in connection with this Lease.

SECTION 11

ENVIRONMENTAL INDEMNIFICATION

11.01 **Use of Hazardous Material.** Tenant shall not cause or permit any hazardous material, as defined in Subsection 11.05 to be generated, brought onto, used, stored, or disposed of in, on or about the Leased Premises. Tenant shall:

- (A) Use, store and dispose of all such hazardous material in strict compliance with all applicable statutes, ordinances, and regulations in effect during the lease term that relate to public health and safety and protection of the environment (environmental laws); and
- (B) Comply with all environmental laws at all times during the full term of this Lease.

11.02 Notice of Release or Investigation. If, during the full term of this Lease, either Landlord or Tenant becomes aware of (a) any actual or threatened release of any hazardous material on, under, or about the Leased Premises, or (b) any inquiry, investigation, proceeding, or claim by any government, agency, or other person regarding the presence of hazardous material on, under, or about the Leased Premises, that Party shall give the other Party written notice of the release or investigation within five (5) calendar days after learning of it and shall simultaneously furnish to the other Party copies of any claims, notices of violation, reports, or other writings received by the Party providing notice that concern the release or investigation.

11.03 Environmental Indemnification. Tenant shall, at Tenant's sole expense, indemnify, defend, and hold harmless Landlord, its officers, directors, officials, agents, employees or others acting under its direction and control, with respect to all losses arising out of or resulting from the release of any hazardous material or the violation of any environmental law in or about the Leased Premises, except those solely caused by Landlord. This indemnification shall survive the expiration or termination of this Lease and shall include:

- (A) Losses attributable to diminution in the value of the Leased Premises;
- (B) Loss or restriction of use of rentable space at the Leased Premises;
- (C) Adverse effect on the marketing of any part of the Leased Premises; and
- (D) All other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant and expert fees and expenses) resulting from the release or violation.

11.04 Remediation Obligations.

- (A) If the presence of any hazardous material brought onto the Leased Premises, unless brought by Landlord, results in contamination of the Leased Premises, Tenant shall promptly take all necessary actions, at Tenant's sole expense, to return the Leased Premises to the condition that existed before the introduction of such hazardous material. Tenant shall first obtain Landlord's written approval of the proposed remedial action. This provision does not limit the indemnification obligation set forth in other Sections of this Lease.
- (B) In the event Tenant fails to meet its remediation obligations under paragraph (A) above, Landlord shall have the right, but not the obligation, to perform any such remediation at Tenant's sole expense. Said expense shall be due and payable, as additional rent, within thirty (30) calendar days after the date of the invoice in which Landlord bills Tenant for such expense.

11.05 Definition of Hazardous Material. As used in this Section 11, the term "**Hazardous Material**" shall mean any hazardous or toxic substance, material, or waste that is or becomes regulated by the United States, the State of Arizona, or any local government authority having jurisdiction over the Leased Premises. Hazardous material includes:

- (A) Any "hazardous substance" as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 United States Code §§ 9601-9675) including all amendments thereto or successor statutes;

- (B) "Hazardous waste" as that term is defined in the Resource Conservation and Recovery Act of 1976 (RCRA) (42 United States Code §§ 6901-6992K) including all amendments thereto or successor statutes;
- (C) Any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, within the meaning of any other applicable Federal, State, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders imposing liability or standards of conduct concerning any hazardous, dangerous, or toxic waste, substance, or material, now or hereafter in effect);
- (D) Petroleum products;
- (E) Radioactive material, including any source, special nuclear, or byproduct material as defined in 42 United States Code §§ 2011-22976-4 including all amendments thereto or successor statutes;
- (F) Asbestos in any form or condition; and
- (G) Polychlorinated biphenyls (PCBs) and substances or compounds containing PCBs.

SECTION 12

ENTRY BY LANDLORD

12.01 Entry by Landlord. Landlord reserves the right, without abatement of rent and other charges due hereunder from Tenant, to enter upon or have its employees, agents, contractors and assignees enter upon the Leased Premises at any reasonable time upon reasonable notice for any reasonable purpose, including the inspection of the Leased Premises to determine if the provisions of this Lease are being complied with, to conduct environmental assessments and audits, to perform repairs and/or maintenance in accordance with Section 8, including any actions necessary to remediate, abate or cleanup any hazardous substances or environmental conditions at the Leased Premises in accordance with Section 11.

12.02 Waiver of Claims. Tenant hereby waives any claim for damage for any injury or inconvenience to or interference with Tenant's operations, any loss of occupancy or quiet enjoyment of the Leased Premises, and any other loss occasioned by Landlord's entry unless such claim is a direct result of Landlord's intentional conduct. Landlord shall have the right to use any and all means which Landlord deems necessary to gain access to the Leased Premises and Tenant's personal property in the event of an emergency. "Emergency" shall be defined as any existing condition of disaster or of extreme peril to the safety of persons or property within the area of the Leased Premises caused by air pollution, fire, flood, or flood water, storm, epidemic, riot, earthquake, or other natural disaster. Such entry by Landlord shall not, under any circumstances, be construed or deemed to be a forcible, unlawful, negligent entry into, and shall not be construed or deemed as conduct intended to cause damage or injury, or a detainer of, Tenant's personal property and the Leased Premises or an eviction of Tenant from the Leased Premises or any portion thereof.

SECTION 13

NON-DISCRIMINATION; EQUAL EMPLOYMENT

13.01 Non-Discrimination. The Tenant, for itself, its personal representative, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (a) no person on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or familial status shall be excluded from participation, denied the

benefits of, or be otherwise subject to unlawful discrimination in the use of the Leased Premises; (b) that in the construction of any improvements on, over, or under the Leased Premises, no person on the grounds of race, color, religion, national origin, sex, sexual orientation, gender identity, or disability shall be excluded from participation in, denied the benefits of, or otherwise be subject to unlawful discrimination.

13.02 **Equal Employment Opportunity.** Tenant must comply with all ordinances and other requirements of the City of Mesa and applicable law relating to nondiscrimination and equal employment opportunity. In performing under this Lease, Tenant will not discriminate against any worker, employee or any member of the public, because of race, color, religion, sex, sexual orientation, gender identity and expression, national origin, age, veterans' status, marital status, genetic information, or disability, nor otherwise commit an unfair employment practice. Tenant will take affirmative action to ensure that applicants are employed, and that employees are dealt with during employment, without regard to their race, color, religion, gender, national origin, age, sexual orientation or disability. Such action will include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Tenant further agrees that this clause will be incorporated in all licenses or subleases allowed pursuant to the terms of this Lease.

SECTION 14 **ASSIGNMENT; SUBLETTING; ENCUMBERING**

14.01 **No Assignment.** Tenant may not sublet, transfer, assign, mortgage, pledge, hypothecate, allow use of or encumber the Leased Premises or any part thereof, without Landlord's express prior written approval, which may be granted or denied in Landlord's sole discretion. Any such transfer without said approval, whether voluntary or involuntary, shall be void and shall confer no right of occupancy upon said assignee or purchaser. Tenant shall be entitled to retain any rents or fees collected from any sublessee or user of the Leased Premises provided such rents or fees are attributed to Tenant's recovery of its operational costs and are not used for profit.

14.02 **Assumption of Obligations.** Any transfer or assignment of this Lease that is approved by the Landlord shall include the agreement to perform all of the obligations of the Tenant under this Lease and retain the Tenant as a guarantor of the original obligation.

14.03 **Non-Subordination.** Landlord's interest in the Leased Premises and this Lease, as the same may be modified, amended or renewed, shall not be subject or subordinate to: (i) any mortgage now or hereafter placed upon Tenant's interest in this Lease; or (ii) any other liens, encumbrances or other matters hereafter affecting Tenant's interest in this Lease.

14.04 **Liens and Mortgages.** Except as may be permitted under the terms of the Lease, Tenant shall not engage in any financing or other transaction creating any mortgage or deed of trust upon the Leased Premises or this Lease, place or suffer to be placed upon the Leased Premises any lien or other encumbrance, or suffer any levy or attachment to be made on Tenant's interest in the Leased Premises or this Lease. Except as contemplated in this Lease, any such mortgage or deed of trust, encumbrance, or lien shall be deemed to be a violation of this Section, constituting a failure by Tenant to comply with the terms of the Lease, on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

SECTION 15 **UNLAWFUL USE**

15.01 **No Unlawful Use.** Tenant agrees no improvements shall be erected, placed upon, operated or maintained on the Leased Premises, nor shall business be conducted or operated

thereon in violation of the terms of this Lease, or any regulations, order or laws, statutes, by-laws or ordinances of any governmental body having jurisdiction there over.

15.02 Compliance with Applicable Zoning. Tenant agrees to meet all applicable zoning required to use the Leased Premises for the purposes stated in this Lease.

SECTION 16 **DEFAULT, ABANDONMENT**

16.01 Event of Default. The occurrence of any of the following shall constitute an event of default (“**Event of Default**”) hereunder:

- (A) The filing of a petition by or against Tenant for adjudication as bankrupt or insolvent, or for its reorganization or for the appointment of a receiver or trustee of Tenant’s property; an assignment by Tenant for the benefit of creditors or the taking of possession of the property of Tenant by any governmental officer or agency pursuant to statutory authority for the liquidation of Tenant.
- (B) Abandonment of the Leased Premises, as provided in Subsection 16.02 hereof.
- (C) Operation or maintenance of the Leased Premises in violation of law or any other misuse of the Leased Premises.
- (D) The failure of Tenant to pay any installment of rent due and any other amount due from Tenant under this Lease, provided that Tenant does not cure such failure within fifteen (15) calendar days after delivery by Landlord of a written notice of such failure.
- (E) The filing of any mechanic’s, materialmen’s, or other lien of any kind against the Leased Premises or Property because of any act or omission of Tenant which lien is not discharged, by bonding or otherwise, within thirty (30) calendar days of receipt of actual notice thereof by Tenant.
- (F) The failure of Tenant to maintain all insurance coverage required by Section 9 of this Lease (and any cure must cover any lapsed or uncovered period of time).
- (G) The failure of Tenant to perform any of its other obligations under this Lease, whether or not that failure is specifically identified as creating default in the language of this Lease, including, but not limited to, the failure of Tenant to use the Leased Premises in accordance with this Lease, provided that Tenant does not cure such failure within thirty (30) calendar days after delivery by Landlord of a written notice of such default; provided, however, if a cure of the default reasonably requires more than thirty (30) calendar days to complete and Landlord agrees, then the time to cure shall be extended so long as the cure is being diligently pursued.

16.02 Abandonment. If Tenant, prior to the expiration or other termination of this Lease, relinquishes possession of the Leased Premises without Landlord’s prior written consent, or fails to open for business under usual business hours for a period of thirty (30) calendar days, such occurrence shall be deemed to be an abandonment of the Leased Premises and an Event of Default under this Lease.

16.03 Waiver. There shall be no implied waivers. No express waiver by Landlord of any breach or default by Tenant in the performance of its obligations under this Lease shall be

deemed to be a waiver of any subsequent default by Tenant in the performance of any such obligations, and no express waiver shall affect an Event of Default (Subsection 16.01) in a manner other than as specified in the waiver. The consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or for any subsequent similar acts by Tenant.

16.04 Remedies Not Exclusive. The specific remedies set forth in this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which Landlord may be entitled to resort, either in law or in equity, in case of any breach or threatened breach of any provisions of this Lease.

16.05 Landlord Default. The following shall constitute a material default of this Lease by Landlord (a "**Landlord Default**"): the failure of Landlord to perform any of its material obligations under this Lease, provided that Landlord does not cure such failure within thirty (30) calendar days after delivery by Tenant of a written notice of such default; provided, however, if a cure of the default reasonably requires more than thirty (30) calendar days to complete and Tenant agrees, then the time to cure shall be extended so long as the cure is being diligently pursued.

16.06 Content of Default Notice. Any default notice tendered to Tenant hereunder shall be deemed to be sufficient if it is reasonably calculated to put Tenant on inquiry as to the nature and extent of such default.

SECTION 17 **TERMINATION**

17.01 Termination for Default by Tenant. If an Event of Default occurs as defined in Section 16 of this Lease, Landlord may at its election, without prejudice to any other rights and remedies available to Landlord at law, or in equity: terminate this Lease and the tenancy created thereby effective immediately following any required notice and cure period (as applicable). In such case, Tenant shall surrender the Leased Premises to Landlord pursuant to Section 19.

17.02 Transfer for Public Use. In the event that during the Term of this Lease, the Leased Premises, or any part thereof, is sold or exchanged for public, quasi-public or private purposes, Tenant shall have no claim to, nor shall Tenant be entitled to any portion of any sale proceeds, for damages or otherwise, with such rights and proceeds assigned to Landlord. In the event that all or part of the Leased Premises is sold or exchanged, Landlord shall have the right to terminate this Lease by providing a written notice to Tenant at least sixty (60) calendar days prior to the termination date.

17.03 Termination for Convenience. Landlord may terminate this Lease, for any reason or for no reason whatsoever, upon not less than ninety (90) calendar days prior written notice to the Tenant; and such termination shall be deemed to be the end of the Term of this Lease. If so terminated, Tenant shall not receive any compensation or other consideration from Landlord.

17.04 Landlord's Damages Relating to Termination. Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of an Event of Default, which shall include, without limitation, all of Landlord's expenses in connection with any repossession or re-letting including, but not limited to, repossession costs, repairs, redecorating, refurbishments or improvements to the Leased Premises, brokerage commissions, attorneys' fees, and legal expenses, which shall be paid within ten (10) calendar days of invoice to Tenant for such costs. All amounts collected by Landlord from subtenants in the Leased Premises during the Term of this Lease shall be credited against Landlord's damages.

SECTION 18

REMEDIES

18.01 Landlord's Remedies. In addition to any and all remedies available to Landlord as a matter of law and those set forth in other provisions of this Lease, Landlord shall, subject to the cure period set forth in Subsection 16.01 (as applicable), have the immediate right upon Tenant's default in any term or condition of this Lease, to resort to any and all legal remedies or combination of remedies which Landlord may desire to assert including, but not limited to, one or more of the following: a) lock access to the Leased Premises and exclude Tenant there from, b) retain or take possession of any property at the Leased Premises pursuant to Landlord's statutory lien, c) enter the Leased Premises and remove all persons and property there from, d) declare this Lease at an end and terminated, e) sue for the rent due and to become due under this Lease, and for any damages sustained by Landlord, f) collect, directly from any sublessee or assignee under Tenant all sub-rents and other charges payable by such sublessee or assignees, Tenant hereby assigning to Landlord such sub-rents and other charges in the event that Landlord declares a default by Tenant under this Lease, and g) continue this Lease in effect and relet the Leased Premises on such terms and conditions as Landlord may deem advisable with Tenant remaining liable for the monthly rent plus the reasonable cost of obtaining possession of the Leased Premises and of any repairs and alterations necessary to prepare the Leased Premises for reletting, less the rentals received from such reletting, if any.

18.02 Vacating of the Leased Premises. Tenant shall peaceably quit the Leased Premises upon written notification to Tenant of Landlord's intent to re-enter the Leased Premises and improvements placed thereon by Tenant. The various rights, elections, and remedies of Landlord and Tenant contained in this Lease shall be cumulative, and no one of them shall be construed as exclusive of any other or of any right, priority or remedy allowed or provided by law. Landlord shall use its best efforts to mitigate cost to Tenant.

18.03 Election to Terminate. No action of Landlord shall be construed as an election to terminate this Lease unless written notice of such intention is given to Tenant. Tenant agrees to pay as additional rent all attorney's fees and other costs and expenses incurred by Landlord in enforcing any of Tenant's obligations under this Lease. Any amount due from Tenant to Landlord under this Lease which is not paid when due shall bear interest at the highest rate allowed by Arizona law and is in effect on the date such amount is due, accruing from such date until paid.

18.04 Tenant Remedies. Upon the occurrence of a Landlord Default under this Lease, Tenant may seek any right or remedy allowed at law or in equity or by statute or otherwise (except as provided herein) for such breach including, but not limited to, seeking specific performance, all of which shall be construed and held to be cumulative and non-exclusive; provided, however, Tenant shall not seek, and hereby waives any right to, damages from Landlord for loss profits, loss of sub-rents, loss of any other revenue, loss of business opportunity, loss of good will, or loss due to business interference.

SECTION 19

SURRENDER OF LEASED PREMISES

19.01 Surrender of Premises; Normal Wear and Tear. Upon expiration, default by Tenant or termination of this Lease by Tenant or Landlord, Tenant's right to occupy the Leased Premises and exercise the privileges and rights granted under this Lease shall cease, and Tenant shall surrender the same and leave the Leased Premises free of trash and debris, broom clean and in good condition, except for normal wear and tear except as otherwise provided for in this Lease. Should Landlord so demand, within thirty (30) calendar days after receiving written notice from Landlord, Tenant shall commence the removal of all personal and permanent improvements from the Leased Premises and shall complete said removal within thirty (30) calendar days. All trade

fixtures, equipment, and other personal property installed or placed by Tenant in the Leased Premises which is not permanently affixed thereto shall remain the property of Tenant, and Tenant shall have the right at any time during the Term of this Lease, to remove the same from the Leased Premises, provided that Tenant shall repair, at its sole cost, any damage caused by such removal. Any property not removed by Tenant within thirty (30) calendar days after the expiration or termination of this Lease shall become a part of the Leased Premises, and ownership thereof shall vest in Landlord. Tenant shall, however, remain financially liable to Landlord for the costs of repairs to the Leased Premises incurred as a result of Landlord's removal and/or relocation of property formerly belonging to Tenant and not otherwise removed from the Leased Premises as provided herein, and shall remit to Landlord payment for such costs within thirty (30) calendar days of Tenant's receipt of Landlord's invoice therefor.

19.02 Voluntary Surrender. Tenant shall, on the last day of the Term of this Lease, or upon any termination of this Lease, truly surrender and deliver the Leased Premises along with any fixtures (other than trade fixtures) and permanent improvements then located on these premises thereon into the possession and use of Landlord, without fraud or delay and in good order, condition and repair, free and clear of all Tenant or other occupants, free and clear of all liens and encumbrances other than those existing on the date of this Lease, if any, without any payment or allowance whatsoever by Landlord.

19.03 Trade Fixtures and Equipment. All trade fixtures, equipment, and other personal property installed or placed by the Tenant on the Leased Premises which is not permanently affixed thereto shall remain the property of Tenant, and Tenant shall have the right at any time during the term of this Lease, and for an additional period of thirty (30) calendar days after its expiration to remove the same from the Leased Premises, provided that Tenant is not in default of any of its obligations hereunder and that Tenant shall repair, at its sole expense, any damage caused by such removal. Any property not removed by Tenant within the thirty (30) day period shall become a part of the Leased Premises, and ownership thereof shall vest in the Landlord.

SECTION 20 PARTIAL INVALIDITY

20.01 Partial Invalidity. If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

SECTION 21 SALE OF LEASED PREMISES AND ESTOPPEL CERTIFICATE

21.01 Sale of the Leased Premises. If there is a sale or other conveyance by Landlord of its interest in the Leased Premises, Landlord shall be automatically freed and released from all liability accruing from and after the date of such sale or conveyance as respects the performance of any covenant or obligation on the part of Landlord contained in this Lease to be performed. Upon such a sale or conveyance, the covenants and obligations contained in this Lease on the part of Landlord shall be binding on its successors or assigns. Landlord and any of its successors in interest agree not to disturb or otherwise interfere with Tenant's possession of the Leased Premises for the unexpired Term of the Lease, except as otherwise provided herein. From and after such sale or conveyance, Tenant shall be bound to such successor or assign who becomes the new landlord under this Lease; and Tenant shall attorn to such successor or assign as its landlord, said attornment to be effective and self-operative without the execution of any further instruments on the part of either party

21.02 Estoppel Certificate. Both Parties shall, without charge, at any time and from time to time hereafter, within thirty (30) calendar days after written request from the other Party to do so, certify by written instrument duly executed and acknowledged by the Party and certified to the requesting Party and to any prospective lender or purchaser the following, to the extent such information is true and correct at the time such request is made: (i) as whether this Lease is in full force and effect along with the amount and current status of the Leased Premises rent and other amounts due hereunder; (ii) as to whether this Lease has been modified or amended in any respect or describing such modifications or amendments, if any; (iii) as to whether there are any existing defaults, to the knowledge of the Party executing the certificate, and specifying the nature of such defaults, if any; (iv) as to whether that Party has assigned or transferred its interests or any portion thereof in this Lease; and (v) as to any other matters as may be reasonably requested. Any such certificate may be relied upon by the requesting Party and any prospective purchaser or lender to whom the same was certified

SECTION 22 **HOLDING OVER**

22.01 Holdover. In the event Tenant shall lawfully hold possession of the Leased Premises after the term herein created, then such holding over shall be considered a tenancy from month to month and governed by the same conditions and covenants as contained in this Lease except that the amount of consideration outlined in Subsection 4.01 that Tenant must pay to Landlord will be increased such that Tenant will pay Landlord by the first of each month during the hold over tenancy a monthly rent of \$500.00. In the event Tenant holds over, Tenant shall be liable for all of Landlord's direct and consequential damages, which shall include, without limitation, costs, fees, expenses, damages and attorneys' fees incurred by Landlord as a result of Tenant's holding over, and damages and expenses incurred by Landlord for its inability to deliver possession of the Leased Premises to a new tenant.

SECTION 23 **CONDEMNATION**

23.01 Entire or Partial Condemnation. If the whole or any part of the Leased Premises shall be taken or condemned by any competent authority for any public use or purposes during the Term of this Lease, this Lease shall terminate with respect to the part of the Leased Premises so taken, and 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) without impairing any rights of Landlord for the taking of or injury to the Landlord's interests.

23.02 Continuation of Lease. In the event of a taking of less than all of the Leased Premises, this Lease shall continue in effect with respect to the portion of the Leased Premises not so taken; the rent shall not be adjusted except if the taking materially affects Tenant's use of the Leased Premises and in such event the rent shall be equitably adjusted as agreed to by the Parties. Provided, further, however, if the taking is so material that the remaining part of the Leased Premises cannot feasibly be used or converted for use by Tenant for the uses contemplated by the Lease, Tenant may, at its option, terminate this Lease within ninety (90) calendar days after such taking by serving upon Landlord at any time within said ninety (90) calendar day period, a thirty (30) calendar day written notice of Tenant's election to so terminate accompanied by a certificate of Tenant that the remaining part of the Leased Premises cannot feasibly be used or converted for use by Tenant.

23.03 Temporary Taking. If the temporary use of the whole or any part of the Leased Premises or the appurtenances thereto shall be taken, the Term 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, unless the period of occupation and use by the condemning authority shall extend beyond the date of expiration of this Lease, in which event the award made for such taking shall be apportioned between Landlord and Tenant as of the date of such expiration.

23.04 Notice of Condemnation. In the event any action is filed to condemn the Leased Premises or Tenant's leasehold estate or any part thereof by any public or quasi-public authority under the power of eminent domain, either Landlord or Tenant shall give prompt notice thereof to the other Party. Each Party shall 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 and to make full proof of its claims. 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, which shall not be unreasonably withheld.

SECTION 24 **GENERAL PROVISIONS**

24.01 Notices. All notices given, or to be given, by either Party to the other, shall be given in writing and shall be addressed to the Parties at the addresses hereinafter set forth or at such other address as the Parties may hereafter designate. Notices and payments to Landlord, and notices to Tenant shall be deemed properly served when sent by certified or registered mail or hand delivered to the addresses stated below. Any notice shall be deemed to have been received four (4) calendar days after the date of mailing, if given by certified mail, or upon actual receipt if personally delivered.

To "Landlord": City of Mesa
 20 E. Main Street
 P.O. Box 1466
 Mesa, AZ 85211-1466
 Attn: Real Estate Services

A copy of all notices to "Landlord" shall also be sent or delivered to:

City of Mesa
Community Services
P. O. Box 1466
Mesa, AZ 85211-1466
Attn: Community Services Department Director

To "Tenant": Oakwood Creative Care, Inc.
 247 N McDonald
 Mesa, AZ 85201
 Attention: Sherri Friend

24.02 Amendments. This Lease sets forth all of the agreements and understandings of the Parties and is not subject to modification except in writing, signed by the Parties.

24.03 Successors; Joint Liability. The covenants herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all the Parties hereto; and all of the Parties hereto shall be jointly and severally liable hereunder.

24.04 Time of the Essence. Time is of the essence with respect to the obligations to be performed under this Lease.

24.05 Independent Legal Relationship. Nothing contained in this Lease shall create any partnership, joint venture or other arrangement between Landlord and Tenant. Except as expressly provided herein, no term or provision of this Lease is intended to or shall be for the benefit of any person not a party hereto, and no such other person shall have any right or cause of action hereunder.

24.06 Authority. The person executing this Lease on behalf of, or as a representative for the Tenant warrants that he/she is duly authorized to execute and deliver this Lease on behalf of the Tenant and that this Lease is binding upon the Tenant in accordance with the terms and conditions herein.

24.07 Governing Law. Any dispute with respect to this Lease and the rights and duties created by this Lease will be governed by the laws of the State of Arizona and litigated in a court of competent jurisdiction in Maricopa County, Arizona. The Parties will not raise, and hereby waive, any defenses based on venue, inconvenience of forum, or lack of personal jurisdiction in any action or suit brought in accordance with this Lease. *The Parties acknowledge that they have read and understand this clause and agree voluntarily to its terms.*

24.08 Termination under A.R.S. § 38-511. This Lease is subject to termination under A.R.S. § 38-511.

24.09 Binding Agreement. This Lease shall be considered to be the only agreement between the Parties hereto pertaining to the Leased Premises. It is understood that there are no oral agreements between the Parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the Parties hereto with respect to the subject matter hereof, and none shall be used to interpret or construe this Lease.

24.10 Survivability. All warranties, representations, and duties to indemnify, defend, and hold harmless shall survive the termination, cancellation, or expiration of this Lease. Additionally, all obligations to restore the Leased Premises shall survive the termination or expiration of this Lease as well as any other section which reasonably should survive shall survive.

24.11 Execution of Lease Documents. Tenant has full power and authority to execute, deliver and perform this Lease and the other documents to which it is a party and to enter into and carry out the transactions contemplated by those documents. The execution, delivery and performance of this Lease and the other documents related to the Leased Premises do not, and will not, violate any provision of law applicable to Tenant or its organizational documents, and do not, and will not, conflict with or result in a default under any agreement or instrument to which Tenant is a party or by which it is bound.

24.12 Litigation. Tenant must notify Landlord within fifteen (15) calendar days after the commencement of any action, suit, proceeding or arbitration against Tenant, or any material development in any action, suit, proceeding or arbitration pending against Tenant if such action, suit, proceeding or arbitration would materially and adversely affect the Leased Premises, the validity of this Lease, or the performance of Tenant's obligations under this Lease.

24.13 Authorizations and Approvals. Tenant shall promptly obtain, from time to time at its own expense, and maintain all such governmental licenses, rights, authorizations, consents, permits and approvals as may be required to enable it to comply with its obligations hereunder including, but not limited to, all such approvals necessary to provide the services provided by Tenant outlined in Subsection 2.01.

24.14 Corporate Authorization. Tenant shall provide a certified copy of a resolution of its corporate Directors authorizing Tenant to enter into this Lease to Landlord within thirty (30) calendar days of execution of the Effective Date.

24.15 Governmental Capacity. Any approvals Tenant is required to obtain from Landlord under this Lease are in addition to and separate from approvals Tenant must obtain from the City of Mesa in its governmental capacity, including but not limited to applicable approvals required under the City of Mesa Building Code or Zoning Ordinance. Notwithstanding anything in this Lease to the contrary, this Lease does not affect the City of Mesa in its governmental capacity.

24.16 No Personal Liability of Officials of Landlord or Tenant. None of the covenants, stipulations, promises, agreements and obligations of Landlord or Tenant contained herein shall be deemed to be covenants, stipulations, promises, agreements or obligations of any official, officer, agent or employee of Landlord or Tenant in his or her individual capacity, and no recourse shall be had for the payment for any claim based thereon or any claim hereunder against any official, officer, agent or employee of Landlord or Tenant

24.17 Severability. If any provision of this Lease is declared void or unenforceable (or is construed as requiring the Landlord to do any act in violation of any applicable law, including any constitutional provision, law, regulation, City Code or City Charter), such provision shall be deemed severed from this Lease and this Lease shall otherwise remain in full force and effect; provided that this Lease shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits to the Parties as if such severance and reformation were not required. Unless prohibited by any applicable law, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Lease, as reformed.

24.18 Approvals, Consents, and Notices. All approvals, consents and notices called for in this Lease shall be in writing, signed by the appropriate Party, and may not be established solely by oral testimony.

24.19 Non-Waiver of Rights. No waiver or default by Landlord of any of the terms, conditions, covenants or agreements hereof to be performed, kept or observed by Tenant shall be construed or act as a waiver of any subsequent default of any of the terms, covenants, conditions or agreements herein contained to be performed, kept or observed by Tenant, and Landlord shall not be restricted from later enforcing any of the terms and conditions of this Lease.

24.20 Drug Free Work Place. Tenant shall require a drug free workplace for all employees working at the Leased Premises. Specifically, Tenant's employees who are working at the Leased Premises shall be notified by the Tenant that they are prohibited from the manufacture, distribution, dispensation, possession or unlawful use of a controlled substance on the Leased Premises. Tenant shall ensure that employees do not use or possess illegal drugs while in the course of performing their duties on the Leased Premises.

24.21 E-Verify Requirements. To the extent applicable under A.R.S. § 41-4401 and 23-214, Tenant represents and warrants compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements of A.R.S. § 23-214(A). Breach of the above-mentioned warranty shall be deemed a breach of the Agreement and may result in the termination of the Agreement by Landlord. Landlord retains the legal right to randomly inspect the papers and records of any employee who works under this Lease or on the Leased Premises to ensure compliance with the above-mentioned laws.

24.22 Memorandum of Lease. Landlord and Tenant agree that at the request of either, each will execute a “Memorandum of Lease” in the form attached hereto as *Exhibit D* for recording in the Office of the County Recorder, Maricopa County, Arizona.

24.23 No Boycott of Israel. Tenant certifies pursuant to A.R.S. § 35-393.01 that it is not currently engaged in, and for the Term of this Lease will not engage in, a boycott of Israel.

24.24 Preserve State Shared Revenue. Notwithstanding any other provision of, or limitation in, this Lease to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Lease violates any provision of state law or the Constitution of Arizona, Landlord and Tenant are not able (after good faith attempts) to modify the Lease so as to resolve the violation with the Attorney General within thirty days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1), this Lease shall automatically terminate at midnight on the thirtieth day after receiving such notice from the Attorney General, and upon such termination, the Parties shall have no further obligations under this Lease. Additionally, if the Attorney General determines that this Lease may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), Landlord is entitled to terminate this Lease, except if Tenant timely posts such bond, if required; and provided further, that if the Arizona Supreme Court determines that this Lease violates any provision of state law or the Constitution of Arizona, Landlord may terminate this Lease; and the Parties shall have no further obligations hereunder.

24.25 Incorporation of Recitals & Exhibits. The recitals set forth herein are acknowledged by the Parties to be true and correct, and the exhibits attached to the Lease, and are incorporated herein by this reference.

24.26 Construction. The terms and provisions of this Lease shall be interpreted and construed in accordance with their usual and customary meanings. The Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Lease that ambiguous or conflicting terms or provisions contained in this Lease shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Lease or any earlier draft of the same. Unless the context requires otherwise: (i) the term “including” shall mean “including but not limited to” or “including without limitation”; and (ii) the term “shall” will mean “must”.

24.27 Counterparts. This Lease and any addendum may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from the counterparts and the signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document. The Parties agree that they may reflect and confirm their agreement to be bound hereby, and their execution and delivery of this Lease, by transmitting a signed copy of the signature page hereof, by facsimile or email, to the other Party hereto.

24.28 Headings. The various headings and numbers herein and the grouping of the provisions of this Lease into separate sections and paragraphs are for the purpose of convenience only and shall not be considered a part hereof.

(REMAINDER OF PAGE LEFT INTENTIONALLY BLANK)

EXECUTED to be effective on the date specified above.

LANDLORD:

THE CITY OF MESA, ARIZONA

By: [Signature]
Printed Name: Marc Heirshberg
Title: City Manager, or Designee

STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 21 day of July, 2022, by Marc Heirshberg, in their capacity as the City Manager of the City of Mesa, Arizona, or his Designee. Deputy

[Signature: Kimberly A. Fallbeck]
Notary Public



EXHIBIT A

**247 N. MacDonald, Mesa, Arizona
Legal Description**

Commencing at the Northwest corner of Lot 1, Tract A, Block 29, Mesa, according to the Plat of Record on files in the office of the County Recorder of Maricopa County, Arizona, Book 23 of Maps, page 18 thereof; said point also known as the True Point of Beginning;

thence East along the North line of said Tract A ,a distance of 331.60 feet;

thence South, an assumed bearing, a distance of 450.00 feet;

thence West, an assumed bearing, a distance of 165.70 feet;

thence North, a distance of 20.00 feet;

thence West, an assumed bearing, a distance of 165.70 feet;

thence North, along the West line of said Block 29, a distance of 430.0 feet to the True Point of Beginning, containing 145,920 square feet, or 3.35 acres, more or less.

Mesa also owns the buildings on the above described site.

EXHIBIT B
Oakwood Creative Care Leased Premises

The Leased Premises shall consist of 4,176 square feet of the property described in Exhibit A, the location and area of which is depicted in the below site map as the area of the "Oakwood Leased Premises."

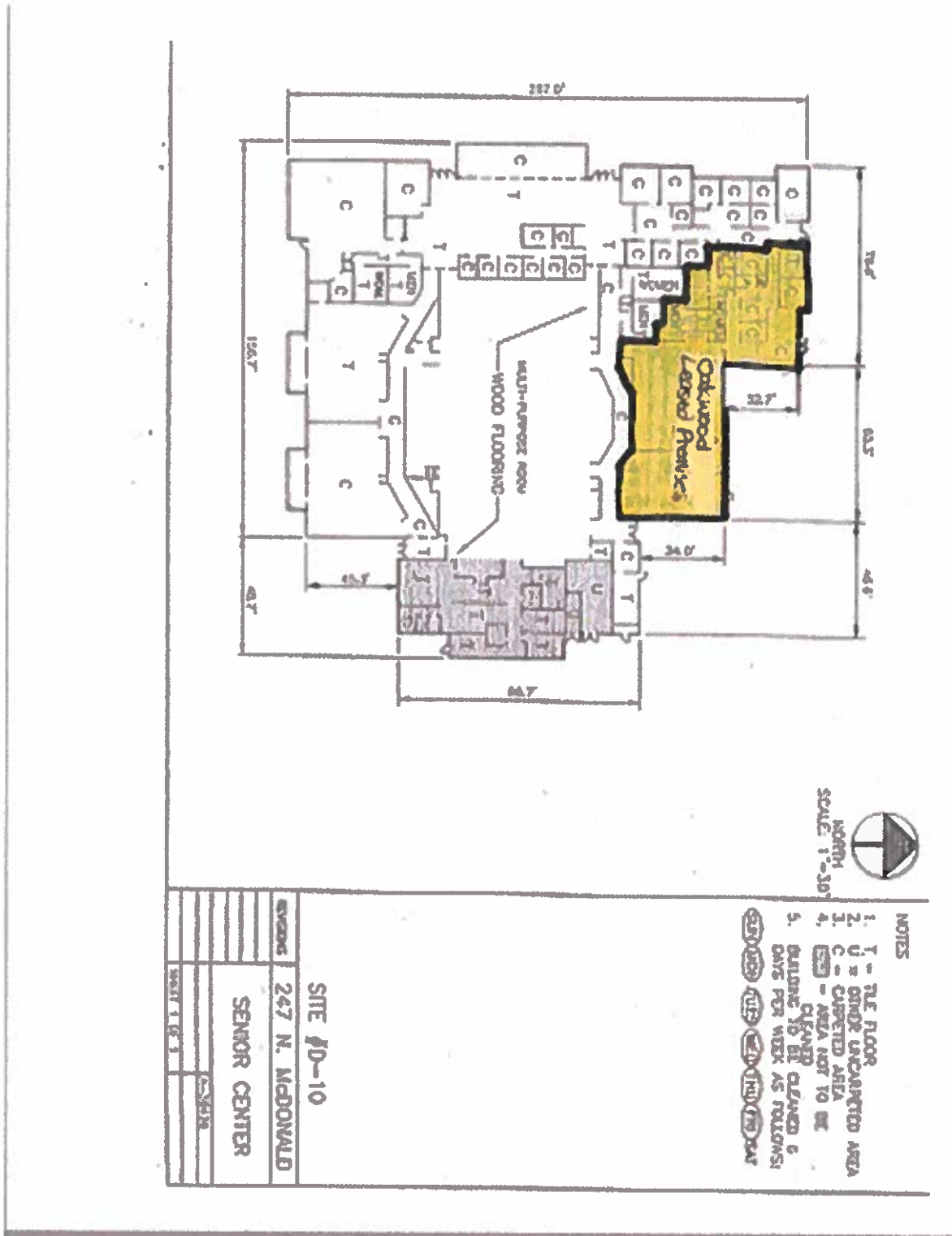


EXHIBIT D
Memorandum of Lease

MEMORANDUM OF LEASE

WHEN RECORDED RETURN TO:

When recorded, return to:
CITY OF MESA
Real Estate Services
P.O. Box 1466
Mesa, AZ 85211-1466

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") provides constructive notice to all persons that there is in existence a Lease as generally described in this Memorandum. This Memorandum is executed by the Landlord and the Tenant for recording purposes only as to the Lease hereinafter described, and it is not intended and shall not modify, amend, supersede or otherwise effect the terms and provisions of the Lease. In the event of a conflict or ambiguity between anything contained in the Lease, and anything contained in this Memorandum, the Lease will control and prevail.

1. Name of Document: City of Mesa Lease Agreement
(the "Lease")
2. Name of Landlord: City of Mesa, Arizona, an Arizona municipal corporation
(the "Landlord")
3. Name of Tenant: Oakwood Creative Care, an Arizona Nonprofit Corporation
(the "Tenant")
4. Address of Landlord: 20 East Main Street, Suite 200
Mesa, Arizona 85211-1466
5. Address of Tenant: 247 N Macdonald
Mesa, AZ 85201
6. Date of Lease: July 1, 2022
7. Lease Term: Commencing on the Effective Date
and expiring five (5) years thereafter, with an option
to renew for five (5) years.

8. **Leased Premises:** A portion of the property located at 247 N. MacDonald, Mesa, Arizona 85201 consisting of 28,383 square feet of the building improvements, with the entire property, including unleased portions, legally described on Exhibit "A" attached hereto and made a part hereof, together with a portion of other improvements, related rights and appurtenances thereto.
9. **Rent:** Tenant shall pay to Landlord rents and other amounts, as more particularly set forth in the Lease.
10. **Incorporation:** All of the covenants, conditions, defined terms and provisions of the Lease are, by this reference to the Agreement, incorporated herein and made a part hereof, the same as though expressly set forth herein. If a conflict arises between the provisions of this Memorandum of Lease and the provisions of the Lease, the provisions of the Lease shall prevail.

A copy of the Lease is maintained at the offices of Landlord and Tenant at their respective addresses set forth above.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease on July 21, 2022.

Signatures and acknowledgments are on the following two pages.

LANDLORD'S SIGNATURE PAGE

Landlord:

City of Mesa, Arizona, an Arizona municipal corporation

By: [Signature]
Name: Marc Heirshberg
Its: Deputy City Manager

STATE OF Arizona)
County of Maricopa) ss.

On July 21, 2022, before me, a notary public in and for said state, personally appeared Marc Heirshberg and _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) (is)(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

Kimberly A. Fallbeck
Notary Public
My Commission Expires: 10/5/2024



TENANT'S SIGNATURE PAGE

Tenant:

Oakwood Creative Care, an Arizona nonprofit corporation

By: Sherris Friend
Name: Sherris Friend
Its: President & CEO

STATE OF Arizona)
County of Maricopa) ss.

On 20th of July, 2022, before me, a notary public in and for said state, personally appeared Sherris Friend and _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) (is)(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

[Signature]
Notary Public
My Commission Expires: 4/8/25

EXHIBIT A TO MEMORANDUM OF LEASE

DESCRIPTION OF THE PROPERTY

**247 N. MacDonald, Mesa, Arizona
Legal Description**

Commencing at the Northwest corner of Lot 1, Tract A, Block 29, Mesa, according to the Plat of Record on files in the office of the County Recorder of Maricopa County, Arizona, Book 23 of Maps, page 18 thereof; said point also known as the True Point of Beginning;

thence East along the North line of said Tract A ,a distance of 331.60 feet;

thence South, an assumed bearing, a distance of 450.00 feet;

thence West, an assumed bearing, a distance of 165.70 feet;

thence North, a distance of 20.00 feet;

thence West, an assumed bearing, a distance of 165.70 feet;

thence North, along the West line of said Block 29, a distance of 430.0 feet to the True Point of Beginning, containing 145,920 square feet, or 3.35 acres, more or less.

Mesa also owns the buildings on the above described site.