

## LEASE AGREEMENT

THIS LEASE ("Lease") is entered into as of the 8 day of March, 2012 ("Effective Date"), by and between the CITY OF MESA, an Arizona municipal corporation ("Lessor"), and CRESCENT CROWN DISTRIBUTING, L.L.C., a Louisiana limited liability company ("Lessee"). This Lease is the "Lease" to which reference is made in that certain Development Agreement (herein so called), dated as of February 8, 2011, by and between Lessor and Lessee, a copy of which was recorded in the Maricopa County, Arizona records ("Records") on February 17, 2011, as Instrument No. 2011-145331. Capitalized terms used in this Lease shall have the meanings ascribed to them parenthetically or in § 2.1 of this Lease.

### RECITALS:

A. This Lease is executed and delivered to implement certain of the purposes of the Development Agreement, which was approved and adopted by the City Council of the City of Mesa, Arizona by Resolution No. 9803 on February 7, 2011. This Lease is made in accordance with, and subject to the provisions of, the Development Agreement, which is incorporated herein by this reference and made a part hereof as though fully set forth herein; provided, however, that any conflict between the Development Agreement and any modifications thereto and this Lease shall be resolved in favor of this Lease.

B. Lessor has title of record to the property located in the City of Mesa, Maricopa County, Arizona, comprised of approximately 22.61 acres located at the Northwest Corner of Broadway Road and Brooks Circle and legally described on Exhibit "A" attached hereto (the "Land") and the building which comprises the improvements constructed on said Land and known as the Government Property Improvements under the Development Agreement. Said Land, the Government Property Improvements and all rights and privileges appurtenant thereto and all future additions thereto or alterations thereof are hereunder collectively referred to as the "Premises." The Government Property Improvements consist of a warehouse/industrial building to be used for distributing purposes, with a portion of such building to be used for incidental office purposes. A certificate of occupancy for the Government Property Improvements has been issued. When the term "City" is used herein, such reference is to the City of Mesa as a municipal, governmental body, and not as Lessor. The term "Premises" does not include the interest of the City in public utility easements, dedicated rights of way, or the improvements therein. The construction of the Government Property Improvements resulted in an increase in property value of the Premises of at least one hundred percent (100%).

C. Lessor is a "Government Lessor" under Arizona Revised Statutes ("A.R.S.") § 42-6201(1) and Lessee is a "Prime Lessee" under A.R.S. § 42-6201(4). When constructed, the Government Property Improvements will constitute "Government Property Improvements" under A.R.S. § 42-6201(2).

D. The Premises will be subject to the Government Property Lease Excise Tax as provided under A.R.S. § 42-6201 et seq. (the "Tax"). Lessor acknowledges that construction of the Government Property Improvements is a redevelopment of the Land described in Exhibit "A" and will result in improvements to and new uses of such property, and the Lessor and the general public will directly and indirectly realize substantial tangible and intangible benefits

from the redevelopment of such Land and the construction of the Government Property Improvements, including without limitation, the redevelopment of a key commercial area within the corporate boundaries of the City of Mesa, the facilitation of the expansion of the employment base within the City of Mesa, spurring the development of adjacent properties, and other benefits more particularly described in the Development Agreement.

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

## ARTICLE 1 — LEASE OF THE SITE

**§ 1.1. Premises.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, upon and in consideration of the terms and conditions contained herein, the Premises. The Premises are subject to other covenants, restrictions, easements, agreements, and reservations of record, if any, including, without limitation, the Development Agreement. Lessee has obtained any title insurance or information Lessee deems appropriate.

**§ 1.2. Term.** The term of this Lease shall be for a term of twenty (20) years, commencing on the Effective Date (the “**Commencement Date**”) and ending at midnight on the twentieth (20<sup>th</sup>) anniversary of the Commencement Date (the “**Termination Date**”), unless this Lease is sooner terminated as hereinafter provided. Notwithstanding anything contained herein to the contrary, the term of this Lease shall not commence until such time as Lessee has completed the Remediation Obligations, as defined in and in the manner required by the Development Agreement.

## ARTICLE 2 — DEFINITIONS

**§ 2.1. Definitions.** For the purposes of this Lease, the following words shall have the definition and meaning hereafter set forth:

“**Additional Payments**” means as defined in § 3.1 (B).

“**Affiliate**”: As applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person. For the purposes of this definition, (i) “control” (including with correlative meaning, the terms “controlling,” “controlled by” and “under common control”), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise, and (ii) “person” means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

“**Applicable Laws**” means as defined in § 8.10.

“**A.R.S.**” means as defined in Recital C.

“**City**” means as defined in Recital B.

“**Development Agreement**” means as defined in the lead-in language to this Lease.

“**Effective Date**” means as defined in the lead-in language to this Lease.

“**Events of Default**” means as defined in § 18.1.

“**General Plan**” means the General Plan of the City of Mesa, Arizona, as the same may be amended from time to time.

“**Government Property Improvements**” means as defined in the Development Agreement and in Recital C and as described in the Conceptual Plan attached as Exhibit “B” to the Development Agreement.

“**GPLET**” means as defined in § 4.6.

“**Imposition**” means as defined in § 4.1.

“**Institutional Lender**” means any third-party savings bank, bank or trust company, savings and loan association, insurance company, mortgage banker, mortgage broker, finance company, college or university, governmental pension or retirement funds or systems, any pension retirement funds or systems of which any of the foregoing shall be trustee, provided the same be organized under the laws of the United States or of any State thereof, or a Real Estate Investment Trust as defined in § 856 of the Internal Revenue Code of 1986 as amended.

“**Land**” means as defined in Recital B.

“**Leasehold Mortgage**” means as defined in § 17.2.

“**Leasehold Mortgagee**” means as defined in § 17.2.

“**Lease Year**” means the one (1) year period beginning on the Commencement Date and ending one (1) year from the Commencement Date, and any one (1) year period having the same beginning and ending dates in subsequent years thereafter.

“**Lessee**” means as defined in the lead-in language to this Lease.

“**Lessee’s Equipment**” means any items of movable machinery, trade fixtures, furniture, furnishings, counters, shelving or other personal property which are capable of being moved without substantial damage, whether or not attached to a building.

“**Lessee’s Improvements**” means all buildings, landscaping, driveways, parking areas, sidewalks and other improvements (excluding Lessee’s Equipment) which from time to time are placed, constructed or located upon the Premises during the Term of this Lease.

“**Lessor**” means as defined in the lead-in language to this Lease.

“**Liabilities**” means as defined in § 13.1(A).

“**Net Rent**” means as defined in § 3.1(A).

“**Premises**” means as defined in Recital B.

“**Records**” means as defined in the lead-in language to this Lease.

“**Regulated Substances**” means as defined in Article 30.

“**Remedies Notice**” means as defined in § 17.2(B).

“**Sublease**” means any agreement, written or oral, by which Lessee gives any person any rights of use or occupancy of or any benefit flowing from the Premises or a portion thereof, whether denominated “sublease” or otherwise, including a permit, assignment, license or concession.

“**Term**” means the period beginning on the Commencement Date and ending on the Termination Date, unless this Lease is terminated on an earlier date as hereinafter provided, in which case the Lease Term shall end on such earlier date.

“**Unavoidable Delay**” means as defined in Article 29.

## ARTICLE 3 — RENT

### § 3.1. Net Rent.

A. **Rent.** Lessee covenants to pay to Lessor, as net rental for the Premises (“**Net Rent**”), the sum of One Dollar (\$1.00) per year on the Commencement Date and every anniversary thereof. The consideration for this Lease includes, without limitation: Lessee’s payment of the entire cost of construction of the Government Property Improvements, Lessee’s performance of all of the covenants and obligations under this Lease and Lessee’s contribution toward fulfillment of Lessor’s policy and desire to promote development within a redevelopment area, to encourage the creation of jobs within the City of Mesa and to enhance tax revenues resulting from the operation of a business on the Premises, including transaction privilege taxes and the government property lease excise tax. Lessee, at its option and without prejudice to its right to terminate this Lease as provided herein, may prepay the Net Rent as provided for herein, but upon any early termination of this Lease, Lessor shall not be obligated to refund any portion of the prepaid rent.

B. **Additional Payments.** Net Rent shall be in addition to, and over and above, all of the other payments (if any) to be made by Lessee as hereinafter provided (collectively, “**Additional Payments**”).

§ 3.2. **Rent Absolutely Net.** It is the purpose and intent of the Lessor and Lessee that Net Rent payable hereunder shall be absolutely net to Lessor, so that this Lease shall yield to

Lessor the Net Rent herein specified, free of any charges, assessments, Impositions or deductions of any kind charged, assessed, or imposed on or against the Premises and without abatement, deduction or set-off by the Lessee, and Lessor shall not be expected or required to pay any such charge, assessment or Imposition or be under any obligation or liability hereunder except as herein expressly set forth, and that all costs, expenses and obligations of any kind relating to the maintenance and operation of the Premises, including all construction, alterations, repairs, reconstruction and replacements as hereinafter provided, which may arise or become due during the Term shall be paid by Lessee, and Lessor shall be indemnified and held and saved harmless by Lessee from and against such costs, expenses, and obligations.

**§ 3.3. Non-Subordination.** Lessor's interest in this Lease, as the same may be modified, amended or renewed, shall not be subject or subordinate to: (a) any mortgage now or hereafter placed upon Lessee's interest in this Lease; or (b) subject to the provisions of Section 11.5, any other liens, encumbrances or other matters hereafter affecting Lessee's interest in this Lease, unless otherwise agreed to by Lessor, in writing, in Lessor's commercially reasonable discretion.

**§ 3.4. No Release of Obligations.** Except for either a written mutual release and waiver of rights and liabilities arising under this Lease or to the extent expressly provided in this Lease, no happening, event, occurrence or situation during the Term, whether foreseen or unforeseen, and however extraordinary, shall permit the Lessee to quit or surrender the Premises or this Lease nor shall it relieve the Lessee of its liability to pay the Net Rent and Additional Payments and other charges under this Lease, nor shall it relieve the Lessee of any of its other obligations under this Lease.

#### ARTICLE 4 — ADDITIONAL PAYMENTS

**§ 4.1. "Additional Payments" Described.** Lessee shall pay, as Additional Payments during the Term, without notice (except as specifically provided herein) and without abatement, deduction or setoff (except as provided in Section 4.3), before any fine, penalty, interest or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, all sums, impositions, costs, expenses and other payments and all taxes, including personal property taxes, the rental taxes described in Section 4.2 and the GPLET (subject to Section 4.6), assessments, special assessments, water and sewer rents, rates and charges, charges for public utilities, excises, levies, licenses and permit fees, and other governmental or quasi-governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, provided that they are uniformly applied to all similarly situated property in the City, of any kind or nature whatsoever which, at any time during the Term may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or with respect to, or become a lien on or encumbering, the Premises or any part thereof, or any appurtenances thereto, any use or occupation of the Premises, or such franchises as may be appurtenant to the use of the Premises (all of which are sometimes herein referred to collectively as "**Impositions**", and, individually, as an "**Imposition**") provided, however, that:

A. if, by law, any Imposition may at the option of the Lessee be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Lessee may exercise the option to pay the same (and any accrued interest on the unpaid balance

of such Imposition) in installments and in such event, shall pay such installments as they become due during the Term before any fine, penalty, further interest or cost may be added thereto; and

B. any Imposition (including Impositions which have been converted into installment payments by Lessee, as referred to in paragraph (A) of this Section 4.1) relating to a fiscal period of the taxing authority, a part of which period is included within the Term and a part of which is included in the period of time after the expiration of the Term shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or become a lien upon the Premises, or shall become payable, during the Term) be adjusted between Lessor and Lessee as of the expiration of the Term, so that Lessee shall pay that portion of such Imposition attributable to the Term and Lessor shall pay the remainder thereof.

The parties believe that the transfer of the Premises from Lessee to Lessor at or contemporaneously with the Lease Commencement Date is not subject to the "speculative builder tax" as enacted by the City as a portion of the City's adoption of the "Model City Tax Code" because the City does not view such transfer, under the circumstances present with respect to the transfer from Lessee to Lessor in this instance, as a taxable event and the parties therefore contemplate that Lessee shall not be obligated to pay any speculative builder tax under Mesa City Code § 5-10-416 in connection with its transfer of the Premises to Lessor as contemplated by the Development Agreement. Lessee acknowledges and agrees that, notwithstanding the preceding sentence, Lessee will be obligated to cause to be paid any applicable "construction contracting" transaction privilege tax that is properly payable in connection with the construction of the Government Property Improvements.

**§ 4.2. Payments.** Lessee shall pay to Lessor, with and in addition to annual Net Rent, all taxes imposed on Lessor by any governmental unit in connection with this Lease. Lessee shall pay all other Impositions directly to the taxing authority or authorities, unless otherwise required by Applicable Laws.

**§ 4.3. Contest.** Lessee, if it shall so desire, may contest the validity or amount of any Imposition, in which event Lessee may defer the payment thereof during the pendency of such contest; provided, that upon request by Lessor at any time after the same shall have become due, Lessee shall deposit with the Lessor an amount sufficient to pay such contested item together with the interest and penalties thereon (as reasonably estimated by Lessor and Lessee), which amount shall be applied to the payment of such item when the amount thereof shall be finally fixed and determined. Nothing herein contained, however, shall be so construed as to allow such item to remain unpaid for a length of time that permits the Premises or any part thereof, or the lien thereon created by such Imposition to be sold for the nonpayment of the same. If the amount so deposited shall exceed the amount of such payment, the excess shall be paid to Lessee or, in case there shall be any deficiency, the amount of such deficiency shall be promptly paid by Lessee to Lessor together with all interest, penalties or other charges accruing thereon.

**§ 4.4. Assessment Reduction.** Lessee may, if it shall so desire, without expense to Lessor, endeavor at any time to obtain a lowering of an imposition or assessment upon the Premises for the purpose of reducing the amount thereof. However, in such event, although Lessor will not oppose such endeavor, Lessor will only be required to cooperate with Lessee in such endeavor if such endeavor is undertaken with respect to a taxing authority other than the City of Mesa. Lessee shall be authorized to collect any refund payable as a result of any

proceeding Lessee may institute for that purpose and any such refund shall be the property of Lessee to the extent to which it may be based on a payment made by Lessee.

**§ 4.5. Hold Harmless.** Lessor shall not be required to join in any action or proceeding referred to in Sections 4.3 or 4.4 (unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event any such action or proceeding may be taken by Lessee in the name of the Lessor only with Lessor's prior written consent, which consent shall not be unreasonably withheld or delayed). Lessee hereby agrees to pay, protect, defend, indemnify and save and hold Lessor harmless from, all costs (including Lessor's attorneys' fees), expenses, claims, loss or damage by reason of, in connection with, on account of, growing out of or resulting from, any such action or proceeding.

**§ 4.6. Government Property Lease Excise Tax.** As required under A.R.S. § 42-6206, Lessee is hereby notified of its potential tax liability under the Government Property Lease Excise Tax ("GPLET") provisions of A.R.S. §§ 42-6201, *et seq.* Lessee shall be responsible for any and all applicable property taxes and all applicable government property lease excise taxes described in A.R.S. § 42-6201 *et seq.* or similar laws in force from time to time that may be imposed on the Premises or on any interest of Lessee in the Premises under this Lease. Lessee acknowledges that, pursuant to A.R.S. § 42-6206, failure by Lessee to pay such taxes after any applicable notice and opportunity to cure provided in this Lease is an event of default that could result in termination of the Lease and title to the Land and Premises being transferred to Lessee. The City acknowledges that Lessee's development of the Premises is considered economically feasible only as a result of the tax abatement and excise tax rate available to Tenant under GPLET as of the Effective Date. Lessor and Lessee shall perform any administrative acts (that do not require the approval of the Mesa City Council) and execute, acknowledge and/or deliver any instruments and consents necessary for Lessee to qualify for the GPLET treatment as contemplated under the terms of this Lease, provided that such acts do not require the payment of any monies by Lessor or impose any economic cost, expense or penalty of any nature upon Lessor. If after the Effective Date, any of the GPLET statutes in force as of the Effective Date are amended so as to negate or reduce the excise tax rate available to Lessee on the Effective Date, Lessor and Lessee agree to cooperate and work together collaboratively and in good faith, at no cost to Lessor, to analyze any acceptable amendments to this Lease or other actions as may be available to provide essentially the same benefits to Lessee as if the GPLET statutes had not been amended.

## ARTICLE 5 — INSURANCE

**§ 5.1. Insurance Required.** Lessee shall obtain and cause to be in force and effect during the term of the Lease, at Lessee's sole cost and expense, insurance in accordance with the insurance requirements set forth in Exhibit "B" attached hereto. Lessor shall be an additional insured on all such policies.

**§ 5.2. Insurance Certificates.** Lessee shall evidence all insurance required by this Lease by furnishing to Lessor certificates of insurance annually and with each change in insurance coverage. Certificates must evidence that the policy referenced by the certificate is in full force and effect and that the policy satisfies each requirement of this Lease applicable to the policy. For example, certificates must evidence that Lessor and Lessor's employees, officials,

representatives, officers, directors and agents are additional insureds and that insurance proceeds will be paid as required by this Lease. All certificates shall be in addition to the actual policies and endorsements required. Lessee shall provide updated certificates at Lessor's request.

**§ 5.3 Acceptable Insurers.** All insurance policies required by this Lease shall be issued by insurers reasonably acceptable to Lessor. At a minimum, all insurers shall be duly licensed by the State of Arizona, Department of Insurance and shall have and maintain an A.M. Best, Inc. rating of B++VI.

**§ 5.4 Primary Insurance.** All insurance required by this Lease shall be primary insurance. Any insurance or self-insurance maintained by Lessor shall not contribute to the insurance Lessee is required to maintain hereunder.

**§ 5.5 Insurance Proceeds.** All insurance proceeds (whether actually paid before or after termination of this Lease) from any casualty insurance required by this Lease shall be paid directly to Lessee, subject to its obligations and covenants in this Lease. Such insurance proceeds shall be applied to compensate Lessee for the loss of the Premises and use of the Premises, and to protect Lessee and the Premises from every other loss or exposure suffered by Lessee. Subject to the foregoing, Lessee may use and apply such insurance proceeds for any use as reasonably determined by Lessee.

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

## ARTICLE 6 — SURRENDER; RECONVEYANCE

**§ 6.1. Reconveyance Upon Termination or Expiration.** On the last day of the term of this Lease or upon any termination of this Lease, title to the Premises (including all improvements constituting a part thereof) shall automatically vest in Lessee and GPLET shall no longer be applicable to the Premises. Upon such termination of this Lease, Lessor shall be entitled, upon approval of such action by Lessor's city council, and without any action on the part of Lessee, to cause to be recorded a special warranty deed, in the same form as the deed by which Lessee transferred title to the Premises to Lessor, transferring title to the Premises to Lessee and such recordation shall be deemed delivery of the special warranty deed to Lessee and shall be effective to transfer title to Lessee without any further action by Lessee or Lessor.

**§ 6.2. Reconveyance Documents.** Without limiting the foregoing, Lessor upon request from Lessee shall execute and deliver to Lessee the following to evidence the termination of this Lease and the reversioning of title to the Premises in Lessee: (a) the special warranty deed



referenced above; (b) a bill of sale transferring, without warranty of any kind, all of Lessor's right, title and interest in any personal property owned by Lessor and used in connection with the Premises to Lessee; (c) a memorandum in recordable form reflecting the termination of this Lease; (d) an assignment of Lessor'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 Lessor is a party and which are assignable by Lessor; and (e) such other reasonable and customary documents as may be required by Lessee or its title insurer to (i) confirm the termination of this Lease and the revesting of title to the Premises in Lessee and (ii) enable Lessee's title insurer to issue to Lessee a standard coverage owner's policy of title insurance insuring fee title to the Premises in Lessee; provided, however, that the transfer of title to the Premises to Lessee shall be effective upon recordation of the deed referenced in Section 6.1, regardless of whether any of the instruments referenced in this Section 6.2 are executed and delivered by the City.

**§ 6.3. Title and Warranties.** Except for the warranties set forth in the special warranty deed, the Premises shall be conveyed "AS IS" without representation or warranty of any kind, including, without limitation, as to condition or fitness for any purpose.

**§ 6.4. Expenses.** All costs of title insurance, escrow fees, recording fees and other expenses of the reconveyance, except Lessor's own attorneys' fees, shall be paid by Lessee.

#### **ARTICLE 7 — LESSOR'S PERFORMANCE FOR LESSEE**

**§ 7.1. Cures--Rights, Costs and Damages.** If Lessee shall fail to make any payment required to be made under this Lease or shall fail in the performance of the obligations of the Lease, and provided Lessor has given Lessee thirty (30) days written notice of Lessee's failure to pay or perform any obligation under the Lease, and Lessee has failed during said thirty-day period, subject to Enforced Delays, to pay or perform the act required to be performed by Lessee, the Lessor may, without being under any obligation to do so and without thereby waiving such default, make such payment and/or remedy such other default for the account and at the expense of Lessee. Notwithstanding the immediately preceding sentence, Lessor may proceed immediately in the event of an emergency, without any notice to Lessee provided Lessor has reasonably attempted to contact Lessee by telephone call to that person whose name and number have been provided to Lessor prior to such emergency.

#### **ARTICLE 8 — USES AND MAINTENANCE; IMPROVEMENTS BY LESSEE**

**§ 8.1. Absence of Warranties.** Lessee has leased the Premises after a full and complete examination thereof, as well as the title thereto and knowledge of its present uses and nonuses. Lessee accepts the same in the condition or state in which they now are without any representation or warranty, express or implied in fact or by law, by Lessor and without recourse to Lessor, as to the title thereto, the nature, condition, or usability thereof or the use or uses to which the Premises or any part thereof may be put, except to the extent of Lessor's express representations, warranties and indemnities as set forth herein, provided however that Lessor does represent that the anticipated use as an industrial warehouse, distribution, trucking and office uses are allowed by the Mesa City Code. Lessee expressly acknowledges and agrees that Lessee is aware that a fence enclosing certain property adjoining the Premises (Maricopa County Assessor's Parcel No. 134-31-009Y), encroaches onto the Premises along the Eastern boundary thereof and that Lessor shall have no liability to Lessee in connection with said encroachment,

either during the term of this Lease or upon the transfer of title to the Premises back to Lessee upon any termination or expiration of this Lease. Lessor shall not be required to furnish any services or facilities or to make any improvements, repairs or alterations in or to the Premises or to provide any off-site improvements, such as utilities or paving, or other forms of access to the Premises, other than what may already exist on the Effective Date, throughout the Term. Lessee hereby assumes the full and sole responsibility for the condition, construction, operation, repair, demolition, replacement, maintenance, and management of the Premises, excluding City right-of-way and easements, including but not limited to the performance of all burdens running with the Land.

**§ 8.2 Lessor Non-Responsibility.** Except as otherwise set forth in the Development Agreement, or otherwise in Lessor's capacity as a municipal utility service provider, Lessor shall have no responsibility, obligation or liability under this Lease whatsoever with respect to any of the following:

- (a) utilities, including gas, heat, water, light, power, telephone, sewage and any other utilities or services supplied to the Premises;
- (b) disruption in the supply of services or utilities to the Premises;
- (c) maintenance, repair or restoration of the Premises;
- (d) any other cost, expense, duty, obligation, service or function related to the Premises.

Provided, however, that nothing contained in this Section 8.2 shall excuse the City from any liability in its capacity as a municipal utility service provider.

**§ 8.3. Permitted Uses.** Lessee may use the Premises and Lessee's Improvements for any purpose which would be allowed pursuant to the zoning classification or other ordinances which may be applicable to the Premises at any time during the Term.

**§ 8.4. Maintenance Obligations, Repairs and Indemnity.** Lessee shall take good care of the Premises, make all repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Premises in good condition and repair, in accordance with Applicable Laws, City of Mesa standards and this Lease, whichever is more stringent, throughout the term of this Lease.

**§ 8.5 Utility Service; Utility Interruption.** Lessee shall contract for and pay all charges, fees, deposits and other amounts for gas, electricity, water, sewer, waste disposal services, garbage disposal, telephone and all other utilities provided to the Premises at the rates applicable thereto. Lessor is not responsible for any interruption of utilities to or upon the Premises or other difficulties related to utilities at the Premises. Without limitation, Lessor is not responsible for: (i) utility interruptions caused outside the Premises; (ii) utility interruptions not caused directly by Lessor's negligence; or (iii) the acts, breach, errors or omissions of any provider or consumer of electrical service or other utilities to the Premises. Provided however, this Section 8.5 does not relieve the City, in its capacity as a municipal utility service provider, of its obligations to provide utility service to the Premises.

**§ 8.6 Adjoining Public Property.** Lessee shall be obligated to make any modifications to the public sidewalk adjacent to the Premises necessary to bring the sidewalk into compliance with the current requirements of the Mesa City Code. Such modifications to the sidewalk shall be warranted by Lessee for a period of one (1) year. Upon the expiration of said one (1) year warranty period, the City shall thereafter be responsible for the maintenance and repair of the public sidewalk, except to the extent such maintenance or repair is necessitated as a result of damage caused by Lessee or Lessee's employees, agents or invitees. Lessee shall maintain, to the standard required by the Mesa City Code, all landscaping in the City right-of-way and easements immediately adjacent to the Premises to the back of curb.

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

**§ 8.8. Improvements by Lessee.** Lessee shall, pursuant to the terms of the Development Agreement, construct the Government Property Improvements. This Lease shall automatically terminate if Lessee fails to complete the Government Property Improvements within eighteen (18) months of the effective date of the Development Agreement. Lessor agrees, subject to the terms herein, that Lessee may construct additional improvements upon the Premises that are related to the Government Property Improvements and may undertake repairs, installation, construction, grading, structural alterations, utility, lighting, plumbing, sewer or other alterations, parking or traffic alterations, removal, demolition or other cumulatively significant construction or similar work of any description whether or not specifically described herein upon or related to the Premises (collectively, the "**Additional Improvements**"). All Government Property Improvements and Additional Improvements (collectively, "**Lessee's Improvements**") shall comply with the following:

(a) **Cost of Lessee Improvements.** All Lessee's Improvements shall be designed and constructed by Lessee at Lessee's sole cost and expense and in accordance with all Applicable Laws governing the development of the Premises. In no event, including, without limitation, termination of this Lease for any reason, shall Lessor be obligated to compensate Lessee in any manner for any of Lessee's Improvements or other work provided by Lessee during or related to this Lease. Lessee shall timely pay for all labor, materials, work and all professional and other services related thereto (provided that Lessee shall have the right to challenge or otherwise contest any amount claimed to be payable therefor) and shall pay, indemnify, defend and hold harmless Lessor and its council members, officers, directors, employees, representatives, agents and attorneys for, from and against all claims related to or arising out of the construction of Lessee's Improvements.

(b) **Construction Standards.** All Lessee's Improvements shall be constructed in accordance with City of Mesa Building Codes. After completion of the applicable Lessee's Improvement, Lessee shall provide to Lessor a set of "as-built" drawings for the applicable Lessee's Improvement.

(c) **Disturbance of Toxic Substances.** Prior to undertaking any major remodeling construction work on the Premises, Lessee shall cause the Premises to be inspected to prevent disturbance of potential Regulated Substances. Prior to any work of any description at the Premises that bears a material risk of disturbing any Regulated Substance, Lessee shall cause the contractor or other person performing such work to give to Lessor notice by the method described in this Lease to the effect that the person will inspect for such materials, will not disturb such materials and will indemnify, defend and hold Lessor harmless against any disturbance of such materials in the course of the contractor's or other person's work. Lessee shall cause any storage, inspection, treatment, transportation, disposal, handling or other work involving Regulated Substances by Lessee in connection with the Premises to be performed by persons, equipment, facilities and other resources who are at all times lawfully authorized, licensed, permitted and otherwise qualified to perform such services.

(d) **Time for Completion.** Following commencement of construction thereof, Lessee shall diligently pursue to completion the construction of all approved Lessee's Improvements.

**§ 8.9 Removal of Improvements.** If the Lessee removes or demolishes substantially all of the Government Property Improvements such that would not allow the Premises to be used as a distribution center without the prior written consent of Landlord, this Lease shall be subject to termination by the Lessor. In the event of termination of this Lease by the Lessor for any reason, title to the Premises shall be transferred to Lessee in accordance with the provisions of Article 6 hereof.

**§ 8.10. Applicable Laws.** For the purposes of this Agreement, the term "Applicable Laws" means the federal, state, county and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City which apply to the development, use, operation, maintenance and improvement of the Property from time to time.

**§ 8.11 Waste.** Lessee shall not commit or suffer to be committed any material waste or impairment of the Premises.

## ARTICLE 9 — COMPLIANCE

**§ 9.1. Lessee Obligations.** Lessee shall assume and perform any and all obligations under any covenants, easements and agreements affecting the title to the Premises and shall diligently comply, at its own expense during the Term, with all Applicable Laws concerning the Premises or any part thereof, or the use thereof, whether or not the applicable laws or requirements require the making of structural alterations or the use or application of portions of the Premises for compliance therewith or interfere with the use and enjoyment of the Premises; provided, however, that the provisions of this Section 9.1 shall not operate to deprive Lessee of any of Lessee's vested rights with respect to the development and use of the Premises; and provided, further, that Lessee may, in good faith (and wherever necessary, in the name of, but without expense to and with the prior written permission of, Lessor), contest the validity of any such applicable law, including, without limitation, seeking to obtain a taxability determination from the State of Arizona with regard to the lease activity under A.R.S. § 42-5069 and/or seeking

to obtain a determination from the State of Arizona that imputation of a “fair market rental rate” to this Lease for purposes of calculating the rental tax payable in connection herewith is not required under the Model City Tax Code, and, pending the determination of such contest, may postpone compliance therewith, except that Lessee shall not so postpone compliance therewith, as to subject Lessor to the risk of any fine or penalty or prosecution for a crime or other exposure to risk or material loss, damage or liability. Lessee acknowledges that this Lease does not constitute, and Lessor has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to Lessee with regard to) any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Mesa upon or affecting Lessee, the Premises or Lessee’s use of the Premises. Lessee acknowledges that all of Lessee’s obligations hereunder are in addition and cumulative to (and not to any extent in substitution or satisfaction of) all Applicable Laws. Lessee further agrees that this Lease is not intended to diminish any performance to the City of Mesa that would be required of Lessee by law if this Lease had been made between Lessee and a private citizen. This Lease does not impair the City of Mesa’s power to enact, apply or enforce any laws or regulations, or exercise any governmental powers, affecting in any way Lessee or the Premises. Lessor’s rights and remedies hereunder for Lessee’s failure to comply with all applicable laws supplement and are in addition to and do not replace all otherwise existing powers of the City of Mesa or any other governmental entity having jurisdiction over the Premises.

**§ 9.2. Easements.** In order to develop the Premises, it may be necessary or desirable that street, water, sewer, drainage, gas, power lines, set back lines and other easements and similar rights be granted over or within portions of the Premises by easement or other appropriate instrument. Lessor shall, on written request from Lessee, timely join with Lessee in executing and delivering such documents, in recordable form, from time to time throughout the Lease Term, as may be deemed by Lessor reasonably appropriate, necessary or required by any governmental authority, public utility or company for the purpose of granting such easements, so long as the same do not have a material adverse effect on the value of the Premises and/or the proposed use of all or any portion thereof. Lessor shall not have the authority to grant or convey any easements, rights-of-way or any interest in the Land to any entity without the express written consent of Lessee.

## ARTICLE 10 — OWNERSHIP OF IMPROVEMENTS

**§ 10.1. Ownership of Buildings and Improvements.** Title to the Land, Premises and any Lessee’s Improvement shall remain and be in Lessor for the Term, subject to Lessee’s rights hereunder, so long as Lessee fully and timely performs all of its obligations hereunder. Notwithstanding anything herein to the contrary, from and after the Effective Date, Lessor shall not permit the Land and Premises (including, without limitation, Lessor’s fee simple interest in the Land and Premises) to be further encumbered in any manner whatsoever, nor permit any impairment of title to the Premises, without prior written consent of Lessee, which consent may be withheld in Lessee’s sole and absolute discretion.

**§ 10.2. Lessee’s Management.** During the Term, Lessee shall prudently manage and operate (or cause to be managed and operated) the Building, and will properly maintain the Government Property Improvements and all other improvements to the Premises in good repair, reasonable wear and tear excepted.

## ARTICLE 11 — IMPAIRMENT OF LESSOR'S TITLE

§ 11.1. **No Liens.** Subject to the right of contest and appeal, Lessee shall not create, or suffer to be created or to remain, and shall discharge any mechanic's, laborer's or materialman's lien which might be or become a lien, encumbrance or charge upon the Premises or any part thereof or the income therefrom and Lessee will not suffer any other matter or thing arising out of Lessee's use and occupancy of the Premises whereby the estate, rights and interests of Lessor in the Premises or any part thereof might be materially impaired; provided, however, that the foregoing shall not apply to any preliminary lien notices which may be sent in connection with Lessee's construction.

§ 11.2. **Discharge.** If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Premises or any part thereof, Lessee shall cause such lien to be discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise on such terms, conditions and schedule as Lessee shall determine to be appropriate. Lessee shall notify Lessor in writing of its action to either satisfy or contest the lien.

§ 11.3. **No Implied Consent.** Nothing contained in this Lease shall be deemed or construed in any way as constituting Lessor'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 Premises or any part thereof.

§ 11.4. **No Agency Intended.** In connection with any construction of Buildings on the Premises which may take place in accordance with the terms hereof, the parties agree that Lessee is not the agent of Lessor for the construction, alteration or repair of any improvement Lessee may construct upon the Premises, the same to be accomplished at the sole expense of Lessee.

§ 11.5. **Ability to Incumber/Landlord Cooperation.** Notwithstanding anything herein to the contrary, other than matters which Lessee is required to discharge pursuant to the terms of this Lease, Lessee shall be permitted, without Lessor's consent, to enter into any easements, covenants, license agreements or other agreements encumbering Lessor's fee simple title to the Premises, or otherwise subject Lessor's fee simple title to the Premises to any lien or encumbrance (but not liens or encumbrances for financing), that Lessee reasonably deems necessary or desirable for the use, occupancy, ownership, development or operation of the Government Property Improvements. Further, upon request of Lessee, and at no cost, expense or liability to Lessor, Lessor agrees to join in and execute any consents requested by Lessee in connection with such matters solely in its capacity as owner of the Premises (but not in its capacity as a municipality); and the City Manager is hereby authorized to execute and deliver such consents on behalf of Lessor.

## ARTICLE 12 — INSPECTION

§ 12.1. **Inspection and Entry.** Lessor may enter upon the Premises, or any part thereof, for the purpose of ascertaining their condition or whether Lessee is observing and performing the

obligations assumed by it under this Lease, all without hindrance from Lessee, provided that such entry does not interfere with Lessee's business operations or the operations of any assignee or subtenant and provided that Lessor shall give Lessee at least seventy-two (72) hours written notice prior to any inspection of any building interior.

The seventy-two (72) hour notice provision shall not be construed to prohibit or delay any entry by Lessor in an emergency situation or in Lessor's capacity as a municipality exercising its police power or in its criminal law enforcement capacity, nor to any entry authorized by any writ or warrant issued by any Court, nor to any entry authorized by any health or welfare statute, code, ordinance, rule or regulation. Lessor agrees to comply with any and all Federal or State regulations, such as OSHA, upon Lessor's entry into the Premises.

## ARTICLE 13 - INDEMNIFICATION

### § 13.1. Indemnification of Lessor.

A. Lessee shall pay, protect, defend, indemnify and hold and save Lessor harmless for, from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including property damage, personal injury and wrongful death and further including, without limitation, architects' and attorneys' fees and disbursements (collectively, "**Liabilities**"), which may be imposed upon or incurred by or asserted against Lessor by reason of any of the following occurring during the Term unless solely caused by the gross negligence or willful conduct of Lessor, its agents or employees or contractors or a failure to act by the Lessor, its agents, employees or contractors when a duty to act is present and, provided further, that this indemnification shall not apply to any claims asserted against Lessor solely in its capacity as a municipality or as a utility provider rather than as the owner of the Premises or landlord under this Lease:

(1) construction of the buildings or any other work or thing done in, on or about the Premises or any part thereof by Lessee or its agents;

(2) any use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or improvements or any nuisance made or suffered thereon by Lessee or by any person or entity claiming by or through Lessee or any failure by or of Lessee to keep the Premises or improvements or any part thereof, in a safe condition;

(3) any acts of the Lessee or any subtenant or any of its or their respective agents, contractors, servants, employees, licensees or invitees;

(4) any fire, accident, injury (including death) or damage to any person or property occurring in, on or about the Premises or improvements or any part thereof;

(5) any failure on the part of Lessee to pay rent or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with and the exercise by Lessor of any remedy provided in this Lease with respect thereto;

(6) any lien or claim which may be alleged to have arisen against or on the Premises or improvements or any part thereof or any of the assets of, or funds appropriated to, Lessor or any liability which may be asserted against Lessor with respect thereto to the extent arising, in each such case, out of the acts of Lessee, its contractors, agents or subtenants;

(7) any failure on the part of Lessee to keep, observe, comply with and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the subleases or other contracts and agreements affecting the Premises or improvements or any part thereof, on Lessee's part to be kept, observed or performed;

(8) any transaction relating to or arising out of the execution of this Lease or other contracts and agreements to which Lessee is a party affecting the Premises or improvements, the Building or any part thereof or any activities performed by any party, person or entity which are required by the terms of this Lease or such other contracts and agreements;

(9) any tax payable by Lessee under this Lease or relating to the Premises, including any tax attributable to the execution, delivery or recording of this Lease, with respect to events occurring during the Term.

The provisions hereof shall survive the expiration or earlier termination of this Lease.

**B.** Lessee will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises and improvements at the sole risk of Lessee and pay, indemnify, defend and hold Lessor harmless for, from and against any loss or damage thereto pursuant to Section 13.1.

**C.** The obligations of Lessee under this Article 13 shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Premises.

**D.** If any claim, action or proceeding is made or brought against Lessor by reason of any event to which reference is made in this Article 13, then, upon demand by Lessor, Lessee, at its sole cost and expense, shall resist or defend such claim, action or proceeding in Lessor's name, if necessary, by the attorneys for Lessee's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys selected by Lessee as Lessor shall approve, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Lessor shall at all times cooperate with the Tenant in good faith in the defense of any such claim, and Lessor may engage its own attorneys to defend it or to assist in its defense at Lessor's sole expense.

## **ARTICLE 14 — DAMAGE OR DESTRUCTION**

**§ 14.1. Lessee Repair and Restoration.** In case of damage to or destruction of the Premises or the Government Property Improvements during the term of this Lease by fire or other casualty, except as set forth in § 14.3 below, Lessee, at its election and at its sole cost and expense, may elect to restore, replace, rebuild or alter the same as nearly as possible to their value, condition and character immediately prior to such damage or destruction. If Lessee elects



to restore, replace, rebuild or alter the Government Property Improvements, Lessee shall notify Lessor of its election within six (6) months after the occurrence of such fire or other casualty. The restoration, repair, replacements, rebuilding, or alteration shall proceed with diligence and good faith and shall be completed within eighteen (18) months after the election to proceed, subject to: (a) Unavoidable Delay; and (b) Lessor's issuance of the necessary permits and approvals for such restoration, repairs, replacements, rebuildings or alterations in accordance with Lessor's then-applicable municipal process (for which Lessee agrees to timely and promptly file and diligently prosecute to completion the necessary applications to obtain the same). In the event of damage to or the destruction of the Premises and/or the Government Property Improvements, Lessee shall promptly give written notice thereof to Lessor. If Lessee elects not to repair, restore, replace or rebuild the industrial warehouse and distribution facility, Lessee shall notify Lessor of its election to terminate this Lease by giving Lessor written notice of Lessee's election to so terminate. In the event of an election to terminate by Lessee, fee title to the Land and Premises shall be transferred to Lessee as provided in Article 6 hereof. Upon any such termination, GPLET shall no longer be applicable to the Premises and the Development Agreement shall, if not already terminated, immediately terminate.

**§ 14.2. Payment of Insurance Proceeds.** All insurance proceeds received on account of such damage or destruction under the policies of insurance provided for in Article 5 shall be paid to Lessee.

**§ 14.3. Failure to Restore.** If Lessee does not provide notice to Lessor within the time period set forth in § 14.1, Lessor may, by delivering written notice to Lessee, terminate this Lease, which termination shall be effective sixty (60) days after delivery by Lessor of such notice of termination to Lessee, unless prior to the expiration of such sixty (60) day period, Lessee provides written notice of Lessee's election in Paragraph 14.1, as the case may be. Upon any such termination, fee title to the Land and Premises shall be transferred to Lessee as provided in Article 6 hereof, GPLET shall no longer be applicable to the Premises and the Development Agreement shall, if not already terminated, immediately terminate.

## ARTICLE 15 — CONDEMNATION

### § 15.1. Total, Substantial or Unusable Remainder.

A. If, at any time during the Term of this Lease:

(1) Total or Substantial Taking. Title to the whole or substantially all of the Premises shall be taken in condemnation proceedings or by any right of eminent domain or by agreement in lieu of such proceedings, this Lease shall terminate and expire on the date possession is transferred to the condemning authority and the Net Rent and Additional Payments reserved shall be apportioned and paid to such date; or

(2) Remainder Unusable for Purposes Leased. Title to a substantial portion of the Premises shall be taken in condemnation proceedings or by any right of eminent domain or by agreement in lieu of such proceeding, and the remaining part of the Premises cannot feasibly be used or converted for use by Lessee for the uses set forth in Section 8.2 hereof, Lessee may, at its option and with the written consent of any Leasehold Mortgagee, terminate this Lease within ninety (90) days after such taking by serving upon Lessor at any time within said ninety (90) day period, a thirty (30) day written notice of Lessee's election to so terminate accompanied by a certificate of Lessee that the remaining part of the Premises cannot feasibly be used or converted for use by Lessee as contemplated in Section 8.2 hereof.

**B. Award.** All awards and payments made for any taking or conveyance of all or any part of the Premises as described in this Section 15, including but not limited to severance damages, shall be paid to Lessee in addition to any relocation benefits to which Lessee may be entitled under applicable law.

**§ 15.2. Partial Taking--Lease Continues.** In the event of any taking of less than the whole or substantially all of the Premises, the Term shall not be reduced or affected in any way. In such a case, the Net Rent payable for that part of the balance of the Lease Term occurring prior to the termination or expiration of the Lease, shall be based on the ratio of the remaining square footage of leased Land to the square footage of the Land prior to the condemnation. In the event that the whole or partial taking of the Premises is so taken or conveyed such that in Lessee's sole opinion the use of the remaining Premises is materially interfered with, or such that the Government Property Improvements cannot be timely and reasonably rebuilt so that upon completion Lessee may again use the Premises without substantial interference, Lessee may terminate this Lease by giving Lessor written notice at any time after the occurrence of any of the foregoing and such termination shall be effective as of the date of the transfer to the condemning authority. Upon any such termination (a) fee title to the Land and Premises shall be transferred to Lessee as provided in Article 6 hereof and (b) GPLET shall no longer be applicable to the Premises and the Development Agreement shall, if not already terminated, immediately terminate.

**A. Award.** In the event of a partial taking, all of the award or awards resulting from said partial taking shall be paid to Lessee.

**§ 15.3. Rights of Participation.** Each party shall have the right, at its own expense, to appear in and defend any condemnation proceeding and participate in any and all hearings, trials, and appeals therein.

**§ 15.4. Notice of Proceeding.** In the event Lessor or Lessee shall receive notice of any proposed or pending condemnation proceedings affecting the Premises, the party receiving such notice shall promptly notify the other party of the receipt and contents thereof.

## **ARTICLE 16 — REPRESENTATIONS AND WARRANTIES OF LESSEE**

**§ 16.1 Lessee's Representations and Warranties.** The representations and warranties of Lessee contained in this Section are being made to induce Lessor to enter into this Lease and Lessor has relied, and will continue to rely, upon such representations and warranties. Lessee represents and warrants to Lessor as follows:

(a) Lessee has been duly organized or formed, is validly existing and in good standing under the laws of its state of incorporation or formation and is qualified as a foreign corporation, partnership or limited liability company to do business in any jurisdiction where such qualification is required. All necessary corporate, partnership or limited liability company action has been taken to authorize the execution, delivery and performance by Lessee of this Lease and of the other documents, instruments and agreements provided for herein.

(b) The individual executing this Lease on behalf of Lessee is authorized to do so.

(c) The agreements contained in this Lease constitute the legal, valid and binding obligations of Lessee, enforceable against Lessee in accordance with their terms.

(d) To the best of Lessee's actual knowledge, there are no suits, actions, proceedings or investigations pending, or threatened, against or involving Lessee before any court, arbitrator or administrative or governmental body which might reasonably result in any material adverse change in the contemplated business, condition, worth or operations of Lessee or the Premises.

(e) To the best of Lessee's actual knowledge, Lessee is not, and the execution, delivery and performance of this Lease and the documents, instruments and agreements provided for herein will not result, in any breach of or default under any other document, instrument or agreement to which Lessee is a party or by which Lessee, the Premises or any of Lessee's property to be used on or at the Premises is subject or bound, which will have a materially adverse affect on Lessee's ability to perform hereunder.

(f) Lessee has obtained or will obtain all required licenses and permits, both governmental and private, to use and operate the Premises in the intended manner, the absence of which would have a materially adverse affect on Lessee's ability to perform hereunder.

## **ARTICLE 17 — ASSIGNMENT, SUBLETTING, MORTGAGE**

### **§ 17.1. Transfers by Lessee.**

A. Provided Lessee is not in default under the terms of this Lease, Lessee shall have, at any time and from time to time, the right to assign the Lease and Lessee's leasehold interest or to sublease all of or any part of the Premises to any person or persons or entity, without the consent of Lessor; provided, however, that in the event any assignee of Lessee's rights hereunder fails at any time during the Lease Term to employ at least one hundred (100) full-time employees at the Premises, Lessor may, at its election, unless such failure is cured by Lessee within thirty (30) days of written notice of such failure from Lessor, terminate this Lease, effective upon the expiration of said thirty (30) day period. Upon any such termination (a) fee title to the Premises shall be transferred to Lessee as provided in Article 6 hereof and (b) GPLET shall no longer be applicable to the Premises and the Development Agreement shall, if not already terminated, immediately terminate.

**B.** As a condition to any assignment by Lessee of this Lease and Lessee's leasehold interest in the Premises, the assignee shall assume all of Lessee's rights, duties and obligations under this Lease. Any sublease shall be made subject to this Lease and the sublessee under any sublease shall so acknowledge in writing.

**§ 17.2 Leasehold Mortgage.** Lessee shall have the right at any time and from time to time to mortgage, grant a deed of trust regarding or otherwise encumber Lessee's leasehold estate and Lessee's rights under this Lease pursuant to a leasehold mortgage or deed of trust ("**Leasehold Mortgage**"), and Lessee may assign its interest in this Lease as collateral security for such Leasehold Mortgage. The holder of said Leasehold Mortgage must be an Institutional Lender.

**A. Notice to Leasehold Mortgagee.** Lessor agrees to send copies of all notices given to Lessee simultaneously to each leasehold mortgagee notice of whose name and address has been given to Lessor (a "**Leasehold Mortgagee**", which term shall include any successors of said Leasehold Mortgagee as purchaser of the leasehold estate at any foreclosure proceedings).

**B. Cure by Leasehold Mortgagee.** Lessor shall not have the right to exercise any remedies under this Lease unless Lessor shall first give Leasehold Mortgagee: (i) a notice of its intent to exercise its rights hereunder (the "**Remedies Notice**") containing a statement of all existing Events of Default under this Lease; and (ii) the opportunity to cure such Events of Default, within the same periods as Lessee is provided hereunder. Lessor shall deliver such Remedies Notice at the same time Lessor gives written notice of default to Lessee hereunder. If Leasehold Mortgagee cures all stated Events of Default in accordance with the foregoing provisions, then both the notice of default given to Lessee and the Remedies Notice shall be null and void and of no effect. Lessor agrees to accept performance of Lessee's obligations hereunder by Leasehold Mortgagee with the same force and effect as though observed or performed by Lessee. If Leasehold Mortgagee fails to timely cure in accordance with the foregoing, Lessor shall be free to exercise all rights it may have under this Lease, including, without limitation, termination of this Lease and transfer of title to Lessee, in accordance with the provisions of Article 6 hereof.

**C. Limitations on Liability.** Under no circumstances shall Leasehold Mortgagee be liable for the performance of Lessee's obligations hereunder unless and until Leasehold Mortgagee acquires Lessee's rights and interest by foreclosure or other assignment or transfer in lieu thereof. In the event that Leasehold Mortgagee so acquires Lessee's rights and interest by foreclosure or other assignment or transfer in lieu thereof, the liability of Leasehold Mortgagee, its successors and assigns shall be limited to its leasehold interest in this Lease, and then only for obligations which arise during the period of such ownership. Neither Leasehold Mortgagee, nor its successors and assigns, nor any agent, partner, officer, trustee, director, shareholder or principal (disclosed or undisclosed) of Leasehold Mortgagee, its successors or assigns, shall have any personal liability hereunder. Leasehold Mortgagee shall be released from any obligations hereunder after transfer of its leasehold interest.

**D. Notice Procedure.** All notices from Lessor to Leasehold Mortgagee and from Leasehold Mortgagee to Lessor shall be in writing and given in the manner specified in

Article 21 hereof. The address for notices to Leasehold Mortgagee shall be the address furnished to Lessor by Lessee.

## ARTICLE 18 — DEFAULT BY LESSEE

**§ 18.1. Events of Default.** The happening of any one of the following events (herein called “**Events of Default**”) shall be considered a material breach and default by Lessee under this Lease:

**A. Monetary Default.** If default shall be made in the due and punctual payment of any Net Rent or Additional Payment and such default continues for thirty (30) days after written notice thereof to Lessee.

**B. Non-Monetary Default.** If default shall be made by Lessee in the performance of or compliance with any of the covenants, agreements, terms, limitations, or conditions hereof other than those referred to in the foregoing subsection (A), and such default shall continue for a period of sixty (60) days after written notice thereof from Lessor to Lessee (provided, that if Lessee proceeds with due diligence during such sixty (60) day period to substantially cure such default and is unable by reason of the nature of the work involved of Enforced Delays, to cure the same within the required sixty (60) days, its time to do so shall be extended by the time reasonably necessary to cure the same as determined by Lessor); or

**C. Abandonment.** If Lessee shall abandon the Premises.

**D. Bankruptcy, Voluntary.** If Lessee shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall take the benefit of any relevant legislation that may be in force for bankrupt or insolvent debtors or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state, or other statute, law or regulation, or if Lessee shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Lessee or of all or any substantial part of its properties, or shall make any general assignment for the benefit of creditors and Lessee, after voluntary bankruptcy, does not employ at least 100 people on the Premises; or

**E. Bankruptcy, Involuntary.** If a petition shall be filed against Lessee seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation, and shall remain undismissed or unstayed for ninety (90) days, or if any trustee, receiver or liquidator of Lessee, or of all or substantial part of its properties, shall be appointed without the consent or acquiescence of Lessee and such appointment shall remain unvacated and unstayed for ninety (90) days and Lessee, after involuntary bankruptcy, does not employ at least 100 people on the Premises; or

**F. Insurance, Lapse or Termination.** The lapse or cancellation of any policy of insurance required herein, in whole or in part for the benefit of Lessor, shall be an event of default. Lessee shall have thirty (30) days to cure after written notice by Lessor. No cure of such default can be accomplished unless a new or renewed policy is issued which specifically

provides the required coverage to the Lessor for any liability arising during the lapsed or previously uncovered period.

**G. Default Under Development Agreement.** The occurrence of any Event of Non-Performance by Lessee under the Development Agreement that is not cured after written notice to Lessee thereof prior to the expiration of the cure periods provided for in the Development Agreement, unless such cure periods are extended in writing by the City Manager acting on behalf of Lessor.

**§ 18.2. Termination.** Upon the occurrence of one or more of the events listed in § 18.1 which is not cured within the applicable notice and grace periods, if any, set forth above, the Lessor at any time thereafter, but not after such default is cured, may give written notice to Lessee terminating this Lease and the Term hereby demised and all rights of Lessee under this Lease shall expire and terminate as though such date were the date originally set forth herein for the termination hereof. Additionally, Lessor may terminate this Lease immediately if and only if Lessee revokes Lessor's right to enter the Premises to conduct environmental testing, as set forth in the Right to Enter Agreement between Lessor and Lessee dated February 1, 2011. In the event of any termination of this Lease pursuant to this Section 18.2, title to the Premises shall be transferred to Lessee pursuant to (a) the provisions of A.R.S. §42-6206(C), (b) Section 6.2(f) of the Development Agreement and (c) the provisions of Article 6 hereof. Other than executing the documents referenced in Section 6.2 hereof, Lessor shall not be required to undertake any action or incur any cost, including, without limitation, the cost of any title insurance policy desired by Lessee, in connection with such transfer of title to the Premises to Lessee.

**§ 18.3. Lessee Liability.** In the event of expiration or termination, Lessee shall pay to Lessor the Net Rent and Additional Payments required to be paid by Lessee up to the time of such expiration or termination of this Lease.

**§ 18.4. No Implied Waivers.** No failure by Lessor to insist upon the strict performance of any covenant, agreement, term or condition hereof or to exercise any right or remedy consequent upon a breach hereof, and no acceptance of full or partial Net Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition hereof to be performed or complied with by Lessor or Lessee, and no breach thereof, shall be waived, altered or modified, except by a written instrument executed by the party to be charged therewith. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term, limitation and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach hereof.

**§ 18.5. Remedies Cumulative.** In the event of any breach by Lessee of any of the covenants, agreements, terms or conditions hereof, Lessor, in addition to any and all other rights, shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise for such breach. In the event of Lessee's failure to pay Net Rent or Additional Payments on the date when due, Lessee shall pay Lessor interest on any such overdue payments and associated late charges at the rate of fifteen percent (15%) per annum, but in no event an amount greater than permitted by law, but this shall in no way limit any claim for damages for Lessor for any breach or default by Lessee.

**§ 18.6. Late Charge.** In the event that any payment required to be made by Lessee to Lessor under the terms of this Lease is not received within ten (10) days after written notice of delinquency, a late charge shall become immediately due and payable as an Additional Payment in the amount of two percent (2%) of the late payment, but in no event greater than \$500 per occurrence.

## **ARTICLE 19 — DEFAULT BY LESSOR**

**§ 19.1. Limitations of Lessor's Liability.** The term "Lessor," as used herein, so far as Lessor's covenants and agreements hereunder are concerned, shall be limited to mean and include only the owner or owners of the fee title to the Premises or those having the right of immediate possession in a pending condemnation action at the time in question. Lessor's rights and obligations hereunder shall be nontransferable and non-assignable during the term, and any purported transfer or assignment in violation of this provision shall be void and vest no rights in the purported transferee or assignee. Lessor shall not convey or transfer all or any portion of the fee simple interest in the Premises except to the Lessee.

**§ 19.2. Remedies.** In the event of any breach by Lessor of any of the covenants, agreements, terms, or conditions hereof, Lessee, in addition to any and all other rights, shall be entitled to enjoin such breach and shall have the right to invoke any "special action remedy" or specific performance remedy allowed at law or in equity or by statute or otherwise for such breach.

## **ARTICLE 20 — UNENFORCEABLE TERMS**

Lessor and Lessee each believes that the execution, delivery and performance of this Lease are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring the Lessor to do any act in violation of any 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 (economic and otherwise) to the parties as if such severance and reformation were not required. Unless prohibited by Applicable Laws, 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.

## **ARTICLE 21 — NOTICES**

**§ 21.1. Notices.** Any notice, request, demand, statement, or consent herein required or permitted to be given by either party to the other hereunder, except as pursuant to Article 12, shall be in writing signed by or on behalf of the party giving the notice and addressed to the other parties to the Lease at the address as set forth below:

If to the City: Christopher J. Brady  
City Manager  
20 East Main Street, 7<sup>th</sup> Floor  
Mesa, Arizona 85211-1466  
Telephone: (480) 644-2066  
Facsimile: (480) 644-2175

With a required copy to: Deborah J. Spinner  
City Attorney  
20 East Main Street, 8<sup>th</sup> Floor  
Mesa, Arizona 85211-1466  
Telephone: (480) 644-2343  
Facsimile: (480) 644-2498

With a required copy to: Gust Rosenfeld PLC  
One East Washington, Suite 1600  
Phoenix, Arizona 85004  
Attn: Frank S. Tomkins, Esq.  
Telephone: (602) 257-7476  
Facsimile: (602) 254-4878

If to Developer: Crescent Crown Distributing, L.L.C.  
402 South 54<sup>th</sup> Place  
Phoenix, Arizona 85034  
Attn: Rich Marchant, Vice President -Operations  
Telephone: (602) 346-5547  
Facsimile: (602) 346-5595

With a required copy to: Pew & Lake, P.L.C.  
1744 South Val Vista Drive, Suite 217  
Mesa, Arizona 85204-7366  
Attn: Sean B. Lake, Esq.  
Telephone: (480) 461-4670  
Facsimile: (480) 461-4676

Each party may by notice in writing change its address for the purpose of this Lease, which address shall thereafter be used in place of the former address. Each notice, demand, request, or communication which shall be mailed to any of the aforesaid shall be deemed sufficiently given, served, or sent for all purposes hereunder two (2) business days after it shall be mailed by United States registered or certified mail, postage prepaid, in any post office or branch post office regularly maintained by the United States Government, upon personal delivery, or one business day after deposit with any commercial air courier or express service.

**§ 21.2 Notice to First Leasehold Mortgagee of Record.** When, under the terms of this Lease, any Notice is required or permitted to be given to a Leasehold Mortgagee, it is the intention of the parties that such notice shall only be required to be given to the first Leasehold Mortgagee of Record. Notice to other Lenders shall be the responsibility of Lessee. Should Lessee fail to give notice to other Lenders, such failure shall not affect the validity of any action



taken by Lessor. This provision takes precedence over any other provisions of this Lease that may impose a greater notice requirement upon Lessor.

## ARTICLE 22 — OMITTED

## ARTICLE 23 — QUIET ENJOYMENT

Subject to all of the conditions, terms, and provisions contained in this Lease, Lessor covenants that Lessee, upon paying the Total Rent herein provided, and additional payments and observing and keeping all terms, covenants, agreements, limitations, and conditions hereof on its part to be kept, shall quietly have and enjoy the Premises during the Term, without hindrance or molestation by Lessor.

## ARTICLE 24 — ESTOPPEL CERTIFICATES

Lessor or Lessee may request a certificate evidencing whether or not

A. The Lease is in full force and effect along with the amount and current status of the Net Rent and Additional Payments due hereunder;

B. The Lease has been modified or amended in any respect or describing such modifications or amendments, if any; and

C. There are any existing defaults thereunder, to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any.

The party receiving such a request shall cooperate with the requesting party and shall deliver a written response within twenty (20) days of such request.

## ARTICLE 25 — CONSENTS

**§ 25.1. Parties and Notice.** Whenever the consent or approval of a party to this Lease is required or reasonably requested under this Lease, if they fail to notify the other party in writing within thirty (30) days (except where a longer or shorter period is otherwise specified herein for the giving of such consent or approval) after the giving of a written request therefor in the manner specified herein for the giving of notice, it shall be concluded that such consent or approval has been given.

**§ 25.2. No Damages for Withholding Consent.** Lessee agrees that Lessor shall not be liable or responsible in damages for withholding consent hereunder. If Lessee believes Lessor has wrongfully withheld consent, or has withheld consent in violation of the terms of this Agreement, Lessee's sole remedy shall be to bring an action against Lessor for specific performance of Lessor's purported obligation to consent. In no event shall Lessor be liable for any damages arising out of its failure to consent, whether actual, consequential, exemplary, punitive or otherwise.

## ARTICLE 26 — LESSOR NOT LIABLE

**§ 26.1. Limitation of Liability.** Lessor shall not be responsible or liable, except in the case of Lessor's gross negligence or intentional conduct, for any damage or injury to any property, fixtures, merchandise, or decorations or to any person or persons at any time on the Premises from steam, gas, electricity, water, rain, or any other source whether the same may leak into, issue or flow from any part of the Premises or from pipes or plumbing work of the same, or from any other place or quarter; nor shall Lessor be in any way responsible or liable in case of any accident or injury including death to any of Lessee's employees, agents, subtenants, or to any person or persons in or about the Premises; and Lessee agrees that it will not hold Lessor in any way responsible or liable therefor.

**§ 26.2. Nonliability of Lessor's Officials, Etc.; Non-Recourse.** No City Council member, official, representative, agent, attorney or employee of Lessor shall be personally liable to Lessee, or to any successor in interest to Lessee, in the event of any non-performance or breach by Lessor or for any amount which may become due to Lessee or its successors, or with respect to any obligation of the Lessor under the terms of this Lease. Lessor's liability and responsibility hereunder is limited to its interest in the Premises, and this Lease and all of its obligations are non-recourse upon Lessor, except to the extent of its interest in the Premises. Lessee shall not seek, obtain nor enforce any personal judgment against Lessor for any breach of this Lease by Lessor.

## ARTICLE 27 — MISCELLANEOUS

**§ 27.1. Lessor's Right of Cancellation.** All parties hereto acknowledge that this Lease is subject to cancellation by Lessor pursuant to the provisions of A.R.S. § 38-511.

**§ 27.2. Amendments.** This Lease may not be amended except by a formal writing executed by Lessor and Lessee.

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

**§ 27.4. No Additional Warranties.** Each party to this Lease has been assisted by independent counsel of its own choosing and has been fully apprised of all risks associated with this Lease and the transactions contemplated herein. Lessor has made no representation, warranty, guaranty or inducement of any kind in connection with this Lease. Lessor has made no representation, warranty, guaranty or statement of inducement regarding the value of any property, right or interest or title to any property or interest therein.

**§ 27.5. Conflicts of Interest.** No member, official or employee of Lessor shall have any direct or indirect interest in this Lease, nor participate in any decision relating to the Lease that it prohibited by law.

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

§ 27.7. **Time of Essence.** Time is of the essence of each and every provision of this Lease.

§ 27.8. **No Third Party Beneficiaries.** No person or entity shall be a third party beneficiary to this Lease or shall have any right or cause of action hereunder.

§ 27.9. **Legal Actions.** Any legal action instituted pursuant to this Lease shall be brought in the County of Maricopa, State of Arizona, or in the Federal District Court in the District of Arizona. This Lease shall be construed and enforced in accordance with the internal laws of the State of Arizona without regard to choice of law rules. Claims by Lessee shall comply with time periods and other requirements of Lessor's claims procedures from time to time.

27.10. **Attorneys' Fees.** In the event any action or proceeding is brought by either party to enforce compliance with this Lease or for failure to observe any of the covenants of this Lease or to vindicate or exercise any rights or remedies hereunder, the prevailing party in such proceeding (as determined by the court (and not a jury) in such proceeding) shall be entitled to recover from the other party such prevailing party's reasonable attorneys' fees and other reasonable litigation costs.

§ 27.11. **Memorandum of Lease and Recording.** Concurrently with the execution of this Lease, the parties shall complete, execute and acknowledge a Memorandum of Lease in the form attached hereto as Exhibit "C". The Memorandum of Lease shall be recorded, at Lessee's expense, in the Official Records of Maricopa County, Arizona within ten (10) days of its execution.

§ 27.12. **Integration.** This Lease, together with its schedules and Exhibits and all documents incorporated herein by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, draft agreements, discussion outlines, correspondence and memoranda or representation regarding the Premises.

§ 27.13. **Captions.** The captions of Articles and Sections in this Lease and its Table of Contents are inserted only as a convenience and for reference and they in no way define, limit, or describe the scope of this Lease or the intent of any provision thereof. References to Articles and Section numbers are to those in this Lease unless otherwise noted.

§ 27.14. **Execution and Delivery.** This Lease shall bind Lessee upon its execution thereof. Lessor shall be bound only after it executes and delivers the Lease to Lessee.

§ 27.15. **Singular and Plural, Gender.** If two or more persons, firms, corporations, or other entities constitute either the Lessor or the Lessee, the word "Lessor" or the word "Lessee" shall be construed as if it reads "Lessors" or "Lessees" and the pronouns "it," "he," and "him" appearing herein shall be construed to be the singular or plural, masculine, feminine, or neuter gender as the context in which it is used shall require.

**§ 27.16. Multiple Parties.** If at any time Lessor, Lessee, any Leasehold Mortgagee (Lessor, Lessee or any such mortgagee being in this Section referred to as a “party”) is other than one individual, partnership, firm, corporation, or other entity, the act of, or notice, demand, request, or other communication from or to, or payment of refund from or to, or signature of, or any one of the individuals, partnerships, firms, corporations, or other entities then constituting such party with respect to such party’s estate or interest in the Premises or this Lease shall bind all of them as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed, unless all of them theretofore have executed and acknowledged in recordable form and given a notice (which has not theretofore been revoked by notice given by all of them) designating not more than three individuals, partnerships, firms, corporations, or other entities as the agent or agents for all of them. If such a notice of designation has theretofore been given, then, until it is revoked by notice given by all of them, the act of, or notice, demand, request or other communication from or to, or payment or refund from or to, or signature of, the agent or agents so designated with respect to such party’s estate or interest in the Premises or this Lease shall bind all of the individuals, partnerships, firms, corporations, or other entities then constituting such party as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed.

**§ 27.17. Exhibits and Incorporation.** The following exhibits, which are attached hereto or are in the possession of the Lessor and Lessee, are incorporated herein by reference as though fully set forth:

<u>Exhibit “A”</u>	Legal Description of Premises
<u>Exhibit “B”</u>	Insurance Requirements
<u>Exhibit “C”</u>	Form of Memorandum of Lease

**§ 27.18. Immigration Reform and Control Act of 1986 (IRCA).** Lessee understands and acknowledges the applicability of the IRCA to it and agrees to comply with the IRCA for all activities undertaken under this lease and agrees to permit Lessor to inspect its personnel records to verify such compliance.

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

**§ 27.20. Depreciation.** For income tax purposes and notwithstanding that title to the Premises is vested in Lessor, the Parties intend and hereby covenant that Lessee and not Lessor shall be entitled to the depreciation of the Lessee’s Improvements to the extent permitted under all applicable Federal, State and Local income tax statutes, acts, codes and regulations, including the IRS Code 1986, as Amended.

## ARTICLE 28 — SIGNS

Lessee shall have the right to install, subject to obtaining all required municipal approvals and permits, exterior signs on and about the Government Property Improvements. The signs

shall be subject to Lessor's reasonable approval with respect to size, design, materials and means of attachment. Lessee shall bear all costs of design, fabrication and installation of such exterior signs.

## ARTICLE 29 — UNAVOIDABLE DELAY IN PERFORMANCE FOR CAUSES BEYOND CONTROL OF PARTY

§ 29.1. **Unavoidable Delay; Extension of Time of Performance.** Whether stated or not, all periods of time in this Lease are subject to this Section 29.1. Neither Lessor nor Lessee, as the case may be, shall be considered not to have performed its obligations under this Lease in the event of unavoidable delay (an "**Unavoidable Delay**"). "**Unavoidable Delay**" shall mean the following acts or events, to the extent that they substantially impair the ability of a Party to carry out its obligations under this Lease: acts of God; acts of the Federal, state or local government (other than ordinary course of business activities or decision of Lessor); acts of war or terrorism; litigation concerning the validity and enforceability of this Lease or relating to transactions contemplated by this Lease (other than the effect of litigation instituted by Lessee, or a successor in interest or subtenant of Lessee, against Lessor); fires; floods; epidemics; quarantine; strikes; embargoes; unusually severe and unanticipated weather, or delays of subcontractors or materialmen due to such causes. In no event shall: (i) any party's financial condition or inability to fund or obtain funding or financing constitute an Unavoidable Delay with respect to any obligation of such party; (ii) any delay resulting from general economic or market conditions; (iii) the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Lessee in connection with the Premises; or (iv) any delay arising from a party's default or other failure to perform under this Lease constitute an Unavoidable Delay with respect to such party's obligation under this Lease. In the event of the occurrence of any such Unavoidable Delay, the time or times for performance of the obligations of the party claiming delay shall be extended for a period of the Unavoidable Delay; provided that the party seeking the benefit of the provisions of this Section 29.1 shall, within thirty (30) days after such party knows of any such Unavoidable Delay, first notify the other party of the specific delay in writing and claim the right to an extension for the period of the Unavoidable Delay.

## ARTICLE 30— COMPLIANCE WITH ENVIRONMENTAL LAWS

### § 30.1. Definitions.

A. "**Environmental Laws**": All federal, State, local and common laws, or other applicable regulations, promulgated for the protection of human health or the natural environment.

B. "**Recognized Environmental Condition**": The presence or likely presence of any Regulated Substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any Regulated Substance or petroleum products into structures, on the property or into the ground, groundwater or surface water of the property. The term includes Regulated Substances or petroleum products even under conditions in compliance with laws. The term is not intended to include de minimis conditions that generally do not present a material risk of harm to public health or the

environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies. Conditions determined to be de minimis are not "recognized environmental conditions."

**C. "Regulated Substance":** (i) any hazardous substance, or hazardous waste as defined in any Environmental Law; (ii) petroleum or petroleum based products; (iii) asbestos; (iv) Polychlorinated biphenyls (PCBs) and substances or compounds containing PCBs, or (v) any other substance similarly identified or listed as hazardous under any Environmental Law.

**D. "Release":** Any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, dispersing, spreading or dumping of a Regulated Substance.

**§ 30.2. Compliance.** Lessee shall, at Lessee's own expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Lessee's operation on the Premises.

Other than Regulated Substances used by Lessee as part of its business operations in the ordinary course of business, in compliance with Environmental Laws, Lessee shall not allow any Regulated Substances to be generated, released, stored or disposed of on or under, or transported to or from, the Premises, unless approved in writing by Lessor in its sole discretion. Lessee shall dispose of any Regulated Substances away from the Premises as required by law and as reasonably required by Lessor by notice to Lessee.

### **§ 30.3. Indemnification.**

A. Lessee shall pay, protect, indemnify, defend and save and hold harmless, on demand, Lessor, its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys, for, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, claims, legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons, property, the environment or the Premises and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, human health, property or the environment pursuant to any Environmental Law, the common law, or other statute, ordinance, rule, regulation, judgment or order of any governmental agency or judicial entity, which are incurred or assessed as a result, whether in part or in whole, of (i) any use of the Premises (unless such claim or action is the result solely or the gross negligence or intentional acts of Lessor) during the Term by Lessee or its owners or affiliated entities, agents, employees, invitees, contractors, visitors or licensees or (ii) the presence upon the Premises of any Recognized Environmental Condition. Regardless of the date of termination of this Lease, Lessee's obligations and liabilities under this Article 30 shall continue so long as the Lessor bears any liability or responsibility under the Environmental Laws for any use of the Premises by Lessee or those claiming under Lessee or presence of any Recognized Environmental Condition during the Term. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial actions, removal or restoration work required or conducted by any federal, state or local governmental

agency or political subdivision because of Regulated Substances located on the Premises or present in the soil or ground water on, or under the Premises.

B. Without limiting the foregoing, if the presence of any Recognized Environmental Condition and/or Regulated Substance on, or under the Premises results in any contamination of the Premises or any adjacent real property during the Term, Lessee shall promptly take all actions at its sole cost and expense as are necessary to mitigate any immediate threat to human health or the environment. Lessee shall then undertake any further action necessary to return the Premises or other property to the condition existing prior to the introduction of any such Regulated Substance to the Premises; provided that Lessor's written approval of such actions shall first be obtained, which shall not be unreasonably conditioned, withheld or delayed. Lessee shall undertake such actions without regard to the potential legal liability of any other person, however, any remedial activities by Lessee shall not be construed as to impair Lessee's rights, if any, to seek contribution or indemnity from another person.

C. Lessee shall, during the term of this Lease and at Lessee's own cost and expense, make all tests, reports, studies and provide all information to any appropriate governmental agency as may be required pursuant to the Environmental Laws pertaining to Lessee's use of the Premises. This obligation includes but is not limited to any requirements for a site characterization, site assessment and/or a cleanup plan that may be necessary due to any actual or potential Releases of Regulated Substances on, or under the Premises, during the Term. At no cost or expense to Lessor, Lessee shall promptly provide all information requested by Lessor pertaining to the applicability of the Environmental Laws to the Premises, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination.

In addition, Lessor shall have the right to access, within ten (10) days of Lessee's receipt of written request, and copy any and all records, test results, studies and/or other documentation, other than trade secrets, regarding environmental conditions relating to the use, storage, or treatment of Regulated Substances by the Lessee on, or under the Premises.

D. Lessee shall immediately notify Lessor of any of the following: (1) any correspondence or communication from any governmental agency regarding the application of Environmental Laws to the Premises or Lessee's use of the Premises, (2) any change in Lessee's use of the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under Environmental Laws, and (3) any assertion of a claim or other occurrence for which Lessee may incur an obligation under this Article.

E. Lessee shall insert the provisions of this Article 30 in any sublease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

F. Lessee shall, at its own expense, obtain and comply with any permits or approvals that are required or may become required as a result of any use of the Premises by the Lessee, its agents, employees, contractors, invitees and assigns.

#### **§ 30.4. Noncompliance.**

A. Lessee's failure or the failure of its agents, employees, contractors, invitees or of a third party to comply with any of the requirements and obligations of this Article 30 or applicable Environmental Law shall constitute a material default of this Lease. Notwithstanding any other provision in this Lease to the contrary, Lessor shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Law on, or under the Premises, without waiving any of its rights under this Lease. The exercise by Lessor of any of its rights under this Article shall not release Lessee from any obligation it would otherwise have hereunder.

B. The covenants in this Article 30 shall survive the expiration or earlier termination of this Lease.



**CITY OF MESA,**  
an Arizona municipal corporation

  
\_\_\_\_\_  
Christopher J. Brady, City Manager

ATTEST:

  
\_\_\_\_\_, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_, City Attorney

LESSEE:

**CRESCENT CROWN DISTRIBUTING, L.L.C.,**  
a Louisiana limited liability company





LESSEE:

**CRESCENT CROWN DISTRIBUTING, L.L.C.,**  
a Louisiana limited liability company

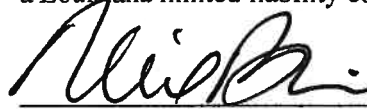
A handwritten signature in black ink, appearing to read "Alibi", is written over a solid horizontal line.

Exhibit "A"

Legal Description of Premises

PARCEL NO. 1:

THE WEST HALF OF THE EAST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 1 NORTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN;

EXCEPT THE SOUTH 33 FEET THEREOF;

ALSO EXCEPT THE NORTH 7 FEET OF THE SOUTH 40 FEET OF THE EAST 30 FEET OF THE WEST HALF OF THE EAST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 20;

ALSO EXCEPT THEREFROM SO MUCH WITHIN THE BOUNDS OF A 50-FOOT STRIP CONVEYED TO PHOENIX AND EASTERN RAILROAD COMPANY BY DEED RECORDED IN BOOK 59 OF DEEDS, PAGE 270, RECORDS OF MARICOPA COUNTY ARIZONA;

ALSO EXCEPT THEREFROM THAT PORTION DEEDED TO THE UNITED STATES OF AMERICA IN QUIT CLAIM DEEDS RECORDED IN BOOK 122 OF DEEDS, PAGES 41, 42 AND 43, RECORDS OF MARICOPA COUNTY, ARIZONA; AND

ALSO EXCEPT THEREFROM THAT PORTION DEEDED TO THE CITY OF MESA IN QUIT CLAIM DEED RECORDED IN DOCUMENT NO. 2011-863097, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 2:

THE EAST HALF OF THE EAST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 1 NORTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN;

EXCEPT THE SOUTH 33 FEET THEREOF;

ALSO EXCEPT THE NORTH 7 FEET OF THE SOUTH 40 FEET OF THE EAST 30 FEET OF THE WEST HALF OF THE EAST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 20;

ALSO EXCEPT THEREFROM SO MUCH WITHIN THE BOUNDS OF A 50-FOOT STRIP CONVEYED TO PHOENIX AND EASTERN RAILROAD COMPANY BY DEED RECORDED IN BOOK 59 OF DEEDS, PAGE 270, RECORDS OF MARICOPA COUNTY ARIZONA;

ALSO EXCEPT THEREFROM THAT PORTION DEEDED TO THE UNITED STATES OF AMERICA IN QUIT CLAIM DEEDS RECORDED IN BOOK 122 OF DEEDS, PAGES 41, 42 AND 43, RECORDS OF MARICOPA COUNTY, ARIZONA; AND

ALSO EXCEPT THEREFROM THAT PORTION DEEDED TO THE CITY OF MESA IN QUIT CLAIM DEED RECORDED IN DOCUMENT NO. 2011-863097, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 3:

THE WEST 20 FEET OF THE NORTH 118 FEET OF THE SOUTH 885 FEET OF THE WEST 325.10 FEET OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 1 NORTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN.

PARCEL NO. 4:

THE WEST 325 FEET OF THE NORTH 502 FEET OF THE SOUTH 567 FEET OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 1 NORTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

EXCEPT THEREFROM THAT PORTION DEEDED TO THE CITY OF MESA IN QUIT CLAIM DEED RECORDED IN DOCUMENT NO. 2011-863096, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 5:

THAT PART OF THE ABANDONED RIGHT-OF-WAY DISCLOSED IN DOCKET 15531, PAGE 67, RECORDS OF MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS:

THE NORTH 10 FEET OF THE SOUTH 65 FEET OF THE WEST 325 FEET OF THE SOUTHWEST QUARTER OF THE

SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 1  
NORTH, RANGE 5 EAST OF THE GILA AND SALT RIVER  
BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

EXCEPT THEREFROM THAT PORTION DEEDED TO THE  
CITY OF MESA IN QUIT CLAIM DEED RECORDED IN  
DOCUMENT NO. 2011-863096, RECORDS OF MARICOPA  
COUNTY, ARIZONA.

PARCEL NO. 6:

THE WEST 20 FEET OF THE FOLLOWING DESCRIBED  
PROPERTY:

THE WEST 325 FEET OF THE NORTH 200 FEET OF THE  
SOUTH 767 FEET OF THE SOUTH HALF OF THE  
SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 1  
NORTH, RANGE 5 EAST OF THE GILA AND SALT RIVER  
BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

Exhibit "B"

Insurance Requirements

A. Required Insurance. At all times while Lessee (or its successors or assigns) operates and/or conducts its business from all or any portion of the Premises, and Lessor maintains an interest as lessor in and under the Lease, Lessee shall maintain the following insurance:

1. Property. Property damage insurance and insurance against any perils generally included within the classification "**special form**," including but not limited to risks covered by fire and extended coverage, terrorism, vandalism and malicious mischief, in amounts at least equal to the full replacement cost of the Lessee's Improvements on the Premises (without deduction for depreciation) as such replacement cost shall be determined from time to time, subject to the further terms and conditions of Section B, C and D below, with Lessor as an additional insured.

2. Liability. General Liability Insurance covering the Lessee and (as an additional insured) Lessor against liability imposed by law or assumed in any written contract, and/or product liability coverage, with a limit of liability of \$1,000,000.00 per occurrence and an additional \$5,000,000.00 umbrella policy.

3. Worker's Compensation. Worker's Compensation to cover obligations imposed by federal and state law having jurisdiction over Lessee's employees and Employer's Liability insurance with limits of \$500,000.00 per accident, \$500,000.00 per disease and \$1,000,000.00 disease policy limit.

4. Vehicle Liability. Business automobile liability including all owned, non-owned and hired autos assigned to or used in conjunction with the Lease, with a limit of liability of not less than \$1,000,000.00 combined single limit for personal injury, including bodily injury or death, and property damage. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Lease, Lessor and its Representatives shall be cited as an additional insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any excess insurance is utilized to fulfill the requirements of this subsection, such excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance

B. Indemnity; Waiver of Subrogation. The insurance requirements herein are minimum requirements for the Lease and in no way limit the Lessee's obligations and covenants of indemnity contained in the Lease or any other agreement between Lessor and Lessee. Lessor in no way warrants that the minimum limits required for insurance contained herein are sufficient to protect the Lessee from liabilities that might arise out of the performance of the construction of Lessee's Improvements and the use and operation of the Premises by the Lessee, its agents, representatives, employees or subcontractors; and Lessee is free to purchase additional insurance as may be determined necessary. In consideration of the execution of the Lease, the Lessee agrees to waive all rights of subrogation against Lessor, its officers, officials, agents and employees for losses arising from the work performed by the Lessee under the Lease, an Lessee's (and any sublessee's) use and occupancy of the Land and/or the Premises.

C. Miscellaneous.

1. All policies of insurance shall comply with the requirements of Article 5 of the Lease and this Exhibit.

2. All policies of insurance to be procured by Lessee shall be issued by insurance companies duly licensed by the State of Arizona with an AM Best Inc. rating of A- or above. Executed copies of the policies of insurance or evidence of insurance meeting the requirements set forth above shall be delivered to Lessor on the Effective Date (as defined in the Lease) and thereafter, executed copies of renewal policies or Certificates thereof shall be delivered to Lessor within thirty (30) days prior to the expiration or cancellation of each such policy. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Lessee in like manner and to like extent.

3. **“Representatives”** as used in this Exhibit shall mean the council members, board members, staff, committee members, planning and other commissioners, officials, employees, members, agents, officers, directors, shareholders, partners, affiliates, principals, independent contractors, attorneys, accountants and representatives of the referenced person or party and the predecessors, heirs, successors and assigns of any such person or party.

4. References herein to the Lease shall mean the Lease of which this Exhibit is a part. Capitalized terms not defined in this Exhibit shall have the meanings ascribed to them in the Lease.

Exhibit "C"

Form of Memorandum of Lease

When Recorded Return To:

City of Mesa  
20 East Main Street, # 750  
Mesa, Arizona 85211  
Attn: Real Estate Services Director

**MEMORANDUM OF LEASE**

THIS MEMORANDUM OF LEASE constitutes constructive notice of record that there is in existence a Lease as described below. This Memorandum of Lease is executed by the Lessor and Lessee named below and in the Lease for recording purposes only as to the Lease hereinafter described. The Premises described below are leased from Lessor to Lessee pursuant to the Lease, but this Memorandum of Lease is not intended to, and shall not, modify, amend, supersede or otherwise affect the terms and provisions of said Lease. Capitalized terms used in this Memorandum of Lease which are not defined herein shall have the meanings ascribed to them in the Lease.

1. Name of Document: Lease Agreement (the "**Lease**").
2. Name of Lessor: CITY OF MESA, ARIZONA, an Arizona municipal corporation.
3. Name of Lessee: CRESCENT CROWN DISTRIBUTING, L.L.C., a Louisiana limited liability company.
4. Address of Lessor: City of Mesa  
20 East Main Street, 7<sup>th</sup> Floor  
Mesa, Arizona 85211-1466  
Attn: Christopher J. Brady, City Manager
5. Address of Lessee: Crescent Crown Distributing  
402 South 54<sup>th</sup> Place  
Phoenix, Arizona 85034  
Attn: Rich Marchant – Vice President of Operations
6. Date of Lease: March 12, 2012  
(**"Effective Date"**)
7. Term: Twenty (20) years, commencing on the Effective Date and ending at midnight on the twentieth (20<sup>th</sup>)

anniversary of the Effective Date, unless this Lease is sooner terminated as provided therein.

8. Premises: That certain real property located in the City of Mesa, Maricopa County, Arizona, comprised of approximately 22.61 acres located at the Northwest Corner of Broadway Road and Brooks Circle and legally described on Exhibit "A" attached hereto and made a part hereof, together with the Government Property Improvements, and any and all other improvements, related rights and appurtenances thereto.
9. Rent: Lessee shall pay to Lessor 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 Lease, 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 on file with Lessor and Lessee at their respective addresses set forth above.



IN WITNESS WHEREOF, Lessor and Lessee have executed this Memorandum of Lease as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**LESSOR:**

**CITY OF MESA, ARIZONA**, an Arizona municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF ARIZONA     )  
                                  ) SS  
COUNTY OF MARICOPA)

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by  
the \_\_\_\_\_ of the CITY OF MESA, ARIZONA, an Arizona  
municipal corporation, on behalf of the City.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_



**EXHIBIT A TO MEMORANDUM OF LEASE**

(Legal Description of Premises)

PARCEL NO. 1:

THE WEST HALF OF THE EAST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 1 NORTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN;

EXCEPT THE SOUTH 33 FEET THEREOF;

ALSO EXCEPT THE NORTH 7 FEET OF THE SOUTH 40 FEET OF THE EAST 30 FEET OF THE WEST HALF OF THE EAST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 20;

ALSO EXCEPT THEREFROM SO MUCH WITHIN THE BOUNDS OF A 50-FOOT STRIP CONVEYED TO PHOENIX AND EASTERN RAILROAD COMPANY BY DEED RECORDED IN BOOK 59 OF DEEDS, PAGE 270, RECORDS OF MARICOPA COUNTY ARIZONA;

ALSO EXCEPT THEREFROM THAT PORTION DEEDED TO THE UNITED STATES OF AMERICA IN QUIT CLAIM DEEDS RECORDED IN BOOK 122 OF DEEDS, PAGES 41, 42 AND 43, RECORDS OF MARICOPA COUNTY, ARIZONA; AND

ALSO EXCEPT THEREFROM THAT PORTION DEEDED TO THE CITY OF MESA IN QUIT CLAIM DEED RECORDED IN DOCUMENT NO. 2011-863097, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 2:

THE EAST HALF OF THE EAST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 1 NORTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN;

EXCEPT THE SOUTH 33 FEET THEREOF;

ALSO EXCEPT THE NORTH 7 FEET OF THE SOUTH 40 FEET OF THE EAST 30 FEET OF THE WEST HALF OF THE EAST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 20;

ALSO EXCEPT THEREFROM SO MUCH WITHIN THE BOUNDS OF A 50-FOOT STRIP CONVEYED TO PHOENIX AND EASTERN RAILROAD COMPANY BY DEED RECORDED IN BOOK 59 OF DEEDS, PAGE 270, RECORDS OF MARICOPA COUNTY ARIZONA;

ALSO EXCEPT THEREFROM THAT PORTION DEEDED TO THE UNITED STATES OF AMERICA IN QUIT CLAIM DEEDS RECORDED IN BOOK 122 OF DEEDS, PAGES 41, 42 AND 43, RECORDS OF MARICOPA COUNTY, ARIZONA; AND

ALSO EXCEPT THEREFROM THAT PORTION DEEDED TO THE CITY OF MESA IN QUIT CLAIM DEED RECORDED IN DOCUMENT NO. 2011-863097, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 3:

THE WEST 20 FEET OF THE NORTH 118 FEET OF THE SOUTH 885 FEET OF THE WEST 325.10 FEET OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 1 NORTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN.

PARCEL NO. 4:

THE WEST 325 FEET OF THE NORTH 502 FEET OF THE SOUTH 567 FEET OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 1 NORTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

EXCEPT THEREFROM THAT PORTION DEEDED TO THE CITY OF MESA IN QUIT CLAIM DEED RECORDED IN DOCUMENT NO. 2011-863096, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 5:

THAT PART OF THE ABANDONED RIGHT-OF-WAY DISCLOSED IN DOCKET 15531, PAGE 67, RECORDS OF MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS:

THE NORTH 10 FEET OF THE SOUTH 65 FEET OF THE WEST 325 FEET OF THE SOUTHWEST QUARTER OF THE

SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 1  
NORTH, RANGE 5 EAST OF THE GILA AND SALT RIVER  
BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

EXCEPT THEREFROM THAT PORTION DEEDED TO THE  
CITY OF MESA IN QUIT CLAIM DEED RECORDED IN  
DOCUMENT NO. 2011-863096, RECORDS OF MARICOPA  
COUNTY, ARIZONA.

PARCEL NO. 6:

THE WEST 20 FEET OF THE FOLLOWING DESCRIBED  
PROPERTY:

THE WEST 325 FEET OF THE NORTH 200 FEET OF THE  
SOUTH 767 FEET OF THE SOUTH HALF OF THE  
SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 1  
NORTH, RANGE 5 EAST OF THE GILA AND SALT RIVER  
BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

A. Lessee's failure or the failure of its agents, employees, contractors, invitees or of a third party to comply with any of the requirements and obligations of this Article 30 or applicable Environmental Law shall constitute a material default of this Lease. Notwithstanding any other provision in this Lease to the contrary, Lessor shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Law on, or under the Premises, without waiving any of its rights under this Lease. The exercise by Lessor of any of its rights under this Article shall not release Lessee from any obligation it would otherwise have hereunder.

B. The covenants in this Article 30 shall survive the expiration or earlier termination of this Lease.

LESSOR: **CITY OF MESA,**  
an Arizona municipal corporation

\_\_\_\_\_  
Christopher J. Brady, City Manager

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
\_\_\_\_\_, City Attorney

LESSEE: **CRESCENT CROWN DISTRIBUTING, L.L.C.,**  
a Louisiana limited liability company

\_\_\_\_\_