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CITY OF MESA
LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is executed to be effective the 9th day of January, 2023 ("Effective Date") by and between THE CITY OF MESA, a municipal corporation ("City"), and DOWNTOWN MESA ASSOCIATION, a domestic nonprofit corporation ("DMA"). City and DMA may be referred to jointly as the "Parties" or individually as a "Party."

RECITALS

A. City has title of record to the real property and improvements, including, but not limited to, the commercial building of approximately 4,035 square feet located at 100 North Center, Mesa, Arizona ("Building"), on Maricopa County Assessor Parcel Number 138-33-001A ("Land"), as legally described and depicted in Exhibit A.

B. DMA desires, and City is willing, to lease the Land, Building, and other improvements on the Land (collectively, "Leased Premises") to serve as office, administrative, and storage space and other ancillary uses to support the functions of DMA, including, but not limited to, the economic growth and business development of downtown Mesa through policy development, advocacy, and program management functions conducted on behalf of downtown property and business owners, and in cooperation with public and other private-sector partners.

C. The Leased Premises constitutes a "Government Property Improvement" under Arizona Revised Statutes ("A.R.S.") § 42-6201(2).

D. City is a "Government Lessor" under A.R.S. § 42-6201(1) and DMA is a "Prime Lessee" under A.R.S. § 42-6201(4).

E. The Leased Premises is subject to the Government Property Lease Excise Tax as provided under A.R.S. § 42-6201, *et seq.* (the "GPLET Tax") unless an exemption applies. It is DMA's sole responsibility to determine the applicability of the GPLET Tax and whether DMA falls within an exemption.

F. DMA represents that the GPLET Tax does not apply because the Leased Premises will be used by DMA and DMA is an organization that is exempt from taxation under section 501(c)(3) of the internal revenue code.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants, conditions and agreements hereinafter and other good and valuable consideration, City and DMA agree as follows.

Section 1. Grant of Lease and Use of Leased Premises

1.01 Grant of Lease to Premises. City hereby grants to DMA a lease for the right to enter upon, occupy, and use the Land, Building, and other improvements on the Land (collectively, the "Leased Premises") for the Permitted Uses stated in Subsection 1.02. The Leased Premises does not include the City's interest in public utility easements or dedicated rights of way, or the improvements located within public utility easements or dedicated rights of way.

23-A001

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1.02 Permitted Uses. DMA shall only use the Leased Premises for purposes directly supporting the functions of DMA, including, but not limited to, the economic growth and business development of downtown Mesa through policy development, advocacy, and program management functions conducted on behalf of downtown Mesa property and business owners, and in cooperation with public and other private-sector partners. Specifically, DMA shall use the Building as administrative and office space and shall use the enclosed outdoor storage area attached to the west side of the Building as storage for equipment and materials for services performed by DMA, such as clean sweep and maintenance services.

1.03 Joint Inspection; Condition of Leased Premises. The Parties agree that, as of the Effective Date, DMA and City (through City's Facilities Maintenance division) will have jointly inspected the Leased Premises. If City determines, in City's sole discretion, as a result of the joint inspection, that maintenance or repair is needed at the Leased Premises, City may, but is not obligated to, complete said repair and maintenance at the Leased Premises at any time, provided the repair or maintenance does not unreasonably interfere with the lease granted to DMA under Subsection 1.01. DMA agrees to accept the Leased Premises in an "AS IS, WHERE IS" condition without any warranty or representation from City, either express or implied, of any kind or nature whatsoever with respect to the Leased Premises, including, but not limited to, any warranty of merchantability, habitability, or fitness for any particular or specific purpose, and all such warranties are hereby disclaimed.

1.04 Conduct of Activities. DMA shall use the Leased Premises and conduct its activities in a manner that will not materially interfere with or detract from the value or appearance of the Leased Premises. The Parties agree that normal wear and tear does not constitute material interference with or detraction from the value or appearance of the Leased Premises.

1.05 Nuisance Prohibited; No Unlawful Use. DMA shall not use or permit any use of the Leased Premises in any way (i) which would create, or cause to be created, nuisances or hazards to the public health or safety; or (ii) for any illegal or immoral purposes. DMA shall comply with all federal, state, and local laws, regulations, codes, or ordinances, whether in effect at present or in the future, concerning the Leased Premises and the use thereof.

1.06 Quiet Enjoyment. DMA agrees that the use of the Leased Premises shall be conducted in such a manner that insures the quiet enjoyment of the neighboring properties and third-party occupants, tenants, or leasees of the Building. City agrees that it will not unreasonably interfere with DMA's quiet enjoyment of the Leased Premises.

1.07 Compliance with Applicable Zoning. DMA agrees to meet all applicable zoning required to use the Leased Premises for the purposes stated in this Agreement.

Section 2. Term

2.01 Initial Term. The initial term of this Agreement shall commence on the Effective Date and shall continue for a period of time of five (5) years unless this Agreement is otherwise canceled, renewed, or terminated as provided herein ("Initial Term").

2.02 Renewal. The Term of the Agreement shall automatically renew on the date that is five (5) years after the Effective Date for an additional five (5) years, unless sixty (60) days prior to the end of the Initial Term either Party provides notice to the other Party of a desire not to renew the Agreement or this Agreement is otherwise canceled or terminated as provided herein, and such renewal shall be on the same terms and conditions as those during the Initial Term; the Initial Term, along with any renewal term, shall collectively be referred to as the "Term".

2.03 Termination for Convenience. City or DMA may terminate this Agreement, for any reason or for no reason whatsoever, upon not less than ninety (90) calendar days prior written notice to the non-terminating Party; and such termination shall be deemed to be the end of the Term of this Agreement. If so terminated, the non-terminating Party shall not receive any compensation or other consideration from the terminating Party.

Section 3. Consideration

3.01 Rental Fee. DMA, in consideration of the foregoing, covenants and agrees to pay to City, in lawful money of the United States of America, a rental fee of one dollar ($1.00), plus all applicable taxes levied upon DMA's occupancy of the Leased Premises, for the Term ("Rental Fee"). The Rental Fee paid by DMA is nonrefundable.

3.02 Payment Procedure. On the Effective Date, DMA shall pay the Rental Fee to City at the address provided in Section 18, without prior notice or demand from City.

Section 4. DMA's Obligations

4.01 DMA's Obligations. In addition to other rights and obligations of DMA herein, in consideration for City's grant to DMA of the lease contained in Section 1, DMA, at its sole cost and expense, must perform all the acts and obligations set forth in this Section 4 (collectively, the "DMA Obligations").

4.02 No City Expenses; Triple Net Lease. DMA agrees to pay all expenses related to this Agreement and DMA's use of the Leased Premises, and DMA hereby indemnifies and holds City harmless from any expenses related to DMA's use of the Leased Premises, including, but not limited to, any expenses, taxes, and insurance. It is the purpose and intent of the Parties that this lease be a so-called "triple net lease." As such, City and DMA intend and agree that (i) the Rental Fee and any additional rent shall be absolutely net to City, so that this lease shall yield, net to City the Rental Fee and any additional rent specified in this Agreement; (ii) all costs, operating expenses, taxes, premiums, fees, interest, charges, expenses, reimbursements and obligations of every kind and nature whatsoever relating to the Leased Premises shall be paid or discharged by DMA; and (iii) each and every DMA Obligation that may arise or be related to the Leased Premises shall be performed by DMA at its sole cost and expense.

4.03 Taxes. DMA shall pay, without notice (except as specifically provided herein), and without abatement, deduction, or setoff, 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 applicable sums, impositions, costs, expenses, and other payments and all applicable taxes, including, but not limited to, personal property taxes and taxes on occupancy, and other governmental or quasi-governmental taxes or charges, general and special, ordinary and extraordinary, foreseen and unforeseen, 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 Leased Premises, or any part thereof, or any appurtenances thereto, or any use or occupation of the Leased Premises.

4.04 Government Property Lease Excise Tax. As required under A.R.S. § 42-6206, DMA is hereby notified of its potential tax liability under the Government Property Lease Excise Tax (the "GPLET Tax") provisions of A.R.S. § 42-6201, *et seq.* DMA is responsible for any and all applicable property taxes and GPLET Tax for the Leased Premises as described in A.R.S. § 42-6201, *et seq.*, or similar laws in force from time to time that may be imposed on the Leased Premises or on any interest of DMA in the Leased Premises under this Agreement. DMA represents and warrants that the GPLET Tax does not apply because the Leased Premises will be used by DMA and DMA is an organization that is exempt from taxation under section 501(c)(3) of the internal revenue code. If at any time during the Term DMA's tax status changes

and DMA is no longer exempt from GPLET Tax, DMA will, in addition to paying the GPLET Tax, provide notice to City and City may terminate this Agreement. It is DMA's sole responsibility to determine the applicability of the GPLET Tax and whether DMA falls within an exemption. DMA acknowledges that, pursuant to A.R.S. § 42-6206, failure of DMA to pay the GPLET Tax and any other taxes such taxes after any applicable notice and opportunity to cure provided in this Agreement, is an Event of Default that could result in the termination of DMA's interest in this Agreement and of its right to occupy the Leased Premises.

4.05 Operating Costs and Expenses. DMA shall be responsible for and shall pay for all operating costs and expenses for the Leased Premises, including, but not limited to: (i) utilities supplied to, used, or consumed at the Leased Premises, including, but not limited to, all water, sewer, gas, electric, and waste disposal services; (ii) custodial services; (iii) trash and recycling removal services which shall occur no less than one (1) time per week; and (iv) WI-FI network and internet connectivity, telephone services, and technology (IT) necessary or desirable to serve the Leased Premises.

4.06 Security. DMA shall be solely responsible for the security and monitoring of the Leased Premises. DMA shall be solely responsible for the ongoing costs (such as monthly fees, utility costs, and WI-FI) and maintenance costs to operate all security features and technology currently present at the Leased Premises, including, but not limited to, the locks to the exterior entrances of the Building and the video doorbell on the Building. DMA shall be solely responsible for securing the Building's entrances and the Building's entrances shall be accessible with a key, access pin pad, or other device restricting building access only to individuals authorized by DMA. The entrances to the Building may be unlocked during regular business hours of DMA but shall otherwise remain locked and require a key to access. City shall have no obligation to provide security at the Leased Premises and City shall not be responsible for any injury or death to persons or damage or theft of property that may occur in, on, or around the Leased Premises. DMA acknowledges that no City employees, agents, or contractors shall be monitoring security anywhere on the Leased Premises at any time during the Term. Should DMA fail to secure the Leased Premises and damage by third-parties to the Leased Premises occurs, City shall have the right to repair the damage and invoice DMA for the expenses incurred to repair the damage, whether repaired by City or an independent contractor at City's direction. Said expense will be due and payable by DMA within thirty (30) days after the date of the invoice in which City bills DMA for such expense. DMA's duty to indemnify outlined in Section 12 includes any claim relating to or arising out of security (including, but not limited to, adequacy of security, lack of security, and types of security installed) for the Leased Premises and for any DMA employee, invitee, guest, or other person on the Leased Premises.

4.07 Maintenance and Repairs. DMA shall meet its maintenance and repair obligations set forth in Section 7.

Section 5. City's Retained Rights

5.01 City Retained Rights. In addition to other rights of City set forth in this Agreement, City retains the rights set forth in this Section 5 (collectively, "City Retained Rights").

5.02 Entry by City. City shall, at all times, have the absolute right to enter the Leased Premises, provided that City's entry does not have a substantial negative impact on DMA's use of the Leased Premises. To that end, DMA shall provide City with the keys, keycards, badges, and any other instrumentalities and information required to surpass the security system and to enter the Leased Premises, including, but not limited to, the Building. DMA shall not exclude City or its employees, representatives, or officials from the Leased Premises and shall not change any locks or perform or modify any security measures that limit access to the Leased Premises unless DMA has the prior written permission of City and City receives the information/instrumentalities necessary for City to maintain its open access to the Leased Premises. DMA hereby waives any claim for damage, injury, or inconvenience to or interference with DMA's operation of

the Leased Premises, any loss of occupancy or quiet enjoyment of the Leased Premises, and any other loss occasioned by City's entry unless such claim is a direct result from City's gross negligence or intentional misconduct. In the event of an emergency, City shall have the right to use any and all means which City deems necessary to gain access to the Leased Premises and remedy the emergency situation.

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

Section 6. Improvements

6.01 Improvements by DMA. DMA shall not make any physical improvement, alteration, addition, enhancement or modification at the Leased Premises ("Improvement") which has a fair market cost of more than five thousand dollars ($5,000) without the prior written consent of City, which consent may be withheld at City's sole and absolute discretion. Additionally, for any Improvement with a fair market cost of more than one thousand dollars ($1,000), DMA shall, at least thirty (30) days prior to commencement of construction or installation of the Improvement, submit to City a general description and cost estimate of the subject Improvement.

6.02 Title to Alterations and Improvements. Upon the completion/installation of any Improvement, title to the Improvement shall accrete to City and shall immediately become the exclusive property of City without payment therefor by City, shall be considered a part of the Leased Premises, shall be surrendered to City upon expiration or other termination of this Agreement. DMA agrees to execute and deliver to City, within ten (10) days after City's request therefor, a quitclaim deed confirming that title to Improvements made by DMA is vested in City.

6.03 Permits Required. DMA's construction (whether electrical, plumbing, or mechanical construction or reconstruction) involving the Leased Premises, if consented to by City under Subsection 6.01, shall conform to City Code for the City of Mesa, including, but not limited to, the City of Mesa's construction and technical codes. DMA shall be responsible for determining whether it is subject to any other building/construction codes or permit requirements, and for compliance with them to the extent they are applicable to DMA's work. No such work shall be commenced without first submitting required plans to and obtaining required permits from the City of Mesa, and City shall, as owner of the Leased Premises, sign any documentation to support DMA's applications for such permits provided that such documentation conforms to City Code for the City of Mesa. All such work shall be permitted, inspected, and approved by the City of Mesa. All Improvements shall be permitted, inspected, and approved by the City of Mesa.

6.04 Mechanics Liens. DMA agrees to keep the Leased Premises, and all Improvements thereon, free of any mechanics' and materialman's liens and other liens of any kind or nature for work done, labor performed, or material furnished thereon at the instance or occasion of DMA, and DMA's duty to indemnify outlined in Section 12 includes any and all Claims (as defined below), liens, demands, costs, and expenses, of whatever nature, for any such work done, labor performed, or materials furnished.

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

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Section 7. Maintenance and Repairs

7.01 City Maintenance, Repairs, and Replacements. City shall be responsible for the maintenance, repair, and replacement costs set forth as "City Maintenance Responsibility" in Exhibit B attached hereto. All repairs made by City shall be substantially the same in quality to the original work, and shall be made in accordance with all laws, ordinances, and regulations whether heretofore or hereafter enacted. City shall have no other maintenance, repair, or replacement obligations other than as set forth as "City Maintenance Responsibility" in Exhibit B.

7.02 DMA Maintenance, Repairs, and Replacements. DMA shall maintain the Leased Premises in a neat, clean, safe, sanitary, and orderly condition. Additionally, DMA shall be responsible for the maintenance, repair, and replacement costs set forth as "DMA Maintenance Responsibility" in Exhibit B attached hereto. All repairs made by DMA shall be substantially the same in quality to the original work, and shall be made in accordance with all laws, ordinances, and regulations whether heretofore or hereafter enacted. Any portion of the Improvements damaged or destroyed by DMA, its employees, contractors, agents, invitees, guests, or by any member of the public using the Leased Premises, ordinary wear and tear excepted, shall be promptly repaired or replaced by DMA at DMA's sole cost and expense, to the reasonable satisfaction of City and, in the event City causes the work of repair or replacement to be performed, the reasonable cost of same shall be reimbursed directly to City by DMA within thirty (30) days of City presenting a demand for payment to DMA for such repair or replacement. In lieu of such repair or replacement reimbursement, where required by City, DMA shall pay to City an amount sufficient to compensate for the loss within thirty (30) days of City presenting a demand for payment to DMA for such amount.

7.03 Emergency Repairs. Within fifteen (15) days of the Effective Date, DMA shall provide to City, through the Office of Downtown Transformation and Parks, Recreation and Community Facilities, a list of names and telephone numbers for designated DMA contact persons responsible for responding to emergencies and issues involving the Leased Premises 24-hours a day. If the DMA contact persons or contact information changes, DMA shall update City's records with the most recent contact persons and contact information.

Section 8. Representations, Warranties, and Covenants of DMA

8.01 Authority of DMA. DMA is a domestic nonprofit corporation, validly existing under the laws of the State of Arizona and is qualified to do business in the State of Arizona. The person(s) who executed this Agreement on behalf of DMA are duly authorized to do so and to fully and unconditionally bind DMA. DMA's execution, delivery, and performance of this Agreement and the other documents related to the Leased Premises do not, and will not, violate any provision of law applicable to DMA or its organizational documents, and do not, and will not, conflict with or result in a default under any agreement or instrument to which DMA is a party or by which it is bound.

8.02 No Additional Authorizations or Consents Needed. No authorizations, consents, or approvals are required in connection with the execution and delivery of this Agreement or in connection with the carrying out by DMA of its obligations hereunder.

8.03 No Defaults. To the best of DMA's knowledge, DMA is not in default in: (i) the payment of any of DMA's indebtedness for borrowed money; or (ii) any material respect under any order, writ, judgment, injunction, decree, determination, or award or any indenture, agreement, lease, or instrument.

Section 9. Signage

9.01 Signage. All signage is subject to compliance with the Mesa City Code (when applicable), including, but not limited to, its Zoning Ordinance requirements (implicating a process and approvals separate from this Agreement).

Section 10. Assignment, Subletting, and Other Transfers

10.01 Transfer Restrictions. DMA shall not transfer, assign, encumber, pledge, or hypothecate its interest in this Agreement or any right or interest hereunder, or sublease the Leased Premises or any part thereof, nor permit any other person to occupy the Leased Premises (each of which events is herein called a "Transfer"), without the prior written consent of City, which may be withheld at City's sole and absolute discretion. DMA shall submit any proposed documentation relating to a proposed Transfer for City's review and approval. Any Transfer entered into without the consent of City shall be void and not voidable. Any City approved Transfer shall require the transferee to assume all of the obligations of DMA under this Agreement from the date of the transfer and thereafter and shall not release DMA from any claim or liability arising prior to the date of Transfer.

Section 11. Insurance and Risk of Loss

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

11.01.1 General Liability Insurance. General Liability insurance with minimum coverage of $2,000,000 per occurrence and $4,000,000 in the aggregate. The policy shall include, at a minimum, coverage for bodily injury, property damage, personal injury, products/completed operations, and blanket contractual covering, including, but not limited to, the liability assumed under the indemnification provisions of this Agreement. If environmental pollution or environmental hazards are excluded from the General Liability policy, a separate Pollution Insurance Policy shall be required with minimum coverage of $1,000,000 each occurrence / aggregate.

11.01.2 Property Insurance. DMA is responsible for carrying fire and broad form property coverage for the Leased Premises, all Improvements, and permanent fixtures for the replacement value thereof on the Leased Premises. City must be named as "Loss Payee" on the property insurance policy. All merchandise, furniture, floor coverings and all personal property and fixtures belonging to DMA, and all persons claiming by or through DMA, which may be on the Leased Premises, will be at the Leased Premises at DMA's sole risk.

11.01.3 Workers' Compensation Insurance. DMA must maintain workers' compensation insurance to cover obligations imposed against DMA by federal and state law.

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

11.02.1 DMA Insurance Primary. DMA's insurance will be primary of all other sources available. No policy will expire, be cancelled, or materially changed to affect the coverage available without advance written notice to City.

11.02.2 Approval by Risk Manager. All insurance certificates and applicable endorsements are subject to review and approval by City's Risk Manager.

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

11.02.4 Insurance Company. All policies must be from a company or companies rated A- or better, authorized to do business in the State of Arizona.

11.03 No Limits on Indemnification. The procuring of such policies of insurance shall not be construed to be a limitation upon DMA's liability or as a full performance on its part of the indemnification provisions of this Agreement.

11.04 Additional Insureds. The City of Mesa, its agents, officials, volunteers, officers, elected officials and employees must be named as additional insureds on all insurance policies (except workers' compensation), issued pursuant to this Section 11 during the Term.

11.05 City's Right to Adjust Insurance. City may reasonably adjust the amount and type of insurance DMA is required to obtain and maintain under this Agreement as reasonably required by City's Risk Manager. Prior to making any adjustment in insurance, City will consult with DMA in order to determine the cost feasibility of DMA to obtain such adjusted insurance; however, if City reasonably believes DMA can afford such adjusted insurance, DMA will be required to obtain such adjusted insurance.

11.06 Use of Proceeds. Proceeds (or an equivalent amount of such proceeds) of any property damage insurance shall be applied as required by this Agreement.

11.07 Insurance by City. In the event DMA fails to procure any insurance required hereunder, City may, upon written notice to DMA, procure and maintain any or all of the insurance required of DMA under this Section 11. City shall itemize such costs and shall invoice DMA for same. Said costs will be due and payable within thirty (30) days after the date of the invoice in which City bills DMA for such expense.

11.08 DMA's Obligation to Restore. In the case of fire or other casualty caused or related to DMA's use of the Leased Premises, that results in damage to or destruction of the Leased Premises or damage to or destruction of other property of City, DMA or third parties, then DMA shall, at its sole cost and expense, proceed with reasonable diligence to repair, restore, replace, or rebuild the same as nearly as possible to their value, condition and character immediately prior to such damage or destruction; provided, however, that DMA's foregoing obligations will be limited to the amount of insurance proceeds available for such repair, restoration, or rebuild and any deducible thereto (if DMA fails to maintain the insurance required by this Agreement, DMA is responsible for the amount that insurance would have provided in such circumstances). Unless otherwise agreed to by Parties in writing, DMA will use all insurance proceeds plus the amount of any deductible for such insurance to repair, restore, or rebuild the Leased Premises and improvements thereon. DMA's obligation to pay the Rental Fee, and any other amounts owing under this Agreement, will continue regardless of any partial, substantial, or total destruction of the Leased Premises; provided, however, if the insurance proceeds and any deducible amount (and any amounts City is willing to pay to restore even though City has no obligation to pay any such amounts) are not sufficient to restore

the Leased Premises to a condition that would allow DMA to use the Leased Premises as reasonably intended, or if the Parties agree in writing to not use such proceeds to restore the Leased Premises, then DMA may terminate this Agreement through the following: (i) payment by DMA to City of all insurance proceeds for the Leased Premises (except proceeds to cover loss for DMA's personal property), plus any deductible amount (or if DMA fails to maintain the insurance required by this Agreement, DMA will be responsible for the amount that insurance would have provided in such circumstances); and (ii) thirty (30) days written notice to City. Such a termination will be deemed to be the end of the Term of this Agreement. City will have no responsibility or liability for any damage or destruction by fire or other casualty and will have no obligation to repair, restore, or rebuild the Leased Premises in such event.

Section 12. Indemnification

12.01 City Responsibility for Own Negligence. City shall be liable for the gross negligence or willful misconduct of City, its officers, directors, officials, employees, and agents while on official business at the Leased Premises.

12.02 Indemnification. Except as otherwise provided in Subsection 12.01, DMA will pay, defend, protect, indemnify and save harmless individually and collectively City and its officials, elected officials, employees, volunteers, and agents (collectively, the "Indemnified Persons"), for, from and against all liabilities, losses, damages, costs, expenses (including, but not limited to, reasonable attorneys' fees and costs), causes of action (whether in contract, tort, or otherwise), suits, claims, demands, and judgments of every kind, character and nature whatsoever from third parties (collectively, "Claims") directly or indirectly arising from or relating to DMA's performance under this Agreement, or due to DMA's, or its officers', directors', employees', agents', contractors' or invitees' occupancy, activities or operations on, at, or of the Leased Premises including, but not limited to, the following:

A. Any Claims, directly or indirectly arising out of or connected with the use, non-use, condition or occupancy of the Leased Premises or any part thereof, for any accident, injury to or death of any person or damage to property in or upon the Leased Premises during the Term;

B. Any work done on or about the Leased Premises or any part thereof by DMA, or its officers, directors, employees, agents, contractors or invitees or its sublicensees;

C. Any breach or violation by DMA of any agreement, covenant, warranty, representation, or condition of this Agreement, or any other documents executed in connection with this Agreement;

D. Any violation due to DMA, or its officers, directors, employees, agents, contractors or invitees or its sublessees of any contract, agreement or restriction relating to the Leased Premises or any part thereof;

E. Any violation due to DMA, or its officers, directors, employees, agents, contractors or invitees or its sublessees of any law, ordinance, or regulation affecting the Leased Premises or any part thereof or the ownership, occupancy or use thereof during the Term; and

F. Any other Claims set forth in the terms of the Agreement.

Section 13. Hazardous Materials and Environmental Indemnification

13.01 No Hazardous Materials and Indemnity. Neither DMA nor City shall bring onto, generate, use store or dispose of in, on or about the Leased Premises any chemical or other substance that is considered hazardous, or through its use would create a hazardous waste as defined in Subsection 13.03 ("Hazardous

Material"). In addition to and without limitation of any other indemnities or obligations in this Agreement, DMA shall pay, indemnify, defend and hold the Indemnified Parties harmless against any Claims incurred by reason of any Hazardous Material on or affecting the Leased Premises, to the extent attributable to or caused by DMA, its employees, agents, contractors, or anyone acting on DMA's behalf.

13.02 Remediation and Restoration. In addition to the requirements and indemnity in the above Subsection 13.01, if due to the actions or inactions of DMA, its agents, contractors, or anyone acting on DMA's behalf, the presence of any Hazardous Material in or on the Leased Premises results in any contamination of the Leased Premises or any adjacent real property, including, but not limited to, the contamination of groundwater, DMA shall: (i) promptly, and with best efforts, take all actions at its sole cost and expense as are necessary to mitigate any immediate threat to human health; and (ii) undertake any action necessary to return the Leased Premises and other property (including, but not limited to, the groundwater), as applicable, to the condition existing prior to the introduction of any Hazardous Material. Additionally, DMA shall first obtain the written approval of City before initiating the remediation or restoration actions.

13.02.1 Reimbursement of Costs to City. If DMA fails to remediate and restore the Leased Premises, as herein required, DMA shall reimburse City for all costs incurred by City for the remediation and restoration of the Leased Premises.

13.02.2 Survival. The indemnity, duty to defend, and hold harmless requirements and the remediation and restoration requirements of Section 13 shall survive the expiration or any termination of this Agreement.

13.02.3 DMA Right to Terminate. If any Hazardous Material or contaminated substances are discovered on the site and such materials are NOT attributable to or caused by DMA, its employees, agents, contractors, or anyone acting on DMA's behalf, DMA has the right to terminate this Agreement immediately with written notice to City that identifies and locates such Hazardous Material.

13.03 Definition of Hazardous Material. As used in this Section 13, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste that is or becomes regulated by the United States, the State of Arizona, or any local government authority having jurisdiction over the Leased Premises. Hazardous material includes:

A. Any "hazardous substance" as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 United States Code §§ 9601 9675), including, but not limited to, all amendments thereto or successor statutes;

B. "Hazardous waste" as that term is defined in the Resource Conservation and Recovery Act of 1976 (RCRA) (42 United States Code §§ 6901 6992K), including, but not limited to, all amendments thereto or successor statutes;

C. Any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including, but not limited to, consent decrees and administrative orders imposing liability or standards of conduct concerning any hazardous, dangerous, or toxic waste, substance, or material, now or hereafter in effect);

D. Petroleum products;

E. Radioactive material, including, but not limited to, any source, special nuclear, or byproduct material as defined in 42 United States Code §§ 2011 22976 4 including, but not limited to, all amendments thereto or successor statutes;

F. Asbestos in any form or condition; and

G. Polychlorinated biphenyls (PCBs) and substances or compounds containing PCBs.

Section 14. Default and Remedies

14.01 Default of DMA. The occurrence of any of the following shall constitute an event of default on the part of DMA ("DMA Default"):

A. Failure in the performance of any of DMA's agreements or obligations under this Agreement which shall continue for at least thirty (30) days after written notice of such failure from City to DMA. In the event the failure is such that more than thirty (30) days would reasonably be required to cure the default or otherwise comply with any term or provision herein, then DMA shall notify City of such and the timeframe needed to cure such default, so long as DMA commences performance or compliance or gives notice of additional time needed to cure within said thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation; provided, however, that no cure period may exceed one hundred and twenty (120) days.

B. Abandonment by DMA of the Leased Premises without City's prior written consent (which consent may be granted or withheld in City's sole and absolute discretion); provided that any cessation of operations for purposes of remodeling, refurbishment, reconstruction, or repair of any damage or destruction or any other temporary vacancy or cessation of operations for a period of sixty (60) days or less shall not be deemed to constitute an abandonment.

C. The filing of a petition by or against DMA for adjudication as bankrupt or insolvent, or for its reorganization or for the appointment of a receiver or trustee of DMA's property; an assignment by DMA for the benefit of creditors or the taking of possession of the property of DMA by any governmental officer or agency pursuant to statutory authority for the liquidation of DMA.

14.02 Notice of DMA Default. In the event DMA commits a DMA Default then City may provide written notice to perform to DMA. DMA shall have the period of time specified in Subsection 14.01 from receipt of the notice to cure the DMA Default. Any written notice shall specify the nature of the DMA Default and how the DMA Default may be satisfactorily cured, if possible.

14.03 Remedies for DMA Default. City's sole remedies for an uncured DMA Default shall be:

A. To seek specific performance of this Agreement, which means the enforcement of all of DMA's material agreements and obligations under this Agreement. City may seek and obtain specific performance (whether characterized as special action, mandamus, injunction or otherwise), requiring DMA to use best and all efforts to fully and timely perform its obligations under this Agreement. DMA stipulates that a Maricopa County Superior Court, or Federal Court, may impose specific performance requirements on DMA for an uncured default of this Agreement.

B. To terminate this Agreement; provided, however, that before City may pursue termination of this Agreement as a remedy, City must first provide a notice to DMA indicating that City has elected to pursue termination of this Agreement as a remedy for an uncured breach or DMA Default in existence at

the time the notice is sent, and stating that if the specific breach or default is not cured within thirty (30) days following the delivery to DMA of the notice, then City may proceed to terminate this Agreement.

C. To seek any remedies available at law or in equity except City specifically waives the right to seek any damages from DMA characterized as special, incidental, indirect, consequential, punitive, or other similar types of damages.

14.04. Default of City. In the event City shall neglect or fail to perform or observe any of the material covenants, provisions, or conditions contained in this Agreement on its part to be performed or observed, and such failure continues for thirty (30) days after written notice of default from DMA which shall specify the nature of the default and how the default may be satisfactorily cured, if possible (or if more than thirty (30) days shall be required because of the nature of the default, if City shall fail to commence the curing of said default within the thirty (30) day period and proceed diligently thereafter to complete the curing of the default), then DMA's sole remedies for an uncured breach or default of this Agreement by City shall be:

A. To seek specific performance of this Agreement, which means the enforcement of all of City's agreements and obligations under this Agreement. DMA may seek and obtain specific performance (whether characterized as special action, mandamus, injunction or otherwise), requiring City to use best and all efforts to fully and timely perform its obligations under this Agreement. City stipulates that a Maricopa County Superior Court, or Federal Court, may impose specific performance requirements on City for an uncured default of this Agreement.

B. To terminate this Agreement; provided, however, that before DMA may pursue termination of this Agreement as a remedy, DMA must first provide a notice to City indicating that DMA has elected to pursue termination of this Agreement as a remedy for an uncured breach or default of this Agreement by City in existence at the time the notice is sent, and stating that if the specific breach or default is not cured within thirty (30) days following the delivery to City of the notice, then DMA may proceed to terminate this Agreement.

C. To seek any remedies available at law or in equity except DMA specifically waives the right to seek any damages from City characterized as special, incidental, indirect, consequential, punitive, or other similar types of damages.

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

Section 15. Surrender of Leased Premises and Sale of Leased Premises

15.01 Surrender of Leased Premises; Normal Wear and Tear. Upon expiration of the Term, a DMA Default, or termination of this Agreement by DMA or City, DMA's right to occupy the Leased Premises and exercise the privileges and rights granted under this Agreement shall cease, and DMA shall surrender the same and leave the Leased Premises free of trash and debris, broom cleaned, and in good condition, except for normal wear and tear or as otherwise provided for in this Agreement. Should City so demand, within thirty (30) days after receiving written notice from City, DMA must commence the removal of all personal property from the Leased Premises and must complete the removal of those personal items within sixty (60) days. All property at the Leased Premises purchased by City, regardless of who installed the subject property, shall remain the property of City. All property at the Leased Premises purchased by DMA, regardless of who installed the subject property, shall remain the property of DMA. Any personal items of DMA not removed by DMA within sixty (60) days after the expiration or termination of this Agreement

may, if City so chooses in its sole and absolute discretion, become a part of the Leased Premises, and thereof shall vest in City.

15.02 Voluntary Surrender. DMA must, on the last day of the Term of this Agreement, or upon any termination of this Agreement, truly surrender and deliver the Leased Premises along with any fixtures and Improvements not owned by DMA, whether temporary or permanent, then located at the Leased Premises, into the possession and use of City, without fraud or delay and in good order, condition and repair, free and clear of all liens and encumbrances other than those existing on the Effective Date of, if any, without any payment or allowance whatsoever by City.

15.03 Sale of the Leased Premises. If there is a sale or other conveyance by City of its interest in the Leased Premises, City will provide DMA prior notice of the effective date of the sale/conveyance and this Agreement will automatically terminate upon such date, with DMA no longer having any right to use the Leased Premises following the termination date.

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

Section 16. Continued Use and Holding Over

16.01 Holdover. It is agreed that the date of termination of this Agreement and the right of City to recover immediate possession of the Leased Premises upon the termination of this Agreement is an important and material matter affecting the Parties, all of which have been specifically considered by City and DMA. In the event of any continued use or occupancy of the Leased Premises by DMA, whether in whole or in part, without an amendment to this Agreement signed by the Parties extending the Term, or DMA failing to surrender the Leased Premises as required by this Agreement, then such continued use or holding over shall be considered on a month-to-month term and governed by the same conditions and covenants as contained in this Agreement, except that DMA shall pay a monthly rental fee to City of one hundred dollars ($100) due and payable to City at the address provided in Section 18 on the first day of the continued use and holding over and every month thereafter for the duration of the continued use and holding over.

16.02 No Waiver. Nothing in this Section 16 shall be deemed a waiver of any of City's rights under this Agreement nor shall it be considered City's authorization for an extension of the Term.

Section 17. Condemnation

17.01 Entire or Partial Condemnation. If the whole or any part of the Leased Premises shall be taken or condemned by any competent authority for any public use or purposes during the Term, this Agreement shall terminate with respect to the part of the Leased Premises so taken, and DMA reserves unto itself the right to claim and prosecute its claim in all appropriate courts and agencies for any award or damages based

upon loss, damage or injury to its Agreement hold interest (as well as relocation and moving costs) without impairing any rights of City for the taking of or injury to the City's interests.

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

17.03 Temporary Taking. If the temporary use of the whole or any part of the Leased Premises or the appurtenances thereto shall be taken, the Term shall not be reduced or affected in any way. The entire award of such taking (whether paid by way of damages, rent, or otherwise) shall be payable to DMA, unless the period of occupation and use by the condemning authority shall extend beyond the date of expiration of this Agreement, in which event the award made for such taking shall be apportioned between City and DMA of the date of such expiration.

17.04 Notice of Condemnation. In the event any action is filed to condemn the Leased Premises or DMA's leasehold estate or any part thereof by any public or quasi-public authority under the power of eminent domain, either City or DMA shall give prompt notice thereof to the other Party. Each Party shall have the right, at its own cost and expense, to represent its respective interest in each proceeding, negotiation or settlement with respect to any taking or threatened taking and to make full proof of its claims. No agreement, settlement, conveyance or transfer to or with the condemning authority affecting DMA's leasehold interest shall be made without the consent of DMA, which shall not be unreasonably withheld.

Section 18. General Provisions

18.01 Notices. All notices to be given by either Party to the other, shall be given in writing and shall be addressed to the Parties at the addresses hereinafter set forth or at such other address as the Parties may hereafter designate. Notices and payments to City, and notices to DMA shall be deemed properly served when sent by certified or registered mail or hand delivered to the addresses stated below. Any notice shall be deemed to have been received two (2) business days after the date of mailing, if given by certified mail, or upon actual receipt if personally delivered.

To DMA: Downtown Mesa Assoc.
Attn: Executive Director
100 N. Center
Mesa AZ 85201

With a required copy to: _____

To City:	The City of Mesa Attn: Jeff McVay 20 East Main Street P.O. Box 1466 (USPS mail only) Mesa, Arizona 85211
With a required copy to:	The City of Mesa Attn: City Attorney 20 East Main Street P.O. Box 1466 (USPS mail only) Mesa, Arizona 85211

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

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

18.04 Time of the Essence. Time is of the essence with respect to the obligations to be performed under this Agreement.

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

18.06 Governing Law. Any dispute with respect to this Agreement and the rights and duties created by this Agreement will be governed by the laws of the State of Arizona and litigated in a court of competent jurisdiction in Maricopa County, Arizona. Pursuant to A.R.S. § 12-1518, the Parties agree to make use of arbitration in all disputes which are subject to mandatory arbitration pursuant to A.R.S. § 12-133. The Parties will not raise, and hereby waive, any defenses based on venue, inconvenience of forum, or lack of personal jurisdiction in any action or suit brought in accordance with this Agreement. The Parties acknowledge that they have read and understand this clause and agree voluntarily to its terms.

18.07 Termination under A.R.S. § 38-511. This Agreement is subject to termination under A.R.S. § 38-511.

18.08 Binding Agreement. This Agreement shall be considered the only agreement between the Parties hereto pertaining to the Leased Premises. It is understood that there are no oral agreements between the Parties affecting this Agreement, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements, and understandings, if any, between the Parties with respect to the subject matter hereof, and none shall be used to interpret or construe this Agreement; provided, however, that nothing in this Agreement shall be deemed to supersede, modify, amend, or cancel the IGA or Lease.

18.09 Survivability. All warranties, representations, and duties to indemnify shall survive the termination, cancellation, or expiration of this Agreement. Additionally, all obligations to restore the Leased Premises

shall survive the termination or expiration of this Agreement, as well as any other Section or Subsection which reasonably should survive shall survive.

18.10 E-Verify Requirement. To the extent A.R.S. §§ 41-4401 and 23-214 are applicable, DMA represents and warrants compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements of A.R.S. § 23-214(A). A breach of DMA's warranty under this Subsection 18.10 will be deemed a breach of this Agreement and may result in the termination of this Agreement by City; however, DMA will not be deemed to have materially breached this warranty if it establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A). Pursuant to A.R.S.§§ 41-4401 and 23-214, City retains the legal right to randomly inspect the papers and records of any employee who works under this Agreement or on the Leased Premises to ensure compliance with the above-mentioned laws.

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

18.12 Preserve State Shared Revenue. Notwithstanding any other provision of, or limitation in, this Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Agreement violates any provision of state law or the Constitution of Arizona, City and DMA are not able (after good faith attempts) to modify the Agreement so as to resolve the violation with the Attorney General within thirty (30) days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1), this Agreement shall automatically terminate at midnight on the thirtieth (30th) day after receiving such notice from the Attorney General, and upon such termination, the Parties shall have no further obligations under this Agreement. Additionally, if the Attorney General determines that this Agreement may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), City is entitled to terminate this Agreement, except if DMA timely posts such bond, if required; and provided further, that if the Arizona Supreme Court determines that this Agreement violates any provision of state law or the Constitution of Arizona, City may terminate this Agreement; and the Parties shall have no further obligations hereunder.

18.13 Non-Discrimination. DMA must comply with all applicable federal, state, and local laws and executive orders, and ordinances and other requirements of the City of Mesa, relating to nondiscrimination and equal employment opportunity. In performing under this Agreement, DMA will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, ethnicity, national origin, religion, sex, sexual orientation, gender, gender identity and expression, genetic information, age, veterans' status, marital status, familial status, or disability (collectively, "Protected Status"), nor otherwise commit an unfair employment practice. DMA will take affirmative action to ensure that applicants are employed, and that employees are dealt with during employment, without regard to their Protected Status. Such action will include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including, but not limited to, apprenticeship. DMA further agrees that this clause will be incorporated in all licenses or agreements entered into with permitted sublessees.

18.14 Litigation. DMA must notify City within ten (10) days after DMA receives notice of the commencement of any action, suit, proceeding, or arbitration against DMA, or any material development in any action, suit, proceeding, or arbitration pending against DMA if DMA has reason to believe such action, suit, proceeding, or arbitration would materially and adversely affect the Leased Premises, the validity of this Agreement, or the performance of DMA's obligations under this Agreement.

18.15 Memorandum of Lease; Execution of Agreement Documents. In conjunction with the execution of this Agreement, the Parties agree that they will execute a Memorandum of Lease in a similar form as Exhibit C, that will be filed in the records of Maricopa County. DMA has full power and authority to execute, deliver and perform this Agreement and the other documents to which it is a party and to enter into and carry out the transactions contemplated by those documents. The execution, delivery and performance of this Agreement and the other documents related to the Leased Premises do not, and will not, violate any provision of law applicable to Lessee or its organizational documents, and do not, and will not, conflict with or result in a default under any agreement or instrument to which DMA is a party or by which it is bound.

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

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

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

18.19 Non-Waiver of Rights. No waiver or default by either Party of any of the terms, conditions, covenants, or agreements hereof to be performed, kept, or observed by the other Party shall be construed or act as a waiver of any subsequent default of any of the terms, covenants, conditions, or agreements herein contained to be performed, kept, or observed by the other Party, and the waiving or defaulting Party shall not be restricted from later enforcing any of the terms and conditions of this Agreement.

18.20 Drug Free Workplace. DMA shall require a drug free workplace for all employees working at the Leased Premises. Specifically, all DMA employees who are working at the Leased Premises or under this Agreement shall be notified in writing by DMA that they are prohibited from the manufacture, distribution, dispensation, possession, or unlawful use of a controlled substance in the workplace. DMA agrees to prohibit the use of intoxicating substances by all employees at the Leased Premises and shall ensure that employees do not use or possess illegal drugs while in the course of performing their duties on the Leased Premises.

18.21 Failure of Legislature to Appropriate. Notice is given of A.R.S. § 35-154.

18.22 Incorporation of Recitals and Exhibits. The recitals and Exhibits set forth herein are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

18.23 Construction. Unless otherwise specified in this Agreement, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings. In this Agreement, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The use of the term "shall" in this Agreement means a mandatory act or obligation. The term "including, but not limited to," means including, but not limited to, without limiting the generality of any description that precedes such term, and will be deemed to be followed by the phrase "but not limited to" or words of similar import. The Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

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

[Signatures on the following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

CITY:

The City of Mesa, Arizona,
an Arizona municipal corporation

By: _____
Christopher J. Brady
City Manager

DMA:

_____
_____

By: Nancy Hormann
Name: Nancy Hormann
Its: Executive Director

20230011586

CITY OF MESA LEASE AGREEMENT

Between

Downtown Mesa Association "DMA"

AND

City of Mesa

Exhibit A: Legal Description and Depiction of Land (1 page)

is **not** recordable and therefore **not** recorded with this

CITY OF MESA LEASE AGREEMENT

Exhibit A: Legal Description and Depiction of Land (1 page)

is on file and can be viewed at:

Real Estate Department
City of Mesa
20 E. Main Street, 5th Floor
Mesa, AZ 85201

EXHIBIT A

LEGAL DESCRIPTION AND DEPICTION OF LAND

MESA MCR 3-11 BLK 3 S 97F OF E 159F LOT 1 BLK 3

EXHIBIT B

MAINTENANCE RESPONSIBILITIES

DMA MAINTENANCE RESPONSIBILITY

DMA shall be responsible for the maintenance, repair, and replacement of all the following:

1. Cleaning
    a. Wash, wax, vacuum, dust floors, walls, windows, fixtures, furniture and equipment
2. Supplies
    a. All office, janitorial or non-durable goods including, but not limited to, restroom stock, commodities, copy papers, writing utensils, etc.
3. Repairs
    a. A/V projectors, screens, furniture, window coverings, drains, interior doors, building security system, and interior plumbing fixtures not requiring repair by licensed plumber such as valves and faucets
4. Janitorial
    a. Building interior trash (and recycle) collection and all general janitorial supplies and services
5. Fixtures, Furniture, Appurtenances
    a. Maintenance and periodic service of interior painted surfaces, printers and other office equipment, wall coverings, HVAC filters, light bulbs
6. Building Security
    a. Repair, maintenance, and replacement of locks, video doorbell, and private building security equipment
7. Grounds and Landscaping
    a. Mowing, edging, palm date removal, leaf and debris removal, pruning, fertilization, irrigation, replacement and management of irrigation head and emitter, general maintenance and replacement, spaghetti tube replacement and adjustment, overseeding, decomposed granite refresh, and all other general groundskeeping duties. Maintenance and replacement, as needed, of all vegetation and ground cover.
8. Pest Control - interior and exterior

CITY MAINTENANCE RESPONSIBILITY

City shall be responsible for the maintenance, repair, and replacement of all the following:

1. Roof, flooring, walls, and structural components
    a. Roofing material, caulking, flashing, beams, slabs and trusses, drop ceilings, hard floor replacement, trim, structural integrity maintenance, load bearing walls, drywall damage excluding general wear and tear.
    b. Electrical distribution systems
    c. Main panel, breakers, raceways, switches and wiring 12 gauge and lower, replacement of light fixtures not to include bulbs or general care and maintenance
    d. Fenestration
    e. Windows and exterior door maintenance resulting from normal wear and tear
2. HVAC
    a. Heating, ventilating, air conditioning and heating system operations with the exception of regular air filter replacement

3. Automated energy management systems
4. Plumbing system
    a. Water lines, valves, waste pipes and traps, fixture hangers and water heater
5. Emergency and safety systems
    a. Fire alarms and fire sprinklers
6. Building exterior
    a. Paint, caulking and lights fixtures, excluding bulbs
7. Grounds
    a. Parking lot surface, poles, fixtures and ground boxes
    b. Irrigation valves, boxes and components, controllers, control wire, main distribution line irrigation pipe and couplings

EXHIBIT C

FORM 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 Landlord (Lessor) and Lessee (Lessee) named below and in the Lease for recording purposes only as to the Lease hereinafter described. The Leased Premises described below are leased from Landlord (Lessor) to Lessee (Lessee) pursuant to the Lease, and this Memorandum of Lease is not intended to, and shall not, modify, amend, supersede or otherwise affect the terms and provisions of 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: Downtown Mesa Assoc., a domestic non-profit corp.[Insert name of and type of entity corporation/LLC/etc.]

4. Address of Lessor: City of Mesa
20 East Main Street, 7th Floor
Mesa, Arizona 85211-1466
Attn: Kim Fallbeck, Real Estate Services Administrator

5. Address of Lessee: 100 N. Center
Mesa, AZ 85201

Attn: Executive Director[insert title]

6. Date of Lease: Jan. 9, 2023 ("Effective Date")

7. Term: Effective Date to Jan. 9, 2028 unless this Lease is sooner terminated or renewed for an additional 5yr period(s), as provided therein.

8. Leased Premises: The portion of the property known as APN 138-33-001A as described and/or depicted in Exhibit A to this Memorandum of Lease.

9. Rent: Lessee shall pay to Lessor rents and other amounts, as more particularly set forth in the Lease.

10. Incorporation: All 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.

(SIGNATURES ON THE FOLLOWING PAGES.)

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

LESSOR (LANDLORD):

CITY OF MESA, ARIZONA, AN ARIZONA MUNICIPAL CORPORATION

By: _____
Name: Christopher S. Brady
Title: City Manager

STATE OF ARIZONA)
) SS
COUNTY OF MARICOPA)

The foregoing was acknowledged before me this 9 day of January, 2023, by _____ the _____ of the CITY OF MESA, ARIZONA, an Arizona municipal corporation, on behalf of the City.

_____
Notary Public

OFFICIAL SEAL
PRISCILLA GUTIERREZ
NOTARY PUBLIC-ARIZONA
MARICOPA COUNTY
Comm. # 577438 Expires March 8, 2024

My commission expires: March 8, 2024

LESSEE (TENANT):

By: _____
Name: Nancy Hormann
Title: President + Executive Director

STATE OF ARIZONA)
) SS
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 21 day of December, 2022, by _____, the _____ of _____, a _____, on behalf of the Lessee entity.

_____
Notary Public

TRACY DOREN
NOTARY PUBLIC - ARIZONA
AZ COUNTY
COMMISSION # 610808
MY COMMISSION EXPIRES
JULY 15, 2025

My commission expires: 7/15/2025

20230011586

CITY OF MESA LEASE AGREEMENT

Between

Downtown Mesa Association "DMA"

AND

City of Mesa

Exhibit A To Memorandum of Lease: Legal Description and Depiction of Premises (1 page)

is **not** recordable and therefore **not** recorded with this

CITY OF MESA LEASE AGREEMENT

Exhibit A To Memorandum of Lease: Legal Description and Depiction of Premises (1 page)

is on file and can be viewed at:

Real Estate Department
City of Mesa
20 E. Main Street, 5th Floor
Mesa, AZ 85201

EXHIBIT A TO MEMORANDUM OF LEASE

[Legal Description/Depiction of Premises – Use what is attached to the Lease]

MESA MCR 3-11 BLK 3 S 97F OF E 159F LOT 1 BLK 3