

# CITY OF MESA LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease"), made this 10<sup>th</sup> day of May, 2010 by and between the CITY OF MESA, a municipal corporation, hereinafter referred to as "Lessor", and the DOWNTOWN MESA ASSOCIATION, whose address is 58 West Main Street, Mesa, Arizona, hereinafter referred to as "Lessee". Lessor and Lessee may be referred to jointly as "Parties", and each separately may be referred to as a "Party".

## WITNESSETH:

WHEREAS, Lessor owns certain real property located at 100 North Center, Mesa, Arizona,; and

WHEREAS, Lessor is willing to lease to Lessee, and Lessee desires to lease the building and improvements, subject to all terms and conditions of this Lease; and

NOW, THEREFORE, in consideration of the mutual promises and conditions herein contained, the Parties agree as follows:

## SECTION 1 LEASED PREMISES

1.01 Leased Premises. The premises leased include: a) a building located at 100 North Center, Mesa, Maricopa County, Arizona; b) the immediately adjacent parking lots north and west of the building; and c) the grassy area immediately adjacent and west of the building. This entire area is referred to as the "Leased Premises." The Leased Premises are further identified in the picture attached hereto as Exhibit A, and incorporated herein by this reference.

1.02 Condition of Leased Premises. Lessee acknowledges, represents and agrees to lease and take possession of the Leased Premises "AS IS" based on its own inspection and investigation and not in reliance on any statement, representation, inducement or agreement of Lessor not set forth in this agreement.

## SECTION 2 USE OF LEASED PREMISES

2.01 Permitted Uses. Lessee agrees to use and operate the Leased Premises as administrative offices and for services such as clean sweep, maintenance, etc. Lessee shall not use the Leased Premises for any other uses without prior written approval from the Mesa City Manager or Designee.

2.02 Conduct of Activities. Lessee shall use the Leased Premises and conduct its activities in a manner that will in no way materially interfere and detract from the value of the Leased Premise. Lessee agrees that the Leased Premises will not be used for the storage of heavy equipment, unless prior approval is received in writing by the Lessor.

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

### **SECTION 3** **TERM**

3.01 Initial Term. The Lease term shall be for a period of Five Years, commencing on May 10, 2010 (the "Commencement Date") and ending on May 9, 2015 (the "Expiration Date") unless otherwise canceled or terminated as provided herein.

3.02 Renewal Term. This Lease shall automatically renew for an additional three years, commencing on May 10, 2015 (the Renewal Term "Commencement Date") and ending on May 9, 2018 (the Renewal term "Expiration Date") unless: 1) either party shall notify the other of their intent to terminate this Lease on or before April 10, 2018; or 2) this Lease is otherwise canceled or terminated as provided herein.

3.02 Termination Upon Notice. Notwithstanding anything in this Lease to the contrary, this Lease may be terminated by the either Party giving 90 days written notice to the non-terminating Party.

### **SECTION 4** **CONSIDERATION**

4.01 Minimum Rental. Lessee, in consideration of the foregoing, covenants and agrees to pay in lawful money of the United States of America to Lessor, rental for the entire Initial Term Lease in the amount of One dollar (\$1.00). Any lease payment paid in full is non refundable.

4.02 No City Expenses. Lessee agrees to pay all expenses related to Lessee's use of the Leased Premises and indemnifies and holds Lessor harmless from any expenses related to Lessee's use of the Leased Premises, including but not limited to any expenses, taxes and insurance.

4.03 Payment Procedures. Lessee shall pay to Lessor, without prior notice or demand, rental for the entire Initial Term on the first day of the Initial Term and the first day of the Renewal Term. Any other payments due pursuant to this Lease shall be paid as set forth in that section of the Lease.

### **SECTION 5** **IMPROVEMENTS**

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

5.02 Initial Improvements. Lessee shall not make any temporary or permanent Improvements to the Leased Premises, with a cost of more than five thousand dollars

(\$5,000.00), without the prior written approval of the Lessor. Lessor's approval shall not be unreasonably conditioned, withheld or delayed. Lessee shall submit to Lessor complete architectural, electrical and mechanical plans and specifications covering all such work, whether such work is to be done by Lessee or others. Such plans and specifications shall be prepared in such detail as Lessor may require, and Lessee agrees not to commence any such work upon any portion of the Leased Premises until Lessor has approved such plans and specifications. Any changes in said plans or specifications must be similarly approved by Lessor.

**5.03 Improvements, Construction and Maintenance.** All Improvements shall be constructed and/or maintained in a good and workmanlike manner in compliance with all laws, code, rules, regulations, and orders of all governmental authorities having jurisdiction thereof. Lessee shall, at Lessee's own expense, promptly remove from the Leased Premises area all trash and debris which may accumulate in connection with any work in or on the Leased Premises. Lessee shall, at all times during the full term of this Lease and at Lessee's sole cost and expense, maintain the Leased Premises and all Improvements thereon or appurtenances thereto, in good order, condition and repair (including any such replacement, periodic painting, and restoration as is required for the purpose) and in a safe, sanitary, weed and dust free, neat and attractive condition, and shall comply with all public laws, ordinances and regulations applicable to said Leased Premises. Lessee shall indemnify and hold harmless Lessor against liability for all claims arising from any failure to maintain, repair, or alter the Leased Premises and the Improvements thereon, or from any construction, alteration or repair of the Leased Premises or from the non-observance of any law, ordinance, or regulation applicable to such construction, alteration or repair. Notwithstanding the foregoing, neither lessee nor lessor has any obligation to replace or repair either the air conditioning or the roof during the term of this lease.

## **SECTION 6 MECHANICS LIENS**

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

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

## **SECTION 7 UTILITIES**

7.01 Utilities. Lessee shall be responsible for and shall pay for all utilities supplied to, used, or consumed as a result of Lessee's use of the Leased Premises, including without limitation, all water, sewer, gas, electric (including parking lot lights), sanitation, cable and telephone installation and all associated fees, monthly use, or other charges. Lessor shall separately meter the utilities used by Lessee. Commencing on the date that the Leased Premises are ready for occupancy, Lessee shall make all appropriate applications to the local utility companies and pay all required deposits for meters and service for all utilities.

## **SECTION 8** **MAINTENANCE AND REPAIRS**

8.01 Maintenance and Repairs. Lessee shall bring the Leased Premises into good order and repair and then shall thereafter maintain Leased Premises and all improvements thereon in good order and repair, as well as perform all necessary repairs and maintenance. Lessee may make improvements such as installing restroom and shower facilities, block fencing, air conditioning units. Lessee shall fund and pay for all maintenance associated with all improvements and to existing facilities.

8.02 Neat Condition. Lessee shall keep the Leased Premises neat and orderly at all times. This includes, without limitation the prevention of the accumulation of any refuse or waste materials which might be or constitute a health or fire hazard or public nuisance. Lessee shall be responsible for the removal and recycling, as appropriate, of all trash and solid waste from the Leased Premises at a minimum of once per week.

8.03 Lessor Right to Conduct Maintenance. In the event Lessee fails to maintain and/or repair the Leased Premises and all improvements thereon in accordance with this Section 8, Lessor shall have the right, but not the obligation, to perform any such maintenance and/or repair at Lessee's sole expense. Lessor shall itemize such costs and shall invoice Lessee for same. Lessee agrees to pay any such invoice no later than thirty (30) days after the date of the invoice.

## **SECTION 9** **INSURANCE**

9.01 Insurance. As a condition precedent to the effectiveness of this Lease, Lessee shall procure and maintain in full force and effect during this terms of this Lease, a policy or policies of public liability and property damage insurance from a company or companies rated A- or better, authorized to do business in the State of Arizona with minimum coverage of \$3,000,000.00 for death, bodily injury, or loss sustained in any one occurrence, \$3,000,000.00 for loss by damage or injury to property in any one occurrence. In addition, as a condition precedent to the effectiveness of this Lease, Lessee shall procure and maintain in full force and effect during the terms of this Lease a policy or policies of company or companies rated A- or better, authorized to do business in the State of Arizona, Worker's Compensation Insurance to cover obligations imposed by federal and state statutes and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) for each accident; One Million Dollars (\$1,000,000) coverage for each employee, and One Million Dollars (\$1,000,000) disease policy coverage. The policy shall further provide that the same shall not be canceled until a thirty day (30) written notice of cancellation has been served upon Lessor. Lessor shall be named as additional insured by endorsement. Lessee shall deliver said policy of insurance or certified copy thereof to Lessor for approval as to sufficiency. Lessor shall approve or disapprove said policy, in writing, within thirty (30) days of its submission.

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

9.03 Failure to Procure Insurance. If Lessee fails to procure insurance as required by this Section, Lessor may procure such insurance at the sole expense of Lessee. Lessor shall itemize such costs and shall invoice Lessee for same. Lessee agrees to pay any such invoice no later than thirty (30) days after the date of the invoice.

9.04 Lessor Right to Adjust Insurance. The Lessor may adjust the amount and type of insurance Lessee is required to obtain and maintain under this Agreement as follows: At least ninety (90) days before the annual anniversary of the commencement date, the Lessor's Risk Manager shall notify the Lessee of the adjusted insurance requirement. The Lessor's Risk Manager's determination shall reasonably reflect the risks associated with operating the Center.

## **SECTION 10 INDEMNIFICATION**

10.01 Lessor Responsibility for Own Negligence. Lessor shall be liable for negligent acts, or omissions of Lessor, its officers, directors, officials, employees and agents while on official business at the Leased Premises.

10.02 Indemnification. Except as otherwise provided in Section 10.01, Lessee shall defend, indemnify, and hold harmless Lessor, its officers, directors, officials, agents employees, and others acting under the City's direction and control, from and against any and all claims, demands, losses or liability of any kind or nature which Lessor, its officers, directors, officials, agents, employees or others acting under its direction and control may sustain or incur, or which may be imposed upon them, or any of them for injury to, or death of, persons; or damage to property arising out of or in any manner connected with the Lessee's use and operation of the Leased Premises. This would not apply to claims, demands losses or liability arising out of the sole and exclusive negligence, act(s) or omission(s) of the lessor.

## **SECTION 11 ENVIRONMENTAL INDEMNIFICATION**

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

- (a) Use, store and dispose of all such hazardous material in strict compliance with all applicable statutes, ordinances, and regulations in effect during the

lease term that relate to public health and safety and protection of the environment (environmental laws); and

- (b) Comply with all environmental laws at all times during the full term of this Lease.

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

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

- (a) Losses attributable to diminution in the value of the Leased Premises.

- (b) Loss or restriction of use of rentable space at the Leased Premises.

- (c) Adverse effect on the marketing of any part of the Leased Premises; and

- (d) All other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant and expert fees and expenses) resulting from the release or violation.

11.04 Remediation Obligations.

- (a) If the presence of any hazardous material brought onto the Leased Premises, unless brought by Lessor, results in contamination of the Leased Premises, Lessee shall promptly take all necessary actions, at Lessee's sole expense, to return the Leased Premises to the condition that existed before the introduction of such hazardous material. Lessee shall first obtain Lessor's written approval of the proposed remedial action. This provision does not limit the indemnification obligation set forth in other Sections of this Agreement.

- (b) In the event Lessee fails to meet its remediation obligations under paragraph (a) above, Lessor shall have the right, but not the obligation, to perform any such remediation at Lessee's sole expense. Lessor shall itemize such costs and shall invoice Lessee for same. Lessee agrees to pay any such invoice no later than thirty (30) days after the date of the invoice.

11.05 Definition of Hazardous Material. As used in this Section 11, the term "Hazardous Material" shall mean any hazardous or toxic substance, material, or waste that is or becomes regulated by the United States, the State of Arizona, or any local

government authority having jurisdiction over the Leased Premises. Hazardous material includes:

- (a) Any "hazardous substance" as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 United States Code §§ 9601-9675) including all amendments thereto or successor statutes;
- (b) "Hazardous waste" as that term is defined in the Resource Conservation and Recovery Act of 1976 (RCRA) (42 United States Code §§ 6901-6992K) including all amendments thereto or successor statutes;
- (c) Any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, within the meaning of any other applicable Federal, State, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders imposing Liability or standards of conduct concerning any hazardous, dangerous, or toxic waste, substance, or material, now or hereafter in effect);
- (d) Petroleum products;
- (e) Radioactive material, including any source, special nuclear, or byproduct material as defined in 42 United States Code §§ 2011-22976-4 including all amendments thereto or successor statutes;
- (f) Asbestos in any form or condition; and
- (g) Polychlorinated biphenyls (PCBs) and substances or compounds containing PCBs.

## **SECTION 12** **ENTRY BY LESSOR**

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

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

intended to cause damage or injury, or a detainer of, Lessee's personal property and the Leased Premises or an eviction of Lessee from the Leased Premises or any portion thereof.

### **SECTION 13** **NON-DISCRIMINATION**

13.01 Non-Discrimination. The Lessee, for itself, its personal representative, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (a) no person on the grounds of race, color, national origin, or disability, age, or familial status shall be excluded from participation, denied the benefits of, or be otherwise subject to unlawful discrimination in the use of said facilities; (b) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, national origin, or disability shall be excluded from participation in, denied the benefits of, or otherwise be subject to unlawful discrimination.

13.02 Fair Housing Laws and Presidential Executive Orders. The Lessee, for itself, its personal representative, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree to comply with Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; Section 109 of Title I of the Housing and Community Development Act of 1974; Title II of the Americans with Disabilities Act of 1990; and Architectural Barriers Act of 1968.

### **SECTION 14** **ASSIGNMENT: SUBLETTING: ENCUMBERING**

14.01 No Assignment. Lessee may not sublet, transfer, assign, mortgage, pledge, hypothecate, allow use of or encumber the Leased Premises or any part thereof, without Lessor's prior written approval, which may be granted or denied in Lessor's sole discretion. Any such transfer without said approval, whether voluntary or involuntary, shall be void and shall confer no right of occupancy upon said assignee or purchaser.

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

### **SECTION 15** **UNLAWFUL USE**

15.01 No Unlawful Use. Lessee agrees no improvements shall be erected, placed upon, operated or maintained on the Leased Premises, nor shall business be conducted or operated thereon in violation of the terms of this Lease, or any regulations, order or laws, statutes, by-laws or ordinances of any governmental body having jurisdiction over the Leased Premises.

15.02 Compliance with Applicable Zoning. Lessee agrees to meet all applicable zoning regulations applicable to the Leased Premises.

### **SECTION 16**



## DEFAULT, ABANDONMENT

16.01 Event of Default. The occurrence of any of the following shall constitute an event of default hereunder:

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

(b) Failure of Lessee to pay when due any installment of rent hereunder or any other sum herein required to be paid by Lessee, and the continuance of such nonpayment for five (5) working days after written notice from Lessor.

(c) Abandonment of the Leased Premises, as provided in Sections 2.05, 17.02 or any other provision of this Lease.

(d) Operation or maintenance of the Premises in violation of law, failure to maintain the required insurance, or any other misuse of the Premises.

(e) Lessee's failure to perform any other covenant, condition or agreement of this Lease, within thirty (30) days after written notice by Lessor.

16.02 Abandonment. If Lessee, prior to the expiration or other termination of this Lease, relinquishes possession of the Leased Premises without Lessor's prior written consent, or fails to open for business under usual business hours for a period of sixty (60) days, such occurrence shall be deemed to be an abandonment of the Leased Premises and an event of default under this Lease. This provision seems to conflict with section 2.05. I think we should eliminate section 2.05.

16.03 Waiver No waiver of any default, breach or failure of Licensee under this Agreement shall be construed as a waiver of any subsequent or different default, breach or failure. In case of a breach by Licensee of any of the covenants or undertakings of Licensee, City nevertheless may accept from Licensee any payments hereunder without in any way waiving City's right to exercise the remedies hereinbefore provided for by reason of any breach or lapse which was in existence at the time such payment or payments were accepted by City.

16.04 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 City may be entitled to resort, either in law or in equity, in case of any breach of threatened breach of any provisions of this Lease.

## **SECTION 17** TERMINATION

17.01 Termination for Default. In the event a default occurs, Lessor, at its election, may terminate this Lease Agreement and the tenancy created thereby. In such case, Lessee shall surrender the Leased Premises to Lessor pursuant to Section 20.

17.02 Transfer for Public Use. In the event that during the terms of this Lease, the Leased Premises, or any part thereof, is sold or exchanged for public, quasi-public or private purposes, Lessee shall have no claim to, nor shall Lessee be entitled to any

portion of any sale proceeds, for damages or otherwise, with such rights and proceeds assigned to Lessor. In the event that all or part of the Leased Premises is sold or exchanged, Lessor shall have the right to terminate this Lease by providing a written notice to Lessee at least sixty (60) calendar days prior to the termination date.

## **SECTION 18** **REMEDIES**

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

18.02 Vacation of the Property Lessee shall peaceably quit the Leased Premises upon written notification to Lessee of Lessor's intent to re-enter the Leased Premises and improvements placed thereon by Lessee. As part of Lessor's re-entry, Lessor shall use its best efforts to mitigate cost to Lessee.

18.03 Cumulative Remedies The various rights, elections, and remedies of Lessor and Lessee contained in this Lease shall be cumulative, and no one of them shall be construed as exclusive of any other or of any right, priority or remedy allowed or provided by law.

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

## **SECTION 19** **SURRENDER OF LEASED PREMISES**

19.01 Surrender of Premises; Normal Wear and Tear. Upon expiration, default by Lessee or termination of this Lease by Lessee, Lessee's right to occupy the Leased Premises and exercise the privileges and rights granted under this Lease shall cease and Lessee shall surrender the Leased Premises in as good condition as at the time of occupancy by Lessee, except as otherwise provided for in this Lease, except for normal

wear and tear. Should Lessor so demand, within thirty (30) days after receiving written notice from Lessor, Lessee shall commence the removal of all personal and permanent improvements from the Leased Premises, and shall complete said removal within 60 days.

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

19.03 Trade Fixtures and Equipment. All trade fixtures, equipment, and other personal property installed or placed by the Lessee on the Leased Premises which is not permanently affixed thereto shall remain the property of Lessee, and Lessee shall have the right at any time during the term of this Lease, and for an additional period of thirty (30) days after its expiration to remove the same from the Leased Premises, provided that Lessee is not in default of any of its obligations hereunder and that Lessee shall repair, at its sole expense, any damage caused by such removal. Any property not removed by Lessee within the thirty (30) day period shall either: 1) become a part of the Leased Premises, and ownership thereof shall vest in the Lessor; or 2) shall be disposed of by Lessor at Lessee's sole cost.

## **SECTION 20 PARTIAL INVALIDITY**

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

## **SECTION 21 MARGINAL CAPTIONS**

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

## **SECTION 22 HOLDING OVER**

22.01 In the event Lessee shall lawfully hold possession of the Leased Premises after the term herein created, then such holding over shall be considered a tenancy from month to month and governed by the same conditions and covenants as contained in this Lease, except that Lessee shall begin paying Lessor a monthly rent equal to \$1 per year due and payable on July 1<sup>st</sup> of each year during the term of this lease.

**SECTION 23**  
**NOTICES**

23.01 Notices. All notices given, or to be given, by either party to the other, shall be given in writing and shall be addressed to the parties at the addresses hereinafter set forth or at such other address as the parties may hereafter designate. Notices and Payments to Lessor, and notices to Lessee shall be deemed properly served when sent by certified or registered mail or hand delivered to the addresses as follows:

To "Lessor":           City of Mesa  
                              Real Estate Services  
                              20 E. Main Street  
                              P.O. Box 1466  
                              Mesa, Az 85211-1466  
                              480/644-2577

To "Lessee":           Downtown Mesa Association  
                              Attn: Freddy Curry, Board Chair  
                              100 North Center  
                              Mesa, Az 85201  
                              480/890-2613

**SECTION 24**  
**AMENDMENTS TO BE IN WRITING**

24.01 This Lease sets forth all of the agreements and understandings of the parties and is not subject to modification except in writing.

**SECTION 25**  
**SUCCESSORS IN INTEREST**

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

**SECTION 26**  
**FORCE MAJEURE**

26.01 Force Majeure. If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, inability to procure materials, or other cause, without fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay; and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, provided, however, nothing in this Section shall excuse Lessee from the prompt payment of any rental or other charges required of Lessee hereunder except as may be expressly provided elsewhere in this Lease.

**SECTION 27**  
**TIME**

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

**SECTION 28**  
**NO PARTNERSHIP: NO THIRD PARTY RIGHTS**

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

**SECTION 29**  
**AUTHORITY TO EXECUTE**

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

**SECTION 30**  
**ARIZONA LAW/VENUE**

30.01 This Lease shall be governed by the laws of Arizona. It is subject to termination under ARS 38-511. If legal proceedings are instituted to enforce any provisions of this lease agreement, the parties consent to jurisdiction in Maricopa County Superior Court.

**SECTION 31**  
**BINDING AGREEMENT**

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

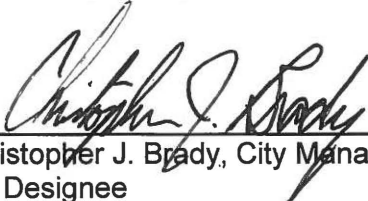
**SECTION 32**  
**SURVIVABILITY**

32.01 The Provision of Section 10 (Indemnification), Section 11 (Environmental Indemnification), Section 22 ( Holding Over), and any other sections, which reasonably should survive, shall survive expiration and other termination of this Lease.

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first hereinabove written.

CITY OF MESA, a municipal corporation

DOWNTOWN MESA ASSOCIATION

By:   
Christopher J. Brady, City Manager,  
Or Designee

By:   
Freddy Curry, Board Chair

