

**When recorded, return to:**

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

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**OPTION AGREEMENT**

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**By and between**

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

**and**

**MESA DEVELOPMENT HOLDINGS LLC  
a Delaware limited liability company;**

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## OPTION AGREEMENT

This Option Agreement (“**Agreement**”) is made by and between the City of Mesa, an Arizona municipal corporation (the “**City**”), and Mesa Development Holdings, LLC, a Delaware limited liability company (“**MDH**”). The City and MDH are sometimes referred to in this Agreement collectively as the “**Parties**,” or individually as a “**Party**.”

### AGREEMENTS

NOW, THEREFORE, for and in consideration of the representations, mutual promises and agreements set forth herein, the Parties state, confirm, and agree as follows:

1. **Definitions.** In this Agreement, unless a different meaning clearly appears from the context:

1.1 “**Affiliate**”, as applied to any Person, means the Person and any Person directly or indirectly controlling, controlled by, or under common control with, the Person or a blood relative or spouse of such Person, if such Person is a natural person. For the purposes of this definition, (i) “control” (including with correlative meaning, the terms “controlling,” “controlled by” and “under common control”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Person, whether through the ownership of voting securities, by contract or otherwise, and (ii) “**Person**” means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts, municipal corporations, municipalities and other organizations, whether or not legal entities. Notwithstanding the foregoing, for purposes of this Agreement, an Affiliate of MDH does not include Chicago Cubs Baseball Club, LLC, a Delaware limited liability company or any Person controlling or controlled by Chicago Cubs Baseball Club, LLC.

1.2 “**Agreement**” means as defined in the introductory paragraph of this Agreement, as amended and restated or supplemented in writing from time to time, and includes all exhibits and schedules hereto. References to Sections or Exhibits are to this Agreement unless otherwise qualified. The introductory paragraphs re incorporated herein by reference and form a part of this Agreement.

1.3 “**Applicable Laws**” means the federal, state and county laws, rules, ordinances and regulations and City Regulations, in effect at the time any submittal relating to the Option Property, Option Parcel(s), or applicable component thereof, is made to the City or a determination of compliance is otherwise necessary or appropriate under this Agreement.

1.4 “**A.R.S.**” means the Arizona Revised Statutes as now or hereafter enacted or amended.

1.5 “**City**” means as defined in the introductory paragraph of this Agreement.

1.6 “**City Charter**” means the City Charter for the City of Mesa, Arizona granted August 18, 1967, Docket No. 6595, Pages 680-715, as amended from time to time.

1.7 “**City Code**” means the Code of the City of Mesa, Arizona, as amended from time to time.

1.8 “**City Council**” means the City Council of the City of Mesa, Arizona.

1.9 “**City Regulations**” means the City Charter, City Code, ordinances, rules, regulations, standards, procedures and administrative policies in effect from time to time.

1.10 “**City Site**” means that certain site owned by the City and legally described on Exhibit A attached hereto, within which the Option Property is located as generally depicted on the Option Property Site Plan.

1.11 “**Closing Date**” means the date on which, following exercise of the Option, an Option Parcel sale is consummated in accordance with the terms of this Agreement and the applicable Purchase and Sale Agreement, provided the Closing Date shall be no later than sixty (60) days following the date of Opening of Escrow as to a specified Option Parcel.

1.12 “**Commencement of Construction**” means the occurrence of both: (i) the obtaining of a building, excavation, grading or similar permit; and, (ii) the actual commencement of physical construction operations in a manner reasonably designed to cause, and with the intent at the commencement of such construction to diligently pursue, Completion of the applicable vertical improvements as contemplated by this Agreement.

1.13 “**Complete**” or “**Completion**” means with respect to any vertical improvements as contemplated by this Agreement: (a) the vertical improvement(s) is or are operational and fully usable in all material respects for its or their intended use in accordance with all Applicable Laws and this Agreement; and (b) all required governmental permits, approvals and certificates of occupancy (as applicable) have been issued.

1.14 “**Common Areas**” means as defined in Section 2.3(b).

1.15 “**Condition of Title**” means all matters regarding the title to the Option Property including without limitation all exceptions or conditions to title, whether or not of public record, including but not limited to the Federal Encumbrance and Permitted Exceptions.

1.16 “**Cure Period**” means as defined in Section 9.1.

1.17 “**Default**” means one or more of the events described in Section 9.1.

1.18 “**Defaulting Party**” means as defined in Section 9.1.

1.19 “**Default Notice**” means as defined in Section 9.1.

1.20 “**Default Rate**” shall mean the published Wall Street Journal U.S. Prime Rate plus 4%.

1.21 “**Earnest Deposit**” means the earnest money deposit which must be deposited by MDH in the Escrow concurrent with the Parties’ deposit of the fully executed Purchase and Sale

Agreement in respect of each Option Parcel in an amount equal to 5% of the applicable Option Parcel Purchase Price.

1.22 “**East Option**” means as defined in Section 2.

1.23 “**East Option Property**” means that portion of the Option Property located east of Riverview Drive, as generally depicted on the Option Property Site Plan.

1.24 “**East Option Term**” means as defined in Section 2.2(b).

1.25 “**Effective Date**” means the date on which all of the following have occurred: (i) this Agreement has been adopted and approved by the City Council; (ii) this Agreement has been executed and delivered by duly authorized and appropriate representatives of MDH and the City; and (iii) a memorandum of this Agreement has been recorded in the office of the Recorder of Maricopa County, Arizona. Notwithstanding the foregoing, there may be conditions to the effectiveness of this Agreement that are intended by the Parties to be satisfied after the Effective Date.

1.26 “**Escrow**” means as defined in Section 2.5(a).

1.27 “**Escrow Agent**” means Thomas Title & Escrow, Promenade Corporate Center, 16435 N. Scottsdale Road, Suite 405, Scottsdale, AZ 85254.

1.28 “**Exercise Notice**” means as defined in Section 2.5(c).

1.29 “**Federal Encumbrance**” means as defined in Section 2.5(g).

1.30 “**Federal Encumbrance Removal Notice**” means as defined in Section 2.5(g).

1.31 “**Federal Encumbrance Removal Notice Date**” means the date on which the City has delivered to MDH the Federal Encumbrance Removal Notice.

1.32 “**Force Majeure**” means causes beyond a Party’s control and without such Party’s fault, failure to comply with Applicable Laws or its negligence including, but not limited to: (1) acts of God, acts of a public enemy, acts of terrorism, fires, floods, unusually severe weather, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, acts of the City (as to MDH) or federal or state government, and acts of Third Parties (including contractors, subcontractors, and suppliers), resulting in delay beyond the reasonable control of the Party; and (2) litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated by this Agreement (but not including the effect of petitions for initiative or referendum); provided, Force Majeure shall not include general economic or market conditions, financial infirmity or financial decisions made by the Party seeking the benefit of Force Majeure, the unavailability for any reason of financing or financing on terms acceptable to such Party, any act that constitutes a Default of the Party seeking the benefit of Force Majeure, or the unavailability for any reason of particular materials or supplies, contractors, subcontractors, vendors, investors or lenders desired by the Party seeking the benefit of Force Majeure; provided, further, it shall be a condition to extension of the time or times for performance of the obligations of the Party claiming Force Majeure that the Party shall,

reasonably promptly after such Party knows or reasonably could have known of any such Force Majeure occurrence, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Force Majeure occurrence.

- 1.33 “**Fourth Tier Requirements**” means as defined in Section 2.9.
- 1.34 “**Initial Construction Requirements**” means as set forth in Section 2.6.
- 1.35 “**Legal Description**” means as defined in Section 2.5(d).
- 1.36 “**Master Declaration**” means as defined in Section 2.3(f).
- 1.37 “**MDH**” means as defined in the introductory paragraph of this Agreement.
- 1.38 “**Memorandum of Termination**” means as defined in Section 2.5(a).
- 1.39 “**Objecting Party**” means as defined in Section 6.
- 1.40 “**Objection Notice**” means as defined in Section 6.
- 1.41 “**Opening Date**” means the first day of the first full spring training season played at the Stadium (i.e., February 1 through April 30).
- 1.42 “**Opening of Option Parcel Escrow**” means as defined in Section 2.5(c).
- 1.43 “**Opening Restaurant**” means as defined in Section 2.6(a).
- 1.44 “**Option**” means as defined in Section 2.
- 1.45 “**Option Parcel**” means as defined in Section 2.3(a).
- 1.46 “**Option Parcel Escrow**” means as defined in Section 2.5(c).
- 1.47 “**Option Parcel Site Plan**” means as defined in Section 2.3(a)(ii).
- 1.48 “**Option Property**” means that certain real property included within the City Site, which is generally depicted on the “**Option Property Site Plan**” attached to this Agreement as **Exhibit B**, and consisting of the “**West Option Property**” and the “**East Option Property**”; provided, at the request of MDH, the City Manager may reconfigure or relocate the three (3) acres comprising the West Option Property within the “**Public Parking**” areas as depicted on the Option Property Site Plan, which approval shall be deemed administrative in nature and shall not be unreasonably withheld so long as the reconfiguration or relocation is minor and non-material (which, for purposes of this section, means the reconfiguration or relocation: (i) is consistent with the Zoning; (ii) does not result in the aggregate land area comprising the West Option Property being more than three acres, (ii) does not require a material change in the configuration of, or land area occupied by, the Stadium or other City-owned facilities on the City Site as generally depicted on Option Property Site Plan, (iii) does not require a re-alignment of any public right-of-way within or appurtenant to the City Site, or (iv) (if and when applicable) would not increase the total building footprint on the Option Property more than 20% or 5,000 square

feet, whichever is less, or increase the activity or intensity of use such that it would negatively impact residentially used property within 100 feet of the perimeter of the modified area of the Option Property, as contemplated by the City Code, or require other than minor adjustments to building footprints, locations and orientations or other than minor shifting of pad locations, reconfiguration of parking lots or drive aisles. The Option Property does not include the “**Connection Path**”, “**Riverview Drive**” or any portion of “**Riverview Park**”, all as generally depicted on the Option Property Site Plan.

1.49 “**Option Property Site Plan**” means as defined in the Section 1.48.

1.50 “**Party**” and “**Parties**” means as defined in the introductory paragraph of this Agreement.

1.51 “**Permitted Exceptions**” means the exceptions to title listed on **Exhibit C**, provided, however, the City Manager, on behalf of the City, and MDH’s representative, as designated by MDH, may jointly amend **Exhibit C** to reflect changes in the Condition of Title.

1.52 “**Prohibited Uses**” means the uses set forth on **Exhibit D**, which shall be prohibited on the City Site and the additional property owned by the City northeast of the City Site, and which shall be included in the Master Declaration.

1.53 “**Providing Party**” means as defined in Section 12.5.

1.54 “**Purchase Price**” means as defined in Section 2.4(a).

1.55 “**Requesting Party**” means as defined in Section 12.5.

1.56 “**Sales Agreement**” means as defined in Section 2.5(c).

1.57 “**Second Tier Requirements**” means as defined in Section 2.7(a).

1.58 “**Site Conditions**” means all physical conditions and constraints affecting the development, use and occupancy of the Option Property including but not limited to (i) any environmental condition or the presence (either historically or at the present time) of any so-called hazardous materials, (ii) the presence of any archaeological sites, artifacts or funerary objects on the Option Property, and (iii) all Applicable Laws, including the Zoning.

1.59 “**Stadium**” means the Major League Baseball spring training stadium and related facilities constructed on Land adjacent to the Option Property.

1.60 “**Status Statement**” means as defined in Section 12.5.

1.61 “**Survey**” means as defined in Section 2.5(d).

1.62 “**Third Party**” means any Person (as defined herein) other than a Party or an Affiliate of a Party.

1.63 “**Third Tier Requirements**” means as defined in Section 2.8(a).

1.64 “**Title Policy**” means as defined in Section 2.5(e).

1.65 “**West Option**” means as defined in Section 2.

1.66 “**West Option Term**” means as defined in Section 2.2(a).

1.67 “**West Option Property**” means that portion of the Option Property located west of Riverview Drive, consisting of not more than three (3) gross acres as reasonably determined by the Parties and otherwise as generally depicted on **Exhibit B**.

1.68 “**Treatment Facility**” means the City of Mesa Northwest Wastewater Treatment Facility located adjacent to the Property, and any future expansion or modification to such facilities.

1.69 “**Zoning**” means the zoning for the City Site, including the Option Property, and the additional property owned by the City northeast of the City Site which, as of the Effective Date, is being processed for consideration by the City Council as a Planned Area Development overlay with an underlying zoning classification of C-3, intended to permit mixed uses including indoor and outdoor entertainment, retail and restaurant uses and office, hotel and residential uses (but not any Prohibited Use), signage in accordance with the Comprehensive Sign Plan, building heights of up to six stories and otherwise consistent with the Option Property Site Plan and other planned development of the City Site.

2. **Option**. Subject to the terms and conditions set forth in this Agreement, the City grants to MDH the exclusive option to purchase the West Option Property (the “**West Option**”) and the East Option Property (the “**East Option**”) (the West Option and the East Option being referred to collectively in this Agreement as the “**Option**”) upon and subject to the following terms and conditions.

2.1 **Option Price.**

(a) On or before the Effective Date, MDH shall pay to the City the sum of Twenty-Five Thousand Dollars (\$25,000.00) (the “**West Option Price**”) as consideration for the City’s granting of the West Option to MDH or forfeit the West Option. In the event that MDH exercises the West Option with respect to the entirety of the three (3) acres comprising the West Option Property, then the West Option Price shall be credited against the Purchase Price to be paid by MDH for the last Option Parcel within the West Option Property.

(b) Within ten (10) business days following MDH’s receipt from the City of the Federal Encumbrance Removal Notice, MDH shall pay to the City the sum of Twenty-Five Thousand Dollars (\$25,000.00) (the “**East Option Price**”) as consideration for the City’s granting of the East Option to MDH, or forfeit the East Option. In the event that MDH exercises the East Option with respect to the entirety of the East Option Property, then the East Option Price shall be credited against the Purchase Price to be paid by MDH for the last Option Parcel within the East Option Property.

2.2 **Option Terms.**

(a) The term of the West Option (“**West Option Term**”) will commence on the Effective Date of this Agreement, and (subject to satisfaction of the Initial Construction Requirements) shall continue until the expiration of eighteen (18) months after the Opening Date, or thereafter as the West Option Term may be extended in accordance with this Agreement, unless sooner terminated.

(b) The term of the East Option (the “**East Option Term**”) will commence on the Effective Date of this Agreement, and (subject to satisfaction of the Initial Construction Requirements) shall continue until the expiration of eighteen (18) months after the delivery by the City to MDH of the Federal Encumbrance Removal Notice, or thereafter as the East Option Term may be extended in accordance with this Agreement, unless sooner terminated.

(c) If the Federal Encumbrance Removal Notice has been delivered by the City to MDH prior to the Opening Date, then the East Option Term shall be co-terminous with the West Option Term and shall terminate in accordance with clause (a) above.

### 2.3 **Establishment of Option Parcel**

(a) Without extending any Option Term or the time for any required payment or performance hereunder, either:

(i) MDH, at its sole cost and expense, shall prepare and deliver to the City, before its initial exercise of the West Option or the East Option, respectively, a conceptual site plan and design guidelines for the entire West Option Property or the northern or southern portion of the East Option Property, as applicable (the “**West Option Conceptual Development Plan**” or, if applicable, an “**East Option Conceptual Development Plan**”), which shall include a depiction and designation of the parcel or parcels within the West Option Property or northern or southern portion of the East Option Property, as applicable, as to which MDH proposes to exercise the Option (each, an “**Option Parcel**”); in which event the West Option Conceptual Development Plan and/or East Option Conceptual Development Plan, as applicable, shall be subject to the City’s design review process and approval by the City Council and, thereupon, administrative development review for individual Option Parcels so long as the City’s Planning Director determines the proposed design is consistent with the approved West Option Conceptual Development Plan or East Option Conceptual Development Plan; or

(ii) MDH, at its sole cost and expense, shall prepare and deliver to the City, in each instance before exercising the West Option or the East Option with respect to an Option Parcel, a site plan for such Option Parcel (each, an “**Option Parcel Site Plan**”), in which event the Option Parcel Site Plan shall include a “context” element depicting, for the balance of the West Option Property or northern or southern portion of the East Option Property, as applicable, rights-of-way, utility easements, shared facilities and existing and anticipated uses in proximity to the Option Parcel; in which event each such Option Parcel Site Plan will be subject to the City’s site plan and design review processes and approval by the City’s Planning and Zoning Board and the City Council.

(b) Without limitation of the foregoing, each Option Parcel shall include a proportionate share of the Option Property comprising areas (such as drives, walks, entries,

parking areas in addition to the Minimum Public Parking [if applicable], open space, drainage areas and the like but not the “**Connection Path**” or associated utility facilities) which will be made available to all owners (and their tenants) of real property within the West Option Property and/or the northern or southern portion of the East Option Property, as applicable (“**Common Areas**”), as depicted on the West Option Conceptual Development Plan or East Option Conceptual Development Plan or, if applicable, the Option Property Site Plan. For purposes of the preceding sentence, the proportionate share shall be not less than the percentage of the total area of the West Option Property or the northern or southern portion of the East Option Property, as applicable, comprising Common Areas.

(c) The West Option Conceptual Development Plan, East Option Conceptual Development Plan or each Option Parcel Site Plan, as applicable, further shall be prepared in conformity with the Zoning including showing the proposed use or uses of the Option Parcel.

(d) Upon receipt of the West Option Conceptual Development Plan, East Option Conceptual Development Plan or Option Parcel Site Plan, as applicable, the City shall promptly initiate and thereafter diligently proceed with its review of the same in connection with the City’s required approval process applicable to such West Option Conceptual Development Plan, East Option Conceptual Development Plan or Option Parcel Site Plan, as applicable; provided, such review shall be limited to applicable development requirements including, with respect to each Option Parcel, the remainder of the West Option Property or the remainder of the northern or southern portion of the East Option Property, as applicable, must have development potential independent of such proposed Option Parcel taking into account the Zoning and relevant market and other development considerations, and a further requirement that each Option Parcel (and any further subdivided lot within an Option Parcel) constitutes a separately developable parcel or lot.

(e) The City and MDH agree and acknowledge that the configuration of any or all of the land area comprising the West Option Property and the East Option Property, respectively, and the related Common Areas for each, as depicted on the Option Property Site Plan, is preliminary with respect to any portion of the Option Property that has not previously been sold to MDH; and, from time to time during the term of the Option, MDH may prepare and deliver to the City, for the City’s review and approval in accordance with the process described in clause (d) above, amended Option Property Site Plans which reconfigure and/or adjust the land area comprising any or all of the Option Property which have not been sold to MDH or (if applicable) a Third Party and the related Common Areas. Such review shall be deemed administrative in nature, and the City Manager may provide such approval, so long as such reconfiguration or adjustment is minor and non-material (which, for purposes of this section, means the reconfiguration or relocation: (i) is consistent with the Zoning; (ii) does not result in the aggregate land area comprising the West Option Property being more than three acres, (iii) does not require a material change in the configuration of, or land area occupied by, the Stadium or other City-owned facilities on the City Site as generally depicted on Option Property Site Plan, (iv) does not require a re-alignment of any public right-of-way within or appurtenant to the City Site, or (iv) (if and when applicable) would not increase the total building footprint on the Option Property more than 20% or 5,000 square feet, whichever is less, or increase the activity or intensity of use such that it would negatively impact residentially used property within 100 feet of the perimeter of the modified area of the Option Property as contemplated by the City

Code, or require other than minor adjustments to building footprints, locations and orientations or other than minor shifting of pad locations, reconfiguration of parking lots or drive aisles.

(f) Before the initial exercise of any Option, and without extending any Option Term or the time for any required payment or performance hereunder, MDH shall prepare and deliver to the City a declaration of covenants, conditions and property restrictions for the Option Property (“**Master Declaration**”) which shall address matters common to the entire Option Property including, without limitation: (i) establishment of Common Areas; (ii) establishment of use rights for the Option Property owners (and their tenants) of any freeway landmark {pylon} sign constructed by MDH and other shared signage; and (iii) establishment of property owner assessments to pay (A) the costs of operation and maintenance of the Common Areas and all “amenity improvements” to the Connection Path (the City being responsible to construct, operate and maintain the Connection Path street improvements and City-Owned Utilities located therein) and (B) capital costs of certain shared facilities (*e.g.*, drainage areas, open space, shared signs). The Master Declaration shall also provide: (A) that the City shall remain “**Declarant**” until the last Option Parcel is sold; (B) that there can be no amendments to the Option Property Site Plan except as referenced in clause (c) above or the CC&R’s without the approval of the City for as long as City has an ownership interest in any portion of the Option Property; (C) for the non-exclusive use by all property owners and their tenants of Common Areas and proportionate access to shared signage as provided in Section 4; (D) for all costs imposed upon property owners for such Common Areas and other shared facilities to be roughly proportional to such property owners’ interests in the Option Property or use rights, as applicable (*i.e.*, resulting in a commercially reasonable allocation of such costs); and (E) for the annexation of additional property within the City Site if and to the extent such property is made available for private development and either the City desires for the owners (and tenants) of such property to have access to shared signage as provided in Section 4 or the Parties reasonably determine such owners (and their tenants) will benefit from the Common Areas and/or other shared facilities, in which event such owners will be subject to property owner assessments commensurate with the use rights afforded such owners (and their tenants). The City shall approve the form and content of the Master Declaration in its reasonable commercial discretion, and MDH agrees and consents that the Master Declaration shall be recorded in the Official Records of Maricopa County, Arizona, prior to the exercise by MDH of any Option in order to bind and encumber the entirety of the Option Property.

(g) Without extending any Option Term or the time for any required payment or performance hereunder, before (i) the initial exercise of the West Option, MDH shall prepare and deliver to the City a sub-declaration of covenants, conditions and property restrictions for the West Option Property (“**West Option CC&R’s**”) and (ii) the initial exercise of the East Option, MDH shall prepare and deliver to the City a sub-declaration of covenants, conditions and property restrictions for the northern or southern portion of the East Option Property, as applicable (each, “**East Option CC&R’s**”). The West Option CC&R’s and the East Option CC&R’s, respectively, shall: (i) address matters common to the West Option Property or the northern or southern portion of the East Option Property, as applicable, including the establishment of Common Areas and property owner assessments; and (ii) provide (A) the City shall remain “**Declarant**” until the last Option Parcel in the West Option Property or the East Option Property (as applicable) is sold, (B) there can be no amendments to such West Option Property CC&R’s or East Option Property CC&R’s, as applicable, without the approval of the

City for as long as City has an ownership interest in any portion of the West Option Property or northern or southern portion of the East Option Property, as applicable, (C) for the non-exclusive use by all property owners and their tenants of Common Areas and, if applicable, proportionate access to shared signs, and (D) for all costs imposed upon property owners for Common Areas and other shared facilities to be roughly proportional to such owners' respective interests in the West Option Property or the northern or southern portion of the East Option Property, as applicable, or use rights (i.e., resulting in a commercially reasonable allocation of such costs). The City shall approve the form and content of the West Option CC&Rs and the East Option CC&Rs, respectively, in its reasonable commercial discretion, and MDH agrees and consents that West Option CC&Rs and East Option CC&Rs, respectively, shall be recorded in the Official Records of Maricopa County, Arizona, prior to the initial exercise by MDH of, as applicable, the West Option or the East Option, in order to bind and encumber the West Option Property or the northern or southern portion of the East Option Property, as applicable.

#### 2.4 **Purchase Price.**

(a) The Purchase Price for the Option Property ("**Purchase Price**") shall be \$9.00 per square foot, based upon the mutual agreement of the Parties after appraisals were done.

(b) If, notwithstanding Section 2.3(b), the area within the boundaries of an Option Parcel includes less than a proportionate share of the applicable Common Area (in the Option Property, West Option Property or northern or southern portion of the East Option Property), the Purchase Price for the Option Parcel shall include an additional amount equal to the product of \$9.00 and the number of square feet comprising such difference. By way of illustration, and not of limitation, if the Common Areas included in the Option Property, as provided for in the Master Declaration, constitute 9% of the area of the Option Property and the Common Area included in the Option Parcel is less than 9% of the area of the Option Parcel, then the Purchase Price for such Option Parcel shall be increased by an amount equal to the product of \$9.00 and the number of square feet of such difference. If this formula produces a shortfall to the City at the time the last Option Parcel is purchased (that is, the City has not been paid the full Purchase Price for the land area included within the Option Property), then such shortfall shall be paid by MDH as part of the Purchase Price for such final Option Parcel. If this formula produces a windfall to the City at the time the last Option Parcel is purchased (that is, the City has been paid more than the full Purchase Price for the land area included within the Option Property), then the Purchase Price for such final Option Parcel shall be reduced by the amount of such windfall.

#### 2.5 **Escrow; Exercise of Option.**

(a) **Option Escrow.** Promptly following the Effective Date, the City and MDH shall open an escrow ("**Escrow**") with Escrow Agent and deliver to Escrow Agent the Memorandum of Termination of Option, in the form attached to this Agreement as **Exhibit E**, executed and acknowledged by MDH and the City ("**Memorandum of Termination**"). Escrow Agent shall hold and administer all documents and instruments as contemplated in this Agreement.

(b) **Escrow Instructions.** The City and MDH shall execute the standard form of escrow instructions as required by Escrow Agent, provided however in the event of any conflict between the terms of this Agreement and the form escrow instructions, the terms of this Agreement shall prevail including, without limiting the foregoing, no provision of the form escrow instructions shall excuse any performance by either Party at the times provided in this Agreement.

(c) **Option Exercise.** During the applicable Option Terms (if and as extended), and provided that MDH has not committed or performed any act, or omitted or failed to perform any act which, but for the passage of time or the giving of notice, or both, would be a Default pursuant to this Agreement, and further provided any party having the primary right to use the adjacent Stadium has not committed or performed any act, or omitted or failed to perform any act which, but for the passage of time or the giving of notice, or both, would be a default pursuant to the use agreement for the Stadium, then MDH may exercise the West Option or the East Option (as applicable), as to any Option Parcel or Option Parcels that are subject to the applicable Option, by providing written notice to the City and Escrow Agent (“**Exercise Notice**”). Three (3) counterparts of the Option Parcel Purchase and Sale Agreement (“**Sale Agreement**”), executed on behalf of MDH, in the form attached hereto as **Exhibit F**, together with the Earnest Deposit and the other items specified in this Section, shall be delivered to Escrow Agent, upon receipt of which Escrow Agent shall deliver to the City the three (3) counterparts of the Sale Agreement together with confirmation of receipt of the Earnest Deposit (as required by the Sale Agreement) and other items specified in this Section (as applicable). Within five (5) business days of receipt of the three (3) counterparts and Escrow Agent’s confirmation, the City Manager, on behalf of the City, shall execute and deliver to Escrow Agent the three (3) counterparts of the Sale Agreement, whereupon the escrow in respect of such transaction (“**Option Parcel Escrow**”) shall be deemed opened (“**Opening of Option Parcel Escrow**”) and Escrow Agent shall deliver one fully executed counterpart of the Sale Agreement to each of the City and MDH.

(d) **Survey and Legal Description.** Concurrent with providing the Exercise Notice to the City and Escrow Agent, MDH shall deliver to the City and Escrow Agent a current survey (“**Survey**”) of such Option Parcel or Option Parcels, prepared by a surveyor licensed in the State of Arizona and reasonably approved by the City, incorporating a legal description of the Option Parcel or Option Parcels (“**Legal Description**”), the square footage of the Option Parcel or Option Parcels, the area of the Common Areas (Option Property, West Option Property or East Option Property, as applicable) included in the Option Parcel or Option Parcels and the proportionate area of the Common Areas (Option Property, West Option Property or East Option Property, as applicable) attributable to such Option Parcel or Option Parcels, and certifying to the City and Escrow Agent (i) the Survey, (ii) the Legal Description, and (iii) that such Survey has been prepared in accordance with the requirements of ALTA and ACSM. The City shall have fifteen (15) calendar days to review and approve the Survey (in the City’s reasonable commercial discretion); in the event that the City disapproves the Survey, the City shall provide written notice of such disapproval (and setting forth in reasonable detail the basis for such disapproval) to MDH on or before the expiration of such fifteen-day period. In the event MDH disagrees with the City’s disapproval notice, then the parties shall resolve their differences pursuant to the process established in Section 6.

(e) **Title Commitment.** Within five (5) business days following Escrow Agent's receipt of the Survey and Legal Description of the Option Parcel or Option Parcels, but in any event subject to the City's approval rights set forth in clause (d) above, Escrow Agent shall deliver to the City and MDH a commitment to issue to MDH (and, at the request of MDH, any proposed lender) extended coverage owners (and, if applicable, lenders) title insurance in an amount equal to the Purchase Price of the Option Parcel (or Option Parcels), and listing Escrow Agent's requirements for insuring fee title to the Option Parcel or Option Parcels subject only to the Permitted Exceptions ("**Title Policy**") together with copies of all Schedule B requirements and exception items reflected therein. The City shall be responsible, at the sole cost of the City, for satisfying any Schedule B requirements applicable to the City and the Option Property and/or resolving, to the satisfaction of MDH, any exceptions other than the Permitted Exceptions and MDH shall be responsible, at the sole cost of MDH, for satisfying any Schedule B requirements applicable to MDH.

(f) **Memorandum of Termination.** Upon notice from the City to Escrow Agent of the expiration or earlier termination of the applicable West Option Term or East Option Term pursuant to this Agreement, including as set forth in Section 2.6(c), Escrow Agent shall record the Memorandum of Termination.

(g) **Unavailability of Certain Property.** Notwithstanding anything in this Agreement to the contrary, the City states, and MDH acknowledges, that the East Option Property shall not be available for an exercise by MDH of the East Option with respect to such property until such time as the City has caused the removal or release of certain restrictions imposed on the use of the East Option Property (the "**Federal Encumbrance**"). If and when the City has caused or achieved the removal or release of the Federal Encumbrance, the City shall deliver to MDH a notice of such removal or release (the "**Federal Encumbrance Removal Notice**").

(h) **Certain As-Is Matters.** The sale of the Option Property to MDH shall be as-is (with the City having no obligation to remediate or otherwise expend any money except as referenced in clause (e) above with respect to Conditions of Title and Site Conditions. Although the City discloses that the Option Property has previously been subjected to an archaeological review, the City (with no duty of inquiry) is not presently aware of the presence of any hazardous materials on the Option Property in violation of law, the discharge of hazardous materials onto the Option Property, or the presence as of the Effective Date of any archaeological sites, artifacts or funerary objects on the Option Property. Notwithstanding the foregoing, from and after the Effective Date, the City agrees that it shall not (i) cause any Site Condition to be added to or expanded upon the Option Property, and (ii) cause the Conditions of Title to be expanded beyond the Permitted Exceptions (except that the City may, during its construction of the Stadium and appurtenant facilities (1) grant or modify such easements or similar rights as may be reasonably required in connection with the provision of utility services to the Stadium and appurtenant facilities, provided that such easements or similar rights do not impair the developability of the Option Property, and (2) grant such temporary easements or similar rights as may be required in connection with the construction of the Stadium and appurtenant facilities or Site Work upon the Option Property, provided that such temporary easements or similar rights have been terminated at such time as MDH causes the Commencement of Construction of any improvements upon an Option Parcel affected by such easements or similar rights).

2.6 **Initial Construction Requirements.** In order for MDH to have any rights under the Option:

(a) MDH shall have purchased an Option Parcel within the West Option Property and the Completion of Construction of improvements thereon shall have occurred, consisting of not less than 10,000 square feet, which requirement can be satisfied by the construction of a Captain Morgan's (or similar) Restaurant equivalent in size (+/- 10%) to the existing Captain Morgan's Restaurant located at Wrigley Field in Chicago ("**Opening Restaurant**"). The Opening Restaurant need not be a restaurant, but may be other retail or hospitality improvements of comparable size.

(b) Notwithstanding Section 2.6(a) to the contrary, the Opening Restaurant may be constructed (*i.e.*, tenant improvements and fixturation) within the Stadium by or pursuant to a sublease, sublicense or similar agreement with the tenant of the Stadium.

(c) Such Opening Restaurant shall be fully operational and open for business no later than the first day of the first full spring training season played at the Stadium ("**Opening Date**"). For the first full year of operations, the Opening Restaurant shall be open for business daily, and on a year-round basis (subject only to closing for holidays and other days on which comparable enterprises may typically be closed), and not just during the Spring Training season. Thereafter, the Opening Restaurant shall be open for business, at a minimum, during Event Days during the Spring Training Season.

(d) If the Opening Restaurant is not fully operational and open for business by the Opening Date, then this Agreement, without further act or notice required, shall be terminated, the West Option Price shall become the property of the City, and MDH shall have no further rights under this Agreement.

(e) Notwithstanding Section 2.6(d) to the contrary, if the Opening Restaurant is not fully operational and open for business by the Opening Date, then MDH may keep the West Option Term in full force and effect by paying to the City, on or before the Opening Date, the sum of \$250,000.00, in which event MDH shall have until the expiration of the West Option Term to cause the Completion of Construction of the Opening Restaurant and to satisfy the Second Tier Requirements set forth in Section 2.7. This sum is not a penalty, but is consideration paid to the City for maintaining the West Option Term in the absence of the Opening Restaurant. It shall not be applied to or reduce the Purchase Price of any Option Parcel and shall be deemed to be fully earned by the City at the time of payment by MDH.

(f) The Initial Construction Requirements shall be subject in all events to Force Majeure.

## 2.7 **Second Tier Construction Requirements.**

(a) If MDH has satisfied the Initial Construction Requirements (or has made the payment required by Section 2.6(e)) then on or before the expiration of the applicable Option Term, MDH may purchase an Option Parcel of sufficient size for, and cause the Commencement of Construction of, 10,000 usable square feet of commercial (*e.g.*, retail, restaurant or hospitality) improvements on such Option Parcel (the "**Second Tier Requirements**"). If the Completion of

Construction of such improvements extends more than twenty-four (24) months beyond the recordation of the deed for such Option Parcel as provided in Section 2.12, the City, as its exclusive remedy, may elect to proceed pursuant to Section 2.13.

(b) If MDH has satisfied the Second Tier Requirements, and is diligently prosecuting the Completion of Construction of the improvements, then the applicable Option Term shall be extended for an additional eighteen (18) months from the end of the previous Option Term.

(c) In the event that MDH has not satisfied the Second Tier Requirements on or before the expiration of the Option Term as extended pursuant to Section 2.6(e), then the Option as to both the West Option Property and the East Option Property automatically (and without further act or notice required) shall be terminated, and Escrow Agent shall immediately record the Termination of Option.

(d) Notwithstanding Section 2.7(c) to the contrary, the Second Tier Requirements shall be deemed satisfied if, on or before the Opening Date, MDH has provided assistance to the City with regard to recruiting and soliciting, and the City has entered into an agreement with, a qualified party to develop within the approximately twenty-five (25) acre site owned by the City northeast of the City Site. Notwithstanding the foregoing, the City shall have no obligation to enter into any such agreement or otherwise pursue any such development opportunity and may elect to do so or not, in its sole discretion; provided, however, if the City elects to pursue such development opportunity and the material terms (general size, scope and uses comprising such development) have been substantially agreed to prior to the Opening Date, the City Manager will in his reasonable discretion, extend the date for a reasonable time to allow completion of the agreement. In such case, the Second Tier Requirements shall be deemed satisfied even if a final agreement is not approved, executed and delivered until a later date. The Parties agree to work in good faith to recruit such a development and conclude such a transaction.

## 2.8 Third Tier Construction Requirements.

(a) If MDH has satisfied the Second Tier Requirements, then on or before the expiration of the applicable Option Term (as extended pursuant to Section 2.7(b)) MDH may purchase an Option Parcel of sufficient size for, and cause the Commencement of Construction of, an additional 10,000 usable square feet of commercial (*e.g.*, retail, restaurant or hospitality) improvements on such Option Parcel (the “**Third Tier Requirements**”). If the Completion of Construction of such improvements extends more than twenty-four (24) months beyond the recordation of the deed for such Option Parcel as provided in Section 2.12, the City, as its exclusive remedy, may elect to proceed pursuant to Section 2.13.

(b) If MDH has satisfied the Third Tier Requirements, and is diligently prosecuting the Completion of Construction of the improvements, then the applicable Option Term shall be extended for an additional eighteen (18) months from the end of the previous Option Term..

(c) In the event that MDH has not satisfied the Third Tier Requirements on or before the expiration of the Option Term (as extended pursuant to Section 2.7(b)) then the Option as to both the West Option Property and the East Option Property automatically (and without further act or notice required) shall be terminated, and Escrow Agent shall immediately record the Termination of Option.

2.9 **Fourth Tier Construction Requirements.**

(a) If MDH has satisfied the Third Tier Requirements, then on or before the expiration of the applicable Option Term (as extended pursuant to Section 2.8(b)), MDH may purchase an Option Parcel of sufficient size for, and cause the Commencement of Construction of, an additional 10,000 usable square feet of commercial (*e.g.*, retail, restaurant or hospitality) improvements on such Option Parcel (the “**Fourth Tier Requirements**”). If the Completion of Construction of such improvements extends more than twenty-four (24) months beyond recordation of the deed for such Option Parcel as provided in Section 2.12, the City, as its exclusive remedy, may elect to proceed pursuant to Section 2.13.

(b) If MDH has satisfied the Fourth Tier Requirements, and is diligently prosecuting the Completion of Construction of the improvements, then the applicable Option Term shall be extended for an additional eighteen (18) months from the end of the previous Option Term.

(c) In the event that MDH has not satisfied the Fourth Tier Requirements on or before the expiration of the Option Term (as extended pursuant to Section 2.8(b)) then the Option as to both the West Option Property and the East Option Property automatically (and without further act or notice required) shall be terminated, and Escrow Agent shall immediately record the Termination of Option.

2.10 **Fifth Tier Construction Requirements.**

(a) If MDH has satisfied the Fourth Tier Requirements, then on or before the expiration of the applicable Option Term (as extended pursuant to Section 2.9(b)) MDH may purchase an Option Parcel of sufficient size for, and cause the Commencement of Construction of, an additional 10,000 usable square feet of commercial (*e.g.*, retail, restaurant or hospitality) improvements on such Option Parcel (the “**Fifth Tier Requirements**”). If the Completion of Construction of such improvements extends more than twenty-four (24) months beyond recordation of the deed for such Option Parcel as provided in Section 2.12, the City, as its exclusive remedy, may elect to proceed pursuant to Section 2.13.

(b) If MDH has satisfied the Fifth Tier Requirements, and is diligently prosecuting the Completion of Construction of the improvements, then the applicable Option Term shall be extended for an additional eighteen (18) months from the end of the previous Option Term.

(c) In the event that MDH has not satisfied the Fifth Tier Requirements on or before the expiration of the Option Term (as extended pursuant to Section 2.9(b)) then the Option as to both the West Option Property and the East Option Property automatically (and without

further act or notice required) shall be terminated, and Escrow Agent shall immediately record the Termination of Option.

2.11 **Sixth Tier Construction Requirements.**

(a) If MDH has satisfied the Fifth Tier Requirements, then on or before the expiration of the applicable Option Term (as extended pursuant to Section 2.10(b)) MDH may purchase an Option Parcel of sufficient size for, and shall cause the Commencement of Construction of, an additional 10,000 usable square feet of commercial (*e.g.*, retail, restaurant or hospitality) improvements on such Option Parcel (the “**Sixth Tier Requirements**”). If the Completion of Construction of such improvements extends more than twenty-four (24) months beyond recordation of the deed for such Option Parcel as provided in Section 2.12, the City, as its exclusive remedy, may elect to proceed pursuant to Section 2.13.

(b) If MDH has satisfied the Sixth Tier Requirements, and is diligently prosecuting the Completion of Construction of the improvements, then the applicable Option Term shall be extended for an additional eighteen (18) months from the end of the previous Option Term.

(c) In the event that MDH has not satisfied the Sixth Tier Requirements on or before the expiration of the Option Term (as extended pursuant to Section 2.10(b)) then the Option as to both the West Option Property and the East Option Property automatically (and without further act or notice required) shall be terminated, and Escrow Agent shall immediately record the Termination of Option.

2.12 **Construction Deadlines.** Any Option Parcel purchased by MDH shall require Completion of Construction of the applicable improvements on such Option Parcel within twenty-four (24) months of the recordation of the deed from the City to MDH, subject to extension for Force Majeure; and all deeds conveying Option Parcels from the City to MDH shall include such restriction and the City’s remedy set forth in Section 2.13 below. City Manager, in his complete and unfettered discretion, shall have the authority to grant an extension to these construction deadlines, if appropriate.

2.13 **Failure to Satisfy Construction Deadlines.** The Parties expressly agree and acknowledge that this Agreement is intended to grant to MDH an option to acquire the Option Property from the City for the express purpose of causing and promoting commercial development around the Stadium. It is expressly agreed, understood and acknowledged by the Parties that this is not a “land-banking” or similar agreement by which MDH (or its successors and assigns) may acquire all or portions of the Option Property from the City and hold such property without developing it. Accordingly, MDH agrees (with such agreement constituting material consideration for the City’s entering into this Agreement, and without which the City would not have granted the Option to MDH) that in the event that (i) MDH has not caused the Commencement of Construction of retail, restaurant or hospitality improvements on any portion of the Option Property purchased by MDH pursuant to this Agreement within twelve (12) months from the date of acquisition of such portion of the Option Property, or (ii) if MDH has timely caused the Commencement of Construction of such improvements, but thereafter fails to cause the Completion of Construction of such improvements in accordance with Section 2.12,

then and in that event, and as to only such portion of the Option Property for which MDH has failed to satisfy the construction deadlines:

(a) If not previously terminated, the Option shall terminate without any further act or notice required.

(b) The City shall have the right, but not the obligation, to provide notice to MDH of the City's intent to re-acquire or repurchase such portion of the Option Property; provided, if MDH resumes construction on such portion of the Option Property prior to the City providing its notice of intent, MDH shall have the right to diligently prosecute such construction to Completion in which event the City's right to re-acquire or repurchase such portion of the Option Property shall terminate, but Completion of Construction of the improvements on such portion of the Option Property shall not revive the Option or extend any additional rights to MDH with respect to any other portion of the Option Property .

(i) The price to be paid by the City to re-acquire such portions of the Option Property shall be the price paid by MDH for the portion of the Option Property being repurchased by the City plus the actual amounts advanced for planning and construction of the improvements located on, or directly benefiting, such portion of the Option Property being re-acquired by the City, including without limitation, those items listed in (ii) below.

(ii) At no additional charge, cost or expense to the City, MDH shall assign to the City all existing construction contracts for such improvements, all warranties from contractors, subcontractors and materialmen in connection with such improvements, all rights of recovery (e.g., insurance claims, claims against contractors) with respect to such improvements, all pending executory purchase contracts and leases for such improvements upon completion, and all studies, reports, analyses and assessments relating to the physical condition and the developability of such Option Parcel or Parcels.

(iii) In addition, MDH shall indemnify, defend, pay and hold the City harmless for, from and against any and all claims relating to the acts or omissions of MDH or its agents, contractors and representatives and arising on or before the date of repurchase of such Option Parcel or Parcels or portions thereof, by the City.

(c) The right of the City to re-acquire or repurchase the Option Property shall be included in the deed of any Option Parcel from the City to MDH, it being the express intention of the Parties that any conveyance of any portion of the Option Property shall be subject and subordinate to the rights of the City as set forth in this Section 2.13; provided, and notwithstanding anything to the contrary in this Agreement, the City's remedies under this Section 2.13 are the sole and exclusive remedies of the City in the event MDH fails to satisfy the construction deadlines set forth in this Article 2.

2.14 **Exclusive Development Rights**. The City agrees and acknowledges that it is in the best interest of the City to facilitate the efforts of MDH to cause and promote commercial development around the Stadium and, accordingly, in the event MDH purchases an Option Parcel or Option Parcels and thereafter provides written notice to the City that MDH is in discussions with any prospective tenant or other end-user concerning the potential use of all or

any portion of such Option Parcel or Option Parcels, the City may not offer or make available to such prospective tenant or other end-user, directly or indirectly, the purchase or other use rights in respect of the City Site or that certain property owned by the City and which is located generally adjacent to S.R. 202 and northeast of the Option Property (as shown on the Option Property Site Plan). The obligation of the City pursuant to this Section 2.14 shall terminate upon (i) the consent of MDH, (ii) receipt of notice from MDH that MDH is no longer pursuing such prospective tenant or other end-user, (iii) MDH committing or performing any act, or omitting or failing to perform any act, which is a Default under this Agreement, or (iv) if MDH fails to satisfy the construction deadlines set forth in this Article 2.

2.15 **Right of First Offer.** At all times when the Option is in effect pursuant to this Agreement and, thereafter, if MDH has purchased the entire Option Property pursuant to the Option and satisfied the construction deadlines set forth in this Article 2 with respect thereto (including either Completion of Construction has occurred with respect to all improvements on the Option Property or, if Completion of Construction has not occurred with respect to all improvements, Commencement of Construction has occurred and construction is being diligently pursued), and the City elects to make additional property within the Spring Training Facilities Site available for private development, the City shall first provide notice to MDH of its intention to offer such property for private development and the price for which the City is willing to sell such property for such purpose. If MDH provides notice to the City of its election to purchase such property for the price specified by the City on or before thirty (30) days following receipt of the City's notice, the purchase shall proceed and be consummated using the process and form of Sale Agreement provided for in Section 2.5(c) - (e). If MDH does not timely provide such notice to the City, the City may proceed to offer such property to Third Parties and MDH shall have no further rights with respect to such property.

2.16 **Zoning Condition.** Notwithstanding the foregoing, if the Zoning, in form and substance satisfactory to MDH, has not been finally approved by the City on or before the Opening Date, MDH may, by notice to the City, elect to terminate this Agreement and the Option, whereupon Escrow Agent or the City (as applicable) shall promptly refund to MDH the West Option Price and the East Option Price and neither Party shall have any further right or obligation hereunder.

3. **Special Taxing Districts.** Following the first exercise of the Option and consummation of the sale of such Option Parcel or Option Parcels, MDH may petition the City to form one or more special taxing districts in respect of the Option Property or applicable portions thereof, including one or more improvement districts or community facilities districts, if MDH determines so doing would facilitate the financing of public infrastructure costs in connection with development of the Option Property or applicable portions thereof in accordance with the Option Property Site Plan, Zoning and any governmental approvals applicable thereto. In such event, the City will cooperate with MDH in the preparation of any required applications and consider and act upon each such request, diligently and in good faith, it being acknowledged and agreed it is in the mutual best interests of the Parties to facilitate and encourage development of the Option Property as promptly and fully as possible.

4. **Signage.**

4.1 **Freeway Landmark Sign.** At all times from the Effective Date but subject to satisfaction of the Second Tier Requirements, MDH shall have the exclusive option to purchase from the City the necessary land for, and to construct, own and operate, one freeway landmark (pylon) sign in accordance with the freeway landmark (pylon) signage approvals obtained from the City, as referenced in the Development Agreement. Upon exercise of the option: (a) the City shall convey the necessary land to MDH in consideration of the payment of a purchase price of \$9.00 per square foot and provide, at no additional cost, access easements across City land from the nearest public right-of-way as necessary to permit the construction and, thereafter, operation and maintenance of such sign; and (b) the sign shall be subject to the Master Declaration, which shall establish limited common use rights in respect of the sign in favor of the owners of the Option Property (and their tenants) in order to provide access for business identification (not product or third party) signage in general proportion to such owners' interests in the Option Property, provided it shall be a condition to such access that each owner pay the assessments, established in the Master Declaration to reimburse MDH for a commensurate share of the costs incurred to acquire the land, obtain the necessary approvals for and construct such sign and to pay the costs to operate and maintain such sign; provided, further, in the event MDH does not satisfy the Second Tier Requirements and the Option is terminated pursuant to Section 2.7(c), the property owners association established in conjunction with the Master Declaration shall have the right, but not the obligation, to purchase such sign for a purchase price equal to all costs incurred by MDH for the land, necessary approvals and construction of the sign (whereupon MDH shall assign to the association all construction contracts, all warranties from contractors, subcontractors and materialmen and all rights of recovery, *e.g.*, insurance claims and claims against contractors, with respect to the sign improvements).

4.2 **Other Signs.** At all times from the Effective Date but subject to satisfaction of the Second Tier Requirements, MDH shall have the exclusive right to design, install and operate the signage panels appurtenant to the entry and other "gateway" signs constructed within the City Site pursuant to the Development Agreement, as well as the exclusive right to design, install and operate all other Option Property signage reserved to MDH through the City approval process provided for in Section 2.3(a) provided; (a) MDH shall pay a \$10 per year license fee to the City for the exclusive use rights in respect of the "gateway" signs; and (b) such signs shall be subject to the Master Declaration, which shall establish limited common use rights in respect of such signs in favor of the owners of the Option Property (and their tenants) in order to provide access for business identification (not product or third party) signage in general proportion to such owners' interests in the Option Property, provided it shall be a condition to such access that each owner pay the assessments established in the Master Declaration to reimburse MDH for a commensurate share of the costs incurred to obtain the necessary approvals for and construct such signs and to pay the costs to operate and maintain such signs.

4.3 **Termination of Signage Rights.** If the Second Tier Requirements are not satisfied and the Option terminates, as provided in Section 2.7, the rights granted to MDH herein shall terminate and be of no further force or effect and, notwithstanding anything herein to the contrary: (a) the signage rights granted to MDH hereunder shall be subject and subordinate to any prior similar exclusive granted by the City to the tenant or other user of the Stadium; and (b) nothing herein is intended to preclude any Option Property owner (and its tenants) from placing identification signage on such owner's (or its tenants') facility within the Option Property.

4.4 **Annexation.** It is contemplated the Master Declaration will provide for the annexation of additional property within the City Site if and to the extent such property is made available for private development and the City desires the owners (and tenants) of such property to have access to the freeway landmark sign and “gateway” signs as provided for in this Section; provided, in any such event, it shall be a condition to such access that each owner pay the assessments established in the Master Declaration to reimburse MDH for a commensurate share of the costs incurred to obtain the necessary approvals for and construct such signs and to pay the costs to operate and maintain such signs.

5. **Site Conditions.** MDH shall have the right, at any time or from time to time during the Option, to enter upon any portion of the Option Property remaining subject to the Option to make all inspections, investigations, surveys and tests MDH deems advisable including, but not limited to, engineering studies, environmental site assessments and investigations, cultural resource surveys, biological assessments and investigations and soils tests. MDH shall bear all costs and expenses of any such inspections, investigations, surveys and tests, and repair or restore any damage or disturbance to the Option Property caused by the acts of MDH and/or its agents, contractors or representatives and indemnify the City from and against any loss or damage occasioned thereby.

6. **Dispute Resolution.** The Parties shall cooperate, diligently and in good faith, to resolve all matters relating to the Option Property and this Agreement, as provided for herein, provided if either Party believes the other Party is not making required payments or performing in accordance with the terms and conditions of this Agreement or in a commercially reasonable manner in connection with any matter, such Party may invoke the provisions of this Section and provide notice to the other Party (“**Objection Notice**”) identifying the matter objected to with reasonable specificity. If a Party provides an Objection Notice to the other Party under this Section or the process provided for in this Section is invoked pursuant to other express provisions of this Agreement, then within three business days of the receipt of such Objection Notice (or other notice) by the receiving Party, as applicable, representatives of the City and MDH shall meet, telephonically or in person, in an effort to resolve such objection in accordance with the issue resolution ladder attached to this Agreement as **Exhibit G-1**. If such objection has not been resolved to the satisfaction of the City and MDH at the conclusion of the issue resolution ladder process, then either Party may invoke the dispute resolution process set forth in **Exhibit G-2** attached hereto, by written notice to the other Party.

7. **Insurance.** During the term of this Agreement:

7.1 **Indemnity and Insurance.**

(a) MDH shall and does hereby agree to indemnify, defend (by counsel reasonably satisfactory to the City) and hold the City, its elected officials and the members of any board or commissions and its employees, its and their respective successors and assigns, and the Lessees (collectively, the “Indemnitees”) harmless for, from and against any loss, damage, injury, accident, fire or other casualty, liability, claim, cost or expense (including but not limited to, reasonable attorneys’ fees) of any kind or character to any person or property caused by MDH or its Representatives while on the Option Property, including the property of the Indemnitees (collectively, the “Claims”), including without limitation: (a) any act or omission of MDH, or

any of its Representatives while on the Option Property; (b) any bodily injury, property damage, accident, fire or other casualty to or involving MDH, or its Representatives and its or their property while on the Option Property; (c) any violation or alleged violation by MDH, or its Representatives, while on the Option Property of any law or regulation now or hereafter enacted relating to the Option Property; (d) any loss or theft whatsoever of any property or anything placed or stored by MDH or its Representatives, on or about the Option Property; and (e) any cost of removing MDH, or its Representatives, from the Option Property; provided, however, the foregoing indemnity shall not apply to the extent any such Claim is ultimately established by a court of competent jurisdiction to have been proximately caused by the acts or omission of any of the Indemnitees. Anything to the contrary contained herein notwithstanding, the terms and conditions of this Section 7.1(a) shall survive the termination or expiration of this Agreement, or the close if escrow on the Option Property. This indemnification provision shall not be limited by the amount of insurance set forth in Section 7.1(b) below.

(b) MDH, at its sole cost and expense, and as a condition precedent to MDH's (or its Representatives') entry onto the Option Property, shall maintain comprehensive general liability insurance ("Liability Insurance") on an "occurrence basis" against claims for "personal injury" caused by MDH or its Representatives while on the Option Property, including without limitation, bodily injury, death or property damage, occurring upon, on or about the Property, such Liability Insurance to afford immediate minimum protection at all times during the term of this Agreement, to a limit of not less than Three Million and No/100 Dollars (\$3,000,000.00) with respect to personal injury or death to any one or more persons or to damage to property on the Property. Such Liability Insurance shall designate, and be for the benefit of, MDH, as the named insured party and the Indemnitees, as additional insureds on the Liability Insurance policy. The limits of said Liability Insurance shall not, however, limit the liability of MDH under the Indemnification provisions this Agreement. No such Liability Insurance policy shall be cancelable, or subject to reduction of coverage, or other modification, except after at least thirty (30) days' prior written notice to the City.

7.2 **Allocation of Primary Liability.** Except as otherwise provided herein or agreed to by the Parties, each Party's insurance will be primary for any liability arising out of the activities, operations and responsibilities of the Party under this Agreement, provided as to matters covered by the indemnity provisions of the Sale Agreement(s), the insurance of the Party responsible for indemnification shall be the primary insurance, but shall not limit the obligations of indemnity required pursuant to the Sale Agreement(s). The Parties may agree to further specific allocations of primary liability from time to time and to purchase combined coverage policies.

7.3 **Waiver of Subrogation.** Notwithstanding anything to the contrary herein, each Party hereby releases and relieves the other Party and waives its entire right of recovery against the other Party for direct or consequential loss or damage arising out of or incident to the perils covered by any property insurance carried by the other Party, or as to which the City elected to self-insure, whether due to the negligence of the released Party or its agents, employees, contractors or invitees. If necessary, all property insurance policies required by this Agreement shall be endorsed to so provide.

8. **Representations and Warranties.**

8.1 **City Representations.** The City represents and warrants to MDH, acknowledging and agreeing MDH is entering into this Agreement in reliance on such representations and warranties:

(a) The City's execution and approval of this Agreement have been in compliance with the procedural requirements of the City Charter and the City Code.

(b) The City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement and evidence this Agreement.

(c) As of the date of this Agreement, the City knows of no litigation, proceeding, initiative, referendum or official investigation contesting the powers of the City or its officials with respect to this Agreement including the City's execution, delivery and performance hereof.

(d) The execution, delivery and performance of this Agreement by the City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which the City is a party or is otherwise subject.

(e) The City has all necessary authority and power to implement the Site Master Plan and utilize the Option Property and related portions of the City Site for the purposes contemplated by this Agreement.

(f) The City holds fee simple title to the Option Property, free and clear of any liens or encumbrances except the Permitted Exceptions and, as applicable, as contemplated by the Option Property Conceptual Plan, the Zoning and any City-approved development plan for any Option Parcel, and, except as expressly contemplated in this Agreement, shall not consent to or grant any easement, right-of-way, lien, encumbrance or other interest in or to the Option Property, or convey or encumber any portion thereof without the prior consent of MDH which may be withheld in its sole discretion.

(g) The City shall not take any action, or omit to take action, which would result in an adverse change in the condition of the Option Property including the condition of title or the physical condition thereof.

(h) The City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

For the purposes of this Section 8.1, the "knowledge" of the City shall be deemed to refer only to the actual knowledge of the City Manager as of the Effective Date and solely in his or her capacity as the City Manager including in no event shall he or she be personally liable for any representation or warranty contained herein.

8.2 **MDH Representations.** MDH represents and warrants to the City, acknowledging and agreeing the City is entering into this Agreement in reliance on such representations and warranties:

(a) MDH's execution and approval of this Agreement are in compliance with the organizational/formation and operating documents of MDH.

(b) MDH will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement and evidence this Agreement.

(c) As of the date of this Agreement, MDH knows of no litigation, proceeding or official investigation contesting the powers of MDH or its officers with respect to this Agreement including MDH's execution, delivery and performance hereof.

(d) The execution, delivery and performance of this Agreement by MDH is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which MDH is a party or is otherwise subject.

(e) MDH has not paid or given, and will not pay or give, any Third Party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

(f) MDH has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

For the purposes of this Section 8.2, the "knowledge" of MDH shall be deemed to refer only to the actual knowledge of the general counsel of MDH as of the Effective Date and solely in his or her capacity as such officer of MDH including in no event shall he or she be personally liable for any representation or warranty contained herein.

## 9. Default and Remedies.

9.1 Default and Cure Period. Except as otherwise specified in this Agreement, if either the City or MDH fails to perform its obligations under this Agreement and such failure continues for a period of ten (10) business days after written notice thereof from the other Party in accordance with this Agreement (the "Cure Period"), such failure shall constitute a default under this Agreement (a "Default"). Notwithstanding the foregoing, if such Default is a non-monetary Default and more than thirty (30) days would reasonably be required to perform such action or otherwise comply with this Agreement, the Cure Period may be extended by such additional time as may be reasonably necessary for the Party in Default (the "Defaulting Party") to cure such Default provided the Defaulting Party commences performance or compliance within the initial Cure Period and thereafter diligently and in good faith pursues completion of such performance or compliance in a manner calculated to cure the Default. Any notice of an alleged Default ("Default Notice") shall specify the nature of the alleged Default and the manner in which the Default may be satisfactorily cured. If a Default is not cured within the Cure Period (as extended, if applicable), the non-Defaulting Party shall have the remedies set forth in Section 9.2.

9.2 Remedies. Whenever a Default occurs and is not cured within the Cure Period (as extended, if applicable), the remedies of the non-Defaulting Party shall consist of and be limited to the following:

(a) The recovery of the non-Defaulting Party's actual damages as of the time of entry of judgment, the Parties expressly waiving any right to seek consequential, punitive, multiple, exemplary or other damages, of any kind or nature, except actual damages, provided, in the event of a payment Default, the non-Defaulting Party shall be entitled to interest on such payment amount at the Default Rate from the date of Default until paid in full;

(b) In such event, it is an appropriate remedy and the non-Defaulting Party may seek specific performance, an injunction (whether characterized as mandamus, injunction or otherwise), special action, declaratory relief or other similar relief requiring the Defaulting Party to undertake and to fully and timely perform its obligations under this Agreement;

(c) If the City is the Defaulting Party, it is an appropriate remedy and MDH may, in addition to its other remedies hereunder, elect to: (i) if the City fails to deliver title to any Option Parcel as provided in Section 8.1(f) require that the City return the Option Price; (ii) extend the applicable Option Term by the period in which the City is (or was) in Default; and/or (iii) seek the offset of its actual damages against amounts otherwise payable to the City under any existing or future Sale Agreement.

All such remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of the remedies shall not constitute a waiver or election with respect to any other available remedy.

10. **Referendum or Legal Challenge.** In the event of a referendum petition being timely filed with the Clerk of the City with respect to the adoption of this Agreement by the City Council, the City at its sole cost and expense, shall schedule such referendum election for the next regular election of the City, or, in the City's sole and absolute discretion, as a special election; and the election shall be deemed a Force Majeure Event. In the event that the electors of the City disapprove the adoption of this Agreement, then this Agreement shall automatically, and without further act or notice, be deemed terminated, and neither Party shall have any further rights or obligations hereunder (except for obligations of indemnity that may survive the termination of this Agreement).

11. **Notices and Filings.**

11.1 **Manner of Service.** Except as otherwise required by Applicable Laws, all notices, demands or other communications given hereunder shall be in writing and shall be given by personal delivery, delivered by recognized national overnight courier service (such as UPS or FedEx), or by United States certified mail (return receipt requested), with all postage and other delivery charges prepaid, and addressed as follows:

To the City:           City of Mesa  
                              20 East Main Street  
                              Mesa, Arizona 85211  
                              Attention: City Manager

Copy to: City of Mesa  
20 East Main Street  
Mesa, Arizona 85211  
Attention: City Attorney

To MDH: Mesa Development Holdings, LLC  
1053 West Waveland  
Chicago, Illinois 60613  
Attention: Office of the President

Copy to: Mesa Development Holdings, LLC  
1053 West Waveland  
Chicago, Illinois 60613  
Attention: General Counsel

Copy to: Greenberg Traurig  
2375 East Camelback Road, Suite 700  
Phoenix, Arizona 85016  
Attention: Rebecca L. Burnham, Esq.

Escrow Agent: Thomas Title & Escrow  
Promenade Corporate Center  
16435 N. Scottsdale Rd., Suite 405  
Scottsdale, Arizona 85254  
Attention: Brett Hopper

Messages delivered electronically (e.g., e-mail) shall not be effective for any purpose.

11.2 **Effective Date of Notices.** No such notice, demand or other communication will be deemed effective absent documented confirmation in commercially acceptable form and, in such event, such notice, demand or other communication shall be deemed effective: (i) if delivered personally or delivered through a same day delivery/courier service, upon the date of such confirmation of delivery or refusal to accept delivery by the addressee, (ii) if delivered by U.S. Mail in the manner described above, upon actual receipt, and (iii) if delivered by a recognized national overnight delivery service, the date of such confirmation of delivery; in each case except delivery by U.S. Mail regardless of whether such notice, demand or other communication is actually received by any person to whom a copy of such notice, demand or other communication is to be delivered pursuant to this Section 11. Any payment by any Party required or permitted under this Agreement may be made by personal delivery, U.S. Mail, recognized national overnight delivery service or, if the Party entitled to receive such payment provides wiring instructions to the Party obligated to make such payment, via wire transfer, provided, if such payment is made in any manner described in the preceding sentence, such payment shall be deemed made at the time provided in this Section 11 for notices, demands and other communications to be deemed effective.

12. **General Provisions.**

12.1 **Designated Representatives.** Whenever a term or condition of this Agreement refers to a “**Designated Representative**” of a Party, such reference shall be to the representative designated for such purpose in a notice by a Party to the other Party, provided if no such designation has occurred or if such designated representative is no longer employed by the Party or otherwise available, the Designated Representative for the City shall be deemed to be its City Manager and for MDH its corporate secretary.

12.2 **Persons Not Liable.** No shareholder, partner, member, director, officer, official, representative, agent, attorney or employee of either Party shall be personally liable to the other Party, or to any successor in interest to the other Party, in the event of any Default by a Party or for any amount which may become due to the other Party or any successor or assign, or with respect to any obligation of the City or MDH under the terms of this Agreement.

12.3 **Good Faith of Parties.** Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

12.4 **Further Assurances.** Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require from time to time to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or to confirm the status of (a) this Agreement as in full force and effect, and (b) the performance of the obligations hereunder at any time during its Term.

12.5 **Status Statements.** Any Party (the “**Requesting Party**”) may, at any time, and from time to time, deliver written notice to any other Party requesting such other Party (the “**Providing Party**”) provide in writing, to the knowledge of the Providing Party, (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended or modified, and if so amended, identifying the amendments, (c) the Requesting Party is not in Default in the performance of its obligations under this Agreement, or, if in Default, to describe therein the nature and amount of any such Default, and (d) any other matter reasonably requested (a “**Status Statement**”). A Party receiving a request hereunder shall execute and return such Status Statement within fifteen (15) business days following the receipt thereof. The City Manager (or the City Manager’s designee) shall have the right to execute any Status Statement requested by MDH hereunder. The City acknowledges a Status Statement hereunder may be relied upon by transferees and mortgagees; provided, however, the City shall have no liability for monetary damages suffered by MDH, or any transferee or mortgagee, or to any other person in connection with, resulting from or based upon the good faith provision of any Status Statement by the City.

12.6 **No Right to Encumber or Hypothecate.** Notwithstanding any other provision in this Agreement, MDH shall not mortgage, hypothecate or otherwise encumber all or any portion of its right, title and interests arising under or in connection with this Agreement, except with the

prior written consent of the City, which consent may be granted, withheld, conditioned or delayed by the City in the City's sole, absolute and unfettered discretion; provided, nothing in this Section is intended to, or shall, restrict or preclude the mortgage or encumbrance of any Option Parcel upon or following the purchase of such Option Parcel by MDH pursuant to this Agreement.

12.7 **Successors and Assigns**. All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Parties pursuant to A.R.S. § 9-500.05(D); provided, without the prior written consent of the City, MDH may not assign or transfer its interest under this Agreement except as follows:

(a) To any entity if ownership of not less than 51% of the total ownership interests in such entity remains in MDH and/or any Affiliate of MDH;

(b) To any person or entity which has acquired the entirety of the rights and obligations of MDH as a successor in interest to MDH, provided the successor has expressly and in writing for the benefit of the City either (A) assumed all of the obligations of the assignor under this Agreement including but not limited to all obligations of MDH arising prior to the date of such assignment or transfer, with respect to this Agreement, or (B) assumed all of the obligations of the assignor under this Agreement arising from and after the date of such assignment or transfer, with respect to this Agreement, provided, in the case of an assumption pursuant to this item (B), either (1) MDH, or (2) a party with financial capabilities substantially equivalent to or better than the assignor on the date of such assignment (or otherwise reasonably acceptable to the City in the case of an assignment by an assignor which is not MDH or its Affiliate) shall guaranty to the City the obligations of the assignor under this Agreement arising prior to the date of such assignment or transfer.

(c) Notwithstanding the foregoing, no assignment, transfer or conveyance of all or any portion of this Agreement, or any rights arising in favor of MDH (or its permitted successors and assigns) under this Agreement, may be made, if (i) MDH has committed or performed any act, or omitted or failed to perform any act which, but for the passage of time or the giving of notice, or both, would be a Default, or (ii) any party having the primary right to use the adjacent Stadium has committed or performed any act, or omitted or failed to perform any act which, but for the passage of time or the giving of notice, or both, would be a default pursuant to the use agreement for the Stadium. Additionally, any assignment, transfer or conveyance made in violation of this Agreement shall be void *ab initio*, and not merely voidable.

Notwithstanding anything to the contrary in this Agreement, nothing herein is intended to, or shall, restrict or preclude the mortgage or encumbrance of any Option Parcel upon or following the purchase of such Option Parcel by MDH pursuant to this Agreement

12.8 **Waiver**. The Parties agree neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege

with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

12.9 **Governing Law; Choice of Forum.** This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court for Maricopa County, in Phoenix, Arizona, and the Parties agree and consent to the exclusive jurisdiction of such Superior Court. MDH waives all right to seek removal of any action to any court (federal or state) other than the Superior Court in and for Maricopa County, Arizona.

12.10 **Attorney's Fees and Costs.** In the event of commencement of a legal action or proceeding in an appropriate forum by a Party to enforce any covenant, term, provision or requirement of this Agreement, or any of such Party's rights or remedies under this Agreement, or on in the event of commencement of any action or proceeding seeking a declaration of the rights of any Party or equitable or injunctive relief against any Party, the prevailing Party or Parties in any such action or proceeding shall be entitled to recovery of its reasonable attorneys' fees, court costs and expenses, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the Parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental expenses associated with such dispute. The award shall be made by the Court and not by a jury.

12.11 **Business Days.** If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, or any other day on which the business offices of the City (as opposed to its emergency services) are closed, then the duration of such time period or the date of performance, as applicable, shall be extended so it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday, or day on which the business offices of the City are closed.

12.12 **Time of Essence.** Time is of the essence in implementing the terms of this Agreement

12.13 **Headings.** The descriptive headings of the Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

12.14 **Exhibits.** Any exhibit attached hereto shall be deemed to have been incorporated into this Agreement by this reference with the same force and effect as if fully set forth in the body of this Agreement.

12.15 **Construction.** The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been, or has had the opportunity to be, represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary

meanings. The Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement and which holds ambiguous or conflicting terms or provisions contained in this Agreement (or any other provision of this Agreement) shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of same.

12.16 **No Partnership; Third Parties.** Nothing contained in this Agreement shall create, or be deemed to create, any partnership, joint venture or other similar arrangement between the City and MDH. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a Party hereto, and no such other person, firm, organization or corporation shall have any right or standing to any cause of action hereunder; except each Mortgagee shall be a third party beneficiary of the provisions of this Section 12.16, and except the protection of the indemnification provisions of this Agreement shall extend to all agents, attorneys, Council members and employees of the City acting in the course and scope of their employment or engagement and all such persons shall be, and are intended to be, third party beneficiaries of such indemnification provisions.

12.17 **Broker Fees.** No broker's fees or commissions are payable in connection with the Option or the purchase of the Option Property upon exercise of the Option hereunder and each Party shall indemnify and hold the other Party harmless for, from and against any and all costs, expenses and liabilities, including attorneys' fees, incurred in connection with claims made by any broker based upon the acts or agreements or alleged acts or agreements of the indemnifying Party.

12.18 **Amendment.** No change, addition or deletion is to be made to this Agreement, except by a written amendment approved by the City Council and executed by the Parties. Although the material terms of this Agreement shall not be changed without City Council approval, the City Manager and MDH shall have the right (but not the obligation) to vary or modify, upon their mutual agreement, minor, administrative, technical or procedural terms of this Agreement dealing with, for example and without limitation, diligence, approvals or conceptual plans, or to amend or otherwise modify legal descriptions of the Option Property, Option Parcels, or portions thereof, as applicable, and, otherwise, in respect of the exercise of the Option and/or Close of escrow. Within 10 days after any approved amendment to this Agreement, pursuant to this Section 12.18, such approved amendment shall be recorded in the office of the Maricopa County, Arizona Recorder.

12.19 **Limited Severability.** The Parties agree in the event any provision of this Agreement or portion of any provision is declared void or unenforceable (or is construed as requiring the City to do any act in violation of any Applicable Law) such provision or portion thereof shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided, this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further shall perform all acts and execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as and if reformed in accordance with this Section 12.19.

12.20 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so the signatures of all Parties may be physically attached to a single document.

12.21 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to its subject matter. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written (including any term sheets, discussion outlines or similar documents), are hereby superseded and merged into this Agreement.

12.22 **Survival.** All agreements and indemnities contained in this Agreement shall survive the execution and delivery of this Agreement, the consummation of any transaction contemplated herein, and the rescission, cancellation, expiration or termination of this Agreement for the period of the applicable statute of limitations.

12.23 **Covenants Running With Land; Inurement.** The covenants, conditions, terms and provisions of this Agreement relating to use of the Option Property shall run with the Option Property and shall be binding upon, and shall inure to the benefit of the Parties and their respective permitted successors and assigns with respect to such Option Property. Wherever the term “**Party**” or the name of any particular Party is used in this Agreement such term shall include any such Party’s permitted successors and assigns.

12.24 **Conflict of Interest Statute; Compliance with Financing Requirements.** This Agreement is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. §38-511.

12.25 **Prohibition of Doing Business with Sudan and Iran.** Pursuant to A.R.S. §§35-391.06 and 35-393-06, MDH hereby certifies to the City that MDH does not have “scrutinized” business operations, as defined in A.R.S. §§35-391 and 35-393, in either Sudan or Iran. MDH acknowledges that, in the event either of the certifications to the City by MDH contained in this paragraph is determined by the City to be false, the City may terminate this Agreement and exercise other remedies as provided by law, in accordance with A.R.S. §§35-391.06 and 35-393-06.

12.26 **Treatment Facility.** If the City continues, at any time during the Option Term or at any time if MDH purchases any portion of the Option Property and satisfies the construction requirements applicable thereto, to operate the City of Mesa Northwest Wastewater Treatment Facility located adjacent to the Spring Training Facilities Site and any future expansion to or modification of such facilities, the City shall operate (or cause to be operated) the Treatment Facility at a standard equal to, and not less than, the current operations with regard to limiting noise and odor, and otherwise in compliance with all Applicable Laws. .

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf and MDH has signed the same, on or as of the day and year first written above.

[SIGNATURES APPEAR ON NEXT PAGE]

**CITY:**

CITY OF MESA, ARIZONA, an Arizona  
municipal corporation

By: \_\_\_\_\_  
Its: City Manager

**ATTEST:**

By: \_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Mesa City Attorney

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2011, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Mesa, Arizona,  
an Arizona municipal corporation, who acknowledged he/she signed the foregoing instrument on  
behalf of the City.

Notary Public

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



**LIST OF EXHIBITS**

- Exhibit A: Legal Description of City Site
- Exhibit B: Option Property Site Plan
- Exhibit C: Permitted Exceptions
- Exhibit D: Prohibited Uses
- Exhibit E: Memorandum of Termination
- Exhibit F: Option Parcel Purchase and Sale Agreement
- Exhibit G-1: Issue Resolution Ladder
- Exhibit G-2: Dispute Resolution Process

**Exhibit "A"**  
Legal Description of City Site

A Parcel of Real Property Located in the North Half of Section 18, Township One North, Range Five East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona. Said Parcel described as follows:

Commencing West Corner of said Section 18, thence North 89 degrees 25 minutes 44 seconds East along the Mid Section line of said Section 18 a distance of 1,044.57 feet;

thence North 01 degrees 21 minutes 36 seconds West a distance of 44.91 feet; to the POINT OF BEGINNING, said point being on the North Right-of-Way line of West 8th Street;

thence North 01 degrees 21 minutes 36 seconds West a distance of 291.50 feet;

thence South 89 degrees 44 minutes 22 seconds West a distance of 406.01 feet;

thence North 33 degrees 09 minutes 44 seconds East a distance of 261.23 feet;

thence North 13 degrees 48 minutes 55 seconds East a distance of 286.14 feet;

thence North 64 degrees 24 minutes 13 seconds East a distance of 665.81 feet;

thence North 60 degrees 20 minutes 42 seconds East a distance of 428.26 feet;

thence North 76 degrees 36 minutes 26 seconds East a distance of 220.73 feet;

thence North 63 degrees 26 minutes 05 seconds East a distance of 435.13 feet;

thence North 87 degrees 52 minutes 34 seconds East a distance of 231.33 feet;

thence South 00 degrees 16 minutes 13 seconds East a distance of 266.65 feet;

thence South 89 degrees 44 minutes 03 seconds East a distance of 1,372.64 feet;

thence North 00 degrees 19 minutes 56 seconds East a distance of 666.54 feet;

thence North 74 degrees 25 minutes 30 seconds East a distance of 101.70 feet;

thence South 02 degrees 12 minutes 17 seconds East a distance of 26.36 feet;

thence North 89 degrees 49 minutes 36 seconds East a distance of 71.46 feet;

thence North 01 degrees 25 minutes 15 seconds West a distance of 65.74 feet;

thence North 72 degrees 12 minutes 48 seconds East a distance of 117.11 feet;

thence South 00 degrees 18 minutes 29 seconds West a distance of 929.21 feet;

thence North 60 degrees 18 minutes 22 seconds West a distance of 11.48 feet;

thence South 00 degrees 18 minutes 29 seconds West a distance of 102.37 feet;

thence South 90 degrees 00 minutes 00 seconds East a distance of 128.35 feet to a tangent curve concave to the northwest having a radius of 1,163.76 feet and a central angle of 22 degrees 28 minutes 13 seconds;

thence Northeasterly along said curve to the left a distance of 456.41 feet;

thence North 67 degrees 31 minutes 47 seconds East a distance of 121.78 feet to a tangent curve concave to the southeast having a radius of 710.21 feet and a central angle of 22 degrees 28 minutes 13 seconds;

thence Northeasterly along said curve to the right a distance of 278.53 feet;

thence South 90 degrees 00 minutes 00 seconds East a distance of 105.32 feet to a point on the East Section line of said Section 18;

thence South 89 degrees 05 minutes 04 seconds East a distance of 32.29 feet; to a non-tangent curve, concave to the northeast, having a radial bearing of South 58 degrees 42 minutes 53 seconds West and a radius of 243.45 feet;

thence Southeasterly along said non-tangent curve to the left through a central angle of 14 degrees 38 minutes 40 seconds a distance of 62.22 feet;

thence South 45 degrees 56 minutes 30 seconds East a distance of 79.00 feet to a tangent curve concave to the southwest having a radius of 22.50 feet and a central angle of 86 degrees 37 minutes 48 seconds;

thence Southwesterly along said curve to the right a distance of 34.02 feet to a reverse curve concave to the southeast having a radius of 896.80 feet and a central angle of 39 degrees 45 minutes 05 seconds, said curve being on the west Right-of-Way line of North Dobson Road;

thence Southwesterly along said curve to the left a distance of 622.20 feet;

thence South 00 degrees 56 minutes 23 seconds West along the west Right-of-Way line of North Dobson Road, a distance of 434.06 feet;

thence South 45 degrees 11 minutes 46 seconds West a distance of 27.69 feet to a point 45.00 feet north of the Mid Section line of said Section 18, said point being on the north Right-of-Way line of West 8<sup>th</sup> Street;

thence South 89 degrees 27 minutes 07 seconds West along the north Right-of-Way line of West 8<sup>th</sup> Street, a distance of 2,583.62 feet;

thence South 89 degrees 25 minutes 34 seconds West along the north Right-of-Way line of West 8<sup>th</sup> Street, a distance of 1,613.32 feet to the POINT OF BEGINNING.

The area containing 5,493,668.71 square feet, or 126.11 acres more or less.

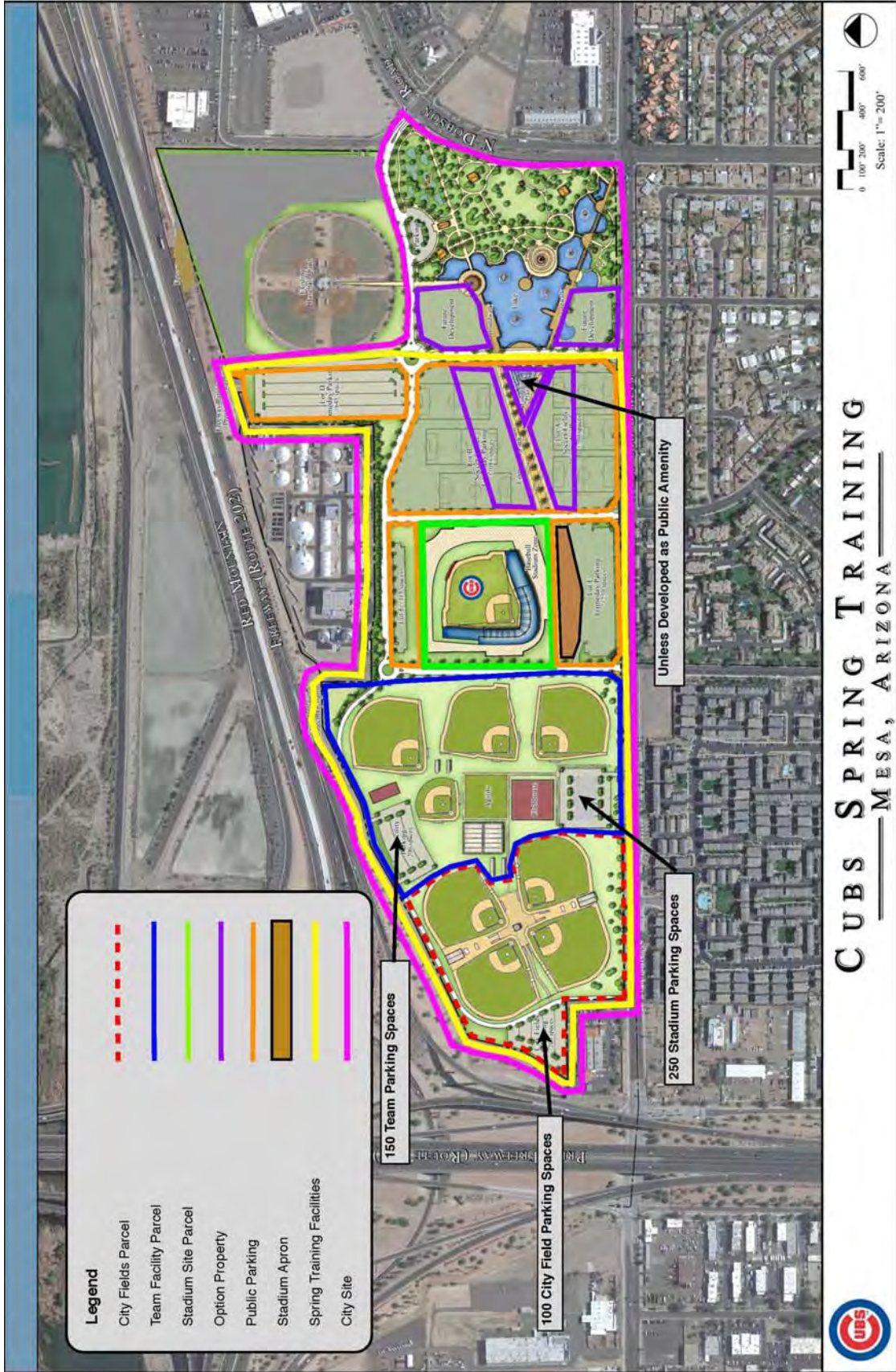


October 5, 2011

**Exhibit "B"**

Option Property Site Plan

(Full size copy on file with City)



**Exhibit "C"**  
**Permitted Exceptions**

1. The Liabilities, Obligations, and Burdens imposed upon said land by reason of inclusion within the Salt River Project Agricultural Improvement and Power District and Agricultural Improvement Districts.
2. Water Rights, claims or title to water, whether or not shown by the public records.
3. Any adverse claim based upon the assertion that said land or any part thereof is now or at any time has been included within a navigable river, slough or other navigable body of water.
4. Reservations contained in the Patents to said land recorded in Book 5 of Deeds, page 295, Book 53 of Deeds, page 597 and Docket 1237, page 373, reading as follows  

“Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws and decisions of courts”, and also, “Subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted, as provided by law”.
5. Reservations contained in the Patents to said land recorded in Book 281 of Deeds, page 492 and Book 120 of Deeds, page 221, reading as follows  

“Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws and decisions of courts; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed under the authority of the United States of America.”
6. Easement for electric lines, and rights incident thereto as set forth in Docket 1382 page 312.
7. Easement for line of poles with wires, and rights Incident thereto as set forth in Docket 3250 page 287.
8. Terms, conditions and easements contained in Agreement for Sale of Real Property under threat of condemnation recorded in Docket 10987 page 705.
9. Easement for underground power, and rights incident thereto as set forth In Docket 12000 page 1444.
10. A Resolution by the Board of Supervisors of Maricopa County, Arizona, recorded in Docket 13600 page 159, purporting to establish a roadway over the South 45 feet.
11. Easement for overhead and underground power, and rights incident thereto as set forth in

Docket 15481 page 764.

12. Roadway over the South 45 feet, as disclosed by 83-246144.
13. All matters set forth in instrument recorded in Intergovernmental Agreement recorded in Document No. 90-436689.
14. Terms and Conditions, Liabilities and Obligations contained in that certain Agreement, recorded in Document No. 87-004192.
15. Easement for line of poles with wires, and rights incident thereto as set forth in Document No. 90-268324.
16. Easement for underground power, and rights incident thereto as set forth in Document No. 90-494473.
17. Easement for underground power, and rights incident thereto as set forth in Document No. 91-327407.
18. Easement for underground power, and rights incident thereto as set forth in Document No. 91-327401.
19. Easement for underground power, and rights incident thereto as set forth in Document No. 96-0552108.
20. Easement for drainage, and rights incident thereto as set forth in Document No. 99-0295016.
21. Easement for underground power, and rights incident thereto as set forth in Document No. 2001-0533343.
22. All matters set forth in instrument recorded in that certain Resolution of the City Council of the City of Mesa, Maricopa County, Arizona, Extinguishing a portion of an Easement for Outfall Sewer Line and Dedicating an Easement for Sewer Line purposes recorded in Document No. 2002-0900698.

**Exhibit “D”**  
Prohibited Uses

Certain uses allowed in the GC zoning district are not consistent with the active, urban, entertainment and recreation environment envisioned for this project. To ensure the overall quality of the environment in the future the following list of uses is prohibited:

Assisted Living, except housing for baseball personnel

Group Residential

- Group residential - Correctional Transitional Housing Facility
- Group Housing, except housing for baseball personnel

Rehabilitation Center, except for physical therapy and physical training

Social Service facilities, including homeless shelter, charity dining facility, blood bank or blood plasma center, employment agency for day labor or similar

Automobile/Vehicle Sales and Services

- Automobile rentals
- Automobile/vehicle sales and leasing
- Automobile/vehicle repair, Major and Minor
- Automobile/vehicle washing
- Large Vehicle and equipment sales, services, and rental
- Service Station/Gas Station

Building materials and services

Eating and drinking establishments with drive-thru facilities

Funeral parlors and mortuaries

Light fleet-based services

Maintenance and Repair services

Non-chartered Financial Institutions (payday lenders)

Plant nurseries and garden centers

Pawn Shops

Tattoo and Body Piercing Parlors

Sexually-oriented business

Handicraft/custom manufacturing

Light assembly/cabinetry

Recycling facilities

Warehousing and Storage

- Mini-storage
- Wholesale

Helistops or heliports

Bingo Hall

**Exhibit "E"**

When recorded, return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**MEMORANDUM OF TERMINATION**

This Memorandum of Termination is entered into this day of \_\_\_\_\_, 201\_\_ by and between the City of Mesa, an Arizona municipal corporation (the "**City**"), and Mesa Development Holdings, LLC, a Delaware limited liability company ("**MDH**").

The City and MDH have entered into (i) the certain Option Agreement dated \_\_\_\_\_, 2010 (the "**Agreement**"), relating to certain real property legally described on **Exhibit "1"**, which is attached hereto and incorporated herein by this reference ("**Option Property**"), and (ii) the certain Memorandum of Option dated \_\_\_\_\_, 2010 and recorded \_\_\_\_\_, 2010 at Document Number \_\_\_\_\_, Official Records of \_\_\_\_\_ County, Arizona.

MDH's right to purchase the Option Property described on **Exhibit "1"** has terminated and the Parties desire to give actual and constructive written notice to all persons MDH has no further rights to purchase such Option Property under the Agreement and the City has no further obligations to MDH under the Agreement with respect thereto.

MEMORANDUM:

MDH and the City hereby agree and give actual and constructive notice to all persons the Option is terminated and is of no further force and effect and MDH has no further rights to purchase the Option Property described on **Exhibit "1"** and the City has no further obligations to MDH with respect thereto.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have placed their signatures on the day and year first above written.

**CITY:**

CITY OF MESA, ARIZONA, an Arizona municipal corporation

By: \_\_\_\_\_  
Its: City Manager

**ATTEST:**

By: \_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Mesa City Attorney

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged he/she signed the foregoing instrument on behalf of the City.

Notary Public

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



**Exhibit "F"**

Option Parcel Purchase and Sale Agreement  
**PURCHASE AND SALE AGREEMENT**  
**By and between**

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

**and**

**Mesa Development Holdings LLC**  
**a Delaware limited liability company**

\_\_\_\_\_, 20\_\_

**PURCHASE AND SALE AGREEMENT  
(Option Parcel)**

This Purchase and Sale Agreement (“**Agreement**”) by and between the City of Mesa, an Arizona municipal corporation (“**Seller**”), and Mesa Development Holdings, LLC, a Delaware limited liability company [or Affiliate] (“**Buyer**”), is made effective as of the [\*] day of \_\_\_\_\_, 20[\*] (the “**Agreement Date**”). Seller and Buyer are sometimes referred to in this Agreement collectively as the “**Parties**,” or individually as a “**Party**”.

**RECITALS**

A. This Agreement is entered into pursuant to that certain Option Agreement, by and between Seller and Buyer, dated \_\_\_\_\_, 2011 and recorded on \_\_\_\_\_, 2011, as Instrument No. 2011-\_\_\_\_\_ in the Official Records of Maricopa County, Arizona (“**Option Agreement**”), the applicable terms of which are herewith incorporated by reference. Any initially capitalized term used in this Agreement and not otherwise defined herein shall have the meaning ascribed to such term in the Option Agreement.

B. Seller owns certain real property, located in the City of Mesa, Arizona (the “**City**”), consisting of the City Site and certain other property adjacent to the City Site, known as [\_\_\_\_\_] (the “**Project**”). Pursuant to the Option Agreement, Buyer has an option to purchase portions of the City Site (the “**Option Property**”).

C. Pursuant to the Option Agreement, Buyer has submitted to the City and the City has finally approved through all required action, the [*West Option Conceptual Development Plan / East Option Conceptual Development Plan / Option Parcel Site Plan*] and that portion of the Option Property which is the subject of this Agreement (the “**Option Parcel(s)**”), the Option Parcel(s) being legally described on Exhibit “A” and depicted on Exhibit “B”, each attached hereto.

D. Pursuant to the Option Agreement, the City has finally approved through all required action the zoning for the Project inclusive of the Option Property, as reflected in [*insert description of City adopted PAD overlay and C-3 zoning ordinance*] (the “**Zoning**”).

E. The City has finally approved through all required action: (i) freeway landmark signs for the Project, as reflected in [*insert description of City approval action in respect of freeway landmark signage, e.g., Resolution adopted ...*] in respect of which, pursuant to the Option Agreement, Buyer has the exclusive option to purchase from the City the necessary land for and construct, own and operate one freeway landmark sign for the benefit of the Option Property (“**Freeway Sign**”) and (ii) a comprehensive sign plan for the Project, as reflected in [*insert description of City approval action in re CSP*] (“**Comprehensive Sign Plan**”).

F. Pursuant to the Option Agreement, Buyer has caused to be prepared and submitted to the City, and the City has finally approved through all required action, that certain Declaration of Covenants, Conditions and Property Restrictions in respect of the Project, dated \_\_\_\_\_, 20\_\_, and recorded on \_\_\_\_\_, 20\_\_, as Instrument No. 20\_\_-\_\_\_\_\_ in the Official Records of Maricopa County, Arizona (“**Master Declaration**”) and that certain Declaration of Covenants, Conditions and Property Restrictions in respect of [the

*West Option Property / East Option Property* , dated \_\_\_\_\_, 20\_\_, and recorded on \_\_\_\_\_, 20\_\_, as Instrument No. 20\_\_ - \_\_\_\_\_ in the Official Records of Maricopa County, Arizona ( {“**West Option Property CC&Rs**”/ “**East Option Property CC&Rs**”} ).

G. Seller and Buyer each acknowledge and agree that they, and the existing and future owners and/or tenants of the planned development to be constructed at the Project, will benefit from an orderly plan of development for the Project, as contemplated by the Option Agreement, the Zoning, the City sign approvals including the Comprehensive Sign Plan, the Master Declaration and [*the West Option Property CC&Rs / East Option Property CC&Rs*], and that such orderly plan of development will enhance the coherence and value of the Project.

## **AGREEMENT**

In consideration of the terms, covenants and conditions contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

1. **Definitions.** As used in this Agreement, the terms identified below shall have the following meanings unless the context requires otherwise. Other defined terms are identified and defined throughout the Agreement.

1.1 **“Agreement”.** This means as defined in the introductory paragraph of this Agreement, as amended and restated or supplemented in writing from time to time, and includes all exhibits hereto. References to Sections or Exhibits are to this Agreement unless otherwise qualified. The introductory paragraphs re incorporated herein by reference and form a part of this Agreement

1.2 **“Applicable Laws”.** The federal, state, County and City laws, rules, regulations, permit conditions and requirements, and court orders, applicable to the Project, which include the Zoning and sign approvals referenced in the recitals including the Comprehensive Sign Plan.

1.3 **“City”.** This means as defined in the introductory paragraph of this Agreement.

1.4 **“Closing” or “Closing Date”.** The date on which Buyer acquires title to the Option Parcel(s), which shall occur on or before sixty (60) days following the date of Opening of Escrow

1.5 **“Commencement of Construction”.** The occurrence of both: (i) the obtaining of a building, excavation, grading or similar permit; and, (ii) the actual commencement of physical construction operations in a manner reasonably designed to cause, and with the intent at the commencement of such construction to diligently pursue, Completion of the applicable vertical improvements as contemplated by this Agreement.

1.6 **“Complete” or “Completion”.** With respect to the vertical improvements to be constructed as contemplated by this Agreement: (a) the improvement(s) is or are operational and fully usable in all material respects for its or their intended use in accordance with all Applicable Laws and this Agreement; and (b) all required governmental permits, approvals and certificates of occupancy (as applicable) have been issued.

- 1.7 **“Comprehensive Sign Plan”**. This means as defined in Recital E.
- 1.8 **“Condition of Title”**. All matters regarding the title to the Option Parcel(s) including without limitation all exceptions or conditions to title, whether or not of public record.
- 1.9 **“Condition to Closing”**. This means as defined in Section 6.4.
- 1.10 **“Deed”**. This means as defined in Section 6.1(a).
- 1.11 **“Earnest Deposit”**. The earnest money deposit which must be deposited by Buyer in the Escrow concurrent with the Parties’ deposit of the fully executed Agreement in respect of the Option Parcel(s) in an amount equal to five percent (5%) of the Purchase Price
- 1.12 **“Escrow”**. The escrow that shall be opened with Escrow Agent in respect of the sale and purchase of the Option Parcel(s) whereby, pursuant to this Agreement, Escrow Agent shall hold and administer all funds, documents and instruments through the Closing or termination of this Agreement.
- 1.13 **“Escrow Agent”**. Thomas Title & Escrow, Promenade Corporate Center, 16435 N. Scottsdale Road, Suite 405, Scottsdale, AZ 85254, Attention: \_\_\_\_\_ (**“Escrow Officer”**).
- 1.14 **“Feasibility Expiration Date”**. The date that is forty-five (45) days following the date of the Opening of Escrow.
- 1.15 **“Force Majeure”**. Causes beyond a Party’s control and without such Party’s fault, failure to comply with Applicable Laws or its negligence including, but not limited to: (1) acts of God, acts of a public enemy, acts of terrorism, fires, floods, unusually severe weather, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, acts of the City (as to Buyer) or federal or state government, and acts of Third Parties (including contractors, subcontractors, and suppliers), resulting in delay beyond the reasonable control of the Party; and (2) litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated by this Agreement (but not including the effect of petitions for initiative or referendum); provided, Force Majeure shall not include general economic or market conditions, financial infirmity or financial decisions made by the Party seeking the benefit of Force Majeure, the unavailability for any reason of financing or financing on terms acceptable to such Party, any act that constitutes a Default of the Party seeking the benefit of Force Majeure, or the unavailability for any reason of particular materials or supplies, contractors, subcontractors, vendors, investors or lenders desired by the Party seeking the benefit of Force Majeure; provided, further, it shall be a condition to extension of the time or times for performance of the obligations of the Party claiming Force Majeure that the Party shall, reasonably promptly after such Party knows or reasonably could have known of any such Force Majeure occurrence, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Force Majeure occurrence.
- 1.16 **“Freeway Sign”**. This means as defined in Recital E.

1.17 “**Governance Documents**”. Collectively: (i) the articles of incorporation, the by-laws and the rules and regulations of the Governing Organizations]; (ii) *[if applicable: the Project Design Guidelines pertaining to commercial development within the Project]*; (iii) the Master Declaration; and (iv) the *[West Option Property CC&Rs / East Option Property CC&R’s]*, as any of the foregoing may be amended from time to time.

1.18 “**Governing Organizations**”. Collectively, the *[Master Property Owners Association and, if applicable, the {West Option Property Sub-Association / East Option Property Sub-Association}, respectively]*.

1.19 “**Master Declaration**”. The Master Declaration, as defined in Recital E, together with all duly adopted amendments and supplements relating thereto.

1.20 “**Master Property Owners Association**”. The [\_\_\_\_\_] Property Owners Association established concurrent with the establishment of the Master Declaration and those certain Bylaws of the [\_\_\_\_\_] Property Owners Association.

1.21 “**Opening of Escrow**”. The date on which all of the following have occurred: (i) this Agreement has been executed and delivered by duly authorized and appropriate representatives of Seller and Buyer; and (iii) three (3) counterparts of this Agreement and the Earnest Deposit have been delivered to Escrow Agent.

1.22 *[If applicable]* “**Option Parcel Site Plan**”. The site plan for the Option Parcel(s), as finally approved by the City, as provided in the Option Agreement.

1.23 “**Party**” and “**Parties**”. This means as defined in the introductory paragraph of this Agreement.

1.24 *[If applicable]* “**Plat**”. The final plat for the Option Parcel(s), as finally approved by the City, and as to which all prerequisites to recordation in the Official Records of the Maricopa County Recorder have been completed *[or, if recorded: the final plat for the Option Parcel(s) recorded in Book [\*] of Maps, page [\*], of the Official Records of the Maricopa County Recorder.]*

1.25 “**Purchase Price**”. This means as defined in Section 2.2

1.26 “**Site Conditions**”. All physical conditions and constraints affecting the development, use and occupancy of the Option Parcel(s) including but not limited to (i) any environmental condition or the presence (either historically or at the present time) of any so-called hazardous materials, (ii) the presence of any archaeological sites, artifacts or funerary objects on the Option Parcel(s), and (iii) all Applicable Laws, including the Zoning.

1.27 “**Stadium**”. The Major League Baseball spring training stadium and related facilities constructed on property within the Project and adjacent to the Option Property.

1.28 “**Status Statement**”. This means as defined in Section 13.4.

1.29 “**Title Policy**”. This means as defined in Section 4.1.

1.30 “[*West Option Property CC&Rs / East Option Property CC&R’s*]”. The [*West Option Property CC&Rs / East Option Property CC&R’s*], as defined in Recital E, together with all duly adopted amendments and supplements relating thereto.

1.31 “[*West Option Property/ East Option Property*] **Property Owners Association**”. The [\_\_\_\_\_] Property Owners Association established concurrent with the establishment of the [*West Option Property CC&Rs / East Option Property CC&R’s*] and those certain Bylaws of the [\_\_\_\_\_] Property Owners Association.

2. **Agreement of Purchase and Sale.** Subject to, and in accordance with, the terms, covenants and conditions of the Option Agreement and this Agreement, Seller shall sell to Buyer and Buyer shall purchase from Seller the Option Parcel(s) on the Closing Date.

2.1 **Earnest Money.** Concurrent with the delivery to Escrow Agent of this Agreement, Buyer shall deposit \_\_\_\_\_ Dollars (\$\_\_\_\_\_), by Buyer’s corporate check or wire transfer, as the Earnest Deposit, with Escrow Agent, whereupon Opening of Escrow shall be deemed to have occurred.

(a) **Failure to Timely Deposit Earnest Money.** If Buyer fails to deposit the Earnest Deposit with Escrow Agent within five (5) business days of delivery to Escrow Agent of three (3) counterparts of this Agreement, fully executed by the Parties, this Agreement shall be immediately terminated and, thereafter, except as otherwise provided in this Agreement, neither Party shall have any further obligations or liabilities hereunder.

(b) **Non-Refundable After Feasibility Expiration Date.** All Earnest Money shall be refundable to Buyer until the Feasibility Expiration Date. Except as otherwise provided elsewhere in this Agreement, all Earnest Money shall be non-refundable to Buyer following the Feasibility Expiration Date.

(c) **Investment of Earnest Money.** All cash sums deposited by Buyer hereunder which are not disbursed by Escrow Agent on the date such funds are delivered to Escrow Agent shall be deposited into an interest-bearing demand deposit account at a federally insured bank located in Phoenix, Arizona. All interest shall accrue for the benefit of Buyer unless Seller is entitled to receive the Earnest Money upon termination of this Agreement under the terms of this Agreement. To allow such account to be opened, Escrow Agent shall use Buyer’s federal tax employer identification number provided below its signature to this Agreement. Buyer shall pay all charges incurred by Escrow Agent (if any) in opening the account.

(d) **Disposition of Earnest Money.** All cash sums deposited by Buyer hereunder shall remain in Escrow following the deposit thereof and shall be credited toward payment of the Purchase Price payable by Buyer at the Closing, thereby reducing the total cash payable by Buyer at the Closing. *[IF APPLICABLE: INSERT CREDIT FOR OPTION PRICE if LAST OPTION PARCEL WITHIN WEST/EAST OPTION PROPERTY IS BEING PURCHASED]*

2.2 **Purchase Price.** The purchase price (“**Purchase Price**”) for the Option Parcel(s) is \_\_\_\_\_ Dollars (\$\_\_\_\_\_), the product of \$9.00 multiplied times the square

footage of the Option Parcel(s). Pursuant to the Option Agreement, Buyer has delivered to Seller and Seller has reviewed and approved the Survey incorporating the Legal Description of the Option Parcel(s) and the square footage of the Option Parcel(s) (including the square footage of the Common Area included in the Option Parcel(s) and the proportionate area of the Common Areas attributable to the Option Parcel(s)) and acknowledges and agrees the Purchase Price has been determined in accordance with the Option Agreement.

3. **Escrow Instructions.** Concurrent with the execution and delivery of this Agreement, Seller and Buyer have executed and delivered to Escrow Agent's standard form of escrow instructions as required by Escrow Agent; provided, however, by its acceptance of this Agreement and Opening of Escrow, Escrow Agent shall be deemed to have acknowledged and agreed, in the event of any conflict between the terms of this Agreement and the form escrow instructions, the terms of this Agreement shall prevail. The Parties acknowledge and agree no provision of the form escrow instructions shall excuse any performance by either Party at the times provided in this Agreement.

4. **Condition of Title.**

4.1 **Title Policy.** At the closing of the transaction which is the subject of this Agreement, Escrow Agent shall deliver to Buyer an ALTA extended coverage owner's policy in the full amount of the Purchase Price (the "**Title Policy**"), insuring title to the Option Parcel(s) as being vested in Buyer subject only to those matters affecting title to the Option Parcel(s) described as "Permitted Exceptions" in the Option Agreement, together with such other matters as are specifically described elsewhere in this Agreement (the "**Permitted Exceptions**") and containing any title endorsements required by Buyer or Buyer's lender that Escrow Agent committed to issue prior to the Feasibility Expiration Date. Without limitation of the foregoing or anything in this Agreement to the contrary, Seller shall be responsible, at the sole cost of Seller, for satisfying any Schedule B requirements applicable to Seller and the Option Parcel(s) and/or resolving, to the satisfaction of Buyer, any exceptions other than the Permitted Exceptions and Buyer shall be responsible, at the sole cost of Buyer, for satisfying any Schedule B requirements applicable to Buyer.

4.2 **Title Commitment.** Within five (5) business days following Opening of Escrow, Escrow Agent shall deliver to Seller and Buyer a commitment to issue to Buyer (and, at the request of Buyer, any proposed lender) extended coverage owners (and, if applicable, lenders) title insurance in an amount equal to the Purchase Price of the Option Parcel(s), and listing Escrow Agent's requirements for insuring fee title to the Option Parcel(s) subject only to the Permitted Exceptions. For purposes of this Agreement, Permitted Title Exceptions shall include, as applicable, the Zoning, the Governance Documents], [*the Plat*] and [*the Site Plan*] but shall not include the Option Agreement.

4.3 **Title Insurance Premium.** Seller shall pay the title insurance premium for standard owner's coverage title insurance, which premium shall be paid from the proceeds deposited by Buyer at the Closing. Buyer shall pay the excess premium for extended coverage owners title insurance and any additional insurance coverage ordered by Buyer, including but not limited to any title insurance endorsements required by Buyer or Buyer's lender, and the cost of any lender's policy of title insurance.

5. **Condition of Property.** The sale of the Option Parcel(s) to Buyer shall be as-is (with Seller having no obligation to remediate or otherwise expend any money, except as referenced in Section 4.1 with respect to Conditions of Title, and otherwise as provided in the Option Agreement.

5.1 **Property Information.** Seller has provided to Buyer, or shall provide within five (5) days following Opening of Escrow, all plans, studies and reports (prepared by or for the City) pertaining to the Option Parcel(s) in Seller's possession (to Seller's knowledge, with no duty of inquiry) (the "**Property Information**"). Buyer understands and acknowledges that Seller is providing the Property Information that has been prepared by third parties to Buyer as an accommodation and Seller is not in any way representing or warranting the accuracy, sufficiency or completeness of any such documentation or information provided to Buyer, Seller having recommended to Buyer that it conduct its own examination, inspection and investigation of the Option Parcel(s) on or before the Feasibility Expiration Date, including the subsurface thereof and all soil, engineering and other conditions and requirements pertaining to the Option Parcel(s) and in any way pertaining to the ownership and development of the Option Parcel(s).

5.2 **Feasibility Determination.** Notwithstanding anything in this Agreement to the contrary, in the event Buyer, in its sole and absolute discretion, is dissatisfied with the results of its inspection and feasibility review prior to the Feasibility Expiration Date, then Buyer may terminate this Agreement by giving notice of such termination to Seller and Escrow Agent on or before the Feasibility Expiration Date, whereupon this Agreement shall terminate, the Earnest Deposit shall be returned to Buyer, and thereafter, except as otherwise provided in this Agreement, neither party shall have any further obligations or liabilities under this Agreement.

5.3 **Entry License.** Unless and until this Agreement terminates, Seller grants to Buyer, its agents, contractors and representatives a non-exclusive license to go upon the portion of the Project that includes the Option Parcel(s) for the purpose of conducting, at Buyer's sole cost and expense, appropriate inspections with respect to the Option Parcel(s). Such inspections shall be performed so as not to cause any material disruption of work, if any, on behalf of Seller or otherwise with respect to the Option Parcel(s) or in the Project. Buyer shall repair or restore any damage or disturbance to the Option Parcel(s) caused by the acts of Buyer and/or its agents, contractors or representatives and indemnify Seller from and against any loss or damage occasioned thereby. In addition, upon Buyer's entry upon the Option Parcel(s), if Buyer has not previously done so, Buyer shall provide Seller with evidence that Buyer has obtained and has in force insurance against claims for injuries to persons and damages to property in accordance with the insurance requirements set forth in the Option Agreement.

6. **Closing.**

6.1 **Action at the Closing by Seller.** At the Closing, and as a condition to Buyer's obligation to purchase the Option Parcel(s), Seller shall deliver (if not otherwise delivered prior thereto) to Escrow Agent or other required party, as applicable, the following instruments dated as of, or prior to, the Closing Date, fully executed and, if appropriate, acknowledged and, if applicable, in proper form for recording:

- (a) Special Warranty Deed ("**Deed**") in the form attached as **Exhibit "C"**;

- (b) Affidavit of Property Value;
- (c) Affidavit of Non-Foreign Person;
- (d) Release of Option Agreement as to Option Parcel(s);
- (e) Non-Exclusive Assignment of [*INSERT: improvement plans, if any, to which the City is a party and which directly relate to development of the Option Parcel(s), e.g., grading, drainage plans* ];
- (f) [*If not recorded: The Plat, provided the Plat has been executed and acknowledged on behalf of Buyer and all other required parties*]; and
- (g) Such other instruments or documents as may be reasonably necessary to fulfill the covenants and obligations to be performed by Seller at the closing pursuant to the Option Agreement and this Agreement.

**6.2 Action at the Closing by Buyer.** At the Closing, and as a condition to Seller's obligation to sell the Option Parcel(s), Buyer shall deliver to Escrow Agent (if not otherwise delivered prior thereto) the Purchase Price and all other sums required to be paid by Buyer at the closing, together with the following instruments referred to below, dated as of, or prior to, the Closing Date, fully executed and, if appropriate, acknowledged and, if applicable, in proper form for recording:

- (a) Affidavit of Property Value; and
- (b) Such other instruments, or documents as are reasonably necessary to fulfill the covenants and obligations to be performed by Buyer at the closing pursuant to the Option Agreement and this Agreement.

**6.3 Closing Costs.** The escrow fee payable to Escrow Agent with respect to this transaction shall be shared equally by the Parties. All other fees, recording costs, charges or expenses incidental to the sale and transfer of the Option Parcel(s) to Buyer shall, except as otherwise herein expressly provided, be paid according to the then custom of real estate transactions consummated in Maricopa County, Arizona, as determined by Escrow Agent.

**6.4 Conditions to Closing.**

(a) **Seller's Conditions to Closing.** The obligation of Seller to sell the Option Parcel(s) pursuant to this Agreement is subject to the satisfaction, or written waiver by Seller, at or before the Closing Date, of each of the following conditions precedent, as applicable (each a "**Condition to Closing**" and collectively, the "**Seller's Conditions to Closing**").

- (i) Buyer shall have performed in all material respects each of its covenants and obligations contained in this Agreement required to be performed on or before the Closing; and

(ii) None of the Buyer's representations or warranties set forth in this Agreement that are to be true and correct as of the Closing shall be false in any material respect.

(b) **Buyer's Conditions to Closing.** The obligation of Buyer to purchase the Option Parcel(s) pursuant to this Agreement is subject to the satisfaction, or written waiver by Buyer, at or before the Closing Date, of each of the following conditions precedent, as applicable (each a "**Condition to Closing**" and collectively, the "**Buyer's Conditions to Closing**"):

(i) Seller shall have performed in all material respects each of its covenants and obligations contained in this Agreement required to be performed on or before the Closing Date;

(ii) Escrow Agent shall be ready, willing and able to issue to Buyer the Title Policy as provided for in Section 4.1; and

(iii) None of the Seller's representations or warranties set forth in this Agreement that are to be true and correct as of the Closing shall be false in any material respect.

(c) **Failure of Conditions to Closing.** In the event, as of the Closing Date, any Condition to Closing has not been satisfied or waived in writing by Seller or Buyer, as applicable, then Seller or Buyer, as applicable, may provide notice to Escrow Agent and the other Party that it has elected to terminate this Agreement, whereupon the Escrow shall terminate and the Earnest Deposit and any interest earned thereon shall be disbursed to the non-defaulting Party (or, if neither Party is in default, to Buyer) and neither Seller nor Buyer shall have any further rights or obligations hereunder; provided, and notwithstanding anything to the contrary contained in this Agreement, if the failure to satisfy any Condition to Closing is caused by the default of either Party, this Agreement and the Escrow shall not terminate and the non-defaulting Party shall have the right to exercise the remedies described in Section 11 or Section 12, as applicable.

7. **Post-Closing.** Following the Closing:

7.1 **Temporary Construction Easement.** Seller hereby grants and conveys to Buyer and its contractors, subcontractors, employees, agents and representatives, a temporary, non-exclusive right, easement and privilege of ingress and egress over, upon, across, under and through the portions of the Project owned by Seller, for the purpose of constructing and installing Buyer's planned improvements within the Option Parcel(s) in accordance with the final approved plans and specifications therefore and the requirements of Applicable Laws; provided that such easement shall terminate automatically and without further action upon the Completion of Construction of such improvements; provided, Buyer shall indemnify Seller from and against any loss or damage occasioned thereby as provided in Section 8. In addition, upon Buyer's entry upon such portions of the Project, if Buyer has not previously done so, Buyer shall provide Seller with evidence that Buyer has obtained and has in force insurance against claims for injuries to persons and damages to property in accordance with the insurance requirements set forth in the Option Agreement.

7.2 **Option to Repurchase.** As provided in the Deed, if Buyer has not caused the Commencement of Construction of the required improvements on the Option Parcel(s) within twelve (12) months from the date of the Closing (subject to extension for Force Majeure) or Completion of Construction of such improvements within twenty-four (24) months from the date of the Closing (subject to extension for Force Majeure), Seller shall have the option to repurchase all or the applicable portion of the Option Parcel(s) pursuant to the terms and conditions of the Option Agreement.

7.3 **Survival of Obligations.** Without limiting the generality of any other provision of this Agreement, the covenants and obligations contained in this Section 7 shall survive the Closing and shall not merge with the Deed or any other documents delivered at the Closing.

8. **Indemnity.** To the fullest extent permitted by Applicable Laws, Buyer shall indemnify, protect and hold Seller, its Council members, officers and employees, and each of their respective successors and assigns (collectively, the “**Indemnified City Parties**”) harmless from and defend the Indemnified City Parties against any and all “**Liabilities**” (as hereinafter defined), including for any “**Bodily Injury**” (as hereinafter defined) or “**Property Damage**” (as hereinafter defined), whatsoever arising out of or resulting from any entry by Buyer on those portions of the Project owned by the City and for the acts or omissions of Buyer or Buyer’s agents, contractors directly hired by Buyer or Buyer’s employees in, on or about those portions of the Project owned by the City; provided such indemnity shall not apply to the extent any such liabilities are caused by the negligence or willful misconduct of the Indemnified City Parties nor to the extent the Indemnified City Parties have expressly undertaken the obligation to indemnify Buyer for such liabilities pursuant to the terms of this Agreement. As used in this Agreement, “**Liabilities**” shall mean, when owed to any Third Party, all liabilities, claims, damages, losses, penalties, litigation, demands, causes of action (whether in tort or contract, in law or equity or otherwise), suits, proceedings, judgments, disbursements, charges, assessments, and expenses (including reasonable attorneys and experts fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim or proceeding, whether out of court, at trial or in any appellate or administrative proceeding); provided, for the avoidance of doubt, Liabilities shall not include incidental, consequential or punitive damages, or lost profits or business opportunities, except as determined to be owed to a Third Party. “**Bodily Injury**” means bodily injury, sickness or disease sustained by a person, including death resulting from any of the foregoing. “**Property Damage**” shall mean physical injury to tangible property, including all resulting loss of use of the property, or loss of use of tangible property not physically injured. The provisions of this Section 8 are independent of, and will not be limited by, any insurance obligations in this Agreement, and shall survive the Closing or, if applicable, earlier termination of this Agreement with respect to any claims or liability arising in connection with any event occurring prior to the Closing or, if applicable, such termination.

## 9. **Representations and Warranties.**

9.1 **Seller Representations.** Seller represents and warrants to Buyer, acknowledging and agreeing Buyer is entering into this Agreement in reliance on such representations and warranties:

(a) The City’s execution and approval of this Agreement have been in compliance with the procedural requirements of the City Charter and the City Code.

(b) The City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement and evidence this Agreement.

(c) As of the date of this Agreement, the City knows of no litigation, proceeding, initiative, referendum or official investigation contesting the powers of the City or its officials with respect to this Agreement including the City's execution, delivery and performance hereof.

(d) The execution, delivery and performance of this Agreement by the City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which the City is a party or is otherwise subject.

(e) The City has all necessary authority and power to sell Option Parcel(s) and perform the obligations of the City pursuant to this Agreement.

(f) The City holds fee simple title to the Option Parcel(s), free and clear of any liens or encumbrances except the Permitted Exceptions and, as applicable, the Zoning, the Master Declaration, the [*West Option Property CC&Rs / East Option Property CC&R's*], [*the Plat*] and [*the Site Plan*].

(g) The City shall not take any action, or omit to take action, which would result in an adverse change in the condition of the Option Parcel(s) including the condition of title or the physical condition thereof.

(h) The City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

For the purposes of this Section 9.1, the "knowledge" of the City shall be deemed to refer only to the actual knowledge of the City Manager as of the date of Opening of Escrow and solely in his or her capacity as the City Manager including in no event shall he or she be personally liable for any representation or warranty contained herein.

**9.2 Buyer Representations.** Buyer represents and warrants to Seller, acknowledging and agreeing Seller is entering into this Agreement in reliance on such representations and warranties:

(a) Buyer's execution and approval of this Agreement are in compliance with the organizational/formation and operating documents of Buyer.

(b) Buyer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement and evidence this Agreement.

(c) As of the date of this Agreement, Buyer knows of no litigation, proceeding or official investigation contesting the powers of Buyer or its officers with respect to this Agreement including Buyer's execution, delivery and performance hereof.

(d) The execution, delivery and performance of this Agreement by Buyer is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Buyer is a party or is otherwise subject.

(e) Buyer has not paid or given, and will not pay or give, any Third Party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

(f) Buyer has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

For the purposes of this Section 9.2, the “knowledge” of Buyer shall be deemed to refer only to the actual knowledge of the [*officer*] of Buyer as of the date of Opening of Escrow and solely in his or her capacity as such officer of Buyer including in no event shall he or she be personally liable for any representation or warranty contained herein.

## 10. Notices and Filings.

10.1 **Manner of Service.** Except as otherwise required by Applicable Laws, all notices, demands or other communications given hereunder shall be in writing and shall be given by personal delivery, delivered by recognized national overnight courier service (such as UPS or FedEx), or by United States certified mail (return receipt requested), with all postage and other delivery charges prepaid, and addressed as follows:

To Seller: City of Mesa  
20 East Main Street  
Mesa, Arizona 85211  
Attention: City Manager

Copy to: City of Mesa  
20 East Main Street  
Mesa, Arizona 85211  
Attention: City Attorney

To Buyer: Mesa Development Holdings, LLC [*or Affiliate*]  
1053 West Waveland  
Chicago, Illinois 60613  
Attention: Office of the President

Copy to: Mesa Development Holdings, LLC  
1053 West Waveland  
Chicago, Illinois 60613  
Attention: General Counsel

Escrow Agent: Thomas Title & Escrow  
Promenade Corporate Center  
16435 N. Scottsdale Rd., Suite 405  
Scottsdale, Arizona 85254  
Attention: Escrow Officer

Messages delivered electronically (e.g., e-mail) shall not be effective for any purpose.

**10.2 Effective Date of Notices.** No such notice, demand or other communication will be deemed effective absent documented confirmation in commercially acceptable form and, in such event, such notice, demand or other communication shall be deemed effective: (i) if delivered personally or delivered through a same day delivery/courier service, upon the date of such confirmation of delivery or refusal to accept delivery by the addressee, (ii) if delivered by U.S. Mail in the manner described above, upon actual receipt, and (iii) if delivered by a recognized national overnight delivery service, the date of such confirmation of delivery; in each case except delivery by U.S. Mail regardless of whether such notice, demand or other communication is actually received by any person to whom a copy of such notice, demand or other communication is to be delivered pursuant to this Section 10. Any payment by any Party required or permitted under this Agreement may be made by personal delivery, U.S. Mail, recognized national overnight delivery service or, if the Party entitled to receive such payment provides wiring instructions to the Party obligated to make such payment, via wire transfer, provided, if such payment is made in any manner described in the preceding sentence, such payment shall be deemed made at the time provided in this Section 11 for notices, demands and other communications to be deemed effective.

**11. Buyer Default and Seller Remedies.** Buyer shall not be deemed to be in default under this Agreement: (a) with respect to any monetary obligation of Buyer unless the failure is not cured within the greater of two (2) business days after Buyer's receipt of notice of such failure from Seller, or (b) with respect to any non-monetary obligation of Buyer unless the failure is not cured within ten (10) business days after Buyer's receipt of notice of such failure from Seller. In the event of (i) Buyer's default prior to the Closing, Seller's sole and exclusive remedies shall be to either waive such default and proceed with the Closing or terminate this Agreement by notice to Buyer and Escrow Agent, whereupon Seller shall be entitled to retain the Earnest Deposit and any interest earned thereon as liquidated damages and as consideration for entering into this Agreement with Buyer and for taking the Option Parcel(s) off the market and not as a penalty, Buyer and Seller acknowledging that it would be impractical and extremely difficult to estimate the actual damages which Seller may suffer as a result of a default by Buyer prior to the Closing Date and therefore Buyer and Seller agree that the Earnest Deposit and interest thereon have been calculated in good faith, under the circumstances existing at the time this Agreement is entered into, as a reasonable estimate of the amount of damages likely to be suffered by Seller as a result of Buyer's default, and (ii) Buyer's default after the Closing, Seller's remedies shall include (x) the right to recover from Buyer Seller's actual damages and such equitable relief (including provisional and extraordinary remedies) as may be appropriate under the circumstances, Seller hereby waiving any right to recover exemplary, punitive, indirect, consequential, special or other damages other than Seller's actual damages, or (y) where applicable, the right to repurchase the Option Parcel(s), as more particularly set forth in the Deed and the Option Agreement.

12. **Seller Default and Buyer Remedies.** Seller shall not be deemed to be in default under this Agreement: (a) with respect to any monetary obligation of Seller unless the failure is not cured within the greater of two (2) business days after Seller's receipt of notice of such failure from Buyer, or (b) with respect to any non-monetary obligation of Seller unless the failure is not cured within ten (10) business days after Seller's receipt of notice of such failure from Buyer. In the event of (i) Seller's default prior to the Closing, Buyer's sole and exclusive remedies shall be to either terminate this Agreement by notice to Seller and Escrow Agent, whereupon the applicable Earnest Deposit shall be returned to Buyer, and thereafter (except as otherwise provided in this Agreement) neither Party shall have any further obligations or liabilities under this Agreement, or institute all proceedings necessary to specifically enforce the terms of this Agreement including to cause title to the Option Parcel(s) to be conveyed to Buyer, provided that, in the event specific performance is not available as a remedy, Buyer may seek recovery from Seller of the actual damages reasonably incurred by Buyer and resulting from Seller's default, and (ii) Seller's default following the Closing, Buyer may seek recovery from Seller of Buyer's actual damages (together with interest thereon if provided for in this Agreement or any Ancillary Agreement) and such equitable relief (including provisional and extraordinary remedies) as may be appropriate under the circumstances, Buyer hereby waiving any right to recover exemplary, punitive, indirect, consequential, special or other damages other than Buyer's actual damages.

13. **General Provisions.**

13.1 **Persons Not Liable.** No shareholder, partner, member, director, officer, official, representative, agent, attorney or employee of either Party shall be personally liable to the other Party, or to any successor in interest to the other Party, in the event of any default by a Party or for any amount which may become due to the other Party or any successor or assign, or with respect to any obligation of Seller or Buyer under the terms of this Agreement.

13.2 **Good Faith of Parties.** Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

13.3 **Further Assurances.** Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require from time to time to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or to confirm the status of (a) this Agreement as in full force and effect, and (b) the performance of the obligations hereunder at any time during its existence.

13.4 **Status Statements.** Prior to or following the Closing, any Party (the "**Requesting Party**") may, at any time, and from time to time, deliver written notice to any other Party requesting such other Party (the "**Providing Party**") provide in writing, to the knowledge of the Providing Party, (a) prior to the Closing, (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified, and if so

amended, identifying the amendments; (b) prior to or after the Closing, the Requesting Party is not in default in the performance of its (if applicable, surviving) obligations under this Agreement or the Deed (with respect to the construction requirements), or, if in default, to describe therein the nature and amount of any such default, and (c) at any time, any other matter reasonably requested (a “**Status Statement**”). A Party receiving a request hereunder shall execute and return such Status Statement within fifteen (15) business days following the receipt thereof. The City Manager (or the City Manager’s designee) shall have the right to execute any Status Statement requested by Buyer hereunder. The City acknowledges a Status Statement hereunder may be relied upon by transferees and mortgagees; provided, however, the City shall have no liability for monetary damages suffered by Buyer, or any transferee or mortgagee, or to any other person in connection with, resulting from or based upon the good faith provision of any Status Statement by the City.

**13.5 Successors and Assigns.** All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Parties; provided, without the prior written consent of Seller, Buyer may not assign or transfer its interest under this Agreement except as follows:

(a) To any entity if ownership of not less than 51% of the total ownership interests in such entity remains in Buyer and/or any Affiliate of Mesa Development Holdings, LLC;

(b) To any person or entity which has acquired the entirety of the rights and obligations of Buyer as a successor in interest to Buyer, provided the successor has expressly and in writing for the benefit of Seller either (A) assumed all of the obligations of the assignor under this Agreement including but not limited to all obligations of Buyer arising prior to the date of such assignment or transfer, with respect to this Agreement, or (B) assumed all of the obligations of the assignor under this Agreement arising from and after the date of such assignment or transfer, with respect to this Agreement, provided, in the case of an assumption pursuant to this item (B), either (1) Buyer, or (2) a party with financial capabilities substantially equivalent to or better than the assignor on the date of such assignment (or otherwise reasonably acceptable to Seller in the case of an assignment by an assignor which is not Mesa Development Holdings, LLC or its Affiliate) shall guaranty to Seller the obligations of the assignor under this Agreement arising prior to the date of such assignment or transfer.

(c) Notwithstanding the foregoing, no assignment, transfer or conveyance of all or any portion of this Agreement, or any rights arising in favor of Buyer may be made, if (i) Buyer has committed or performed any act, or omitted or failed to perform any act which, but for the passage of time or the giving of notice, or both, would be a default, or (ii) any party having the primary right to use the adjacent Stadium has committed or performed any act, or omitted or failed to perform any act which, but for the passage of time or the giving of notice, or both, would be a default pursuant to the use agreement for the Stadium. Additionally, any assignment, transfer or conveyance made in violation of this Agreement shall be void ab initio, and not merely voidable.

(d) Notwithstanding anything to the contrary in this Agreement, nothing herein is intended to, or shall, restrict or preclude the mortgage or encumbrance of the Option

Parcel(s), or any portion thereof, upon or following the purchase of such Option Parcel(s) by Buyer pursuant to this Agreement.

13.6 **Waiver.** The Parties agree neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

13.7 **Governing Law; Choice of Forum.** This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court for Maricopa County, in Phoenix, Arizona, and the Parties agree and consent to the exclusive jurisdiction of such Superior Court. Buyer waives all right to seek removal of any action to any court (federal or state) other than the Superior Court in and for Maricopa County, Arizona.

13.8 **Attorney's Fees and Costs.** In the event of commencement of a legal action or proceeding in an appropriate forum by a Party to enforce any covenant, term, provision or requirement of this Agreement, or any of such Party's rights or remedies under this Agreement, or on in the event of commencement of any action or proceeding seeking a declaration of the rights of any Party or equitable or injunctive relief against any Party, the prevailing Party or Parties in any such action or proceeding shall be entitled to recovery of its reasonable attorneys' fees, court costs and expenses, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the Parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental expenses associated with such dispute. The award shall be made by the Court and not by a jury.

13.9 **Business Days.** If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, or any other day on which the business offices of the City (as opposed to its emergency services) are closed, then the duration of such time period or the date of performance, as applicable, shall be extended so it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday, or day on which the business offices of the City are closed.

13.10 **Time of Essence.** Time is of the essence in implementing the terms of this Agreement.

13.11 **Headings.** The descriptive headings of the Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

13.12 **Exhibits.** Any exhibit attached hereto shall be deemed to have been incorporated into this Agreement by this reference with the same force and effect as if fully set forth in the body of this Agreement.

13.13 **Construction.** The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been, or has had the opportunity to be, represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings. The Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement and which holds ambiguous or conflicting terms or provisions contained in this Agreement (or any other provision of this Agreement) shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of same.

13.14 **No Partnership; Third Parties.** Nothing contained in this Agreement shall create, or be deemed to create, any partnership, joint venture or other similar arrangement between Seller and Buyer. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a Party hereto, and no such other person, firm, organization or corporation shall have any right or standing to any cause of action hereunder; except each lender or mortgagee of Buyer shall be a third party beneficiary of the provisions of this Section 13.14, and except the protection of the indemnification provisions of this Agreement shall extend to all Council members and employees of the City acting in the course and scope of their employment or engagement and all such persons shall be, and are intended to be, third party beneficiaries of such indemnification provisions.

13.15 **Broker Fees.** No broker's fees or commissions are payable in connection with the sale and purchase of the Option Parcel(s) pursuant to this Agreement and each Party shall indemnify and hold the other Party harmless for, from and against any and all costs, expenses and liabilities, including attorneys' fees, incurred in connection with claims made by any broker based upon the acts or agreements or alleged acts or agreements of the indemnifying Party.

13.16 **Amendment.** No change, addition or deletion is to be made to this Agreement, except by a written amendment executed by the Parties; provided, although the material terms of this Agreement shall not be changed without City Council approval, the City Manager and Buyer shall have the right (but not the obligation) to vary or modify, upon their mutual agreement, minor, administrative, technical or procedural terms of this Agreement dealing with, for example and without limitation, extensions, diligence, approvals or conceptual plans, or to amend or otherwise modify legal descriptions of the Option Parcel(s), or portions thereof, as applicable, and, otherwise, in respect of the Closing or Closing Date.

13.17 **Limited Severability.** The Parties agree in the event any provision of this Agreement or portion of any provision is declared void or unenforceable (or is construed as requiring the City to do any act in violation of any Applicable Law) such provision or portion thereof shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided, this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so the reformed agreement (and any related

agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further shall perform all acts and execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as and if reformed in accordance with this Section 13.17.

**13.18 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so the signatures of all Parties may be physically attached to a single document.

**13.19 Entire Agreement.** This Agreement and, prior to the Closing, the applicable terms of the Option Agreement constitutes the entire agreement between the Parties pertaining to its subject matter. Except with respect to the applicable terms of the Option Agreement prior to the Closing, all prior and contemporaneous agreements, representations and understandings of the Parties, oral or written (including any term sheets, discussion outlines or similar documents), are hereby superseded and merged into this Agreement.

**13.20 Survival.** All agreements and indemnities contained in this Agreement shall survive the execution and delivery of this Agreement, the consummation of any transaction contemplated herein, and the rescission, cancellation, expiration or termination of this Agreement for the period of the applicable statute of limitations.

**13.21 Conflict of Interest Statute; Compliance with Financing Requirements.** This Agreement is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. §38-511.

**13.22 Prohibition of Doing Business with Sudan and Iran.** Pursuant to A.R.S. §§35-391.06 and 35-393-06, Buyer hereby certifies to the City that Buyer does not have “scrutinized” business operations, as defined in A.R.S. §§35-391 and 35-393, in either Sudan or Iran. Buyer acknowledges that, in the event either of the certifications to the City by Buyer contained in this paragraph is determined by the City to be false, Seller may terminate this Agreement and exercise other remedies as provided by law, in accordance with A.R.S. §§35-391.06 and 35-393-06.

**13.23 Treatment Facility.** If the City continues, at any time prior to or after Buyer purchases the Option Parcel(s) and satisfies the construction requirements applicable thereto, to operate the City of Mesa Northwest Wastewater Treatment Facility located adjacent to the Project site and any future expansion to or modification of such facilities, the City shall operate (or cause to be operated) the Treatment Facility at a standard equal to, and not less than, the current operations with regard to limiting noise and odor, and otherwise in compliance with all Applicable Laws. .

**14. IRS Real Estate Sales Reporting.** Buyer and Seller hereby appoint Escrow Agent as, and Escrow Agent agrees to act as, “the person responsible for closing” the transaction which is the subject of this Agreement pursuant to Internal Revenue Code Section 6045(e). Escrow

Agent shall prepare and file all informational returns, including without limitation, the applicable IRS Form 1099-S and shall otherwise comply with the provisions of Internal Revenue Code Section 6045(e). Escrow Agent shall indemnify, protect, hold harmless and defend Seller, Buyer and their respective attorneys for, from and against any and all claims, actions, costs, loss, liability or expense arising out of or in connection with the failure of Escrow Agent to comply with the provisions of this Section 14, only to the extent such provision applies to Sellers of real property.

15. **Counterparts.** This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

**Exhibits:**

Exhibit A	Legal Description - Option Parcel(s)
Exhibit B	Depiction - Option Parcel(s)
Exhibit C	Deed

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IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to become effective as of the Agreement Date set forth above.

**SELLER:**  
CITY OF MESA, ARIZONA, an Arizona  
municipal corporation  
By:  
Its: City Manager

**BUYER:**  
MESA DEVELOPMENT HOLDINGS,  
LLC a Delaware limited liability company  
By \_\_\_\_\_  
Its: \_\_\_\_\_

Buyer's Federal Tax Identification  
Number: [\*]

ESCROW AGENT ACCEPTANCE:

The undersigned Escrow Agent accepts this Agreement as its escrow instructions and agrees to perform the acts applicable to Escrow Agent in accordance with the terms of this Agreement. Specifically, Escrow Agent understands, acknowledges and agrees to the provisions of Section 14 labeled “IRS Real Estate Sales Reporting” and Section 3 above. Escrow Agent acknowledges it has received the Earnest Deposit and a fully executed original of this Agreement as of the date set forth underneath its signature below.

Thomas Title & Escrow

By:  
Its: Escrow Agent  
Date:

**Exhibit "G-1"**  
Issue Resolution Ladder

<b>Level</b>	<b>COM Members</b>	<b>MDH Members</b>	<b>Timeline for Action</b>
<b>Level One</b> Project Managers	Ross Renner, Supervising Engineer	MDH representative: Tim Romani	2 business days
<b>Level Two</b> Senior Management	Beth Huning, City Engineer	MDH representative: Steve Jacobsen	2 business days
<b>Level Three</b> Agency Leadership	Chris Brady, City Manager	Crane Kenney	2 business days

**Exhibit “G-2”**  
Dispute Resolution Process

1. Arbitration and Mediation of Disputes. Generally, because time is of the essence with regard to the performance of the Agreement, the Parties acknowledge and agree that the time for exercising the Dispute Resolution procedure is compressed.

**1.1** Defined Terms. Defined terms appear in this Exhibit with the first letter of each word in the term capitalized. Unless otherwise expressly provided herein, all defined terms appearing herein shall have the same meanings as are attributed to such terms in the Agreement of which this Exhibit is a part.

**1.2** Election to Arbitrate. Either Party may elect to resolve by arbitration, after mediation as described below, any dispute between MDH and the City arising from or pertaining to this Agreement, including without limitation a Party’s failure to pay or perform its obligations relating to the Option Property contemplated by and otherwise relating to the Agreement (“**Dispute**”).

**1.3** Governing Rules. The arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration Association (“**AAA**”) then in effect except to the extent modified herein.

**1.4** Qualification of Mediators and Arbitrators. Each proposed mediator and arbitrator shall have at least ten years experience in commercial and/or real estate matters in Arizona and shall be an attorney licensed to practice law in Arizona. Any Arbitrator or Mediator shall be selected, subject to the foregoing qualifications, pursuant to the practice then employed by the AAA for the selection of arbitrators and/or mediators.

**1.5** Initiation of Proceeding. The existence of any Dispute arising from or pertaining to the Agreement shall not delay or excuse any performance of a Party’s monetary or other obligations under the Agreement except as expressly provided in the Agreement. If any Dispute shall arise between the Parties, then, subject to applicable statutes of limitation, either Party may initiate arbitration by serving notice to the other Party of its intention to arbitrate the Dispute (the “**Arbitration Demand**”), provided either Party (the “**Initiating Party**”) shall, as a precursor to arbitration, within five business days of receipt of such Arbitration Demand, notify the other Party (the “**Responding Party**”) of such Party’s election to submit any Dispute, first, to non-binding mediation (the “**Mediation Notice**”). The Initiating Party shall include with such Mediation Notice a notice to the AAA of the Dispute and a request for appointment of a mediator in accordance with the Agreement and the procedures then employed by the AAA. Either party may reject the mediator selected up to two times but then must accept the choice of mediator. Prior to the mediation, the Parties shall each provide the mediator with a confidential (to be exchanged by the Parties) statement setting forth such Party’s description of the nature of the Dispute and, if applicable, the relief sought. The mediation conference shall be conducted and concluded within 60 days of the Mediation Notice and within 30 days of the appointment of a Mediator.

**1.6** Arbitration. If the mediation is not successful, the Parties shall proceed to binding arbitration. A copy of the Arbitration Demand shall be filed at the local office of the AAA together with a copy of the Agreement and this arbitration provision and the appropriate filing fee as required by the AAA, which shall be delivered to the AAA on or

before ten business days after the later of (i) the receipt of the Arbitration Demand, or (ii) the conclusion of the unsuccessful mediation. The Parties shall request an arbitrator be appointed as soon as possible in accordance with the selection procedures then employed by the AAA. The Dispute shall be heard by a single arbitrator with the qualifications specified in Section 1.4 of this Exhibit.

**1.7** Hearing. The arbitration hearing must be held as soon as possible and, in all events, must commence within 30 days following the date on which the arbitrator is appointed, unless the arbitrator for good cause shown delays the hearing to permit discovery or otherwise. At least five days prior to the commencement of the arbitration hearing, each Party shall provide the other Party and the arbitrator with a statement of its position respecting the Dispute in question and a list of any witnesses whom such Party expects to testify at such hearing on its behalf. The arbitration proceeding shall take place in Mesa, Arizona.

**1.8** Scope of Award. With the exception of monetary damages other than actual damages (e.g., punitive, consequential, or other special damages, which are expressly precluded), the arbitrator shall have the authority to award any remedy or relief a federal district court in Arizona could order or grant and which is permitted under the Agreement. The Arbitrator shall have the discretion to award attorneys' fees to the prevailing party in an amount which the Arbitrator deems reasonable in the circumstances.

**1.9** Fees and Costs. Each party shall pay its own costs in arbitration and the Administrative Fees imposed by the AAA and the Parties shall share equally the costs of the arbitrator; provided, however, all such charges/fees may be awarded by the Arbitrator, in his/her discretion, to the prevailing party with arbitration as determined by the Arbitrator.

**1.10** Appointment of Successor. If any arbitrator appointed pursuant to this Exhibit shall thereafter die or become unable or unwilling to act, a successor shall be appointed in accordance with the procedures continuously employed by the AAA in such circumstances.

**1.11** Decision Binding. The decision or award by the arbitrator when made shall be final and non-appealable and the Parties shall be bound by such arbitration decision or award for all purposes and judgment may be entered upon it in accordance with applicable law in the Superior Court of the State of Arizona in and for the County of Maricopa.

**1.12** Notices. All notices and other communications required or permitted hereunder shall be in writing and delivered in accordance with the notice provision of the Agreement. Such notices and communications shall be deemed to be given and received pursuant to such provision of the Agreement.