



CITY COUNCIL AGENDA

CITY COUNCIL CHAMBERS . 11465 WEST CIVIC CENTER DRIVE . AVONDALE, AZ 85323

REGULAR MEETING
November 2, 2015
7:00 PM

CALL TO ORDER BY MAYOR
PLEDGE OF ALLEGIANCE
MOMENT OF REFLECTION

1 ROLL CALL AND STATEMENT OF PARTICIPATION BY THE CITY CLERK

2 SCHEDULED PUBLIC APPEARANCES

a. ROOSEVELT PARK BOARD OF DIRECTORS

The Roosevelt Park Board of Directors will present plaques on behalf of the Roosevelt Park community to the Avondale Fire and Police Departments to express their gratitude for all they for Avondale and the State of Arizona.

3 UNSCHEDULED PUBLIC APPEARANCES

(Limit three minutes per person. Please state your name.)

4 CONSENT AGENDA

Items on the consent agenda are of a routine nature or have been previously studied by the City Council at a work session. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

a. APPROVAL OF MINUTES

Regular Meeting of October 19, 2015

b. SPECIAL EVENT LIQUOR LICENSE - WILDCAT POKER TOURNAMENT AT ST. THOMAS AQUINAS

City Council will consider a request from Louis Sisbarro on behalf of St. Thomas Aquinas' Wildcat Dads Club for approval of a special event liquor license to be used in conjunction with their Wildcat Poker Tournament scheduled for Saturday, November 7, 2015 at St. Thomas Aquinas Church located at 13720 W Thomas Road in Avondale. The Council will take appropriate action.

c. SPECIAL EVENT LIQUOR LICENSE APPLICATION - MARICOPA COMMUNITY COLLEGE DISTRICT FOUNDATION

City Council will consider to approve a request from Jonathan Robles on behalf of Maricopa Community College District Foundation for approval of a special event liquor license to be used in conjunction with the Grand Opening Reception of the new Performing Arts Center at Estrella Mountain Community College located at 3000 N Dysart Road in Avondale on Friday, November 6 from 5:00 to 6:00 pm. The Council will take appropriate action.

d. RESOLUTION 3278-1115 AND ORDINANCE 1589-1115 - AVONDALE CITY CODE CHAPTER 14, PROPERTY MAINTENANCE CODE

City Council will consider a resolution declaring as a public record the "City of Avondale Property Maintenance Ordinance, Amended and Restated November 2, 2015." and an ordinance amending the Avondale City Code Chapter 14 and adopting the document made public by the resolution. The Council will take appropriate action.

e. ORDINANCE 1590-1115 - LEASE AGREEMENT WITH PHOENIX WEST COMMERCIAL, LLC

City Council will consider an ordinance approving a lease agreement with Phoenix West Commercial, LLC for the lease of real property located at 125 S. Avondale Boulevard, Suite 100 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

5 GREATER MARICOPA FOREIGN TRADE ZONE

City Council will receive an an update regarding the Greater Maricopa Foreign Trade Zone (GMFTZ). For information and discussion only.

6 RESOLUTION 3279-1115 - AMENDMENT TO DEVELOPMENT AGREEMENT - LENNAR ARIZONA, INC. AND DESERT SPRINGS VILLAGE HOA

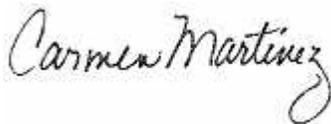
City Council will consider a resolution approving the first Amendment to the Development Agreement with the Desert Springs Village Homeowners Association and Lennar Arizona, Inc. and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

7 EXECUTIVE SESSION

The Council may hold an executive session pursuant to Ariz. Rev. Stat. § 38-431.03 (A)(4) for discussion or consultation with the City's Attorney in order to consider its position and instruct the City's Attorney regarding a potential lease agreement of city-owned property.

8 ADJOURNMENT

Respectfully submitted,



Carmen Martinez
City Clerk

Council Members of the City of Avondale will attend either in person or by telephone conference call.

Los miembros del Concejo de la Ciudad de Avondale participaran ya sea en persona o por medio de llamada telefonica.

Individuals with special accessibility needs, including sight or hearing impaired, large print, or interpreter, should contact the City Clerk at 623-333-1200 or TDD 623-333-0010 at least two business days prior to the Council Meeting.

Personas con necesidades especiales de accesibilidad, incluyendo personas con impedimentos de vista u oido, o con necesidad de impresion grande o interprete, deben comunicarse con la Secretaria de la Ciudad at 623-333-1200 o TDD 623-333-0010 cuando menos dos dias habiles antes de la junta del Concejo.

Notice is hereby given that pursuant to A.R.S. 1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the City Council may be audio and/or video recorded and, as a result, proceedings in which children are present may be subject to such recording. Parents, in order to exercise their rights may either file written consent with the City Clerk to such recording, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the City will assume that the rights afforded parents pursuant to A.R.S. 1-602.A.9 have been waived.

De acuerdo con la ley A.R.S. 1-602.A.9, y sujeto a ciertas excepciones legales, se da aviso que los padres tienen derecho a dar su consentimiento antes de que el Estado o cualquier otra entidad politica haga grabaciones de video o audio de un menor de

edad. Las juntas del Concejo de la Ciudad pueden ser grabadas y por consecuencia, existe la posibilidad de que si hay menores de edad presentes estos aparezcan en estos videos o grabaciones de audio. Los padres puedan ejercitar su derecho si presentan su consentimiento por escrito a la Secretaria de la Ciudad, o pueden asegurarse que los niños no estén presentes durante la grabación de la junta. Si hay algún menor de edad presente durante la grabación, la Ciudad dará por entendido que los padres han renunciado sus derechos de acuerdo a la ley contenida A.R.S. 1-602.A.9.



CITY COUNCIL AGENDA

SUBJECT:

Special Event Liquor License - Wildcat Poker
Tournament at St. Thomas Aquinas

MEETING DATE:

11/2/2015

TO: Mayor and Council

FROM: Carmen Martinez, City Clerk (623) 333-1214

THROUGH: David Fitzhugh, City Manager

PURPOSE:

Staff is recommending approval of an application submitted by Mr. Louis Sisbarro on behalf of Wildcat Dads Club for a special event liquor license to be used in conjunction with their Wildcat Poker Tournament scheduled for Saturday, November 7, 2015 at St. Clare Hall in St. Thomas Aquinas Church located at 13720 W Thomas Road in Avondale.

DISCUSSION:

The City Clerk's Department has received a request from Mr. Louis Sisbarro on behalf of the Wildcat Dads Club at St. Thomas Aquinas School for a special event liquor license to be used in conjunction with their Wildcat Poker Tournament scheduled for Saturday, November 7, 2015 at St. Clare Hall within St. Thomas Aquinas Church.

The required fees have been paid. Staff has determined that the applicant is not requesting any city support other than normal city services. The Police and Fire Departments have reviewed the application and are recommending approval. Their comments are attached.

Staff reviewed this application using the 14 factors set forth in Ordinance 1031-04. The findings are as noted below:

1. The event will be open to the public
2. Criminal history of the applicant - A background check of the representative, Mr. Louis Sisbarro, revealed no contact with the Avondale Police Department
3. The event is a Texas Hold'em Poker tournament to raise funds
4. Security measures taken by the applicant - The Police Department has reviewed the security plan and has determined it to be sufficient
5. Beer and wine will be served
6. Beverages will be dispensed in disposable cups and containers
7. The previous event held on September 19, 2015 revealed no neighborhood disturbances
8. Event activities will be confined to St. Clare Hall within the St. Thomas Aquinas Church campus so there is no potential for problems in the neighborhood in terms of noise, hours and time of the event
9. The event will last five hours
10. Sanitary facilities are available within the church campus
11. Zoning is appropriate - Zoning is Planned Area Development. Planning staff has indicated that

the proposed use will not result in incompatible land uses

12. Anticipated total daily attendance is 50 people
13. There will not be sound amplication.
14. Per the Police Department, traffic control measures will not be necessary

BUDGET IMPACT:

This item does not have any budgetary impact.

RECOMMENDATION:

Staff is recommending approval of an application submitted by Mr. Louis Sisbarro for a special event liquor license to be used in conjunction with their Wildcat Poker Tournament scheduled for Saturday, November 7, 2015 at St. Clare Hall in St. Thomas Aquinas Church located at 13720 W Thomas Road in Avondale.

ATTACHMENTS:

Description

[Department Review](#)

[Application](#)

DEPARTMENTAL REVIEW FORM

TYPE OF LICENSE:

SPECIAL EVENT LIQUOR LICENSE

ROUTING:

- POLICE DEPARTMENT
 FIRE DEPARTMENT
 FINANCE DEPARTMENT
 DEVELOPMENT SERVICES

APPLICANT'S NAME: LOUIS F. SISBARRO JR.

ORGANIZATIONS NAME: WILDCATS DADS CLUB

EVENT ADDRESS: 13720 W. THOMAS ROAD

CITY: AVONDALE **STATE:** AZ. **ZIP CODE:** 85392

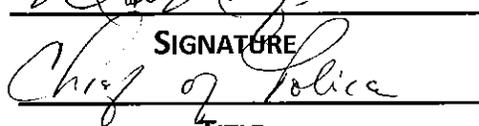
PURPOSE OF EVENT: WILDCAT POKER TOURNAMENT

DEPARTMENTAL COMMENTS:

APPROVED

DENIED



SIGNATURE


TITLE

10/20/15
DATE

THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: NOV. 2, 2015
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: NOV. 22, 2015

DEPARTMENTAL REVIEW FORM

TYPE OF LICENSE:

SPECIAL EVENT LIQUOR LICENSE

ROUTING:

POLICE DEPARTMENT

FIRE DEPARTMENT

FINANCE DEPARTMENT

DEVELOPMENT SERVICES

APPLICANT'S NAME: LOUIS F. SISBARRO JR.

ORGANIZATIONS NAME: WILDCATS DADS CLUB

EVENT ADDRESS: 13720 W. THOMAS ROAD

CITY: AVONDALE **STATE:** AZ. **ZIP CODE:** 85392

PURPOSE OF EVENT: WILDCAT POKER TOURNAMENT

DEPARTMENTAL COMMENTS:

APPROVED
 DENIED

Valerie Russell
SIGNATURE

10/22/15
DATE

Fire Inspector
TITLE

THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: **NOV. 2, 2015**
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: **NOV. 22, 2015**



Aspiring. Achieving. Accelerating.

DEPARTMENTAL REVIEW FORM

TYPE OF LICENSE:

SPECIAL EVENT LIQUOR LICENSE

ROUTING:

POLICE DEPARTMENT

FIRE DEPARTMENT

FINANCE DEPARTMENT

DEVELOPMENT SERVICES

APPLICANT'S NAME: LOUIS F. SISBARRO JR.

ORGANIZATIONS NAME: WILDCATS DADS CLUB

EVENT ADDRESS: 13720 W. THOMAS ROAD

CITY: AVONDALE **STATE:** AZ. **ZIP CODE:** 85392

PURPOSE OF EVENT: WILDCAT POKER TOURNAMENT

DEPARTMENTAL COMMENTS:

APPROVED

DENIED



SIGNATURE
Chief Building Official

TITLE

10/20/15
DATE

THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: NOV. 2, 2015
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: NOV. 22, 2015

DEPARTMENTAL REVIEW FORM

TYPE OF LICENSE:

SPECIAL EVENT LIQUOR LICENSE

ROUTING:

POLICE DEPARTMENT

FIRE DEPARTMENT

FINANCE DEPARTMENT

DEVELOPMENT SERVICES

APPLICANT'S NAME: LOUIS F. SISBARRO JR.

ORGANIZATIONS NAME: WILDCATS DADS CLUB

EVENT ADDRESS: 13720 W. THOMAS ROAD

CITY: AVONDALE **STATE:** AZ. **ZIP CODE:** 85392

PURPOSE OF EVENT: WILDCAT POKER TOURNAMENT

DEPARTMENTAL COMMENTS:

APPROVED

DENIED



SIGNATURE

PLANNING MANAGER

TITLE

10/21/15

DATE

THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: NOV. 2, 2015
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: NOV. 22, 2015



Development Services & Engineering Department

DATE: October 21, 2015

TO: Carmen Martinez, City Clerk

PREPARED BY: Robert Gubser, Planning Manager (623) 333-4015

SUBJECT: St. Thomas Aquinas - Stags Wildcats Event
Series 15 Liquor License – Special Event Liquor License
13720 W Thomas Rd

St. Thomas Aquinas Catholic Community is located on the northwest corner of Thomas Road and 137th Avenue. The property is developed with existing church, school, and social buildings.

The school's dad's club is proposing to hold a poker tournament to include alcohol sales within the existing church social hall building. A Series 15 special event liquor license is required to allow sale of alcohol at the event. A similar event was held at the facility earlier this year and last year after receiving approval of a special event liquor license.

Special event liquor licenses are not required to meet any separation requirements to nearby churches or schools.

The General Plan designates the property as Medium Density Residential and the property is zoned Planned Area Development (PAD). Use of the property for a place of worship, school, and ancillary facilities, such as church social halls, is in conformance with the General Plan and PAD zoning.

Staff recommends approval of this request.

Attachment: Aerial Photograph
Zoning Vicinity Map

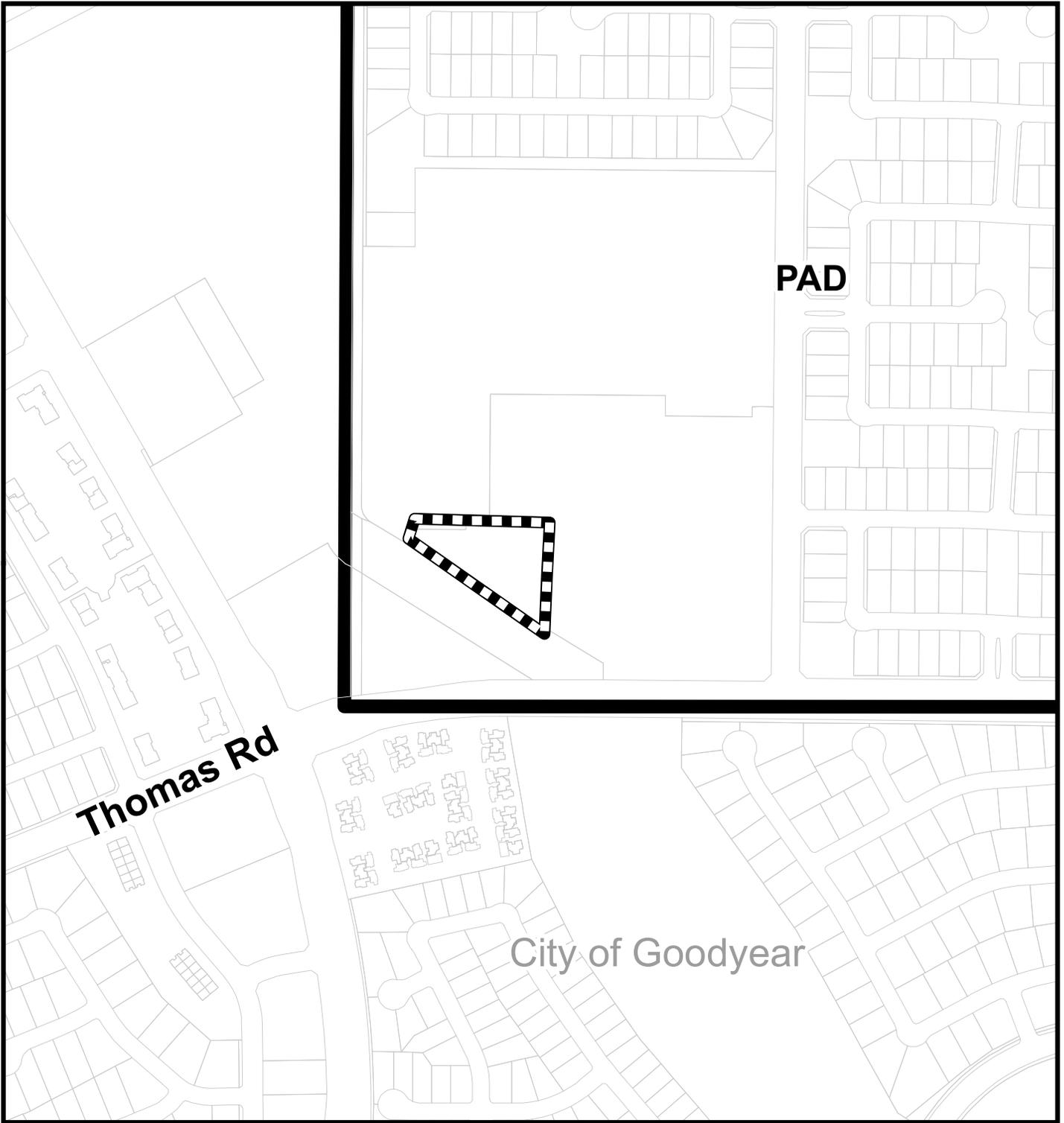


Aerial Photograph



St. Thomas Aquinas





Zoning Vicinity Map



St. Thomas Aquinas



DEPARTMENTAL REVIEW FORM

TYPE OF LICENSE:

SPECIAL EVENT LIQUOR LICENSE

ROUTING:

- POLICE DEPARTMENT
- FIRE DEPARTMENT
- FINANCE DEPARTMENT
- DEVELOPMENT SERVICES

APPLICANT'S NAME: LOUIS F. SISBARRO JR.

ORGANIZATIONS NAME: WILDCATS DADS CLUB

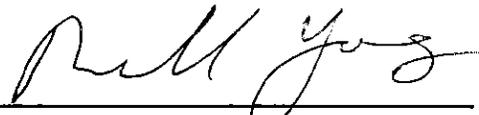
EVENT ADDRESS: 13720 W. THOMAS ROAD

CITY: AVONDALE **STATE:** AZ. **ZIP CODE:** 85392

PURPOSE OF EVENT: WILDCAT POKER TOURNAMENT

DEPARTMENTAL COMMENTS:

APPROVED
 DENIED



SIGNATURE
Tax Audit Supervisor

TITLE

10/20/2015

DATE

THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: NOV. 2, 2015
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: NOV. 22, 2015

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
(602) 542-5141



400 W Congress #521
Tucson AZ 85701-1352
(520) 628-6595

APPLICATION FOR SPECIAL EVENT LICENSE
 Fee = \$25.00 per day, for 1-10 day events only
 A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. § 44-6852)

PLEASE NOTE: THIS DOCUMENT MUST BE FULLY COMPLETED OR IT WILL BE RETURNED.

DEPT USE ONLY
LIC#

****APPLICATION MUST BE APPROVED BY LOCAL GOVERNMENT**

1. Name of Organization: Wildcat Dads Club

2. Non-Profit/I.R.S. Tax Exempt Number: 26-2563865

3. The organization is a: (check one box only)
- Charitable Fraternal (must have regular membership and in existence for over 5 years)
 - Civic Political Party, Ballot Measure, or Campaign Committee
 - Religious

4. What is the purpose of this event? Fundraiser

5. Location of the event: St. Thomas Aquinas Church 13720 W. Thomas
Address of physical location (Not P.O. Box) City County Zip Avondale AZ 85392

Applicant must be a member of the qualifying organization and authorized by an Officer, Director or Chairperson of the Organization named in Question #1. (Signature required in section #18)

6. Applicant: Sisbarro Jr. Louis F.
Last First Middle Date of Birth

7. Applicant's Mailing Address: _____
Street City State Zip

8. Phone Numbers: (_____)
Site Owner # Applicant's Business # Applicant's Home #

9. Date(s) & Hours of Event: (Remember: you cannot sell alcohol before 10:00 a.m. on Sunday)

	Date	Day of Week	Hours from A.M./P.M.	To A.M./P.M.
Day 1:	<u>11-7-15</u>	<u>Saturday</u>	<u>6 pm</u>	<u>11 pm</u>
Day 2:	_____	_____	_____	_____
Day 3:	_____	_____	_____	_____
Day 4:	_____	_____	_____	_____
Day 5:	_____	_____	_____	_____
Day 6:	_____	_____	_____	_____
Day 7:	_____	_____	_____	_____
Day 8:	_____	_____	_____	_____
Day 9:	_____	_____	_____	_____
Day 10:	_____	_____	_____	_____

10. Has the applicant been convicted of a felony in the past five years, or had a liquor license revoked?
 YES NO (attach explanation if yes)
11. This organization has been issued a special event license for 3 days this year, including this event
(not to exceed 10 days per year).
12. Is the organization using the services of a promoter or other person to manage the event? YES NO
If yes, attach a copy of the agreement.
13. List all people and organizations who will receive the proceeds. Account for 100% of the proceeds.
THE ORGANIZATION APPLYING MUST RECEIVE 25% of the gross revenues of Alcoholic Beverage Sales.

Name	Address	Percentage
Wildcat Dads Club		100%

(Attach additional sheet if necessary)

14. Knowledge of Arizona State Liquor Laws Title 4 is important to prevent liquor law violations. If you have any questions regarding the law or this application, please contact the Arizona State Department of Liquor Licenses and Control for assistance.

NOTE: ALL ALCOHOLIC BEVERAGE SALES MUST BE FOR CONSUMPTION AT THE EVENT SITE ONLY.
"NO ALCOHOLIC BEVERAGES SHALL LEAVE SPECIAL EVENT PREMISES."

15. What security and control measures will you take to prevent violations of state liquor laws at this event?
(List type and number of security/police personnel and type of fencing or control barriers if applicable)

_____ # Police Fencing
_____ # Security personnel Barriers

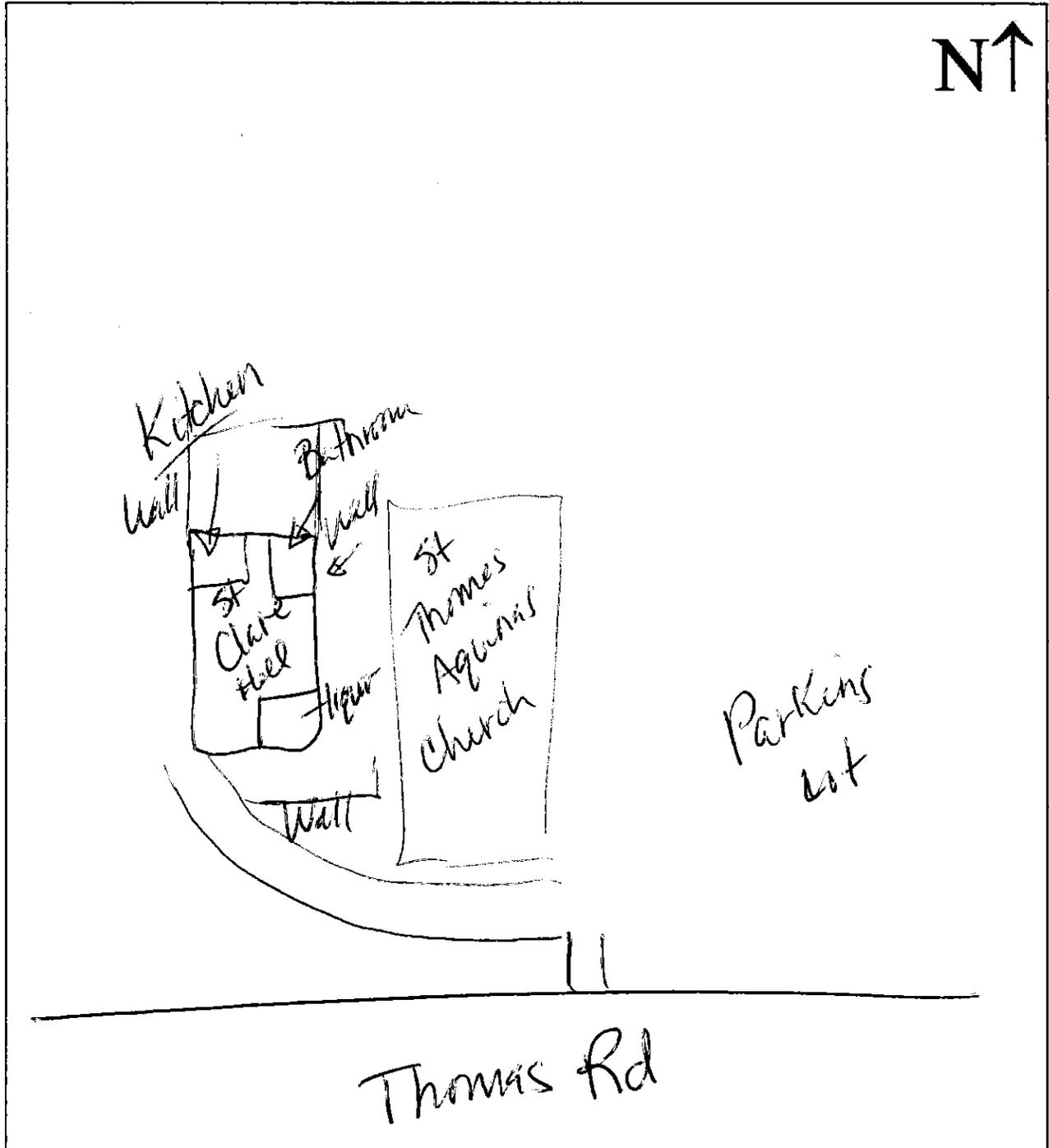
16. Is there an existing liquor license at the location where the special event is being held? YES NO
If yes, does the existing business agree to suspend their liquor license during the time period, and in the area in which the special event license will be in use? YES NO
(ATTACH COPY OF AGREEMENT)

_____ () _____
Name of Business Phone Number

17. Your licensed premises is that area in which you are authorized to sell, dispense, or serve spirituous liquors under the provisions of your license. The following page is to be used to prepare a diagram of your special event licensed premises. Please show dimensions, serving areas, fencing, barricades or other control measures and security positions.

SPECIAL EVENT LICENSED PREMISES DIAGRAM
(This diagram must be completed with this application)

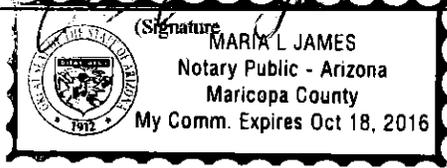
Special Event Diagram: (Show dimensions, serving areas, and label type of enclosure and security positions)
NOTE: Show nearest cross streets, highway, or road if location doesn't have an address.



THIS SECTION TO BE COMPLETED ONLY BY AN OFFICER, DIRECTOR OR CHAIRPERSON OF THE ORGANIZATION NAMED IN QUESTION #1

18. I, Louis Sisharro jr, declare that I am an Officer/Director/Chairperson appointing the applicant listed in Question 6, to apply on behalf of the foregoing organization for a Special Event Liquor License

X [Signature] President 10-17-15
 (Signature) (Title/Position) (Date) (Phone #)



State of Arizona County of Maricopa
 The foregoing instrument was acknowledged before me this

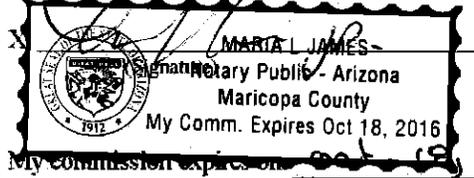
19 10 2015
 Day Month Year

My Commission expires on: Oct. 18, 2016
 (Date)

[Signature]
 (Signature of NOTARY PUBLIC)

THIS SECTION TO BE COMPLETED ONLY BY THE APPLICANT NAMED IN QUESTION #6

19. I, Louis Sisharro jr., declare that I am the APPLICANT filing this application as listed in Question 6. I have read the application and the contents and all statements are true, correct and complete.



State of Arizona County of Maricopa
 The foregoing instrument was acknowledged before me this

19 10 2015
 Day Month Year

My Commission expires on: Oct 18, 2016
 (Date)

[Signature]
 (Signature of NOTARY PUBLIC)

You must obtain local government approval. City or County MUST recommend event & complete item #20. The local city or county jurisdiction may require additional applications to be completed and additional licensing fees before approval may be granted.

LOCAL GOVERNING BODY APPROVAL SECTION

20. I, _____ hereby recommend this special event application
 (Government Official) (Title)
 on behalf of _____
 (City, Town or County) (Signature of OFFICIAL) (Date)

FOR DLLC DEPARTMENT USE ONLY

Department Comment Section:

 (Employee) (Date)

APPROVED DISAPPROVED BY: _____

 (Title) (Date)

SERIES: 15 SPECIAL EVENT LICENSE (Temporary)

**Non-transferable
On-sale retail privileges**

PURPOSE:

Allows a charitable, civic, fraternal, political or religious organization to sell and serve spirituous liquor for consumption only on the premises where the spirituous liquor is sold, and only for the period authorized on the license. This is a temporary license.

ADDITIONAL RIGHTS AND RESPONSIBILITIES:

The applicant for a special event license must request a special event application from the Department and file the application with the governing body of the city or town, or Board of Supervisors of an unincorporated area of a county, where the special event is to take place, for approval or disapproval.

If the application is approved by the local authority, and the event meets the requirements for granting the license, the DIRECTOR will issue a special event license to the qualifying organization.

Qualifying organizations will be granted a special event license for no more than ten (10) days in a calendar year. Events must be held on consecutive days and at the same location or additional licenses will be required. The license is automatically terminated upon closing of the last day of the event or the expiration of the license, whichever occurs first.

The qualified organization must receive at least twenty-five percent (25 %) of the gross revenues of Alcoholic Beverage Sales of the special event.

A person selling spirituous liquor under a special event license must purchase the spirituous liquor from the holder of a license authorized to sell off-sale; except that, in the case of a non-profit organization which has obtained a special event license for the purpose of charitable fund raising activities, a person may receive the spirituous liquor from a wholesaler as a donation.

AVERAGE APPROVAL TIME: One (1) to seven (7) days.

PERIOD OF ISSUANCE:

Issued for no more than a cumulative total of ten (10) days in a calendar year. A special event may be held for more than one (1) day, but it must be held on consecutive days and at the same location, or additional licenses will be required.

FEES: \$25.00 per day.

ARIZONA STATUTES AND REGULATIONS:

ARS 4-203.02, 4-244, 4-261; Rule R19-1-214, R19-1-244, R19-1-250.

Disabled individuals requiring special accommodations please call (602) 542-9051



CITY COUNCIL AGENDA

SUBJECT:

Special Event Liquor License Application -
Maricopa Community College District Foundation

MEETING DATE:

11/2/2015

TO: Mayor and Council

FROM: Carmen Martinez, City Clerk (623) 333-1214

THROUGH: David Fitzhugh, City Manager

PURPOSE:

Staff is recommending approval of a request from Jonathan Robles on behalf of Maricopa Community College District Foundation for approval of a special event liquor license to be used in conjunction with the Grand Opening Reception of the new Performing Arts Center at Estrella Mountain Community College on Friday, November 6 from 5:00 to 6:00 pm.

DISCUSSION:

The City Clerk received an application for a special event liquor license from Jonathan Robles on behalf of Maricopa Community College District Foundation. The license will allow the Foundation to dispense alcohol during their grand opening reception for the new Performing Arts Center. The reception will be held on Friday, November 6th from 5:00 to 6:00 pm at the new center is within Estrella Mountain Community College located at 3000 N. Dysart Road in Avondale.

The required fees have been paid. The Police and Fire Departments have reviewed the applications and are recommending approval. Their comments are attached.

Staff reviewed the applications using the 14 factors set forth in Ordinance 1031-04. The findings are as noted below:

1. This is an invitation only event.
2. Criminal history of the applicant - A background check of the representative, Mr. Jonathan Robles, revealed no contact with the Avondale Police Department
3. Alcoholic drinks will be dispensed to attendees free of charge
4. Security measures taken by the applicant - the Police Department has reviewed the Foundation's security plan which includes a security guard presence during the event, and is not requiring any additional security
5. Wine and beer will be served
6. Beverages will be dispensed in disposable cups
7. This is the first time the Foundation is holding this type of event
8. Drinking of alcoholic beverages will be confined to the fenced in section within the bar area
9. There are appropriate restroom facilities within the Performing Arts Center
10. Zoning is Planned Area Development and Development Services staff has indicated that special events may occur within this zoning designation
11. Anticipated total daily attendance is estimated at about 75 people

12. A small sound system will be available during the ceremony for speeches
13. The Police Department has reviewed and approved the traffic control plan for the overall event

RECOMMENDATION:

Staff is recommending approval of a request from Jonathan Robles on behalf of Maricopa Community College District Foundation for approval of a special event liquor license to be used in conjunction with the Grand Opening Reception of the new Performing Arts Center at Estrella Mountain Community College on Friday, November 6 from 5:00 to 6:00 pm.

ATTACHMENTS:

Description

[Application](#)

[Review by Departments](#)



Arizona Department of Liquor Licenses and Control
 800 W Washington 5th Floor
 Phoenix, AZ 85007-2934
 www.azliquor.gov
 (602) 542-5141

FOR DLIC USE ONLY	
Event Date(s):	
Event time start/end:	
CSR:	
License:	

APPLICATION FOR SPECIAL EVENT LICENSE
 Fee= \$25.00 per day for 1-10 days (consecutive)
 A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. § 44-6852)

IMPORTANT INFORMATION: This document must be fully completed or it will be returned.

The Department of Liquor Licenses and Control must receive this application ten (10) business days prior to the event. If the special event will be held at a location without a permanent liquor license or if the event will be on any portion of a location that is not covered by the existing liquor license, this application must be approved by the local government before submission to the Department of Liquor Licenses and Control (see Section 15).

SECTION 1 Name of Organization: Maricopa Community College District (MCCD) Foundation

SECTION 2 Non-Profit/IRS Tax Exempt Number: 860 327 449

SECTION 3 The organization is a: (check one box only)

- Charitable Fraternal (must have regular membership and have been in existence for over five (5) years)
 Religious Civic (Rotary, College Scholarship) Political Party, Ballot Measure or Campaign Committee

SECTION 4 Will this event be held on a currently licensed premise and within the already approved premises? Yes No

Name of Business	License Number	Phone (Include Area Code)
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SECTION 5 How is this special event going to conduct all dispensing, serving, and selling of spirituous liquors? Please read R-19-318 for explanation (look in special event planning guide) and check one of the following boxes.

- Place license in non-use
 Dispense and serve all spirituous liquors under retailer's license
 Dispense and serve all spirituous liquors under special event
 Split premise between special event and retail location

(If **not** using retail license, submit a letter of agreement from the agent/owner of the licensed premise to suspend the license during the event. If the special event is only using a portion of premise, agent/owner will need to suspend that portion of the premise.)

SECTION 6 What is the purpose of this event? On-site consumption Off-site (auction) Both

SECTION 7 Location of the Event: Estrella Mountain Community College
 Address of Location: 3000 N. Dysart Avondale Maricopa County AZ 85392
Street City COUNTY State Zip

SECTION 8 Will this be stacked with a wine festival/craft distiller festival? Yes No

SECTION 9 Applicant must be a member of the qualifying organization and authorized by an Officer, Director or Chairperson of the Organization named in Section 1. (Authorizing signature is required in Section 13.)

1. Applicant: Robles Jonathan P. 03-31-1969
Last First Middle Date of Birth

2. Applicant's mailing address: 3000 N. Dysart Street Avondale AZ 85392
Street City State Zip

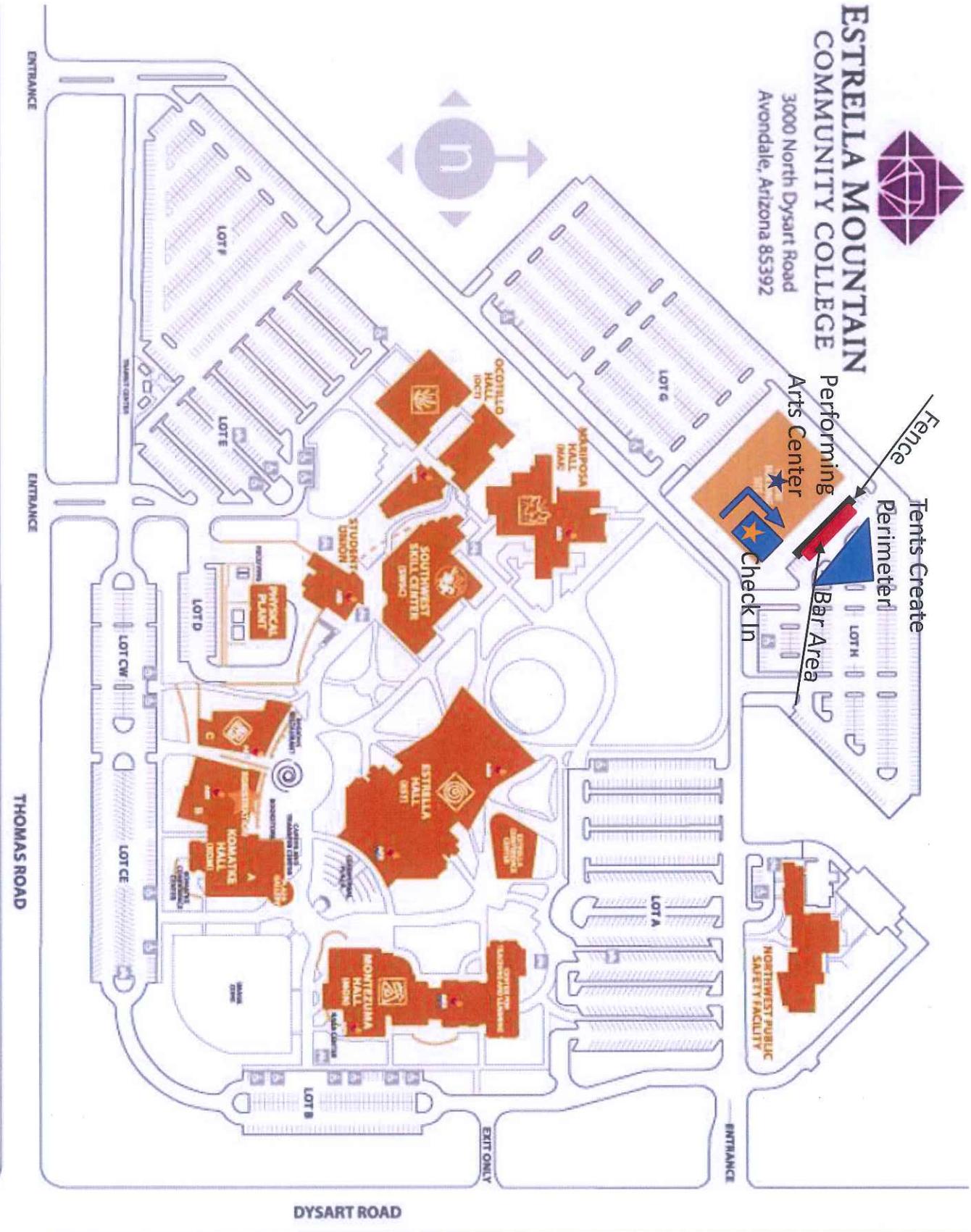
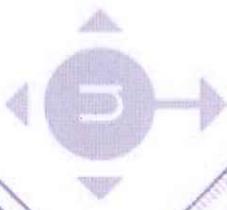
3. Applicant's home/cell phone: _____ Applicant's business phone: (623) 935-8502

4. Applicant's email address: _____



ESTRELLA MOUNTAIN COMMUNITY COLLEGE

3000 North Dysart Road
Avondale, Arizona 85392



Fence
Tents Create
Perimeter

Performing
Arts Center

Check In

Bar Area

ENTRANCE

ENTRANCE

THOMAS ROAD

DYSART ROAD

EXIT ONLY

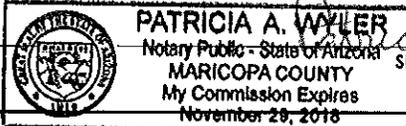
ENTRANCE

SECTION 13 To be completed only by an Officer, Director or Chairperson of the organization named in Section 1.

I, Mary O'Connor declare that I am an OFFICER, DIRECTOR, or CHAIRPERSON
(Print Full Name)
appointing the applicant listed in Section 9, to apply on behalf of the foregoing organization for a Special Event
Liquor License.

X Mary O'Connor President/CEO 10/21/15
(Signature) Title/ Position Date Phone #

The foregoing instrument was acknowledged before me this 22nd October 2015
Day Month Year
State Arizona County of Maricopa

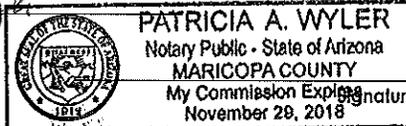
My Commission Expires on: 11/29/18
Date
 Patricia A. Wyler
Signature of Notary Public

SECTION 14 This section is to be completed only by the applicant named in Section 9.

I, Jonathan Peter Robles declare that I am the APPLICANT filing this application as
(Print Full Name)
listed in Section 9. I have read the application and the contents and all statements are true, correct and
complete.

X Jonathan Peter Robles Director/Developer 10/20/15
(Signature) Title/ Position Date Phone #

The foregoing instrument was acknowledged before me this 22nd October 2015
Day Month Year
State Arizona County of Maricopa

My Commission Expires on: 11/29/18
Date
 Patricia A. Wyler
Signature of Notary Public

Please contact the local governing board for additional application requirements and submission deadlines. Additional
licensing fees may also be required before approval may be granted. For more information, please contact your local
jurisdiction: http://www.azliquor.gov/assets/documents/homepage_docs/spec_event_links.pdf.

SECTION 15 Local Governing Body Approval Section

I, _____ recommend APPROVAL DISAPPROVAL
(Government Official) (Title)
on behalf of _____
(City, Town, County) Signature Date Phone

FOR DEPARTMENT OF LIQUOR LICENSES AND CONTROL USE ONLY

APPROVAL DISAPPROVAL BY: _____ DATE: _____

A.R.S. § 41-1030. Invalidity of rules not made according to this chapter; prohibited agency action; prohibited acts by state employees; enforcement; notice
B. An agency shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule or state tribal gaming compact. A general grant of authority in statute does not constitute a basis for imposing a licensing requirement or condition unless a rule is made pursuant to that general grant of authority that specifically authorizes the requirement or condition.
D. THIS SECTION MAY BE ENFORCED IN A PRIVATE CIVIL ACTION AND RELIEF MAY BE AWARDED AGAINST THE STATE, THE COURT MAY AWARD REASONABLE ATTORNEY FEES, DAMAGES AND ALL FEES ASSOCIATED WITH THE LICENSE APPLICATION TO A PARTY THAT PREVAILS IN AN ACTION AGAINST THE STATE FOR A VIOLATION OF THIS SECTION.
E. A STATE EMPLOYEE MAY NOT INTENTIONALLY OR KNOWINGLY VIOLATE THIS SECTION. A VIOLATION OF THIS SECTION IS CAUSE FOR DISCIPLINARY ACTION OR DISMISSAL PURSUANT TO THE AGENCY'S ADOPTED PERSONNEL POLICY.
F. THIS SECTION DOES NOT ABROGATE THE IMMUNITY PROVIDED BY SECTION 12-820.01 OR 12-820.02.

DEPARTMENTAL REVIEW FORM

TYPE OF LICENSE:

SPECIAL EVENT LIQUOR LICENSE

ROUTING:

- POLICE DEPARTMENT
 FIRE DEPARTMENT
 FINANCE DEPARTMENT
 DEVELOPMENT SERVICES

APPLICANT'S NAME: JONATHAN ROBLES

ORGANIZATIONS NAME: MARICOPA COMMUNITY COLLEGES FOUNDATION

EVENT ADDRESS: 3000 N DYSART ROAD

CITY: AVONDALE **STATE:** AZ. **ZIP CODE:** 85392

PURPOSE OF EVENT: ESTRELLA MOUNTAIN COMM. COLLEGE- PERFORMING ARTS CENTER---GRAND OPENING RECEPTION

DEPARTMENTAL COMMENTS:

APPROVED
 DENIED



SIGNATURE
Police Chief

TITLE

10/22/15

DATE

THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: NOV.2, 2015
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: ASAP

DEPARTMENTAL REVIEW FORM

TYPE OF LICENSE:

SPECIAL EVENT LIQUOR LICENSE

ROUTING:

POLICE DEPARTMENT

FIRE DEPARTMENT

FINANCE DEPARTMENT

DEVELOPMENT SERVICES

APPLICANT'S NAME: JONATHAN ROBLES

ORGANIZATIONS NAME: MARICOPA COMMUNITY COLLEGES FOUNDATION

EVENT ADDRESS: 3000 N DYSART ROAD

CITY: AVONDALE **STATE:** AZ. **ZIP CODE:** 85392

PURPOSE OF EVENT: ESTRELLA MOUNTAIN COMM. COLLEGE- PERFORMING ARTS CENTER---GRAND OPENING RECEPTION

DEPARTMENTAL COMMENTS:

APPROVED

DENIED

Valorie Russell

SIGNATURE

10/22/15

DATE

Fire Inspector

TITLE

THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: NOV.2, 2015

PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: ASAP



Aspiring. Achieving. Accelerating.

DEPARTMENTAL REVIEW FORM

TYPE OF LICENSE:

SPECIAL EVENT LIQUOR LICENSE

ROUTING:

POLICE DEPARTMENT

FIRE DEPARTMENT

FINANCE DEPARTMENT

DEVELOPMENT SERVICES



APPLICANT'S NAME: JONATHAN ROBLES

ORGANIZATIONS NAME: MARICOPA COMMUNITY COLLEGES FOUNDATION

EVENT ADDRESS: 3000 N DYSART ROAD

CITY: AVONDALE **STATE:** AZ. **ZIP CODE:** 85392

PURPOSE OF EVENT: ESTRELLA MOUNTAIN COMM. COLLEGE- PERFORMING ARTS CENTER---GRAND OPENING RECEPTION

DEPARTMENTAL COMMENTS:

APPROVED
 DENIED



SIGNATURE
Chief Building Official

TITLE

10/22/15

DATE

**THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: NOV.2, 2015
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: ASAP**

DEPARTMENTAL REVIEW FORM

TYPE OF LICENSE:

SPECIAL EVENT LIQUOR LICENSE

ROUTING:

POLICE DEPARTMENT

FIRE DEPARTMENT

FINANCE DEPARTMENT

DEVELOPMENT SERVICES

APPLICANT'S NAME: JONATHAN ROBLES

ORGANIZATIONS NAME: MARICOPA COMMUNITY COLLEGES FOUNDATION

EVENT ADDRESS: 3000 N DYSART ROAD

CITY: AVONDALE **STATE:** AZ. **ZIP CODE:** 85392

PURPOSE OF EVENT: ESTRELLA MOUNTAIN COMM. COLLEGE- PERFORMING ARTS CENTER---GRAND OPENING RECEPTION

DEPARTMENTAL COMMENTS:

APPROVED

DENIED



SIGNATURE

Principal Planner

TITLE

10/21/15

DATE

THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: NOV.2, 2015
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: ASAP



Development Services & Engineering Department

DATE: October 22, 2015

TO: Carmen Martinez, City Clerk

PREPARED BY: Robert Gubser, Principal Planner (623) 333-4015

SUBJECT: Estrella Mountain Community College – Performing Arts Center – Grand
Opening Reception
Special Event Liquor License (Series 15)
3000 N Dysart Road

The Grand Opening Reception for the Estrella Mountain Community College Performing Arts Center will be held on November 6, 2015. The event, sponsored by the Maricopa County Community College Foundation, will be for approximately 75 invited guests and will occur between 5:00 – 6:00 PM.

A Series 15 special event liquor license is required to allow sale of alcohol at the event. Special event liquor licenses are not required to meet any separation requirements to nearby churches or schools.

The General Plan designates the property as Education and the property is zoned PAD (Planned Area Development). Special events may occur on any property irrespective of General Plan designation or zoning.

Staff recommends approval of this request.

Attachment: Aerial Photograph
Zoning Vicinity Map

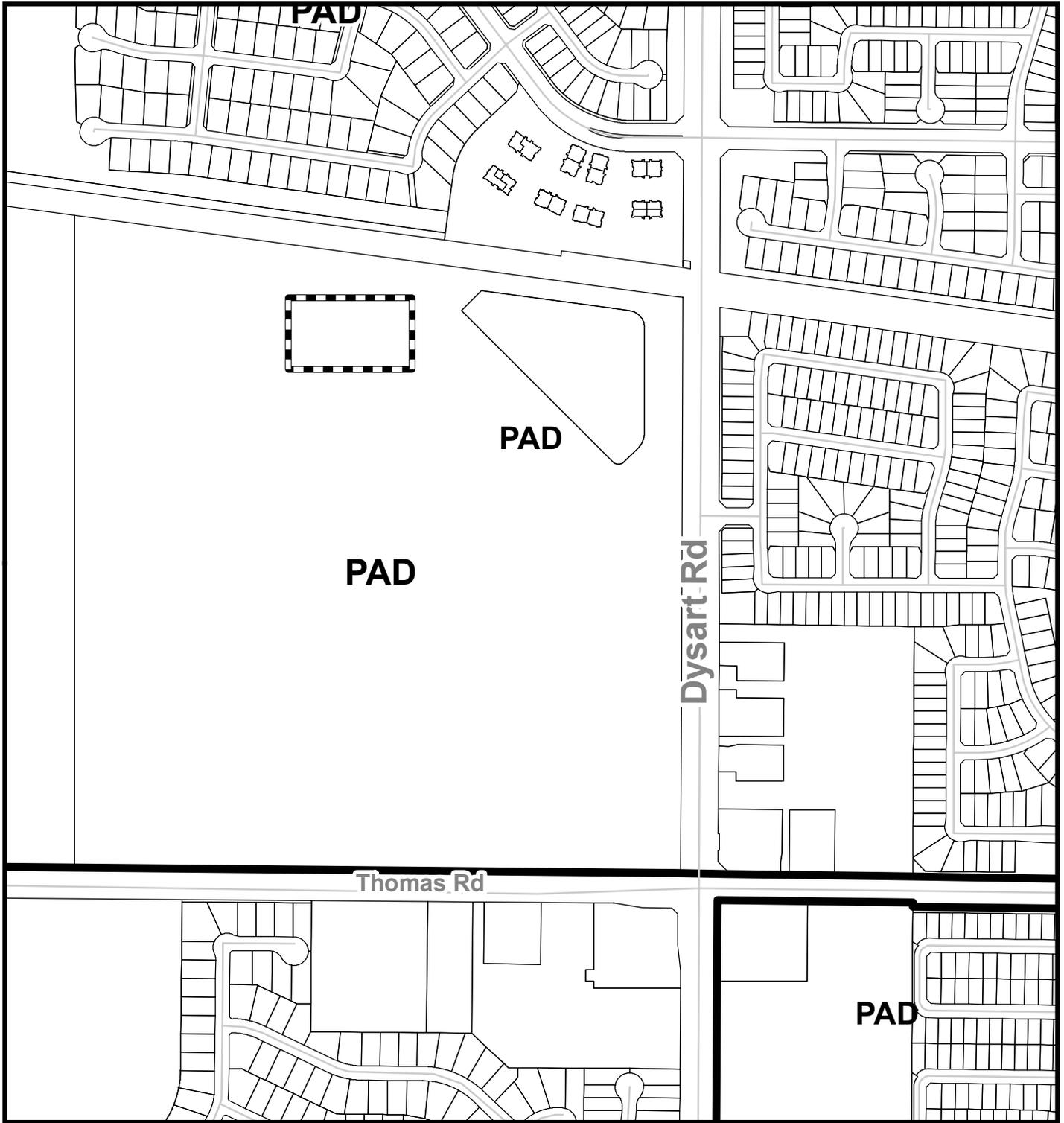


Aerial Photograph



Proposed Special Event





Zoning Vicinity Map



Subject Property



DEPARTMENTAL REVIEW FORM

TYPE OF LICENSE:

SPECIAL EVENT LIQUOR LICENSE

ROUTING:

POLICE DEPARTMENT

FIRE DEPARTMENT

FINANCE DEPARTMENT

DEVELOPMENT SERVICES

APPLICANT'S NAME: JONATHAN ROBLES

ORGANIZATIONS NAME: MARICOPA COMMUNITY COLLEGES FOUNDATION

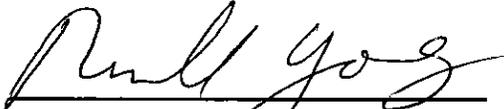
EVENT ADDRESS: 3000 N DYSART ROAD

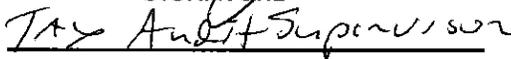
CITY: AVONDALE **STATE:** AZ. **ZIP CODE:** 85392

PURPOSE OF EVENT: ESTRELLA MOUNTAIN COMM. COLLEGE- PERFORMING ARTS CENTER---GRAND OPENING RECEPTION

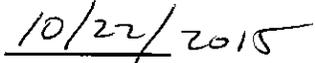
DEPARTMENTAL COMMENTS:

APPROVED
 DENIED



SIGNATURE


TITLE



DATE

THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: NOV.2, 2015
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: ASAP



CITY COUNCIL AGENDA

SUBJECT:

Resolution 3278-1115 and Ordinance 1589-1115
- Avondale City Code Chapter 14, Property
Maintenance Code

MEETING DATE:

11/2/2015

TO: Mayor and Council**FROM:** Stephanie Small, Neighborhood and Family Services Director, 623-333-2711**THROUGH:** David Fitzhugh, City Manager**PURPOSE:**

Staff is recommending Council adoption of resolution declaring as a public record the "City of Avondale Property Maintenance Ordinance, Amended and Restated November 2, 2015." and an ordinance amending and restating the Avondale City Code Chapter 14, Property Maintenance Ordinance.

BACKGROUND:

On March 17, 2014, City Council adopted a comprehensive Property Maintenance Ordinance to replace the existing International Property Maintenance Code with Avondale Amendments. This adopted Property Maintenance Ordinance was customized for the City of Avondale to ensure that properties are maintained to a minimum standard that supports community safety and healthy, vibrant neighborhoods. Staff is now recommending minor text amendments to the ordinance.

DISCUSSION:

Staff has experienced considerable success since implementing the City of Avondale Property Maintenance Ordinance adopted by the City Council in March 2014. This new ordinance has had a significant positive impact on the community and streamlined workflow processes for staff. However, after working with the ordinance, staff has discovered the need for some minor adjustments.

This request will amend the following portions of Avondale City Code Chapter 14:

14-50: Definitions

14-140: Abatement Costs

14-160: Building and structures

14-170: Land Maintenance

14-190: Miscellaneous

14-200: Vacant structures; unsafe structures and unsafe equipment; condemnation

14-210: Demolition

These changes will provide clarity to the citizens and will assist staff to in properly administering the code. A summary of the proposed changes is included (Attachment Summary of Code Changes).

Staff presented the proposed codes to the Neighborhood and Family Services Commission for consideration on October 28, 2015.

BUDGET IMPACT:

There is no budgetary impact associated with this item.

RECOMMENDATION:

Staff recommends Council adoption of a resolution declaring as a public record the “City of Avondale Property Maintenance Ordinance, Amended and Restated November 2, 2015.” and an ordinance amending and restating the Avondale City Code Chapter 14, Property Maintenance Ordinance.

ATTACHMENTS:

Description

[Summary of Code Changes](#)

[Resolution 3278-1115](#)

[Property Maintenance Code](#)

[Ordinance 1589-1115](#)

Proposed Property Maintenance Ordinance Changes

CC14-50 Definitions	Added “Yard, Side” definition for use with Section 14-170(i) – required landscaping
Existing Code: New definition	<u>New Code:</u> Yard, Side: A yard lying between the side lot line of the lot and the line drawn through the nearest point of a principal building extending from the front yard to the rear yard, or in the absence of either of said yards from the front to the rear lot lines respectively.
14-140 Abatement Costs	Added “estimated” before cost of removal for notice
Existing Code: (a) If the owner or occupant of any property within the City does not remove or abate from its property a violation that constitutes a hazard to public health and safety within 30 days after written notice has been served by the City, the City may, at the expense of the owner or occupant, remove or cause the removal thereof and the record owner shall be liable for all costs incurred. The notice shall include the cost of such removal to the City if the owner or occupant does not comply.	<u>New Code:</u> (a) If the owner or occupant of any property within the City does not remove or abate from its property a violation that constitutes a hazard to public health and safety within 30 days after written notice has been served by the City, the City may, at the expense of the owner or occupant, remove or cause the removal thereof and the record owner shall be liable for all costs incurred. The notice shall include the estimated cost of such removal to the City if the owner or occupant does not comply.
14-160 Buildings and structures	14-160(f) – Added language to clarify protective covering for exterior surfaces of structures
Existing Code: (f) All exterior wood surfaces exposed to weather, except decay resistant woods, shall be protected with paint or other protective covering. All exterior painted surfaces shall be maintained in sound condition. Painted surfaces that represent a blighted or deteriorated appearance including, but not limited to, substantial fading, excessive peeling, flaking, chipping or cracking shall be eliminated and surfaces repainted. This Subsection shall apply to any exterior surfaces of any buildings or structures including, but not limited to, fences, walls, roofs or appurtenances including, but not limited to, windows, window frames, window screens, doors, garage doors, door frames, canopies, awnings, cornices, porches, stairways, railings or similar items in public view or an unsheltered area of the property.	<u>New Code:</u> (f) All exterior wood surfaces exposed to weather, except decorative brick, stone, or decay resistant woods, shall be protected with paint or other protective covering. All exterior painted surfaces shall be maintained in sound condition. Painted surfaces that represent a blighted or deteriorated appearance including, but not limited to, substantial fading, excessive peeling, flaking, chipping or cracking shall be eliminated and surfaces repainted. This Subsection shall apply to any exterior surfaces of any buildings or structures including, but not limited to, fences, walls, roofs or appurtenances including, but not limited to rooflines, fascia, windows, window frames, window screens, doors, garage doors, doorframes, canopies, awnings, cornices, porches, stairways, railings or similar items in public view. or an unsheltered area of the property.

Proposed Property Maintenance Ordinance Changes

<p>14-170 Land Maintenance</p>	<p>14-170(f) – Added “personal items” and “plastic material or sheeting, tarps, canvases” as items prohibited in public view</p> <p>14-170(h) – Added language to clarify the responsibility for tall grass/weeds between the property line and the street</p> <p>14-170(i) – Added language to clarify where landscaping is required and added sod and artificial turf as options</p> <p>14-170(m) – Moved out of 14-170(i) into its own subsection for clarification, but no change to content</p>
<p><u>Existing Code:</u></p> <p>(f) No person shall place or store furniture, except furniture designed and placed for outdoor use, household equipment, appliances, vehicle parts, landscape material, or construction material (except in accordance with Section 14-170(g) below), cardboard material, plastic material, debris or any similar materials in public view or any unsheltered area of any property.</p> <p>(h) No person owning or occupying any property fronting on any street, alleyway or public place in the City, shall allow thereon grass or weeds characterized as uncontrolled, unmaintained or overgrown when such conditions create a blighted condition or may harbor infestations or are likely to become a hazard to the public health or safety.</p> <p>(i) No person shall allow any landscaping conditions that contribute to visual blight including, but not limited to, dirt yards or vegetation of any kind that is substantially dead or damaged or characterized by uncontrolled growth or lack of maintenance or any similar conditions. All landscaped areas shall be finished with a natural topping material including, but not limited to, turf, groundcover, planting, decomposed granite, river rock, expanded shale, native stone or bark. Ground cover</p>	<p><u>New Code:</u></p> <p>(f) No person shall place or store furniture, except furniture designed and placed for outdoor use, household or personal items, equipment, appliances, vehicle parts, landscape material, or construction material (except in accordance with Section 14-170(g) below), cardboard material, plastic material or sheeting, tarps, canvases, debris or any similar materials in public view or any unsheltered area of any property.</p> <p>(h) No person owning or occupying any property fronting on any street, alleyway or public place in the City, shall allow thereon grass or weeds characterized as uncontrolled, unmaintained or overgrown, including those areas between the property line and the street, when such conditions create a blighted condition or may harbor infestations or are likely to become a hazard to the public health or safety.</p> <p>(i) No person shall allow or permit to remain any portion of the front or side yard of any residential property that is in public view to be absent of landscaping material. All exposed dirt within required landscaped areas shall be finished with a natural topping material including, but not limited to, sod, artificial turf, groundcover, planting, decomposed granite, river rock, expanded shale, native stone or bark. Ground cover consisting of crushed rock, gravel or similar materials</p>

Proposed Property Maintenance Ordinance Changes

<p>consisting of crushed rock, gravel or similar materials shall be maintained at a sufficient depth that covers all exposed areas of dirt. Parcels with existing undisturbed natural desert vegetation are exempt from this Subsection.</p> <p>(m) Same language, new subsection – moved from (i)</p>	<p>shall be maintained at a sufficient depth that covers all exposed areas of dirt. Parcels with existing undisturbed natural desert vegetation are exempt from this Subsection.</p> <p>(m) No person shall allow or permit to remain any landscaping conditions that contributes to visual blight including, but not limited to, vegetation that substantially dead or damaged, characterized by uncontrolled growth or lack of maintenance, or any other similar conditions. Parcels with existing undisturbed natural desert vegetation are exempt from this Subsection.</p>
<p>14-190 Miscellaneous</p>	<p>14-190(a) – Added “public nuisance” and “blight”</p> <p>14-190(g) – Clarified the language for removal animal droppings</p>
<p><u>Existing Code:</u></p> <p>(a) No person shall erect, maintain, use, place, deposit, cause, allow, leave or permit to be or remain in or upon any private lot, building, structure or property or in or upon any public street, alleyway, sidewalk, right-of-way or other public or private place, any condition, thing or act, that constitutes a hazard to public health or safety.</p> <p>(g) Animal waste such as, but not limited to, manure and droppings shall be removed from pens, kennels, stables, yards and other enclosures at least twice weekly and from residentially zoned properties at least once each week or more frequently if the conditions so necessitate.</p>	<p><u>New Code:</u></p> <p>(a) No person shall erect, maintain, use, place, deposit, cause, allow, leave or permit to be or remain in or upon any private lot, building, structure or property or in or upon any public street, alleyway, sidewalk, right-of-way or other public or private place, any condition, thing or act, that constitutes a public nuisance, blight, or hazard to public health or safety.</p> <p>(g) Within residentially zoned properties, Animal waste such as, but not limited to, manure or and droppings shall be removed from pens, kennels, stables, yards and other enclosures at least twice weekly, or more frequently if the conditions so necessitate, and from residentially zoned properties the property at least once each week. or more frequently if the conditions so necessitate.</p>
<p>14-200 Vacant structures and premises; unsafe structures and unsafe equipment; condemnation</p>	<p>14-200(a)(1) – New subsection to address overgrown grass/weeds specific to vacant lots</p> <p>14-200(a)(2) – Clarified language related securing vacant or abandoned buildings</p>

Proposed Property Maintenance Ordinance Changes

<p><u>Existing Code:</u> (a)(1) New subsection</p> <p>(1) Any unsecured vacant or abandoned building or structure that is structurally sound, weatherproof and otherwise safe must be permanently secured to prevent entry by unauthorized persons. Any wood or similar material used to secure a building or structure must be painted a color compatible with the building or structure. A copy of board-up specifications may be obtained from the Code Enforcement Division.</p>	<p><u>New Code:</u> (a)(1) All vacant premises, including those areas between the property line and the street, shall be maintained to prevent grass, weeds and other vegetation characterized as uncontrolled, unmaintained or overgrown when such conditions create a blighted condition or may harbor infestations or are likely to become a hazard to the public health or safety. Parcels with existing undisturbed natural desert vegetation are exempt from this Subsection when the Code Official determines there is a sufficient separation between the vegetation and adjacent property lines.</p> <p>(1)(2) Any All unsecured vacant or abandoned buildings or structures that is structurally sound, weatherproof and otherwise safe must be permanently secured to prevent entry by unauthorized persons pursuant to approved board-up specifications. Any wood or similar material used to secure a building or structure must be painted a color compatible with the building or structure. A copy of board-up specifications may be obtained from the Code Enforcement Division.</p>
<p>14-210 Demolition</p>	<p>14-210(a) – New subsection to clarify what constitutes a structure that the City would require to be demolished</p> <p>14-210(b) – Change from City may “request” owner to demolition to City may “require”; added “estimated” cost</p>
<p><u>Existing Code:</u> (a) New subsection</p> <p>(a) The Code Official, working in conjunction with the City building official and fire marshal, as applicable, may request the owner or responsible party of any property where a dilapidated building or structure is located that it is unreasonable to repair and that</p>	<p><u>New Code:</u> (a) No person shall allow or cause to remain on any property any damaged or dilapidated building or structure that is unreasonable to repair, contributes to urban blight, adversely affects property values in the city, serves as attractive nuisance, or constitutes a hazard to the public health or safety.</p> <p>(a)(b) The Code Official, working in conjunction with the City building official and fire marshal, as applicable, may require request the owner or responsible party of any property where a dilapidated building or structure is located that it is unreasonable to repair and that</p>

Proposed Property Maintenance Ordinance Changes

<p>constitutes a hazard to public health and safety to demolish or remove the dilapidated building or structure within 30 days after written notice has been served by the City. The notice shall include the cost of such removal or demolition to the City if the owner or responsible party does not comply.</p>	<p>constitutes a hazard to public health and safety to demolish or remove the dilapidated building or structure within 30 days after written notice has been served by the City. The notice shall include the estimated cost of such removal or demolition to the City if the owner or responsible party does not comply.</p>
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RESOLUTION NO. 3278-1115

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED THE "CITY OF AVONDALE PROPERTY MAINTENANCE ORDINANCE, AMENDED AND RESTATED NOVEMBER 2, 2015."

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. That certain document entitled the "City of Avondale Property Maintenance Ordinance, Amended and Restated, November 2, 2015," of which three copies are on file in the office of the City Clerk and open for public inspection during normal business hours, is hereby declared to be a public record and said copies are ordered to remain on file with the City Clerk.

PASSED AND ADOPTED by the Council of the City of Avondale, November 2, 2015.

Kenneth N. Weise, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

**CITY OF AVONDALE
PROPERTY MAINTENANCE ORDINANCE
AMENDED AND RESTATED
NOVEMBER 2, 2015**

Chapter 14 – Property Maintenance Ordinance

Article I – General Provisions

14-10	Title.
14-20	Scope and intent.
14-30	Conflict of ordinances.
14-40	Severability.
14-50	Definitions.

Article II – Administration and Enforcement

14-60	Enforcement – General
14-70	Owner of record.
14-80	Notice of violation.
14-90	Civil citations.
14-100	Civil procedure.
14-110	Civil penalties.
14-120	Recidivist offenders.
14-130	Criminal complaints.
14-140	Violators liable for costs.
14-150	Inspection warrants.

Article III – Specific Acts, Omissions and Conditions

14-160	Buildings and structures.
14-170	Land maintenance.
14-180	Vehicles.
14-190	Miscellaneous.
14-200	Vacant structures; unsafe structures and unsafe equipment; condemnation.
14-210	Demolition.

Article IV – Residential Rental Property

14-220	Purpose.
14-230	Application.
14-240	General.
14-250	Plumbing systems and fixtures.
14-260	Sanitary facilities.
14-270	Kitchen and laundry facilities.
14-280	Electrical and lighting.
14-290	Heating, cooling and ventilation systems.
14-300	Emergency escapes and fire protection systems.
14-310	Light and natural ventilation.
14-320	Interior sanitation.
14-330	Interior of buildings.
14-340	Exterior of buildings.
14-350	Exterior premises and common areas.
14-360	Residential rental property inspections; inspection warrants.
14-370	Re-occupancy prohibited.
14-380	Owner’s responsibility for violations by occupants.

Article V – Registration of Residential Rental Property

14-390	State registration requirements.
14-400	Civil violations.
14-410	Notices and orders.
14-420	Civil penalties.

Chapter 14 – Property Maintenance Ordinance

Article I – General Provisions

14-10	Title.
14-20	Scope and intent.
14-30	Conflict of ordinances.
14-40	Severability.
14-50	Definitions.

14-10 Title.

This Ordinance shall be known as the "Property Maintenance Ordinance of the City of Avondale, Arizona." Within the Ordinance text, the following terms (whether capitalized or not) shall be synonymous with the Property Maintenance Ordinance of the City of Avondale: "this Ordinance," "Avondale Property Maintenance Ordinance," and "The Property Maintenance Ordinance."

14-20 Scope and Intent.

- (a) This Ordinance shall apply to all buildings, structures and lands within the City without regard to the use, the date of construction, improvement or alteration.
- (b) This Ordinance shall be construed to secure its expressed intent, which is to ensure public health, safety and welfare insofar as they are affected by the continued occupancy and maintenance of structures and premises. Unless specifically exempted in Subsection 14-20(c) below, existing structures and premises that do not comply with the provisions of this Ordinance shall be altered or repaired to provide a minimum level of health and safety as required herein. Repairs, alterations, additions to and change of occupancy in existing buildings shall comply with City codes, ordinances and regulations.
- (c) This Ordinance shall not require changes in existing buildings and utilities when alterations were installed and have been maintained in accordance with the City Codes in effect at the time of construction or alteration of the subject building or utilities. This Subsection does not apply when the building has been determined to be an imminent hazard, unsafe, unhealthy, blighted or deteriorated.

14-30 Conflict of ordinances.

- (a) In any case where a provision of this Ordinance is found to be in conflict with a provision of any zoning, building, fire, safety, or health ordinance or code existing on the effective date of this Ordinance, the provision of the zoning, building, fire, safety, or health ordinance or code shall prevail.
- (b) Nothing in this Ordinance shall be construed to repeal, abrogate, annul, or in any way impair or interfere with existing provisions of other laws or ordinances, except those specifically repealed by this Ordinance, or with private restrictions placed upon property by covenant, deed or other private agreement.

14-40 Severability.

If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance should be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect; and to this end, the provisions of this Ordinance are hereby declared to be severable.

14-50 Definitions.

The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Abandoned or inoperable vehicle: Any vehicle that is partially or wholly dismantled, discarded, wrecked; or on blocks, stands or similar devices; or stripped or scrapped; or inoperable due to mechanical disassembly; or with a deflated tire or tires, or physically incapable of operation; or is incapable of operation for other reasons that may include an expired (more than one month) license plate or the absence of a license affixed or assigned thereto.

Adopted Codes: Any of the provisions of the building code, the mechanical code, the electrical code, the plumbing code, the residential code, the fuel gas code or the energy conservation code, as amended and adopted by the City.

Animal waste: Household pet waste and waste from stables, kennels, pet pens, chicken coops, veterinary establishments and others of a similar nature.

Blight, blighted or blighting: Any unsightly, deteriorated, dilapidated, withered or decayed condition of a building, structure, accessory building, fence, landscaping or property characterized by neglect, lack of maintenance, damage or any other similar condition. Examples include, but are not limited to, the accumulation of debris, wood, scrap iron or other metal, boxes, paper, vehicle parts, tires, abandoned or inoperable equipment or vehicles; discarded appliances; or any items that may harbor insect or vermin infestation or create a fire hazard; landscaping that is overgrown, dead or damaged; fences that are broken, rotted, damaged or leaning; buildings or structures exhibiting general disrepair or dilapidation including but not limited to deteriorated shingles, peeling paint, broken doors or windows or any other evidence of neglect or lack of maintenance.

Boardinghouse: A single-family detached or attached dwelling unit in which any of the rooms are rented or leased to persons on a transient basis, but which does not include group homes, dormitories, convalescent homes, nursing homes, substance abuse detoxification centers or substance abuse treatment centers.

Building: Any structure, either temporary or permanent, having a roof and used or built for the shelter and enclosure of persons, animals, chattels or property of any kind. This shall include tents, awnings or vehicles situated on private property and used for purposes of a building.

Code Official: The executive official in charge of enforcing violations of this Ordinance; the Code Official shall be the City Manager or his authorized designee.

Construction materials: Any material commonly used in construction or landscaping including, but not limited to, asphalt, concrete, plaster, tile, rocks, bricks, sand, dirt, lumber, blocks or other similar materials.

Debris: Substance or material of little or no apparent value including, but not limited to, deteriorated lumber, old newspapers, cardboard material, scrap metal, vehicle parts, discarded furniture parts, stoves, sinks, cabinets, household fixtures, refrigerators, abandoned, broken or neglected equipment or the scattered remains of items.

Deteriorate, deteriorated, deterioration: A lowering in quality of the condition of a building, structure or parts thereof including, but not limited to, holes, breaks, rot, crumbling, cracking, peeling, rusting, or any other evidence of physical decay, neglect or lack of maintenance.

Driveway: An unobstructed paved area directly connecting a public or private street with vehicle parking, loading, or maneuvering areas.

Exterior Property: The open space on the premises and on adjoining property under the control of owners or operators of such premises.

Fence (includes screen walls and/or retaining walls): A self-standing structure constructed of wood, chain link, metal, masonry or similar materials designed for and commonly used to provide semi-privacy, security, screening or bank retention between grade separations.

Graffiti: The writing, drawing, inscribing, etching, spray painting, sketching or otherwise applied message, initials, designs, drawing, slogan, sign, symbol or mark of any type that is made on any public or private building, structure or surface, and that is made without the express permission of the building, structure or surface owner.

Habitable space/room: A space in a building for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas, are not considered habitable space.

Hotel/motel: An establishment, other than a boarding house, containing five (5) or more guest rooms that, for a fee, provides temporary sleeping accommodations and customary lodging services, including maid service, the furnishing and upkeep of furniture, bed linens, telephone and desk service, as well as related ancillary uses including, but not limited to, conference and meeting rooms, restaurants, bars, and recreational facilities. For the purposes of this Ordinance, a motel shall be considered a hotel.

Imminent hazard: A condition that could cause serious or life-threatening injury or death at any time.

Inspection warrant: An order, in writing, signed by a judge of a court of competent jurisdiction, directed to a state, county or local official, authorizing entry into private property to inspect for violations of the Avondale City Code or other relevant laws and regulations.

Judge: A City of Avondale Municipal Court Judge.

Municipal Court: The City of Avondale Municipal Court.

Occupant: Any individual living or sleeping on premises, in a building or structure, or having possession or custody of a space on or within a premise, building or structure.

Owner: Any individual, association, corporation, limited liability company, partnership, limited partnership, trust or real estate investment trust.

Person: An individual, proprietorship, partnership, corporation, or other legal entity.

Private property: Land owned by any person other than the United States, the State of Arizona, a County, a City, a school district or a special district.

Premises: A lot, plot or parcel of land including any buildings thereon.

Potential hazard: A condition that can cause an unreasonable risk of death or serious personal injury or serious damage to property and which can become an imminent hazard if further deterioration occurs.

Residential rental property: Any property or premises that is used solely as leased or rented property for residential purposes. If the property is a space rental mobile home park, residential rental property includes the rental space that is leased or rented by the owner of that rental space, but does not include the mobile home or recreational vehicle that serves as the actual dwelling if the dwelling is owned and occupied by the tenant of the rental space and not by the owner of the rental space. It does not include any facilities owned, operated or licensed by the federal, state or county government or any of their agencies or dormitories operated by educational institutions.

Sound condition: Free from decay or defects and capable of performing the task for which it was designed and in the manner it was intended.

Strict liability offense: An offense in which the prosecution in a legal proceeding is not required to prove criminal intent as a part of its case. It is enough to prove that the defendant either did an act that was prohibited, or failed to do an act that the defendant was legally required to do.

Structure: Any piece of work artificially built up or composed of parts joined together in some definite manner.

Tenant: A person, lessee, occupant, corporation, partnership or group, whether or not the legal owner of record, occupying a building or portion thereof as a unit.

Trash: All non-putrescible wastes consisting of both combustible and noncombustible solid waste material, excluding ashes.

Unsafe Equipment: Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure that is in such disrepair or condition that such equipment is a hazard to life, health, property or safety of the public or occupants of the premises or structure.

Unsafe Structure: A structure that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants, in the event of fire, or because such structure contains unsafe equipment or is so damaged,

decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

Unsheltered: Any area on a premise located outside a garage or other building or structure in such a manner as to be visible to a person standing upon any public street, sidewalk or at ground level upon any adjoining piece of property.

Utility service: Those services required for plumbing and electrical systems, heating and cooling systems, ventilation systems and fixtures and appliances to properly operate, including water service, sewer service, electric service and gas service.

Vehicle: Every device by which any person or property is or may be transported or drawn; including, but not limited to, automobiles, motor homes, travel trailers, utility trailers or watercraft. Devices moved by human power or used exclusively upon stationary rails or tracks are exempt.

Vehicle parts: Any part(s), component(s) or accessory of a vehicle.

Vehicle repair: The service, repair or routine maintenance of a vehicle, including, but not limited to, lubrication, minor repair and tune-up of engines, tire rotation, engine or transmission overhaul or replacement, body or frame repair or replacement work or other repair, replacement, restoration or other similar activities.

Weed: Any valueless, undesirable or troublesome plant growing wild or where it is not wanted including, but not limited to, vegetation which bears seeds of a downy or wingy nature; tumbleweed, sagebrush, chaparral and any other brush or vegetation of uncontrolled growth which may provide harborage for insects or other infestations or which is likely to become a fire hazard when dry; and vegetation that is otherwise noxious or dangerous; or dry grass, stubble or brush or other flammable material which may endanger the public health or safety.

Yard, front: A yard extending across the full width of the lot and lying between the front line of the lot and the nearest line of the principal building.

Yard, rear: A yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line of the principal building.

Yard, side: A yard lying between the side lot line of the lot and the line drawn through the nearest point of a principal building extending from the front yard to the rear yard, or in the absence of either of said yards from the front to the rear lot lines respectively.

Zoning Ordinance: The Zoning Ordinance of the City of Avondale, Arizona.

Article II – Administration and Enforcement

14-60	Enforcement – General
14-70	Owner of record.
14-80	Notice of violation.
14-90	Civil citations.
14-100	Civil procedure.

14-110	Civil penalties.
14-120	Recidivist offenders.
14-130	Criminal complaints.
14-140	Violators liable for costs.
14-150	Inspection warrants.

14-60 Enforcement – General.

- (a) The Code Enforcement Division shall be charged with the administration of this Ordinance. In accordance with the prescribed procedures of this jurisdiction and with the concurrence of the appointing authority, the Code Official shall have the authority to appoint deputy code officials, code enforcement officers and other related technical officers, inspectors and employees.
- (b) The Code Official shall have authority, as necessary in the interest of public health, safety and general welfare, to adopt and promulgate rules and procedures, to interpret and implement the provisions of this Ordinance and to secure the intent thereof.
- (c) The City shall proceed either civilly or criminally against any person who is found to be responsible for causing, permitting, facilitating, or aiding or abetting any violation of any provision of this Ordinance or for failing to perform any act or duty required by this Ordinance. A written notice of violation shall be issued to the alleged violator, in accordance with the provisions of Section 14-80. If the violation is not remedied within the time frame specified in the notice of violation, a citation may be issued.
- (d) Each day a violation of any provision of this Ordinance or the failure to perform any act or duty required by this Ordinance continues shall constitute a separate violation or offense.
- (e) It shall be unlawful for any responsible party who has received a notice of a violation to sell, transfer, mortgage, lease or otherwise dispose of such property until the provisions of this Ordinance have been complied with, or until such responsible party first furnishes the grantee, transferee, mortgagee or lessee a true copy of any notice issued by the Code Official or his authorized designee and furnishes to the Code Official or his authorized designee a signed and notarized statement from the grantee, transferee, mortgagee or lessee acknowledging the receipt of such notice and fully accepting the responsibility without condition for making the corrections or repairs required by such notice.
- (f) When two (2) or more persons have liability to the City or are responsible for a violation of this Ordinance, their responsibility shall be joint and several.
- (g) Violations of this Ordinance are in addition to any other violation enumerated within the City Code and in no way limit the penalties, actions or procedures which may be taken by the City for any violation of this Ordinance which is also a violation of any other provision of the City Code or any other applicable law. The remedies specified herein are cumulative and the City may proceed under these or any other remedies authorized by law.

- (h) Any responsible party failing to comply with the provisions of this Ordinance shall be deemed guilty of a misdemeanor for those offenses deemed criminal under this Ordinance or a civil violation for all other offenses.

14-70 Owner of record.

The owner(s) of record, as recorded in the Maricopa County Recorder's Office or as stated on the Maricopa County Assessor's Office tax bill, may be presumed to have lawful control over any building or parcel of land.

14-80 Notice of violation.

The Code Official or his authorized designee shall seek voluntary compliance with the provisions of this Ordinance before issuing a civil citation or criminal complaint, as applicable. This shall include a written notice of violation served on the responsible person or persons.

- (a) A notice of violation may be issued by the Code Official, any code enforcement officer, police officer, or other City agent or employee duly authorized by the City Manager.
- (b) A notice of violation shall include:
- (1) Identification of the property or location of the violation;
 - (2) A statement of the violation(s) in sufficient detail to allow a responsible party to identify and correct the problem;
 - (3) A re-inspection date; and
 - (4) The name of the person at the City to contact for further information.
- (c) A notice of violation shall be deemed effective on the date when the written notice is:
- (1) Hand delivered in person to the owner, occupant, manager, or agent of the premises where the violation has occurred, or to the person responsible for the violation.
 - (2) Posted on or about the entrance of the premises where the violation occurred.
 - (3) Mailed by certified or first class mail, postage prepaid addressed to the owner, occupant, agent, manager or responsible person at the last known mailing address and three business days have elapsed.
 - (4) Served on the owner, occupant, agent, manager or responsible person by the same manner as provided in the Arizona Rules of Civil Procedure.
 - (5) For the purpose of parking violations, placed on the subject vehicle's windshield or mailed by certified or first class mail to the subject vehicle's registered owner's last known address with the Arizona Motor Vehicle Division.

(d) Except in cases involving health and safety violations, imminent hazards, recidivist offenders, or as otherwise prescribed by ordinance, a responsible person will be provided the following amount of time for compliance:

Section 14-160	30 calendar days
Section 14-170	10 calendar days
Section 14-180	10 calendar days
Section 14-190	10 calendar days
Section 14-200	30 calendar days
Section 14-210	30 calendar days
Article IV	10 calendar days
Article V	15 calendar days

(e) Failure of the responsible party, property owner, occupant, manager or authorized agent of the property owner to receive a notice of violation shall not preclude the subsequent issuance of a civil citation or criminal complaint, as applicable.

(f) Nothing in this Section shall prevent the City from taking immediate action to protect the public from an imminent hazard to health or safety as otherwise provided by law.

14-90 Civil Citations.

(a) Unless otherwise designated as a criminal offense in this Ordinance, if a violation continues past the time provided for voluntary compliance in the notice of violation, a civil citation may be issued to the person responsible for the violation.

(b) A civil citation may be issued by the Code Official, any code enforcement officer, inspector, police officer, or other City agent or employee duly authorized by the City Manager.

(c) The citation shall include the date of the violation, the location of the property and reference(s) to the section(s) of this Ordinance violated.

(d) The citation shall direct the defendant to pay the fine imposed pursuant to Section 14-100 of this Ordinance or appear in Municipal Court within ten (10) days of the issuance of the citation.

(e) The citation shall provide notice that if the defendant fails to pay the fine or appear in Municipal Court as directed, a default judgment will be entered in the amount of the fine designated on the citation for the violation. In addition, a default fee may be imposed for failure to appear as set forth in Section 14-100 of this Ordinance.

(f) Service of the citation may be accomplished and will be deemed proper and complete by any of the following means:

(1) Hand delivering the citation to the defendant.

(2) Mailing a copy of the citation by certified or registered mail, return receipt requested, to the defendant's last known address. If the citation is returned showing that the

certified mail was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such citation.

- (3) Any means allowed by the Arizona Rules of Civil Procedure for the Superior Court.
- (4) Service of a citation for a parking violation may be accomplished by placing a copy of the citation on the subject vehicle's windshield or by mailing the citation by certified or registered mail, return receipt requested to the subject vehicle's registered owner's last known address on file with the Arizona Motor Vehicle Division.

14-100 Civil Procedure.

- (a) The defendant shall, within ten (10) days of the issuance of the citation, either pay the fine indicated on the citation or appear in Municipal Court to admit or deny the allegations contained in the citation.
 - (1) The defendant may pay the fine in person or by mailing the citation with a check for the amount of the fine to the Municipal Court. By paying the fine, the defendant admits the violation described in the citation and accepts responsibility for the offense.
 - (2) The defendant may appear in person or through an attorney in Municipal Court and either admit or deny the allegations contained in the citation. If the defendant admits the allegations, the court shall immediately enter a judgment against the defendant in the amount of the fine for the violation charged. If the defendant denies the allegations contained in the citation, the court shall set a hearing date for the matter.
- (b) If the defendant fails to pay the fine or appear in Municipal Court as directed by the citation, the court shall enter a default judgment and impose the fine and default fee required by Section 14-110 of this Ordinance.
- (c) If the defendant fails to appear at the time and place set for hearing by the court, the court shall enter a default judgment and impose the fine and default fee required by Section 14-110 of this Ordinance.
- (d) The Arizona Rules of Procedure in Civil Traffic Violation cases shall be followed by the Municipal Court for civil violations of this Ordinance, except as modified or where inconsistent with the provisions of this Ordinance, local rules of the Municipal Court or rules of the Arizona Supreme Court.

14-110 Civil Penalties.

- (a) Any person that violates this Ordinance shall be subject to a civil penalty of two hundred fifty dollars (\$250) base fine for the first violation, five hundred dollars (\$500) base fine for a second violation and one thousand dollars (\$1,000) base fine for a third violation in any twenty-four (24) month period. The dates of the offenses are the determining factor for calculating the twenty four (24) month period.

- (b) Any defendant that fails to pay the fine or appear in Municipal Court as directed by a citation issued pursuant to this Ordinance, or who fails to appear at the time and place set for hearing of a matter arising under this Ordinance, shall be subject to an additional default fee as established by the Municipal Court.
- (c) Any judgments issued by the Municipal Court shall be subject to all surcharges and fees imposed by state law in addition to the civil fines required by this Ordinance.
- (d) Judgments shall be collected in the same manner as any other civil judgment as provided by law.

14-120 Recidivist Offenders.

Any person deemed to be a recidivist offender shall be penalized and fined subject to the provisions of Section 1-9(D)(6) of the City Code.

14-130 Criminal Complaints.

The Code Official or any other City agent or employee duly authorized by the City Manager may seek the issuance of a complaint by a police officer or the Avondale City Prosecutor for criminal prosecution of any person who commits a criminal offense as set forth in this Ordinance.

- (a) Every criminal action and proceeding under this Ordinance shall be designated a class one misdemeanor and commenced and prosecuted in accordance with the laws of the State of Arizona relating to misdemeanors and the Arizona Rules of Criminal Procedure.
- (b) Upon conviction of a person for a criminal offense, the court may impose any combination of the following:
 - (1) A sentence of incarceration not to exceed six (6) months in jail.
 - (2) A base fine not to exceed two thousand five hundred dollars (\$2,500), exclusive of penalty assessments prescribed by law.
 - (3) A term of probation.
 - (4) Notwithstanding the elective penalty above, a recidivist offender shall be subject to the penalties set forth in Chapter 1 of the City Code.

14-140 Abatement Costs.

- (a) If the owner or occupant of any property within the City does not remove or abate from its property a violation that constitutes a hazard to public health and safety within 30 days after written notice has been served by the City, the City may, at the expense of the owner or occupant, remove or cause the removal thereof and the record owner shall be liable for all costs incurred. The notice shall include the estimated cost of such removal to the City if the owner or occupant does not comply.

- (b) Any person who places, deposits, leaves or causes in or upon any public street, alleyway, sidewalk, park or other City building or property a violation that constitutes a hazard to public health and safety shall be liable for all costs incurred by the City to remove or clean up such violation.
- (c) When the City has effected removal or abatement of a violation that constitutes a hazard to public safety from any building or property pursuant to this article, the actual cost of such removal, including twenty-five percent (25%) for additional inspection and other incidental costs in connection therewith, shall become an assessment upon the building or real property from which such violation is removed. The owner of record of such property shall be liable for the payment of same. If the actual cost for removal, including twenty-five percent (25%) for additional inspection and other incidental costs in connection therewith, has not been paid within thirty (30) days of billing by the City, such assessment shall be recorded in the office of the County Recorder. From the date of the recording it shall be a lien on such building or property until paid. Such liens shall be prior and superior to all other liens, obligations, mortgages or other encumbrances, except liens for general taxes.
- (d) A prior assessment against the building or property shall not be a bar to a subsequent assessment or assessments for such purposes, and any number of liens on the same property may be enforced in the same action.
- (e) A notice of abatement or assessment may be appealed to the City Manager for an administrative hearing for review of such notice. If the City Manager is the designated Code Official, the appeal shall be made to the City civil enforcement officer. A request for an administrative hearing shall be made within the time frame prescribed for compliance in the notice and within 30 calendar days from the date of the assessment.

14-150 Inspection Warrants.

- (a) As set forth herein, the Code Official may seek the issuance of an inspection warrant by the Judge if the Code Official or his authorized designee is denied access to any property, building or structure that the Code Official has authority to inspect. The Code Official shall, in a supporting affidavit, establish that there is probable cause that a violation of this Ordinance or the City Code exists and that the proposed inspection is reasonable and necessary. Probable cause may be established based on any of the following:
 - (1) Previous inspections have shown violations and the present inspection is necessary to determine whether those violations have been abated.
 - (2) Complaints have been received by the Code Enforcement Division and presented to the issuing code enforcement officer from persons, who by status or position have personal knowledge of the violations of law occurring on the subject property, building or structure.
 - (3) The inspection of the premises in question was to be made pursuant to an administrative plan containing neutral criteria supporting the need for the inspection.

- (b) In executing an inspection warrant on an occupied property, the code enforcement officer shall, before entry, make a reasonable effort to present the person's credentials, authority and purpose to the owner, occupant, agent, manager or person in possession of the property and produce the warrant or a copy thereof upon request. A copy of the warrant shall be left with the owner, occupant, agent, manager or person in possession of the property.
- (c) In executing an inspection warrant on an unoccupied property, the code enforcement officer authorized to execute the warrant need not inform anyone of the person's authority and purpose, but may promptly enter the designated property if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition. In such case, a copy of the inspection warrant shall be conspicuously posted on the property.
- (d) Any person who willfully refuses to permit an inspection lawfully authorized by warrant issued pursuant to this Section is guilty of a class 1 misdemeanor.
- (e) An inspection warrant shall be executed within five (5) calendar days from its issuance. The warrant shall be returned to the Judge within three (3) court business days after the inspection warrant is executed.

Article III – Specific Acts, Omissions and Conditions

14-160	Buildings and structures.
14-170	Land maintenance.
14-180	Vehicles.
14-190	Miscellaneous.
14-200	Vacant structures; unsafe structures and unsafe equipment.
14-210	Demolition.

14-160 Buildings and structures.

- (a) The interior of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition. Occupants shall keep that part of the structure which they occupy or control in a clean and sanitary condition.
- (b) All dwelling units shall contain plumbing systems, electrical systems, heating systems, ventilating systems, fixtures and appliances that are properly installed maintained in a safe working condition and capable of performing their intended function(s), as required by the Adopted Codes. If a cooling system is installed is shall be maintained in a safe working condition and capable of performing its intended function(s). All utility service connections shall be active for the proper operation of all systems and appliances.
- (c) All exterior property including yards, ground covers, trees, shrubs or other landscaping; and any exterior surfaces of any buildings or structures including, but not limited to, fences, walls, or roofs or appurtenances including, but not limited to, windows, window frames, window screens, doors, garage doors, door frames, canopies, awnings, cornices, porches,

stairways, railings or similar items shall be properly maintained and shall not otherwise present a blighted or deteriorated appearance.

- (d) All exterior doors, garage doors, door frames, skylights, windows and window frames shall be maintained in sound condition, securely fit in their frames, be substantially weather tight and shall not otherwise present a deteriorated or blighted appearance. Window screens, if present, shall be free from excessive tears or holes or bent or broken frames. All glazing materials shall be maintained free from cracks and holes. Boarded window or door openings on an occupied structure are prohibited. Temporary boarding prior to repairs is acceptable.
- (e) All fences, screen walls and retaining walls on the property shall be maintained in a safe and structurally sound condition and shall not otherwise present a deteriorated or blighted appearance. This includes, but is not limited to, leaning or damaged fences, use of tarps, fences missing slats or blocks, deterioration of paint or materials or any other materials that are otherwise broken, damaged or rotting in such amounts as to present a deteriorated or blighted appearance. All materials shall be of typical fence type, uniform, compatible in color and structure and consistent with the design thereof.
- (f) All exterior surfaces exposed to weather, except decorative brick, stone, or decay resistant woods, shall be protected with paint or other protective covering. All exterior painted surfaces shall be maintained in sound condition. Painted surfaces that represent a blighted or deteriorated appearance including, but not limited to, substantial fading, excessive peeling, flaking, chipping or cracking shall be eliminated and surfaces repainted. This Subsection shall apply to any exterior surfaces of any buildings or structures including, but not limited to, fences, walls, or appurtenances including, but not limited to, rooflines, fascia, windows, window frames, window screens, doors, garage doors, doorframes, canopies, awnings, cornices, porches, stairways, railings or similar items in public view.
- (g) Roofs and all appurtenances shall be structurally sound and maintained in a safe condition. Roof coverings shall be substantially free from broken, rotted, split or curled materials and shall not otherwise present a deteriorated or blighted appearance. All materials shall be uniform, compatible and consistent with the design thereof.
- (h) All overhang extensions including, but not limited to, canopies, marquees, signs, metal awnings, fire escapes, standpipes and exhaust ducts shall be maintained in good repair and be properly anchored so as to be kept in a sound condition. When required, all exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.
- (i) All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair and maintained free from deteriorated or blighted appearance or hazardous conditions.

14-170 Land maintenance.

- (a) No person shall place any personal property, materials, goods, wares, merchandise or similar items of any kind in or upon any public street, sidewalk, alleyway or right-of-way. Items placed by or approved by the City are exempt from this Subsection.
- (b) No person shall attach or place any sign, placard, poster, banner or any other advertising device to any tree, public utility structure, traffic control device, streetlight standard or any other device upon the public streets, alleyways, sidewalks or rights-of-way unless pursuant to a permit, license or other approval from the City.
- (c) No person shall place, deposit or leave in or upon any public or private property, public street, alleyway, sidewalk, rights-of-way, park or other City building or property any waste materials, trash, weeds, bottles, glass, cans, graffiti, handbills, posters, pieces of scrap metal, metal articles, paper or other accumulation of debris or items other than placement of refuse for collection in accordance with Chapter 11 of the City Code.
- (d) No owner or occupant of any property shall allow or permit any trees, shrubs or other plant growth on the property to (1) impede, obstruct or interfere with the free passage upon any public street, sidewalk or alleyway; (2) obstruct the visibility of drivers; or (3) interfere with any traffic control device or signs or street lighting. Tree limbs must be maintained to hang no lower than thirteen (13) feet above any public street or alleyway and eight (8) feet above any public sidewalk. Trees below eight (8) feet, shrubs or other plant growth must be maintained away from any public sidewalk.
- (e) No person shall allow the accumulation of rubbish, debris, trash, garbage, refuse or other wastes, except that which is deposited in proper containers for sanitation collection, in unsheltered areas of private property, including items such as, but not limited to, cardboard, bottles, glass, cans, pieces of scrap wood, metal, metal articles, paper, plastic, boxes, tires, vehicle parts or other such materials or items which constitute a hazard to the health and safety of the occupants, the neighborhood, the public or others or creates a blighted condition.
- (f) No person shall place or store furniture, except furniture designed and placed for outdoor use, household or personal items, equipment, appliances, vehicle parts, landscape material, or construction material (except in accordance with Section 14-170(g) below), cardboard material, plastic material or sheeting, tarps, canvases, debris or any similar materials in public view or any unsheltered area of any property.
- (g) No person shall store construction materials in unsheltered areas in which insects may breed or multiply, or which provides harborage for rodents or which constitutes a hazard to the public health or safety. This paragraph shall not apply to any construction material when a valid building permit exists for the property on which the construction material is located and the construction material is intended to be incorporated in the project for which the permit is issued.
- (h) No person owning or occupying any property fronting on any street, alleyway or public place in the City, shall allow thereon grass or weeds characterized as uncontrolled, unmaintained or overgrown, including those areas between the property line and the street, when such

conditions create a blighted condition or may harbor infestations or are likely to become a hazard to the public health or safety.

- (i) No person shall allow or permit to remain any portion of the front or side yard of any residential property that is in public view to be absent of landscaping material. All exposed dirt within required landscaped areas shall be finished with a natural topping material including, but not limited to, sod, artificial turf, groundcover, planting, decomposed granite, river rock, expanded shale, native stone or bark. Ground cover consisting of crushed rock, gravel or similar materials shall be maintained at a sufficient depth that covers all exposed areas of dirt. Parcels with existing undisturbed natural desert vegetation are exempt from this Subsection.
- (j) No person shall allow any palm tree to have an excessive accumulation of dead or dry fronds that descend downward from the base of the lowest living frond that may result in insect or other infestations or result in other conditions that are likely to become a hazard to public health or safety.
- (k) No person shall allow graffiti on any sidewalk, wall, building, fence or sign, or on any other structure or surface owned by such person. The owner shall keep such property free from graffiti when the graffiti is visible from the street or other public way, or any other public or private property. Any surface that has been defaced with graffiti must be restored to its original state by the owner.
- (l) No person shall erect, cause, allow, leave or permit to be or remain in or upon any private lot, building, structure or property any electric fence or razor wire except where the electric fence or razor wire is intended to contain livestock in approved zoning districts. Barbed wire fence shall not be within eight (8) feet of any public street, alleyway, sidewalk or right-of-way or at a height of less than six (6) feet.
- (m) No person shall allow or permit to remain any landscaping conditions that contributes to visual blight including, but not limited to, vegetation that substantially dead or damaged, characterized by uncontrolled growth or lack of maintenance, or any other similar conditions. Parcels with existing undisturbed natural desert vegetation are exempt from this Subsection.

14-180 Vehicles.

- (a) No person shall park or permit to be parked any vehicle displayed for sale upon any public street or private property including vacant property except where the sale of a vehicle is customary and incidental to the principal use of the property and in accordance with the Zoning Ordinance, except as follows:
 - (1) The display of one (1) vehicle for sale is permitted at a residence when the vehicle is titled to the owner or occupant of the property, is parked on an improved parking surface on the property and is not being sold in connection with an automobile sales business.

- (2) No more than three (3) vehicles may be displayed for sale at the same residence within a calendar year.
- (3) No more than one (1) vehicle shall be displayed for sale at any one (1) time.
- (b) No person shall park or permit to be parked any vehicle on any property or vacant property except where the parking of such vehicles is customary and incidental to the principal use of the property and in accordance with the Zoning Ordinance.
- (c) A vehicle cover placed on any vehicle that is visible from any public street or sidewalk must be properly maintained and made exclusively for covering vehicles. A proper cover does not include bed linen, paper, cardboard, plastic sheeting, tarps or any other item or material not manufactured specifically as a vehicle cover. The use of a vehicle cover on any abandoned or inoperable vehicle as defined in this Ordinance is limited to a vehicle that is stored in a carport.
- (d) No person shall store an abandoned or inoperable vehicle, including any vehicle being repaired or restored, that is visible from any public street or sidewalk except where the storage, repair or restoration is customary and incidental to the principal use of the property and in accordance with the Zoning Ordinance. An abandoned or inoperable vehicle, including any vehicle being repaired or restored, may be stored in a carport if the vehicle is covered with a properly maintained vehicle cover made exclusively for covering vehicles as described in Subsection 14-180(c) above.
- (e) Within any residentially zoned district, no person shall perform any vehicle repairs except as follows:
 - (1) All vehicle repairs performed must be customary and incidental to the principal use of the property.
 - (2) Any vehicle undergoing repair must be titled to the owner or occupant of the property.
 - (3) Vehicle repairs shall not exceed ten (10) calendar days.
 - (4) The painting of vehicles in any residentially zoned district is prohibited.
- (f) No person shall leave, place or park any abandoned vehicle or inoperable vehicle upon any public street, alleyway, public or private parking lot or City property.
- (g) Within any residentially zoned district, no person shall park or permit to be parked any vehicle within a front yard or side yard area except on the driveway or in accordance with the Zoning Ordinance.

14-190 Miscellaneous.

- (a) No person shall erect, maintain, use, place, deposit, cause, allow, leave or permit to be or remain in or upon any private lot, building, structure or property or in or upon any public

street, alleyway, sidewalk, right-of-way or other public or private place, any condition, thing or act, that constitutes a public nuisance, blight, or hazard to public health or safety.

- (b) No person shall abandon, discard, store or keep in any place accessible to children, a refrigerator or any other self-latching container of a capacity greater than one and one-half cubic feet which is outside of any dwelling unit or within any unoccupied or abandoned building or structure without removing the doors, lids, hinges, latches, or securing it to prevent access.
- (c) All property shall be graded and maintained to prevent the erosion of soil and to prevent the accumulation of stagnant water (with the exception of approved retention areas and reservoirs) which may cause a hazardous or unhealthy condition or breed insects.
- (d) No person shall allow any swimming pool, architectural pool, hot tub, spa or pond to remain or be maintained in a condition that (1) may breed insects or result in insect or other infestations, (2) is polluted or stagnant or (3) creates a blighting condition.
- (e) No person shall permit or cause the discharge of water from any swimming pool, architectural pool or spa into any public street, alleyway, rights-of-way or any abutting or adjacent public or private property.
- (f) No person who keeps or controls any animal shall cause, allow or permit any manure or liquid discharge of such animal to be unloaded, left or dumped in or upon any ditch, street, alleyway, sidewalk, place, vacant lot or public property within the City.
- (g) Within residentially zoned properties, animal waste such as, but not limited to, manure or droppings shall be removed from pens, kennels, stables, yards and other enclosures at least twice weekly, or more frequently if the conditions so necessitate, and from the property at least once each week.
- (h) It shall be unlawful for any person to deposit, or permit to be deposited, in an unsanitary manner, upon public or private property within the City, or in any area under the jurisdiction of the City, any human or animal excrement, sewage, household or industrial wastes, or other polluted water or objectionable waste.
- (i) All property shall be kept free of noxious odors. Odors from agriculturally zoned parcels resulting from an approved agricultural use are exempt from this Subsection.
- (j) No person shall cause, allow or permit any pipe, duct, conductor, fan or blower to discharge gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate wastes directly upon any abutting or adjacent public or private property, except in accordance with applicable Adopted Codes.
- (k) All buildings, structures, accessory structures, detached garages, fences, walls and storage structures shall be maintained in a structurally sound condition, free from blight and in good repair, and must not be erected, altered or occupied contrary to applicable law.

- (l) Upon issuance of a stop work order, no person shall continue any work on any building, structure, accessory structure, detached garage, fence, wall or storage structure erected, altered or occupied contrary to applicable law.
- (m) No person shall cause, allow, leave or permit to be or remain in or upon any private lot, building, structure or property any insect, bee, wasp, pigeon, rat, rodent or any vector or vermin infestation of any kind. All premises shall be kept free from the presence or apparent evidence of insects and rodent infestation, other noxious pests, nesting places and any other unsightly or unsanitary condition which could harbor insects, rodents or other vector or vermin.
- (n) Buildings shall have approved premises identification address numbers placed in a position to be plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be a minimum of four (4) inches high with a minimum stroke width of one-half (1/2) inch.

14-200 Vacant structures and premises; unsafe structures and unsafe equipment; condemnation.

- (a) All vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause blight or adversely affect the public health or safety.
 - (1) All vacant premises, including those areas between the property line and the street, shall be maintained to prevent grass, weeds and other vegetation characterized as uncontrolled, unmaintained or overgrown when such conditions create a blighted condition or may harbor infestations or are likely to become a hazard to the public health or safety. Parcels with existing undisturbed natural desert vegetation are exempt from this Subsection when the Code Official determines there is a sufficient separation between the vegetation and adjacent property lines.
 - (2) All unsecured vacant or abandoned buildings or structures must be permanently secured to prevent entry by unauthorized persons pursuant to approved board-up specifications. Any wood or similar material used to secure a building or structure must be painted a color compatible with the building or structure. A copy of board-up specifications may be obtained from the Code Enforcement Division.
 - (3) Unsecured vacant structures and land which have been subject to dumping on more than one occasion shall have signs stating “no dumping” erected thereon in accordance with applicable laws and shall be secured to prevent future occurrences of dumping by installing permanent fencing, ditches or berms, or by placing four (4) foot high posts at four (4) foot intervals, or any other equally effective method approved by the Code Official or Adopted Codes.
- (b) When a structure or equipment is found by the Code Official, working in conjunction with the City building official or fire marshal, as applicable, to be (i) a potential or imminent

hazard, (ii) an unsafe structure, (iii) unsafe equipment or (iv) unfit for human use or occupancy, the Code Official is authorized to condemn such structure or equipment pursuant to the provisions of this Subsection.

- (1) When the Code Official or his authorized designee has condemned a premises, building, structure or equipment, the Code Office shall post a notice bearing the word "Condemned" and a statement of the penalties provided for occupying the premises, building and structure, operating the equipment or removing the notice. The notice shall be served on the owner or the person responsible for the property in accordance with Section 14-80 of this Ordinance.
- (2) No person shall occupy any unsafe building or structure condemned by the Code Official.
- (3) No person shall operate any unsafe equipment that has been condemned by the Code Official.
- (4) No owner or responsible party of any property or premises shall allow anyone to occupy any unsafe building or structure condemned by the Code Official.
- (5) No owner or responsible party of any equipment shall allow anyone to operate any unsafe equipment that has been condemned by the Code Official.
- (6) No person shall deface or remove a condemnation notice without the approval of the Code Official.
- (7) Notwithstanding other provisions of this Ordinance, whenever, in the opinion of the Code Official, working in conjunction with the City building official or fire marshal, if applicable, there is imminent danger due to an unsafe condition of an unsecured vacant or abandoned building or structure, the Code Official shall order the necessary work to be done, including the boarding up of openings to render such structure temporarily safe whether or not the legal procedure herein described have been instituted; and shall cause such other action to be taken as the Code Official deems necessary to meet such emergency. For purposes of this subsection, a vacant or abandoned building or structure shall also include any building or structure that has sustained fire, water, or other substantial damage and is currently unoccupied due to such damage.

14-210 Demolition.

- (a) No person shall allow or cause to remain on any property any damaged or dilapidated building or structure that is unreasonable to repair, contributes to urban blight, adversely affects property values in the city, serves as attractive nuisance, or constitutes a hazard to the public health or safety.
- (b) The Code Official, working in conjunction with the City building official and fire marshal, as applicable, may require the owner or responsible party of any property where a dilapidated building or structure is located to demolish or remove the dilapidated building or structure

within 30 days after written notice has been served by the City. The notice shall include the estimated cost of such removal or demolition to the City if the owner or responsible party does not comply.

- (c) If the owner or responsible party fails to comply with the notice within the time frame provided for compliance, the City may, at the expense of the owner or responsible party, remove or demolish the dilapidated building or structure and the owner or responsible party shall be liable for all cost incurred.
- (d) When the City has removed or demolished the dilapidated building or structure, the actual cost of such removal or demolition, including twenty-five percent (25%) for other incidental costs in connection therewith, shall become an assessment upon the property from which the dilapidated building or structure was removed. The owner of record of such property shall be liable for the payment of same. If the actual cost for removal, including twenty-five percent (25%) for other incidental costs in connection therewith, has not been paid within thirty (30) days of billing by the City, such assessment shall be recorded in the office of the County Recorder. From the date of the recording it shall be a lien on such property until paid. Such liens shall be prior and superior to all other liens, obligations, mortgages or other encumbrances, except liens for general taxes.
- (e) A prior assessment against the property shall not be a bar to a subsequent assessment or assessments for such purposes, and any number of liens on the same property may be enforced in the same action.
- (f) A notice of removal or assessment may be appealed to the City Manager for an administrative hearing for review of such notice. If the City Manager is the designated Code Official, the appeal shall be made to the City civil enforcement officer. A request for an administrative hearing shall be made within the time frame prescribed for compliance in the notice and within 30 days from the date of the assessment.

Article IV – Residential Rental Property

14-220	Purpose.
14-230	Application.
14-240	General.
14-250	Plumbing systems and fixtures.
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14-270	Kitchen and laundry facilities.
14-280	Electrical and lighting.
14-290	Heating, cooling and ventilation systems.
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14-310	Light and natural ventilation.
14-320	Interior sanitation.
14-330	Interior of buildings.
14-340	Exterior of buildings.
14-350	Exterior premises and common areas.
14-360	Residential rental property inspections.
14-370	Re-occupancy prohibited.

14-380 Owner's responsibility for violations by occupants.

14-220 Purpose.

The purpose of this article is to establish the minimum standards for residential rental properties to preserve and promote the public health, safety and general welfare of residents of the City of Avondale and to enhance the appearance and quality of neighborhoods in the City of Avondale.

14-230 Application.

The provisions of this article are minimum standards that apply to all residential rental properties located within the City of Avondale. Residential rental properties must also comply with the provisions contained in this Ordinance. For the purposes of this article, residential rental properties include single family homes, multi-family units, mobile homes, boardinghouses and hotels/motels.

14-240 General.

- (a) All buildings both existing and new and all parts thereof shall be maintained in a safe and sanitary condition. All equipment, devices or safeguards which are required by this Ordinance or any other City Code shall be maintained in a safe and operable condition.
- (b) Every plumbing system, electrical system, heating and cooling system, ventilating system, fixture and appliance shall be properly installed, maintained in a safe working condition and shall be capable of performing the intended function(s).
 - (1) The owner, manager, agent or responsible party shall obtain all required permits necessary for any repair, alteration or replacement of any system or appliance.
 - (2) All utility service connections shall be active for the proper operation of all systems and appliances.
- (c) All exterior property, premises and common areas shall be maintained in a clean, safe and sanitary condition free from deterioration and blighting conditions.
- (d) The exterior and interior of all buildings and structures shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

14-250 Plumbing systems and fixtures.

- (a) *General.* Every residential rental property shall have a plumbing system maintained in good working condition, free from defects, leaks and obstructions. All plumbing fixtures, drains, waste and vent piping shall be maintained in proper working order, connected to an approved disposal system and shall be kept free from obstructions, leaks and defects.
- (b) *Water system.* The water system shall be installed and maintained to provide a supply of water to each fixture in sufficient volume and at pressures adequate such that the fixtures

will function safely and properly, free from defects and leaks and will perform their intended function(s).

- (c) *Water heating facilities.* Water heating facilities shall be properly installed and maintained and capable of providing a supply of water in sufficient volume at every required sink, lavatory, bathtub or shower and laundry facility, if provided, at a temperature of not less than one hundred ten (110) degrees.
 - (1) A gas burning water heater shall be installed in accordance with the applicable Adopted Codes.
 - (2) An approved combination temperature and pressure relief valve and relief valve discharge line shall be properly installed and maintained on water heaters.

14-260 Sanitary facilities.

- (a) Every residential rental property shall be provided with a bathroom equipped with plumbing fixtures consisting of a water closet, lavatory basin and either a bathtub or shower.
- (b) A lavatory basin is required in, or immediately adjacent to, any room containing a water closet. A kitchen sink may not be substituted for the lavatory basin.
- (c) Each water closet, lavatory basin, bathtub and shower shall be properly installed and maintained free from defects and leaks. Each lavatory basin, bathtub and shower shall be supplied with hot and cold running water in sufficient volume necessary for its normal operation.

14-270 Kitchen and laundry facilities.

- (a) Every residential rental property shall have a kitchen or kitchen area with space to store, prepare and serve food in a sanitary manner.
- (b) Every residential rental property shall be equipped with an oven and range or stove, and a refrigerator. Hot plates, toaster ovens, microwaves, propane cooking equipment or similar devices cannot be used as a substitute to an oven and range or stove. Each appliance shall be properly installed and operating in a manner for which the appliance was designed. The oven and range or stove and refrigerator may be provided by the owner or tenant as part of the rental agreement.
- (c) Every residential rental property shall be provided with a kitchen sink properly installed, maintained free from defects and leaks, and supplied with hot and cold running water in sufficient volume necessary for its normal operation.
- (d) When supplied, clothes washer and dryer appliances shall be installed, operational and maintained in accordance with manufacturer's specifications. All electrical and gas connections must be properly installed and maintained. Clothes washers must properly drain in accordance with the applicable Adopted Code. Clothes dryers must be properly vented to the outside of the building or structure.

- (e) Any kitchen or laundry appliance that is required or provided that has become inoperable must be repaired or replaced.

14-280 Electrical and lighting.

- (a) Every residential rental property shall have electrical service and lighting that is maintained in a hazard free condition and in a state of good repair. The capacity of all electrical systems shall be able to safely supply power to the existing appliances, fixtures and facilities in the building or structure.
- (b) The electrical system shall be free from such hazards as broken wiring, non-insulated wiring, exposed wiring, missing or cracked receptacle or switch covers, improper types of wiring, poor connections, overloaded circuits, feeders or services, equipment not properly grounded, over-fused circuits, misuse of wiring, wiring not properly supported, non-approved wiring and wiring exposed to extreme heat, moisture, gases or other harmful vapors or liquids.

14-290 Heating, cooling and ventilation systems.

- (a) Heating, cooling and ventilation systems in any building or structure shall be maintained hazard-free, operational and in a state of good repair. All heating, cooling and ventilation systems shall be free from defects and hazards associated with ventilation, equipment status, mounting, electrical connections and other potential defects.
- (b) Heating, cooling and ventilation systems in residential rental dwellings or dwelling units intended to be used for living or sleeping by human occupants shall not be removed except for immediate repair or replacement.
- (c) All heating, cooling and ventilation systems mounting apparatuses shall be structurally sound.
- (d) Where a heating, cooling or ventilation system has previously existed in a residential rental dwelling or dwelling unit but has been removed, such dwelling or dwelling unit shall not be occupied unless the heating, cooling or ventilation system is re-installed.
- (e) The heating or cooling equipment shall be designed and installed in conformance with the Adopted Codes in effect at the time of installation and maintained in accordance with the manufacture's specifications.
- (f) Evaporative cooling equipment shall be maintained in a condition free from excessive accumulation of rust, corrosion or mineral deposits that limit its proper operation.
- (g) All condensate from air cooling coils and overflow from evaporative coolers shall be piped from the roof.

- (h) Unused and deteriorated heating, cooling, evaporative coolers or ventilation systems shall be removed from the building or structure.

14-300 Emergency escapes and fire protection systems.

- (a) Any room used or designed to be used for sleeping must have at least one (1) functional window or door unit providing access to the exterior of the building or structure for emergency escape or rescue. The window or door unit shall be operable from the inside and provide a clear, unobstructed opening without the use of separate tools.
- (b) All systems, devices and equipment to detect a fire, actuate a local alarm, or suppress or control a fire or any combination thereof shall be maintained in an operable condition at all times.
- (c) Smoke alarms shall be installed and maintained in good operating condition in accordance with the City Code in effect when the residential rental property was constructed or altered.
- (d) If smoke alarms were not required when the residential rental property was constructed or altered, or if smoke alarms are not centrally located in each corridor or area giving access to a sleeping area then smoke alarms shall be installed not later than thirty (30) days after the effective date of this Ordinance.
- (e) Smoke alarms required under this Section may be battery operated or may receive power from the building wiring and shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to each sleeping area.
- (f) Smoke alarms shall sound an alarm audible in all sleeping areas of the residential rental unit in which they are located.
- (g) Multi-level residential rental units requiring smoke alarms under this Section shall have no less than one (1) smoke alarm per level.

14-310 Light and natural ventilation.

- (a) Habitable rooms within a residential rental property shall be provided with natural light by means of an exterior glazed opening facing to the outside.
- (b) Natural ventilation shall be provided by means of an exterior opening vented directly to the outside. If natural ventilation by means of an exterior opening vented to the outside is not provided, a mechanical ventilating system shall be provided.
- (c) Bathrooms, water closet compartments, laundry rooms and similar rooms shall be provided with natural ventilation by means of operable exterior openings. If natural ventilation by means of an exterior opening is not provided, a mechanical ventilating system connected directly to the outside shall be provided.

14-320 Interior sanitation.

The interior of every residential rental property or unit shall be kept free from the presence or apparent evidence of insect, rodent or vermin infestation, and shall be maintained free from any unsafe or unsanitary condition such as, but not limited to, excessive moisture, accumulation of garbage, food waste, trash, rubbish, refuse or litter, human or animal waste, any condition which could promote or harbor infestation by insects, rodents, vermin or other noxious pests or any condition that could create a potential or imminent hazard to its occupants or any others.

14-330 Interior of buildings.

- (a) *Structural members.* All structural members, walls, floors, partitions or ceilings shall be structurally sound and be capable of supporting the imposed loads.
- (b) *Interior surfaces.* All interior surfaces, including walls, ceilings, floors, floor coverings and doors shall be maintained in good repair and free from defective conditions.
- (c) *Handrails and guardrails.* Every handrail and guardrail shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in sound condition.
- (d) *Stairways.* Every interior stairway shall be maintained in sound condition and free from any broken, rotted or missing steps or tripping hazards.

14-340 Exterior of buildings.

- (a) *Foundations, walls and roofs.* Every foundation, exterior wall, roof and all exterior surfaces shall be structurally sound and maintained in a weather tight, watertight condition and substantially vector and vermin proof.
- (b) *Exterior surfaces.* Exterior surfaces of buildings not naturally resistant to decay shall be treated and maintained to protect against excessive peeling, flaking or chipping with a protective coating of paint or other suitable preservative which will provide resistance to weathering and deterioration.
- (c) *Roof coverings.* Roof coverings and flashings shall be free from any defects that admit rain or cause dampness in the walls or interior portion of the building.
- (d) *Handrails and guardrails.* Every handrail and guardrail shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in sound condition.
- (e) *Stairways and balconies.* Every outside stairway and balcony shall be maintained in sound condition and free from any broken, rotted or missing material or steps or tripping hazards.
- (f) *Doors and windows.* Every door, door frame, window, window frame, locking device and related hardware shall be properly installed and maintained in sound condition. Acrylic glass, plastic or any other material other than glass shall not be used as glazing for doors and windows. Exterior doors and windows that provide access to a residential rental property shall be equipped with locking devices and shall be maintained in a substantially weather tight condition. Window screening, if present, shall be maintained in good condition free from tears or holes or imperfections of the frame that could admit insects or other vermin.

14-350 Exterior premises and common areas.

- (a) *Sidewalks, common areas, parking lots and driveways.* All sidewalks, common areas, walkways, parking lots, driveways and similar areas shall be maintained free from potentially dangerous holes, depressions, projections or surface deterioration that may cause tripping or injury to a person or otherwise present a hazardous or blighted condition.
- (b) *Parking areas.* All parking lots, driveways and similar areas designed or used for parking must be an improved surface in accordance with the Zoning Ordinance.
- (c) *Drainage.* All premises shall be maintained to prevent the accumulation of stagnant water when such water may cause an unhealthy or hazardous condition, become a breeding area for insects or cause damage to foundation walls.
- (d) *Grass and weeds.* All premises, including common areas, shall not have grass or weeds characterized as uncontrolled, unmaintained or overgrown when such conditions create a blighted condition or may harbor infestations or are likely to become a hazard to the public health or safety.
- (e) *Landscaping.* All premises, including common areas, shall be kept free from any conditions that contribute to visual blight including, but not limited to, dirt yards, un-landscaped areas or vegetation of any kind that is substantially dead or damaged characterized by uncontrolled growth or lack of maintenance.
- (f) *Abandoned or inoperable vehicles.* The storage of any abandoned or inoperable vehicle, including any vehicle being repaired or restored, that is visible from any public right-of-way or common area of a residential rental property is prohibited.
- (g) *Rubbish and debris.* All premises shall be maintained free from an accumulation of rubbish, debris, trash, garbage, refuse or other wastes, except that which is deposited in proper containers for sanitation collection, including items such as, but not limited to, cardboard, bottles, glass, cans, pieces of scrap wood, metal, metal articles, paper, plastic, boxes, tires, vehicle parts or other such materials or items which constitute a hazard to the health and safety of the occupants, the neighborhood, the public, or others or creates a blighted condition.
- (h) *Items stored in public view.* No person shall place and/or store furniture, except furniture designed and placed for outdoor use, household equipment, appliances, construction or landscape material, cardboard material, plastic material, debris or similar materials in a location that is visible to a person standing upon any public street or sidewalk or any common area of residential rental property.
- (i) *Exterior pest control.* All premises shall be kept free from the presence or apparent evidence of any insect, bee, wasp, pigeon, rat, rodent or any vector or vermin infestation of any kind and any other unsightly or unsanitary condition which could harbor insects, rodents or other vector or vermin.

- (j) *Swimming pools.* All swimming pools, architectural pools and spas shall be properly maintained so as not to create a health or safety hazard, harbor insect infestation, be polluted, become stagnant or create a blighting condition. All enclosures, gates and doors shall be installed and properly maintained in accordance with the City Code.
- (k) *Fences, screening walls and retaining walls.* All fences, screening walls and retaining walls on the premises shall be safe and structurally sound and shall not otherwise contribute to a deteriorated or blighted appearance. This includes, but is not limited to, leaning or damaged fences or walls, missing slats or blocks or any other materials that are broken or damaged. All fencing and wall materials shall be uniform, compatible and commonly used and recognized as fencing or wall material.
- (l) *Exterior lighting.* All exterior lighting including parking lot, common area and security lighting shall be properly maintained and capable of performing its intended function.
- (m) *Graffiti.* All premises shall be kept free of graffiti visible from any public right-of-way, private street or common area of a residential rental property.
- (n) *Common laundry facilities.* All provided common laundry facilities must be properly maintained and cleaned so as not to affect the health, safety or welfare of the occupants or others. All provided common laundry appliances that become inoperable must be repaired or replaced.
- (o) *Exterior sanitation.* All premises and common areas shall be kept sanitary, clean and free of any human or animal waste, hazardous materials or any other condition which may affect the health, safety or welfare of the occupants or others.

14-360 Residential rental property interior inspections; inspection warrants.

The Code Official or his authorized designee may conduct an interior inspection of a residential rental property to determine compliance with this article in accordance with Ariz. Rev. Stat. § 9-1302, as amended and Ariz. Rev. Stat. § 33-1904(A)(1), as amended. Inspection warrants for such inspection shall be issued in accordance with Section 14-150 of this Ordinance.

14-370 Re-occupancy prohibited.

If a violation of any interior standard of this article is found to exist, the owner will be required to correct all violation(s) within a reasonable amount of time. If during that time the building or unit becomes vacant and unoccupied, the building or unit shall not be leased, rented or occupied until the violation(s) have been corrected, inspected and approved by the Code Official.

14-380 Owner's responsibility for violations by occupants.

The owner(s) of a residential rental property shall not permit the occupant(s) of said property to commit a violation of this Ordinance. The owner(s) shall be deemed to have permitted the occupant(s) to commit a violation if the owner fails, after being notified by the Code Official, to take substantial action to prevent the occupant(s) from committing future violations of this Ordinance.

Article V – Registration of Residential Rental Property

14-390	State registration requirements.
14-400	Civil violations.
14-410	Notices and orders.
14-420	Civil penalties.

14-390 State registration requirements.

All owners of residential rental property located within the corporate boundaries of the City shall register with the Maricopa County Assessor the information required by Title 33, Chapter 17, Article 1 of the Arizona Revised Statutes, as amended, in the manner prescribed by the Maricopa County Assessor.

14-400 Civil violations; civil citations

- (a) It shall be unlawful, punishable by civil penalties as set forth below, for any owner of residential rental property to fail to perform any act or duty required by any provision of Title 33, Chapter 17, Article 1 of the Arizona Revised Statutes, as amended, and any such owner may be issued a civil citation and is liable for all costs which may be assessed pursuant to state and local law.
- (b) When two or more persons have liability to the City or are responsible for a violation of this article, their responsibility shall be joint and several.
- (c) The Code Official or his authorized designee shall serve a notice of violation or order in accordance with Section 14-410 of this article.
- (d) Service of the civil citation may be accomplished and will be deemed proper and complete by any one of the methods set forth in Section 14-410 below. Such civil citation shall be deemed a complaint that notices a violation for purposes of Ariz. Rev. Stat. § 33-1902, as amended.
- (e) The defendant may admit the allegations in the civil citation and pay the fine in Section 14-420, below, by mailing the civil citation, together with a check for the amount of the fine made payable to the Municipal Court.
- (f) A civil citation issued under this article shall:
 - (1) Direct the defendant to appear in Municipal Court within ten (10) days of the issuance of the citation.
 - (2) Include the date, address and parcel number of the residential rental property for which an owner has failed to comply with the provisions of Title 33, Chapter 17, Article 1 of the Arizona Revised Statutes.
 - (3) Include a reference to the City Code provision or ordinance violated.

- (4) Include a statement directing that, if the owner complies with the provisions of this article and Title 33, Chapter 17, Article 1 of the Arizona Revised Statutes, written proof of such compliance shall be provided to the Code Official, or authorized designee, prior to any court hearing ordered.
- (5) Include a notice that if the defendant fails to appear as directed, a default judgment will be entered in the amount of the fine designated on the citation for the violation charged in addition to a penalty for failure to appear as set forth in Subsection 14-400(f) below.
- (g) Within ten (10) days of the issuance of the citation, the defendant shall appear in person or through his attorney in Municipal Court and shall either admit or deny the allegations contained in the civil citation or the defendant may proceed as provided by the provisions of this article. If the defendant admits the allegations, the court shall immediately enter judgment against the defendant in the amount of the fine assessed under Section 14-420, below, for the violation charged. If the defendant denies the allegations contained in the citation, the court shall set a hearing date for trial of the matter.
- (h) If the defendant fails to appear as directed on the civil citation, the Municipal Court, upon request by the Code Official, or authorized designee, shall enter a default judgment for the amount of the fine indicated for the violation charged. Additionally, the defendant may be fined up to one hundred dollars (\$100.00) for failure to appear at the time and place set for trial of a matter arising under the provisions of this article.
- (i) If, after receiving a notice of violation or civil citation under this article, an owner complies with the provisions of this article and Title 33, Chapter 17, Article 1 of the Arizona Revised Statutes the owner shall provide written proof of such compliance to the Code Official, or authorized designee, prior to any hearing requested or any court hearing ordered under the provisions of this article.
- (j) The Arizona Rules of Procedure in Civil Traffic Violation Cases shall be followed by the Municipal Court for civil violations of this article, except as modified or where inconsistent with the provisions of the City Code, local rules of the Municipal Court or rules of the Arizona Supreme Court.
- (k) Any person failing to comply with a notice of violation, civil citation or order served in accordance with Section 14-410, below, shall be deemed guilty of a civil violation as determined by the Code Official, or authorized designee, and the violation shall be deemed a strict liability offense.

14-410 Notices and orders.

- (a) Whenever the Code Official, or authorized designee, determines that there has been a violation of this article or Title 33, Chapter 17, Article 1 of the Arizona Revised Statutes or has grounds to believe that a violation has occurred, notice shall be given in the manner prescribed in this Subsection (b) below to a person who is an owner of a residential rental property as specified in this article. If the residential rental property is owned by an entity,

notice shall be given to a person described by or registered under Ariz. Rev. Stat. § 33-1902(A)(2), as amended.

(b) Such notice prescribed in Subsection 14-410(a) above shall be in accordance with all of the following:

- (1) Be in writing.
- (2) Include the date, address and parcel number of the residential rental property.
- (3) Include a statement that the notice of violation shall not be deemed a complaint that notices the violation for the purposes of Ariz. Rev. Stat. § 33-1902.
- (4) Include a statement of the violation(s) and why the notice is being issued.
- (5) Include a correction order giving the owner ten (10) days to register the information required by Title 33, Chapter 17, Article 1 of the Arizona Revised Statutes
- (6) Include a statement directing that, if the owner complies with the provisions of this article and Title 33, Chapter 17, Article 1 of the Arizona Revised Statutes, written proof of such compliance shall be provided to the Code Official, or his authorized designee, prior to any hearing requested under the provisions of this article.

(c) Such notice shall be deemed to be properly served if a copy thereof is either:

- (1) Given by personal service to the owner, owner's authorized agent or owner's statutory agent; or.
- (2) Sent by certified mail, return receipt requested, addressed to the (i) owner's last known address, the owner's authorized agent or the owner's statutory agent; and (ii) to the address to which the tax bill for the property was last mailed.
- (3) If the notice is returned showing that the certified mail, return receipt requested letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

14-420 Civil penalties.

(a) For residential rental property that is acquired by an owner after the date of the notice of assessed valuation and the notice prescribed by Ariz. Rev. Stat. § 42-15103, until the issuance of the next notice of assessed valuation, the City shall assess a civil penalty of one thousand dollars (\$1,000.00) base fine against a person who fails to comply with the provisions of Title 33, Chapter 17, Article 1 of the Arizona Revised Statutes, as amended, plus an additional one hundred dollars (\$100.00) for each month after the date of the original violation until compliance occurs. The Municipal Court shall not suspend any portion of the civil penalty provided by this Subsection.

- (b) Notwithstanding Section 14-420(a) above, if a person complies within ten (10) days after receiving the complaint that notices the violation, the court or hearing officer shall dismiss the complaint and shall not impose a civil penalty.
- (c) Except for newly acquired residential rental property as prescribed by subsection 14-420(a), if a residential rental property owner fails to register with the Maricopa County Assessor as prescribed by the provisions of Title 33, Chapter 17, Article 1 of the Arizona Revised Statute, as amended, the City may impose a civil penalty in the amount of one hundred fifty dollars (\$150.00) per day for each day of violation after the date of the most recent notice of assessed valuation and the notice prescribed by Ariz. Rev. Stat. § 42-15103. If a person complies within ten (10) days after receiving the notice from the Maricopa County Assessor, the court shall dismiss the complaint and shall not impose a civil penalty.
- (d) The Code Official or his authorized designee shall provide shall provide written notice, an upon written request, an opportunity to be heard to any person to whom a notice of violation is issued under this article. Within fifteen days (15) of receipt of the notice of violation, such person shall file a written request with the Code Enforcement Division. If a hearing is held, the Code Official or his authorized designee shall issue a written decision within five (5) days of the hearing, and such decision shall be final. Upon the filing of the written request for a hearing, the Code Official or authorized designee shall not issue a civil citation under this article until the Code Official or authorized designee issues a decision as described in this subsection
- (e) Any person who violates a provision of this article, or fails to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by state or local laws.
- (f) Any judgment for civil penalties taken pursuant to this article may be enforced as any other civil judgment.
- (g) Violations of this article are in addition to any other violation enumerated within this Ordinance and the City Code and in no way limit the penalties, actions or procedures which may be taken by the City for any violation of this article which is also a violation of any other provision of this Ordinance or any other applicable law. The remedies specified herein are cumulative and the City may proceed under these or any other remedies authorized by law.

ORDINANCE NO. 1589-1115

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE AVONDALE CITY CODE, CHAPTER 14, PROPERTY MAINTENANCE ORDINANCE RELATING TO REGULATING THE MAINTENANCE ACTIVITIES AND RESPONSIBILITIES OF PROPERTY OWNERS AND ADOPTING BY REFERENCE THE “CITY OF AVONDALE PROPERTY MAINTENANCE ORDINANCE AMENDED AND RESTATED NOVEMBER 2, 2015.”

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. That certain document known as the “City of Avondale Property Maintenance Ordinance, Amended and Restated November 2, 2015” (the “Amended Property Maintenance Ordinance”) three copies of which are on file in the office of the City Clerk, which document was made a public record by Resolution No. 3278-1115 of the City of Avondale, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this Ordinance.

SECTION 2. The Avondale City Code, Chapter 14, Property Maintenance Ordinance is hereby deleted in its entirety and replaced by the Amended Property Maintenance Ordinance, which shall be inserted into the Avondale City Code, as the new Chapter 14, Property Maintenance Ordinance.

SECTION 3. Any person who fails to comply with any provision of the Amended Property Maintenance Ordinance shall be subject to civil and criminal penalties as set forth in Section 14-110 and Section 14-130 of the Amended Property Maintenance Ordinance. Civil penalties shall not exceed \$1,000.00. Criminal penalties shall constitute a class one misdemeanor, punishable by a fine not to exceed \$2,500.00 or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment. Each day that a violation continues shall be a separate offense.

SECTION 4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Amended Property Maintenance Ordinance adopted herein by reference is for any reason to be held invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 5. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, November 2, 2015.

Kenneth N. Weise, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney



CITY COUNCIL AGENDA

SUBJECT:

Ordinance 1590-1115 - Lease Agreement with Phoenix West Commercial, LLC

MEETING DATE:

11/2/2015

TO: Mayor and Council

FROM: Daniel Davis, Economic Development Director (623) 333-1411

THROUGH: David Fitzhugh, City Manager

PURPOSE:

City Council adopt an ordinance authorizing the lease of real property located at 125 S. Avondale Boulevard, Suite 100 and authorizes the Mayor or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:

The city owns the property, located at 125 S. Avondale Blvd. and includes a 31,000 SF office building. Presently, two (2) tenants occupy approximately 60% of the rentable space, which includes the corporate headquarters for Phoenix International Raceway. The city has marketed the vacant suites to other potential tenants through direct marketing outreach and through prospect submittals in conjunction with Arizona Commerce Authority and Greater Phoenix Economic Council.

DISCUSSION:

Phoenix West Commercial is a local commercial real estate agency that proposes to lease approximately 2,015 SF of space. The initial term for the lease is six (6) years and will commence on January 1, 2016. The tenant will have the ability to renew the lease for an additional five (5) years.

The tenant plans to update the office area that will include space reconfiguration, new flooring, paint, electrical, plumbing and HVAC improvements. The cost estimate for these improvements is in excess of \$60,000. The lease includes that the city will provide approximately \$19,000 in tenant improvement assistance for these facility upgrades. The city will reimburse Phoenix West Commercial after the improvements are completed.

BUDGET IMPACT:

The initial lease rate will start at \$15.55 per SF, and has a 3% annual escalation for the subsequent years. The Common Area Maintenance (CAM) fees are included in the lease rate. During the six (6) year term of the lease, the net effective cash flow for the lease will be approximately \$80,000.

RECOMMENDATION:

Staff recommends City Council adopt an ordinance authorizing the lease of real property located at 125 S. Avondale Boulevard, Suite 100 and authorizes the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Description

[Ordinance 1590-1115](#)

ORDINANCE NO. 1590-1115

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING THE LEASE AGREEMENT BETWEEN THE CITY OF AVONDALE AND PHOENIX WEST COMMERCIAL, LLC.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The Lease Agreement between the City of Avondale and Phoenix West Commercial, LLC is hereby approved in substantially the form and substance attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, November 2, 2015.

Kenneth N. Weise, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 1590-1115

[Lease Agreement]

See following pages.

November __, 2015

OFFICE LEASE AGREEMENT
By and Between

THE CITY OF AVONDALE,
an Arizona municipal corporation, as Landlord

and

PHOENIX WEST COMMERCIAL, LLC,
an Arizona limited liability company, as Tenant

LEASE AGREEMENT

This Cover Sheet (this "**Cover Sheet**") is hereby incorporated by reference into and made a part of the attached Lease. Each reference in the Lease to any term of this Cover Sheet shall have the meaning as set forth in this Cover Sheet for such term. In the event of a conflict between the terms of this Cover Sheet and the Lease, the terms of the Lease shall prevail. Any initially capitalized terms used herein and not otherwise defined herein shall have the meaning as set forth in the Lease.

COVER SHEET

LANDLORD NAME: THE CITY OF AVONDALE
an Arizona municipal corporation

TENANT NAME: PHOENIX WEST COMMERCIAL, LLC
an Arizona limited liability company
Federal Tax I.D. number is 20-4282934

TENANT ADDRESS: 125 S Avondale Boulevard, Suite 100
Avondale, Arizona 85323

TRADE NAME: Phoenix West Commercial, LLC

ITEM 1. **PREMISES:** Those certain premises contemplated to contain approximately 2,015 square feet, as more particularly depicted and described in **Exhibit A** to the Lease the ("**Premises**") and located at Suite 100 on the first floor of 125 South Avondale Boulevard, Avondale, Arizona (hereafter referred to as the "**Building**"). The square footage of the Premises is subject to remeasurement as provided in **Section 1.1** of the Lease. Landlord may, from time to time, designate additions, deletions and other changes, in Landlord's sole discretion, to the Building.

ITEM 2. **[INTENTIONALLY OMITTED]**

ITEM 3. **PERMITTED USE:** Subject to the other provisions of this Lease, Tenant shall use the Premises for general office as expressly provided herein ("**Permitted Use**"), and for no other use or purpose, without Landlord's prior written consent.

ITEM 4. **[INTENTIONALLY OMITTED]**

ITEM 5. **INITIAL TERM:** The term of this Lease (the "**Initial Term**") shall commence on the Commencement Date (as defined in **ITEM 7** below) and shall end on the date that is six years from the Commencement Date.

OPTION TERM: The tenant has 1 option(s) to extend the lease for 5 years (the "**Option Term**").

The Initial Term of this Lease, and any Option Term exercised by Tenant, are sometimes herein referred to as the "**Term**."

ITEM 6. **DELIVERY DATE:** The "**Delivery Date**" shall be the date on which Landlord delivers possession of the Premises to Tenant in the condition required by the Lease.

ITEM 7. **COMMENCEMENT DATE:** Subject to the provisions of this Lease, the Initial Term of this Lease and Tenant's obligation to pay "**Rent**" (as defined in **Article 3**) shall commence on that date that is the earlier of (i) January 1, 2016 or (ii) that date that is one day after a Certificate of Occupancy has been issued by the City of Avondale, Arizona (the "**Commencement Date**"); provided, however, that the Commencement Date may be extended in the event the Delivery Date is delayed as described in Item 11 below. Within 30 days after the Commencement Date has been determined, Landlord and Tenant shall execute and deliver to each other a commencement date memorandum in the form attached hereto as **Exhibit D** and incorporated herein by this reference ("**Form of Commencement Date Memorandum**"). After the Effective Date and in accordance with provisions under this Lease, Tenant shall have access to commence and complete Tenant's Work.

ITEM 8. **RENT:** The Rent payable by Tenant pursuant to this Lease shall include all of the following:

A. During the Initial Term and the Option Terms (as applicable), an amount, per month, as set forth below, provided Tenant shall receive nine months of abated rent beginning with the Commencement Date:

Months	1-12	\$15.55 SF	\$2,611.10
Months	13-24	\$16.02 SF	\$2,690.03
Months	25-36	\$16.50 SF	\$2,770.63
Months	37-48	\$16.99 SF	\$2,852.90
Months	49-60	\$17.50 SF	\$2,938.54
Months	61-72	\$18.03 SF	\$3,027.54
Months	73-84	\$18.54 SF	\$3,113.18
Months	85-96	\$19.13 SF	\$3,212.25
Months	97-108	\$19.70 SF	\$3,307.96
Months	109-120	\$20.29 SF	\$3,407.03
Months	121-132	\$20.90 SF	\$3,509.46
Months	133-144	\$21.53 SF	\$3,615.24

B. [INTENTIONALLY OMITTED]

ITEM 9. [INTENTIONALLY OMITTED]

ITEM 10. [INTENTIONALLY OMITTED]

ITEM 11. **IMPROVEMENTS BY LANDLORD AND TENANT:**

A. **Landlord's Work.** "Landlord's Work" shall mean the following: Landlord shall provide all improvements necessary to deliver utilities to the Premises, and shall construct and pay for all improvements necessary to supply heating and cooling to Premises and all areas within the Premises in accordance with Tenant's approved plans, including, repair and replacement of any improvement damaged by Landlord's Work. Except for Landlord's Work, Landlord is not required to perform any additional improvements to the Premises prior to the Commencement of the Lease. Except for the completion of Landlord's Work, Tenant agrees to accept the Premises in its "AS IS" condition.

- B. **Tenant's Work.** Tenant shall, at its sole cost and expense, design, prepare, plan and obtain the approval of, construct and install tenant improvements, signage and perform all work designated as "Tenant's Work" in Exhibit B-2 in the manner set forth in this Lease. Tenant shall, at its sole cost and expense, cause an architect licensed in the state to prepare interior plans and specifications for Tenant's Work.
- C. **Performance of Tenant's Work and Other Alterations.** Tenant shall not perform Tenant's Work or make or cause to be made any other alterations, repairs, additions or improvements in or to the Premises (other than painting), including the installation of floor covering (other than carpeting), interior or exterior lighting, plumbing fixtures, shades, canopies or awnings, or make any changes to the counter or soffit face or the mechanical, electrical, plumbing or sprinkler systems without providing to Landlord, according to the time requirements set forth in the Construction Guidelines, any drawings or specifications required by Landlord, and without Landlord's prior written consent, which Landlord may grant or deny in its sole and absolute discretion. In the event Landlord grants such consent, such repairs, alterations, additions or improvements shall be performed in a good and workmanlike manner and in accordance with all applicable legal and insurance requirements and all drawings or specifications approved by Landlord. Any work performed by Tenant shall be subject to Landlord's inspection and approval after completion.
- D. **Removal by Tenant.** All repairs, alterations, decorations, additions and improvements made by Tenant shall at once when made become part of the leasehold and become property of Landlord. Upon the expiration or sooner termination of this Lease, Tenant shall not remove any of such alterations, decorations, additions and improvements, except that trade fixtures, furniture and equipment installed by Tenant may be removed if: **(1)** such trade fixtures, furniture and equipment are not integral to the operation of the Building (by way of example only and not a limitation, HVAC and plumbing systems may not be removed); **(2)** all Rents hereunder are paid in full; and **(3)** Tenant has performed all of its other obligations hereunder. Notwithstanding the foregoing, prior to the expiration of the Term, Landlord may designate by written notice to Tenant those alterations, decorations, additions and improvements which shall be removed by Tenant at the expiration or termination of this Lease and Tenant shall promptly remove same and repair any damage to the Premises caused by such removal. Tenant hereby acknowledges and agrees that any property remaining in the Premises after the expiration or earlier termination of this Lease, shall be deemed abandoned by Tenant and Landlord may dispose of such personal property as it deems appropriate, at Tenant's cost, and Tenant shall reimburse Landlord for such costs within fifteen (15) days after being billed for the same.
- E. **Allowance for Tenant Improvement Costs.** Landlord's Work, Tenant's Work and together with all architectural and engineering fees shall be referred to herein as "**Tenant Improvements**". Landlord and Tenant agree that Landlord will provide Tenant a maximum of \$19,143.00 for Tenant Improvements (the "**Tenant Improvement Allowance**" or the "**Construction Allowance**"). Any cost for the Tenant Improvements above \$19,143.00 shall be solely borne by Tenant. Notwithstanding anything to the contrary contained herein, the Landlord shall retain

ownership of all improvements, equipment or other property paid by the Tenant Improvement Allowance.

ITEM 12. **GUARANTOR (subject to the limitations set forth in Exhibit E):**

Name: Joseph A. Mastracci and Bobbie Lorraine Mastracci

Address: 549 E Plaza Circle Dr., Litchfield Park, AZ 85340

Telephone: (623) 535-9707

ITEM 13. **SECURITY DEPOSIT:** An amount equal to \$0.00 to be paid on the Effective Date ("Security Deposit"). See **Article 31**.

LEASE AGREEMENT

This Lease Agreement (this "**Lease**") is made and entered into as of the Effective Date by and between the **CITY OF AVONDALE**, an Arizona municipal corporation ("**Landlord**") and **PHOENIX WEST COMMERCIAL, LLC**, an Arizona limited liability company ("**Tenant**"). The "Effective Date" shall be the date upon which the last of Landlord and Tenant executed this Lease, as indicated on the signature pages of this Lease.

ARTICLE 1

Lease of Premises; Use of Common Areas; Reservation of Rights

1.1 **Lease of Premises; Right to Remeasure.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises.

1.2 **Use of Common Areas.** Except as otherwise specifically set forth by the Landlord in subsequent documents governing the use of the Building Common Areas, Landlord grants to Tenants and its agents, employees and invitees, the non-exclusive right, together with all of the occupants of the Building and their agents, employees and invitees, to use the Common Areas.

1.3 **Landlord's Reservation of Rights.** Landlord reserves "as-is": **(A)** the exclusive use of the exterior walls, the roof, the airspace above the roof and the space below the floor slab; and **(B)** the right to install, maintain, use, repair and/or replace pipes, ducts, conduits, utility lines and wires in the space above the interior surfaces of the ceilings, below the finished floor, within the demising walls of the Premises and in all of the "**Common Areas**" (as defined in **Article 4**) of the Building. Landlord reserves the right to affect such other tenants in the Building as Landlord may elect in its sole business judgment.

ARTICLE 2

Lease Year; Option Term

2.1 **Lease Term.** The Lease Term is set forth in Item 5. Notwithstanding anything to the contrary contained in this Lease, in the event of a disability or death of Tenant's principal, Bobbie Mastracci, Tenant may elect to terminate this Lease by delivering to Landlord a sixty (60) days advance written notice to Landlord after such sixty (60) days all rent obligations shall cease and Tenant shall surrender Premises to Landlord as set forth in this Lease as if this Lease had reached its Term ending.

2.2 **Option Term.** Provided, **(A)** Tenant is fully operating its business for the Permitted Use in all portions of the Premises; and **(B)** no "**Event of Default**" (as defined in **Article 21**) exists on the date Tenant exercises its right or on the date that the Option Term would otherwise commence, Tenant shall have the right to extend the Initial Term for the Option Term by delivering written notice (the "**Option Notice**") to Landlord not less than 180 days prior to expiration of the Initial Term (the "**Exercise Window**"). The right to exercise the Option Term is personal to the named Tenant herein and may not be exercised by any person or entity other than Tenant or a permitted assignee. Provided Tenant has properly and timely exercised the applicable Option Term, prior to the expiration of the Exercise Window, the Term shall be extended for the period of the Option Term, and all terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect, except that Rent payable by Tenant during the Option Term shall be as set forth in **ITEM 8** of the Cover Sheet.

ARTICLE 3
Rent; Payment of Rent; Late Charge

3.1 **Rent.** The term "**Rent**" shall mean all amounts required to be paid by Tenant to Landlord under this Lease. Commencing as of the Commencement Date and continuing throughout the Term, Tenant shall pay to Landlord Rent in equal monthly installments (as set forth in **ITEM 8** of the Cover Sheet), in advance, on the first day of each month, without prior notice or demand, setoff or deduction. Rent shall be prorated for any partial calendar month. If the Commencement Date is a date other than the first day of a calendar month: **(1)** Rent for the month containing the Commencement Date shall be prorated based upon the ratio that the number of days in the Term within such month bears to the total number of days in such month; and **(2)** the initial monthly rental period shall include the month in which the Commencement Date occurs and the following full calendar month (unless the Commencement Date is the first day of a calendar month, in which event the initial monthly rental period shall include only the month containing the Commencement Date). Notwithstanding the aforementioned, Landlord shall provide nine (9) months of abated rent to Tenant beginning at the Commencement Date. The term "**Additional Rent**" means all amounts required to be paid by Tenant to Landlord hereunder, other than Rent, whether or not such amount is specifically designated as Additional Rent.

3.2 **Payment of Rent.** Tenant shall pay all sums required to be paid to Landlord, without prior notice, demand, setoff or deduction, at the City of Avondale, c/o Kennedy Wilson Properties LTD, 7375 E. 6th Avenue, #11, Scottsdale, Arizona 85251, Attention: Mary Jacobs, or at such other place or places as Landlord may designate from time to time. The obligation of Tenant to pay any amount due to Landlord hereunder shall be independent of any obligation of Landlord under this Lease.

3.3 **Late Charge.** Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent shall cause Landlord to incur various expenses not contemplated by this Lease, the exact amount of which is presently difficult to ascertain. Accordingly, if any payment of Rent due from Tenant under this Lease is not received by Landlord when due, then, in addition to the required payment, Tenant shall also pay to Landlord a "**Late Charge**" equal to \$100.00 per day after a seven calendar day grace period, plus interest from the end of the grace period to the date of payment at the rate of 12% per annum unless prohibited by law, in which event the rate shall be the maximum rate permitted by law (the "**Interest Rate**"). Tenant agrees that the Late Charge represents a fair and reasonable estimate of the expenses that Landlord shall incur by reason of a late payment by Tenant. Acceptance of the Late Charge by Landlord shall not constitute a waiver of Tenant's default with respect to any past due amounts, nor prevent Landlord from exercising any other rights and remedies granted to Landlord under this Lease or at law or in equity. The Late Charge and the interest on past due amounts shall be considered Additional Rent.

ARTICLE 4
Common Areas; Control of Common Areas

4.1 **Common Areas.** The Common Areas shall be operated and maintained by the Landlord. The term "**Common Areas**" means all areas, space, equipment and services in or serving the Building and the Premises provided for the common or joint use and benefit of Landlord, Tenant and the occupants of the Building and their employees, agents, servants, customers and other invitees, including, without limitation, storage areas not within the Premises, public restrooms other than those within the Premises, offices not within the Premises, utility rooms other than those within the Premises, the parking areas serving the Building (the use of which is subject to the fees, rules and regulations established by the Landlord), access roads,

corridors, balconies, stairs, elevators, escalators, driveways, retaining walls, exterior boundary walls and fences, water, sanitary and storm sewers (including, without limitation, any on or off-site sewer lines), on or off-site water retention and drainage facilities serving the Building and which Landlord is required to maintain (however, Landlord shall maintain at its cost, sanitary sewers up to the Premises), gas, electric, telephone and other utilities lines, systems, conduits and facilities to the perimeter walls of the Building (even though intended for the use of only one or a limited number of tenants) and those serving more than one premises within the Building, and any of the foregoing which serve the Common Areas, plantings, landscaped areas, truck service ways, loading dock areas and facilities, courts, ramps, sidewalks, any drinking fountains, and the facilities appurtenant to the foregoing.

4.2 **Control of Common Areas.** Subject to the Landlord's subsequent documents relating to use of the Common Areas, it is agreed that: **(A)** all Common Areas shall be subject to the exclusive control and management by Landlord, and Landlord shall have the right at any time (either before, during or after the initial arrangement of the entrances, access roads, parking areas and other Common Areas), to construct buildings and other improvements thereon and therein, and to permit the tenants of the Building and Premises and their invitees to use the Common Areas; **(B)** Landlord shall have the right to demolish and make alterations and additions to the Building, to add and exclude areas from the Building, and to relocate improvements; and **(C)** Landlord shall have the right to do and perform such other acts in and to the Common Areas as Landlord shall determine to be advisable, in its sole and absolute discretion. The rights of Landlord as reserved in this Lease shall be subject to the condition that no exercise of such rights by Landlord shall alter the physical dimensions of the Premises or otherwise materially or unreasonably interfere with the conduct of Tenant's business in the Premises.

4.3 [INTENTIONALLY OMITTED]

4.4 [INTENTIONALLY OMITTED]

4.5 [INTENTIONALLY OMITTED]

4.6 [INTENTIONALLY OMITTED]

4.7 **Security Services.** Landlord shall not be liable in any manner whatsoever to Tenant or any third party by reason of any act or omission of Landlord in providing or maintaining Security Services (or electing not to provide or maintain Security Services) in the Common Areas.

ARTICLE 5 Real Estate Taxes

5.1 **Real Estate Taxes.** Pursuant to ARIZ. REV. STAT. §§ 42-6201 et seq. (the "**Excise Tax Statutes**"), because the City is the fee owner of the Building, the Building will not be assessed property taxes. Pursuant to the Excise Tax Statutes, the Building is instead subject to the assessment or levy of an excise tax (the "**Excise Tax**"). The Excise Tax is calculated in accordance with the provisions of ARIZ. REV. STAT. § 42-6203. Assessments (both special and general) imposed in connection with any financing district, transportation development district, special assessment district, special benefit district, sanitary improvement district, local improvement district or any similar district of which the Building (or any portion thereof) is a part are treated as "**Real Estate Taxes**" according to the terms of this section. Tenant shall pay all taxes applicable to all other property in the Premises that is not taxed as real property and included in Real Estate Taxes, as set forth in **Section 19.1** (captioned "**Tenant's Property**").

5.2 [INTENTIONALLY OMITTED]

ARTICLE 6
Liens

In no event shall any material or equipment that is incorporated in or affixed to the Premises be subject to any notice of lien, lien, encumbrance or security interest; PROVIDED, HOWEVER, the foregoing shall not preclude Tenant from granting a security interest in Tenant's Property. Notice is hereby given that Landlord shall not be liable for any work or materials furnished to Tenant on credit and that no notice of lien or mechanic's or other lien for any such work or materials shall attach to or affect Landlord's interest in the Premises based on any work or material supplied to Tenant or anybody claiming through Tenant. Tenant shall not permit any notice of lien or lien to be filed against the Premises or any portion of the Building for labor, services or materials claimed to have been performed for or furnished to Tenant, its contractors and subcontractors. If such a notice of lien or lien is filed, Tenant shall discharge the notice of lien or lien within ten days after the filing thereof (the "**Lien Cure Period**"). In the event Tenant fails to discharge such notice of lien or lien prior to the expiration of the Lien Cure Period, then such failure shall constitute an Event of Default to which no further cure period applies. Tenant hereby acknowledges its failure to discharge or "bond over" such a notice of lien or lien prior to the expiration of the Lien Cure Period shall cause Landlord to incur expenses not contemplated by this Lease, the exact amount of which is difficult to ascertain. Accordingly, if Tenant fails to "bond over" or discharge any such notice of lien or lien within the Lien Cure Period, then in addition to Landlord's other rights and remedies under this Lease, at law or in equity, Tenant shall pay to Landlord liquidated damages in the amount of \$250.00 for each day between the expiration of the Lien Cure Period and the date such notice of lien or lien is removed or "bonded over." In addition, should Tenant fail to pay or "bond over" any liens within the Lien Cure Period, Landlord may (but shall not be obligated to) "bond over" such lien or pay the lien claimant and obtain a release of the lien without inquiring into the validity thereof and without liability to Landlord for any such payment, and offset any reasonable costs so incurred against any amount owed Tenant, and Tenant shall, upon demand and as Additional Rent, reimburse Landlord for the amount so paid together with all reasonable attorneys' fees incurred by Landlord. In addition to Landlord's rights and remedies under this Lease and at law or in equity, Tenant shall indemnify, defend, and hold Landlord harmless, utilizing legal counsel acceptable to Landlord, for, from and against any and all claims, demands, actions, causes of action, losses, damages, costs, and expenses, including court costs and reasonable attorneys' fees of Landlord, arising from or connected in any way with any notice of lien or lien. Nothing in this Lease shall be construed as a consent or request by Landlord, express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor at or the furnishing of any materials to the Premises.

ARTICLE 7
Parking

Tenant and its employees, customers and invitees may have the non-exclusive right, together with Landlord and all other tenants and occupants of the Building and subject to payment of the fees to use the publicly designed parking lot serving the Building. Neither Tenant, nor its employees shall use any parking spaces marked or designated as reserved parking spaces. Tenant shall, within five days after request from Landlord, furnish to Landlord the automobile license numbers of all automobiles owned or used by Tenant or its employees. If there is a violation of the foregoing requirement by any employee of Tenant, Landlord shall give Tenant notice thereof, and if such violation continues following notice to Tenant, Landlord shall have the right, at Landlord's option, to tow any vehicle parked in violation of the terms hereof, or to charge

Tenant the sum of \$35.00 per day for each violation. Landlord may designate certain portions of the parking areas as reserved for use by certain tenants or customers of certain tenants. Landlord will provide two (2) covered, reserved parking spaces designated for Tenant's exclusive use at no cost to Tenant for the term of the Lease, as depicted on **Exhibit A**, attached hereto, plus 4 parking spaces for each 1,000 rentable square feet within the Premises.

ARTICLE 8 Construction of the Premises

Landlord and Tenant agree that the Premises shall be constructed in a good and workmanlike manner in accordance with the terms and provisions of **ITEM 11** and **Exhibit B-2** hereto. Landlord agrees to use reasonable efforts to complete Landlord's Work and to deliver possession of the Premises to Tenant with all such work substantially completed by Landlord's designated delivery date, which may be adjusted by Landlord from time to time, or as soon thereafter as reasonably possible. Tenant agrees that Landlord has made no representations or warranties regarding the condition of the Premises or the Building, except as expressly set forth in this Lease.

ARTICLE 9 Alterations; Roof Penetration; Signs; Indemnification

9.1 **Interior Non-Structural Alterations.** Tenant shall have the right to make interior, non-structural alterations or additions to the Premises without Landlord's consent. Tenant shall provide 30 days' prior notice to Landlord before the commencement of any interior, non-structural alterations or additions to the Premises.

9.2 **Structural and Exterior Alterations.** Tenant shall not make any structural or exterior modifications, improvements, alterations, additions or installations in or to the Premises (the "**Alterations**") without Landlord's prior, written consent. Along with any request for Landlord's consent and before commencement of any Alterations or delivery of any materials to be used in any Alterations, Tenant shall furnish Landlord with a complete set of plans and specifications, names and addresses of contractors, copies of permits and licenses, and an indemnification in such form and amount as may be reasonably satisfactory to Landlord and, if required by Landlord, a performance bond executed by a commercial surety reasonably satisfactory to Landlord, and in an amount equal to the cost of the Alterations and the payment of all liens for labor and material arising therefrom. All Alterations shall be done only by licensed, bondable contractors or subcontractors reasonably approved by Landlord, and at such time and in such manner as Landlord may from time to time reasonably designate. Tenant shall pay the cost of all Alterations (including a reasonable charge for Landlord's services and for Landlord's inspection, architectural and engineering time), and also the cost of painting, restoring or repairing any portion of the Premises and the Building required because of Tenant's Alterations. Upon completion of the Alterations, Tenant shall furnish Landlord with contractor's affidavits and full final, unconditional waivers of liens and a reasonably detailed breakdown of the costs of all labor and materials employed in such Alterations. All Alterations shall comply with all insurance requirements and all laws, ordinances, rules and regulations of all governmental authorities (including, without limitation, the Americans With Disabilities Act) and shall be constructed in a good and workmanlike and lien free manner. Tenant shall permit Landlord to inspect construction operations in connection with any Alterations. Tenant shall not be allowed to make any modifications, improvements, Alterations, additions or installations if such action results or would result in a labor dispute or otherwise would materially interfere with Landlord's operation of the Building. Subject to applicable federal and state law, in the event

any Alterations result in a labor dispute, Tenant shall cause work to be halted immediately, remove the workers, contractors or mechanics responsible for such dispute and replace them with workers, contractors and mechanics acceptable to Landlord and whose work shall not (in the sole and absolute discretion of Landlord) result in a labor dispute.

9.3 Roof Penetration. Tenant must obtain prior, written approval from Landlord before accessing the roof of the Building for any type of roof puncture/penetration or for attaching any items to the roof, and such work must be performed by Landlord's roofing contractor at a competitive market price or by a contractor approved by Landlord. No such work will be permitted if it would void or reduce the warranty on the roof. Tenant shall be responsible for any damage to the Premises, the roof or the building containing the Premises or the Building caused by Tenant, its agents or contractors, including, but not limited to, any roof puncture/penetration. Tenant shall be responsible for the roof above the Premises in the event it makes an alteration, with or without Landlord permission, and any damage to the Premises occurs.

9.4 Tenant's Signs. All of Tenant's signs shall comply with all Legal Requirements for the Building. Tenant shall be responsible for the costs of designing, manufacturing, installing, illuminating, operating and maintaining its signs. Upon the termination of this Lease, Tenant shall remove its signs and restore and repair all parts of the Premises and the Building affected by the installation or removal of its signs, to the condition existing prior to installation or to a condition reasonably acceptable to Landlord. If Tenant fails or refuses to remove its sign as herein required, Landlord may, but shall not be obligated to, remove such signs and repair and restore all damage caused by their removal, and Tenant shall pay to Landlord the costs of all such removal, repair and restoration, together with an amount equal to 25% of such costs, within ten days after receipt of an invoice therefor. Landlord reserves the right to place signage on the exterior of the Premises, including, without limitation, building identification signage, directional signage and signage for other tenants and occupants of the Building. Landlord shall within fourteen (14) days of executing this Lease remove all existing window decals and signage on and in the Premises. Landlord shall be responsible for all costs of installation and maintenance of Building directory signage, including signage referencing Tenant's business location.

9.5 Indemnification. Tenant agrees to indemnify, defend and hold Landlord harmless, utilizing legal counsel acceptable to Landlord, for, from and against any and all claims, demands, actions, causes of action, losses, damages, costs, and expenses, including court costs and reasonable attorneys' fees of Landlord arising from or connected in any way with Tenant's interior non-structural alterations, Alterations, roof puncture/penetrations, signs installed by Tenant, or any other work performed by or on behalf of Tenant on the Premises regardless of whether or not such claim, demand, action, cause of action, loss, damage, cost or expense is caused in part by a party indemnified hereunder, unless caused by Landlord's negligence or misconduct in which event Landlord shall be solely liable. The provisions of this Section shall survive the expiration or termination of this Lease.

ARTICLE 10 Repair and Maintenance

10.1 Landlord Repairs and Maintenance. Landlord agrees to make or cause to be made the following repairs and maintenance (which shall include replacements, if necessary) (collectively, "**Landlord Repairs**") within a reasonable period of time after receipt of notice from Tenant of the need therefor:

A. **Structural Repairs.** Structural portions of the Premises ("**structural portions**" consisting for example, of the foundation, roof, floor slab and members supporting the roof), the cost of which shall be Landlord's responsibility; PROVIDED, HOWEVER, notwithstanding the foregoing, in no event shall Landlord be responsible for the repair or replacement of the floor covering in the Premises.

B. **Utility Repairs.** All repairs to and replacements of utility systems (including light fixtures and bulbs) and sewer lines up to and within the Premises, including electrical and plumbing (but excluding any electrical and plumbing improvements installed by Tenant as Tenant Improvements), the cost of which shall be Landlord's responsibility; PROVIDED, HOWEVER, in the event any damage is caused by one or more acts or omissions of Tenant, its agents, employees, customers or invitees (or any other person other than Landlord), Tenant shall pay the cost of such repairs within 30 days after receipt of an invoice therefor.

C. **HVAC.** All the maintenance, repair and replacement of the HVAC System serving the Premises, including maintenance of all fixtures, equipment, ducts, air filters, machinery, machinery controls, appliance and utility lines as are used for, in connection with or which are part of the electrical, plumbing, heating, air conditioning, ventilation or other mechanical systems.

D. **Janitorial.** Landlord agrees to furnish janitorial and cleaning services to the Premises as part of this Lease agreement. This includes furnishing all cleaning/maintenance equipment and cleaning supplies as required, including but not limited to, drinking cups at water fountains, bathroom tissues, paper towels, trash receptacle liners and hand soap (preferably liquid). All supplies are to be of good quality acceptable in the janitorial profession and of satisfactory quality suitable to the needs of personnel.

10.2 **Tenant Repairs.** Except as is Landlord's obligation under this Article, Tenant agrees, at its own cost and expense, to take good care of the Premises and Tenant's trash area and to keep them in good and first-class order, condition and state of repair (which shall include replacements, if necessary) including, without limitation, the following:

A. **Interior Repairs.** Any and all interior repairs, including but not limited to all repairs to its trade fixtures and electrical equipment and fixtures, plumbing fixtures, lines and equipment and other utility lines (including sewer and utility lines within the Premises), from the point at which they are stubbed to the Premises, and wiring (including that within walls or ceilings, or under flooring or floor covering, or in or under the slab).

B. **Storefront Repairs.** All storefront repairs, including glass and doors, door frames, locks, lifts, openers and hardware.

C. **Window Repairs.** All repairs to windows (including sashes, frames, locks and hardware) and all Tenant's signs (including replacement of signs).

ARTICLE 11

Inspections; Self Help; Construction in the Building

11.1 **Inspections.** Landlord shall have the right, upon reasonable prior notice, except in the event of an emergency (in which case only such notice as is practicable shall be required), to enter upon the Premises for any purpose, including to determine Tenant's compliance with this Lease or to maintain and repair any pipes, conduits or ducts, whether used in the supply of

services to Tenant or to other occupants of the Building. Landlord shall further have the right, on at least 48 hours prior notice, to enter the Premises in connection with the following: **(A)** construction on the Premises; or **(B)** completing any work, repairs, alterations, or improvements in and about the Premises.

11.2 Landlord's Right to Self Help. If Tenant neglects or refuses to make repairs to or to maintain the Premises as required under this Lease, or to fulfill any other obligation (or any part thereof) as required under this Lease, then in addition to all other rights and remedies of Landlord as a result of such failure, Landlord and/or its agents shall have the right, upon giving Tenant reasonable notice of its election to do so, except in the event of an emergency (in which case only such notice as is practical shall be required), to make the repairs or perform the maintenance or other obligations on behalf of and for the account of Tenant. The cost of the work so done or obligations performed by Landlord or its agents, together with an amount equal to 25% of such costs, shall be paid for by Tenant within ten days after Tenant's receipt of a bill therefor. If Tenant fails to pay such amount within such 10-day period, the amount shall accrue interest at the Interest Rate upon the expiration of such 10-day period until paid. Nothing herein shall imply any duty on the part of Landlord to do any work which Landlord is not specifically and expressly required to perform under this Lease or which, under any provisions of this Lease, Tenant is required to perform, and the performance of such work by Landlord shall not constitute a waiver of Tenant's default. Landlord shall have no liability to Tenant for any loss or damage which may result to its stock or business by reason of such repairs, replacements or action.

11.3 Construction in the Building. In connection with any construction, excavation or other building operations related to changes to the Building, Landlord, its agents, employees and contractors shall have the right of access to enter the Premises on reasonable prior notice to Tenant and to strengthen, add to or shore the foundations, walls, columns or supporting members thereof, and to erect scaffolding and/or protective barricades around and about the Premises (but not so as to preclude entry thereto) and to do any act or thing necessary for the safety or preservation of the Premises, in Landlord's sole discretion, and Landlord shall use reasonable efforts to complete all construction in the Premises as promptly as possible (considering the nature and extent of the construction and subject to prudent construction practices). Tenant's obligations under this Lease shall not be affected by any such changes, construction, excavation or other building operations, and so long as Landlord acts reasonably, Landlord shall not be liable for any inconvenience, disturbance, loss of business or any other annoyance arising therefrom.

ARTICLE 12

Utilities/Meters; Interruption of Service

12.1 Utilities/Meters. Landlord shall provide utility lines to the Premises, including **(A)** one sewer stub directly into the Premises, **(B)** [INTENTIONALLY OMITTED], **(C)** HVAC System controls and all required wiring from panel to HVAC System units for Tenant, and **(D)** one water line of a size sufficient for the Premises. Tenant agrees to obtain directly from the provider thereof and pay all charges for telephone, internet and other telecommunication services from and after the Delivery Date. Landlord shall pay for electric, water, sewer, trash and HVAC serving the Premises, including use after normal business hours and weekends. If Tenant installs any electrical equipment that overloads the lines in the Premises, Tenant shall, at its own expense, make whatever changes are necessary to comply with the requirements of codes and ordinances of the City or any governing body having jurisdiction.

12.2 **Interruption of Service.** No unreasonable interruption in, or temporary stoppage of (not to exceed three business days), any of the services or utilities furnished to the Premises is to be deemed an eviction or disturbance of Tenant's use and possession of the Premises, nor does any such interruption or stoppage relieve Tenant from any obligation under this Lease, render Landlord liable for damages or entitle Tenant to any Rent abatement.

ARTICLE 13
Tenant's Insurance; Landlord's Insurance; Mutual Release
and Waiver of Subrogation

13.1 **Tenant's Insurance.** Tenant, at its sole cost and expense, shall obtain and keep in force commencing as of the Commencement Date, the following insurance with an insurance company authorized to do business in Arizona and which has a general policy rating of A or better and a financial class of VII or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company is no longer available, a similar rating from a similar or successor service):

A. **"Special Form Causes of Loss" Property Insurance.** Property insurance using ISO forms CP0010 and CP1030 (or their equivalent) and including equipment breakdown covering all of Tenant's Property, plate glass and all "**Leasehold Improvements**" in the Premises made and paid for by Tenant (including, without limitation, Leasehold Improvements paid for with the Construction Allowance, if any), in an amount equal to the full replacement cost thereof.

B. **Business Interruption Insurance.** Business interruption insurance using ISO form CP0030 (or its equivalent) and including equipment breakdown, with a deductible or waiting period of no greater than 72 hours, in an amount that shall reimburse Tenant for direct or indirect loss of earnings attributable to all perils insured against in the previous Subsection or attributable to the prevention of access to the Premises by civil authority; and sufficient to reimburse Tenant for Rent in the event of a casualty to, or temporary taking of, the Building or the Premises.

C. **Commercial General Liability Insurance.** Commercial general liability insurance to protect against claims for bodily injury and property damage arising out of premises operations, products, and completed operations, and advertising and personal injury liability, written on an occurrence basis using ISO form CG0001 (or its equivalent) with no amendments to the definition of an insured contract, and including specific coverage for Tenant's security guards, with policy limits of not less than \$2,000,000.00 per occurrence, exclusive of defense costs, unless Landlord agrees to a lesser amount. The foregoing policy shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

D. **Environmental Insurance.** Without limiting the provisions of **Article 32**, in the event Tenant's use of the Premises does or might result in the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants (including, without limitation, any Hazardous Materials) into or upon land, the atmosphere or any watercourse or body of water, then Tenant shall obtain environmental insurance insuring against any loss for bodily injury, property damage, cleanup costs and defense expenses resulting from any of the above-described causes with limits of not less than \$1,000,000.00 inclusive per occurrence and \$2,000,000.00 annual aggregate, per location, or such higher limits as Landlord may require from time to time during the Term. The policy shall include a waiver of any right of subrogation

of the insurers thereunder against Landlord, Landlord's property manager and all mortgagees of Landlord.

E. Employer's Liability Insurance and Workers Compensation. Employer's Liability insurance, with minimum limits of not less than \$500,000.00, bodily injury each accident, \$500,000.00 bodily injury by disease policy limit, and \$500,000.00 bodily injury by disease each employee, and Worker's Compensation in form and amount as required by applicable law. The policy shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

F. Umbrella Liability Insurance. Umbrella liability insurance over such primary general liability, employer's liability insurance policies and/or commercial automobile liability insurance (as applicable) in limits of not less than \$1,000,000.00, inclusive, per occurrence, and \$2,000,000.00 annual aggregate, per location, or such higher limits as Landlord may require from time to time during the Term. The policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

G. Builder's Risk Insurance. In the event Tenant performs any repairs or alterations in, on or about the Premises, Builder's Risk insurance on a "Special Form" basis (including collapse) using a completed value (non reporting) form for full replacement cost covering all work which Tenant contracts for or performs in the Building and all materials and equipment used or installed by Tenant in or about the Premises, off site and in transit. This insurance shall include: **(1)** interests of Tenant, Landlord, Landlord's property manager, all mortgagees of Landlord, Tenant's contractor, subcontractors and sub-subcontractors; and **(2)** a mutual release and waiver of subrogation for all parties.

H. Commercial Automobile Liability Insurance. Commercial automobile liability insurance to include contractual liability insurance for the indemnities set forth in this contract covering all owned, non-owned and hired automobiles, in limits of not less than \$1,000,000.00 combined single limit (each accident), or such higher limits as Landlord may require from time to time during the Term. The policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Landlord and its members, shareholders, employees and property manager.

I. Insurance Changes. Landlord may, from time to time, require changes or endorsements to Tenant's insurance required herein.

13.2 Policies of Insurance. Tenant shall have the right to satisfy the insurance required by this Article by means of blanket insurance policy(ies), provided that no other loss which may also be insured by the blanket insurance shall affect the insurance coverages required hereby and further provided that Tenant delivers to Landlord a certificate specifically stating that such coverages apply to Landlord, Landlord's property manager, all mortgagees of Landlord, the Premises and the Building. All policies of insurance or certificates thereof, except with respect to workers compensation or professional liability, shall name Landlord, Landlord's property manager, and all mortgagees of Landlord, as additional insureds, as their respective interests may appear. All self-insured retentions and deductible amounts shall be subject to Landlord's prior written approval. Any and all deductibles or co-insurance in the above-described policies or inadequacy of limits for coverage shall be assumed by, for the account of, and at Tenant's sole risk. Prior to commencing any work under this Agreement, Tenant will provide Landlord with suitable evidence of insurance in the form of certificates of insurance and

a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Tenant's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Landlord shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. Tenant agrees to further provide Landlord evidence of renewals of policies not later than 30 days prior to the end of the expiring term. All policies of insurance carried by Tenant shall be primary and non-contributing in the event of any loss or damage with any insurance required to be maintained by Tenant under this Lease. All policies and certificates shall require the insurer to notify Landlord, Landlord's property manager, and all mortgagees of Landlord, in writing, not less than 30 days before any lapse, non-renewal or cancellation, including cancellation for nonpayment of premium, or other termination thereof, and shall include a clause or endorsement denying the insurer any rights of subrogation against Landlord, Landlord's property manager, and all mortgagees of Landlord. Landlord reserves the right to request or receive for review certified copies of any and all insurance policies to which this Lease is applicable. The required coverage and/or limits referred to herein shall in no way affect or limit Tenant's liability with respect to its duties and obligations under this Lease.

13.3 Uses Which Affect Insurance. Tenant shall not knowingly conduct or permit to be conducted in the Premises any activity, or place any equipment in or about the Premises or the Building, which shall invalidate the insurance coverage in effect or increase the rate of insurance on the Premises or the Building, and Tenant shall comply with all requirements and regulations of Landlord's property and liability insurers. If any invalidation of coverage or increase in the rate of insurance occurs or is threatened by any insurance company due to any act or omission by Tenant, or its agents, employees, representatives, or contractors, such statement or threat shall be conclusive evidence that the increase in such rate is due to the act of Tenant, and Tenant shall be liable for the increase and such amount shall be considered Additional Rent payable with the next monthly installment of Rent due under this Lease.

13.4 Landlord's Insurance. Landlord shall, at all times during the Term, carry a policy or policies of commercial general liability insurance covering the Common Areas in the Building and special form causes of loss insurance covering Landlord's improvements in the Building, all in such forms and amounts and with such deductibles and self-insured retentions as Landlord reasonably deems appropriate. Landlord shall not be required to carry insurance of any kind on Tenant's Property, and Tenant hereby acknowledges and agrees that Tenant shall have no right to receive any proceeds from any insurance policies carried by Landlord. If insurance coverages generally maintained by landlords of similar space in similar buildings in the area in which the Building is located increase or otherwise change, Landlord may similarly change the insurance coverages Landlord maintains under this Lease.

ARTICLE 14

Non-Liability of Landlord; Tenant Indemnification; Landlord Indemnification; Third Party Claims; Tenant's Risk

14.1 Non-Liability of Landlord. Except as provided in **Section 14.3** (captioned "**Landlord Indemnification**"), neither Landlord, nor its affiliates, owners, members, managers,

partners, directors, officers, agents and employees shall be liable to Tenant and Tenant hereby waives all claims for any loss, injury, or damage, to Tenant or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss. Further, except as provided in **Section 14.3**, neither Landlord, nor its affiliates, owners, members, managers, partners, directors, officers, agents and employees shall be liable to Tenant and Tenant hereby waives all claims: **(A)** against Landlord for damage to any property or injury to, or death of, any person in, upon, or about the Building, including the Premises, arising at any time and from any cause, except to the extent caused by the negligence or willful misconduct of Landlord, its agents, employees, or contractors; **(B)** for any damage caused by other tenants or persons in the Building or by occupants of property adjacent thereto, or by the public, or caused by construction (except to the extent solely caused by the negligence or willful misconduct of Landlord, its agents, employees, or contractors), or by any private, public or quasi-public work; **(C)** for any injury or damage to persons or property resulting from the condition or design of, or any defect in, the Building or its mechanical systems or equipment which may exist or occur, or matters arising out of the provision or lack of provision of security, or the action or inaction of any third party security contractor; **(D)** with respect to matters for which Landlord is or may be liable for consequential, punitive or indirect damages purportedly arising out of any loss of use of the Premises or the Common Areas or any loss of use of equipment or facilities therein by Tenant or any person claiming through or under Tenant; **(E)** related to any defect in the Premises or the Building; and/or **(F)** related to any injury or damage to person or property caused by fire, explosion, falling plaster, steam, gas, electricity, water, rain, flood, snow, or leaks from any part of the Premises or from the pipes, appliances, plumbing works, roof, or subsurface of any floor or ceiling, or from the street or any other place, or by dampness or by any other similar cause.

14.2 Tenant Indemnification. Tenant hereby agrees to indemnify, defend, and hold Landlord and its affiliates, owners, members, managers, partners, directors, officers, agents and employees (collectively, the "**Landlord Indemnified Parties**") harmless for, from and against any and all "**Losses**" (as defined in this Section), which arise from or are connected in any way with any or all of the following (collectively, "**Tenant's Indemnified Matters**"): **(A)** the conduct or management by Tenant or Tenant's officers, directors, members, partners, subtenants, invitees, agents, employees, contractors or representatives ("**Tenant Parties**") of the Premises or any business therein, or any work or Alterations done, or any condition created by Tenant or any Tenant Parties in or about the Premises during the Term or during the period of time, if any, prior to the Commencement Date that Tenant is given access to the Premises; **(B)** any act, omission or negligence of any or all of Tenant and Tenant Parties; **(C)** any accident, injury or damage whatsoever occurring in, at or upon either or both of the Building and the Premises and caused wholly or in part by Tenant and/or Tenant Parties; **(D)** any breach by Tenant of any of its warranties and representations under this Lease; **(E)** any actions necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding or other proceeding under the Bankruptcy Code; **(F)** any violation or alleged violation by any or all of Tenant and/or any Tenant Parties of any law, code, ordinance or other governmental regulation; **(G)** any breach or default on the part of Tenant in the performance of any covenant or obligation contained in this Lease; **(H)** claims for work or labor performed for or materials supplied or furnished to Tenant and/or any Tenant Parties; and **(I)** the violation of any "**Environmental Law**" (as defined in **Article 30**) or any permit, application or consent required in connection with any Environmental Law by any or all of Tenant and Tenant Parties with respect to the Premises during the Term; excluding, however, any violation of any Environmental Law resulting directly from the acts or omissions of Landlord and Landlord's employees, agents and contractors. In case any action or proceeding is brought against any or all of Landlord and Landlord Indemnified Parties by reason of any of Tenant's Indemnified Matters, Tenant, upon notice from Landlord shall defend such

action or proceeding by counsel reasonably satisfactory to, or selected by, Landlord. For purposes of this Article, the term "**Losses**" shall mean all claims, demands, expenses, actions, judgments, damages, penalties, fines, liabilities, losses of every kind and nature, suits, administrative proceedings, costs and fees, including, without limitation, attorneys' and consultants' reasonable fees and expenses, and the costs of cleanup, remediation, removal and restoration, that are in any way related to any matter covered by the foregoing obligations. The provisions of this Section shall survive the expiration or termination of this Lease.

14.3 **Landlord Indemnification.** To the extent permitted by law and subject to Section 33.21, Landlord hereby agrees to indemnify and save harmless Tenant, its officers, agents and servants, for, from and against any and all claims, actions, suits, judgments, decrees, orders, liability and expense in connection with loss of life, bodily injury and/or damage to property **(A)** arising from or out of any occurrence in or upon any of the Common Areas, except to the extent the same is caused by the willful misconduct or negligent act or omission of Tenant and/or Tenant Parties; and **(B)** occasioned wholly or in part by any willful misconduct or negligent act of Landlord, its agents, employees or servants. The provisions of this Section shall survive the expiration or earlier termination of this Lease with respect to any damage, injury or death occurring before such expiration or earlier termination.

14.4 **Third Party Claims.** Landlord shall have no liability to Tenant, Tenant Parties, or other third parties in the event of damage to or loss of personal property (including Tenant's Property) within the Premises or any other injury or damage arising from any act or omission of co-tenants or other occupants of the Building, or of their employees, or of other third parties, not including Landlord, its agents, contractors or employees.

14.5 **Tenant's Risk.** All personal property in the Premises shall be at Tenant's sole risk, and Landlord shall not be liable for any damage done to, or loss of, such personal property, or for damage or loss suffered by the business income or occupation of Tenant arising from any act of neglect of third parties, or from bursting, overflowing, or leaking of water, sewer or steam pipes, rain, wind, tornadoes, floor or other surface or subsurface water, from overflow of drainage facilities or backup or stoppage of any drain, sewer or other water runoff facility or device or from the heating or plumbing fixtures, noise, dust, or from electric wires, or from gas, odors, natural disaster, riot or act of violence, leaking roofs or caused in any other manner. Tenant shall give Landlord prompt notice of any accident to, defect in or problem in the Premises or Building of which Tenant has knowledge or notice. Tenant, for itself and its agents, employees, representatives, contractors, successors, assigns, invitees and licensees, expressly assumes all risks of injury or damage to person or property, whether proximate or remote, resulting from the condition of the Building or any part thereof.

ARTICLE 15

Assignment and Subletting

15.1 **Consent of Landlord.** Tenant shall not assign this Lease or sublet the Premises or any part thereof or mortgage, pledge or hypothecate its leasehold interest or grant any concession or license within the Premises or sublease any operating department therein, whether by sale, assignment, death, incompetency, mortgage, deed of trust, trust, operation of law or otherwise, and whether voluntary or involuntary, without the prior written consent of Landlord (which Landlord shall not unreasonably withhold, condition or delay) which consent shall be evidenced by the signature of the City Manager thereon. Any attempt to do any of the foregoing, without the prior written consent of Landlord, shall be void and of no force or effect.

This prohibition shall be construed to include a prohibition against an assignment or subletting by operation of law.

15.2 Corporate, Partnership or Limited Liability Company Transfer. Any transfer of Tenant's interest in this Lease by merger, consolidation or dissolution or any change in ownership or power to vote a majority of the "**voting stock**" (as defined in this Section) or majority in interest in Tenant, if Tenant is a corporation or limited liability company, or any transfer of this Lease by transfer of any other ownership interest of Tenant, or any Guarantor, during the Term shall constitute an assignment for the purpose of this Lease, and shall not be permitted unless Tenant obtains the express consent of Landlord. For purposes of this Section, the term "**voting stock**" means shares of stock or interest of any kind, regularly entitled to vote for the election of directors, managing partners, or managers or their equivalent of the corporation, limited liability company, partnership or other entity involved.

15.3 Assignment; Pledging. If this Lease is assigned or if the Premises are subleased (whether in whole or in part) or in the event of the mortgage, pledge or hypothecation of the leasehold interest or grant of any concession or license within the Premises or if the Premises are occupied in whole or in part by anyone other than Tenant in violation of the terms of this Article, Landlord shall have the right to do the following: **(A)** collect rent from the assignee, sublessee, mortgagee, pledgee, party to whom the leasehold interest was hypothecated, concessionee or licensee or other occupant and apply the net amount collected to the Rent payable hereunder without being deemed to have approved or consented to such action by Tenant; and/or **(B)** re enter the Premises, assume and take possession of the whole or any part thereof, and remove all persons or personal property therefrom, by direct or summary action, or in a different type of suit or proceeding, by force, or otherwise, without being deemed guilty of trespass or other actionable wrong by reason thereof, and without being liable for damages therefor or in connection therewith, and after demand made therefor, Tenant or anyone in possession claiming under Tenant shall be deemed guilty of unlawful detainer and subject to such summary or other action as may be provided by law.

15.4 Event of Assignment or Subletting. If Tenant wishes to assign this Lease or sublet all or any part of the Premises, it shall first give written notice of such intention to Landlord, furnishing Landlord with a copy of the final proposed assignment or sublease document and with full information as to the identity and financial status of the proposed assignee or subtenant. Any proposed assignment document shall provide, without limitation, the following: **(A)** that the assignee thereunder shall be liable for all of the obligations of Tenant under this Lease (including, without limitation, the payment of any and all amounts paid or to be paid by Tenant under this Lease on an estimated basis and reconciled on an annual basis, regardless of whether such reconciliation occurs subsequent to such assignment); and **(B)** that any security deposit paid to Landlord under this Lease is transferred to such assignee. Within 60 days after receipt of such notice and documentation from Tenant, Landlord shall have the right, by notice to Tenant, to either: **(1)** terminate this Lease, in which case Tenant shall be relieved of further liability hereunder and under the proposed assignment or sublease; **(2)** approve or reject such assignment or subletting; or **(3)** convert the assignment or sublease into a direct lease between Landlord and such proposed assignee or sublessee and receive all of the rents. If no such response is given, Landlord shall be deemed to have elected to disapprove the assignment or subletting. Notwithstanding the foregoing, Tenant may not attempt to assign or sublease this Lease until 12 months after the commencement of this Lease.

15.5 Permitted Transfer. Notwithstanding anything contained in this Lease to the contrary, Tenant, without Landlord's prior consent but with 20 days prior written notice, may

assign this Lease or sublet the whole of the Premises (a "**Permitted Transfer**") to a legal entity (a "**Permitted Transferee**") which is either: **(A)** the successor, by merger or otherwise, to all or substantially all of Tenant's assets and liabilities; or **(B)** controls or is controlled by or is under common control with Tenant. For purposes of this Section, the term "**control**" (including the terms "controls," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise. Any such assignment or subletting shall be otherwise subject to and upon all of the terms, provisions and covenants of this Lease. However, any assignment, including a Permitted Transfer, shall not in any way relieve Tenant of liability as to any term or condition of this Lease without the express approval of Landlord.

15.6 Miscellaneous Provisions. Landlord agrees to give an estoppel letter to any assignee or sublessee to which Landlord consents or in the event of a Permitted Transfer, upon request from such assignee or sublessee. Any sale, assignment, mortgage, transfer or subletting of this Lease which is not in compliance with the provisions of this Article shall be void and of no further force or effect. All rentals paid to Tenant by an assignee or sublessee shall be received by Tenant in trust for Landlord and forwarded immediately to Landlord without offset or reduction, or, at Landlord's election, such rentals shall be paid directly to Landlord (to be applied as a credit and offset to Tenant's Rent obligations). All consideration paid to Tenant for an assignment, sublease or other right to use the Premises which is in excess of the amount required to be paid over to Landlord for the use of the Premises (or pro rata portion of the amount required to be paid to Landlord in the case of a sublease of a portion of the Premises) shall be paid to Landlord by Tenant upon receipt. Tenant shall pay all costs incurred by Landlord in connection with any proposed assignment or sublease, including reasonable attorneys' fees, and shall pay any brokerage commission incurred by reason of any such proposed assignment or sublease.

15.7 No Release or Waiver. Notwithstanding anything contained in this Lease to the contrary, no consent or action by Landlord, and no assignment or subletting permitted by Landlord, shall be deemed a waiver or a release of Tenant from the performance by Tenant of its covenants, duties and obligations hereunder. All obligations and duties shall continue notwithstanding any such consent, assignment or subletting.

ARTICLE 16

Landlord Transfer

16.1 Landlord Transfer. Landlord reserves the right to sell or otherwise assign its interest in this Lease or the Premises and the acquisition of title or of Landlord's interest in this Lease by a subsequent owner shall not affect or impair this Lease. However, Landlord may not sell, assign, or otherwise transfer this Lease with Tenant without also selling, assigning, or otherwise transferring any and all of Landlord's liabilities and/or responsibilities under this Lease. If Landlord conveys or transfers its entire interest in the Premises, upon such conveyance or transfer, Landlord (and in the case of any subsequent conveyances or transfers, the then grantor or transferor) shall be released from all liability with respect to the performance of any obligations on the part of Landlord to be performed hereunder from and after the date of such conveyance or transfer. Upon notice of such transfer, Tenant shall attorn to the new owner as landlord.

16.2 [INTENTIONALLY OMITTED]

ARTICLE 17
Permitted Use; Prohibited Uses; Future Restriction;
Rules and Regulations; Legal Requirements;

17.1 **Permitted Use.** It is understood and agreed between the parties hereto that during the Term of this Lease, the Premises shall be used and occupied only for the Permitted Use as defined in **ITEM 3** of the Cover Sheet and for no other purpose or purposes without the prior written consent of Landlord (which may be withheld in Landlord's sole and absolute discretion). In the event Landlord elects (in the exercise of its sole and absolute discretion) to permit Tenant to use all or any portion of the Premises for a use other than the Permitted Use described in **ITEM 3** of the Cover Sheet, then such approved use shall constitute a "**Permitted Use**" for purposes of this Lease.

17.2 **Prohibited Uses; Future Restrictions.** In addition to Tenant's agreement to operate only for the Permitted Use as provided above, Tenant expressly covenants and agrees that it shall not operate or permit any operation in the Premises so as to violate or permit the violation of, or cause Landlord to violate any future provision for exclusive use or other restriction negotiated by Landlord and applicable to the Premises or the Building after the Effective Date ("**Future Restriction**"); PROVIDED, HOWEVER, Landlord agrees that any Future Restriction which would in any way limit or restrict Tenant's right to use the Premises for the Permitted Use (or such other use as Landlord may have expressly approved in writing prior to the date of such Future Restriction) shall have no application whatsoever to Tenant's conduct of said Permitted Use or approved use in the Premises, so long as this Lease is in full force and effect. Additionally, Tenant shall promptly comply with all encumbrances of record affecting the Premises from time to time, all laws, ordinances and lawful orders, the rules adopted by the Declarant, or, if applicable, any rules and regulations of the Building, as may be amended or promulgated in the future, affecting the Premises and the cleanliness, safety, occupation and use of the same. In addition to other restrictions on the use of the Premises, Tenant shall not use or permit the Premises to be used for, and the Premises are subject to, and Tenant shall abide by, the "**Building Rules and Regulations**" (as defined in this Article). In the event that Tenant's use violates or causes Landlord to violate the provisions of any of the Exclusives or any Prohibited Use or Future Restriction, then and in any of such events, Landlord shall give Tenant written notice of such violation and Tenant shall immediately cease such violation within two days thereafter. In the event Tenant fails to remedy such violation, then in addition to Landlord's rights and remedies under this Lease and at law or in equity, Tenant shall indemnify, defend, and hold harmless Landlord for, from and against any and all claims, demands, actions, causes of action, losses (including, but not limited to, loss or abatements of rents resulting from the exercise of abatement or termination rights by another tenant pursuant to its lease), damages, costs, and expenses, including court costs and reasonable attorneys' fees, and including any cost or legal expenses of Landlord in enforcing the restriction as and against Tenant and otherwise arising from or related to wholly or in part, the use of the Premises in violation of any Exclusive, Prohibited Use or Future Restriction. In the event Tenant violates any of the provisions of this Section, Landlord shall have all rights and remedies provided in this Lease, in addition to all rights and remedies available to Landlord at law or in equity, including, but not limited to, injunctive relief.

17.3 **Building Rules and Regulations.** In addition to the restrictions contained in this Lease, Landlord may from time to time promulgate reasonable and non-discriminatory rules and regulations which further govern the operation of Tenant's business in the Premises and in and

about the Building ("**Building Rules and Regulations**"). Tenant agrees to abide by and comply with all such reasonable and non-discriminatory rules and regulations.

17.4 **Legal Requirements.** Tenant shall be obligated (and shall be responsible) to comply with any Legal Requirements, which pertain to Tenant's use and occupancy of the Premises, whether such Legal Requirements are structural or nonstructural in nature. The term "**Legal Requirements**" means all applicable current or future statutes, ordinances, orders, rules, regulations, judgments and requirements of public authorities with jurisdiction over the Building and/or the Premises, and all other matters of record affecting the Premises from time to time. Tenant shall not do or permit anything to be done in or about the Premises, nor bring or keep anything therein which is not within the Permitted Use of the Premises which shall in any way increase the existing rate of or affect any fire or other insurance upon the Premises or the Building or any of its contents, or cause a cancellation of any insurance policy covering said Premises or the Building or any part thereof or any of its contents. Further, Tenant shall furnish and maintain an adequate number of fire extinguishers in good operating condition as may be reasonably required by Landlord or any governmental authority, and in any event, not less than one such extinguisher for each floor or level of the Premises.

17.5 [INTENTIONALLY OMITTED]

ARTICLE 18

Bankruptcy and Other Actions

Any Event of Default of the type described in **Subsection 21(D)** (captioned "**Bankruptcy**") under the Default provisions of this Lease (a "**Bankruptcy Event**") shall be deemed in material breach of Tenant's obligations hereunder and this Lease shall thereupon automatically terminate. Landlord does, in addition, reserve any and all other remedies provided in this Lease or in the law in connection with any Bankruptcy Event.

A. No default of this Lease by Tenant, either prior to or subsequent to the happening of any Bankruptcy Event, shall be deemed to have been waived unless expressly done so in writing by Landlord.

B. It is understood and agreed that this is a lease of real property as such a lease is described in Section 365(b)(3) of the Bankruptcy Code, that Landlord is entitled to all rights and benefits of a landlord thereunder, and that nothing contained herein shall be deemed a waiver of any such right or benefit.

C. Subject to applicable federal and state law, included within and in addition to any other conditions or obligations imposed upon Tenant or its successor in the event of assumption and/or assignment of this Lease in connection with any Bankruptcy Event are the following: **(1)** the cure of any monetary defaults and the reimbursement of pecuniary loss within not more than 30 days of assumption and/or assignment; **(2)** the deposit of an additional sum equal to three months of Minimum Rent and Additional Rent to be held as security; **(3)** the use of the Premises as set forth in this Lease with the quality and quantity of any goods or services required to be offered for sale unchanged with a covenant of continuous operation by Tenant or its successor; **(4)** the reorganized debtor or assignee of such debtor in possession or Tenant's trustee demonstrates in writing that it has experience and financial ability to operate out of the Premises in the manner contemplated in this Lease and meets all other reasonable criteria of Landlord as did Tenant upon execution of this Lease; **(5)** the prior written consent of any mortgagee to which this Lease has been assigned as collateral security; and **(6)** the Premises,

at all times, remains the same with no physical changes of any kind may be made to the Premises unless in compliance with the applicable provisions of this Lease.

ARTICLE 19

Tenant's Property; Personal Property Taxes; Leasehold Improvements

19.1 **Tenant's Property.** Upon the expiration or earlier termination of this Lease, Tenant shall remove from the Premises all of Tenant's furniture, trade fixtures, signage (including both interior and exterior signage, but excluding signage installed by Landlord or required by law [e.g., "EXIT" signage]), merchandise, inventory, displays and other personal property paid for by Tenant (i.e., excluding any property or improvements paid for by Landlord either directly or with the Construction Allowance) located in the Premises (collectively, "**Tenant's Property**"). Tenant shall use reasonable efforts to avoid or minimize any damage to the Premises or Building resulting from such removal and shall repair any damage to the Premises or Building caused by the removal of Tenant's Property, and all utility lines shall be professionally capped or plugged and Tenant shall leave the Premises in broom clean condition. Tenant hereby agrees that, in addition to any other work required to comply with the provisions of this Section, the foregoing shall require Tenant to repair all damage to the exterior of the Premises resulting from the removal of Tenant's signage and other improvements therefrom, and to repaint all areas beneath such signage and improvements to the extent required for such areas to match the color and materials of the remainder of the exterior of the Premises. If Tenant shall fail to remove any of Tenant's Property, such Property shall become the property of Landlord and Landlord shall have the right to dispose of such Property as it deems appropriate, and Tenant shall reimburse Landlord for any costs thereby incurred on demand. This requirement shall survive the Term of this Lease to the extent necessary to give effect hereto. Notwithstanding anything contained in this Lease to the contrary, during the Term of this Lease Tenant acknowledges and agrees that it shall pay all taxes, impositions, assessments and similar charges levied or imposed by any governmental or taxing authority against Tenant's Property or any other property or fixtures located in the Premises and used in connection with the operation of Tenant's business therein that are not taxed as real property, whether owned by Landlord or Tenant (collectively, "**Personal Property Taxes**"). Tenant shall pay all Personal Property Taxes directly to the applicable governmental authority (or, if Landlord receives the bill with respect to any Personal Property Taxes, Tenant shall pay to Landlord within 20 days after receipt of an invoice therefor from time to time, in which event Landlord shall remit such Personal Property Taxes to the applicable governmental authority).

19.2 **Leasehold Improvements Remain.** Notwithstanding anything to the contrary set forth in this Lease, all alterations, decorations, installations, additions or improvements upon or to the Premises attached or affixed to the real estate by either party, including, but not limited to, all paneling, millwork, decorations, partitions, air conditioning units, heating equipment, hot water heaters, light fixtures, railings, mezzanine floor, galleries, elevators, stairways, vault doors, kitchen equipment and the like (collectively, the "**Leasehold Improvements**"), shall immediately become the property of Landlord upon installation and shall remain upon, and be surrendered with the Premises, as a part thereof, at the termination of this Lease. The value or cost of the Leasehold Improvements constructed by Tenant shall in no way constitute a substitute for or a credit against any obligation of Tenant under this Lease to pay Rent. Notwithstanding the foregoing, Landlord may, at its option, require, by giving notice to Tenant prior to the expiration of the Term, earlier termination or cancellation of the Lease, default or otherwise, that any or all of the Leasehold Improvements made by Tenant upon or to the Premises be removed by Tenant, in which case such Leasehold Improvements shall be removed, and the Premises and Building shall be restored, to the condition in which it was

delivered by Landlord. Tenant shall use reasonable efforts to avoid or minimize any damage to the Premises or Building resulting from such removal, and shall repair any damage to the Premises or Building caused by the removal of such Leasehold Improvements. If Tenant shall fail to either **(A)** properly remove any of Tenant's Property as required under this Lease; or **(B)** repair any damage caused by the removal of any alterations or property (including, without limitation, Tenant's Property) which Tenant is required or entitled to remove from the Premises pursuant to this Lease, and such failure shall continue for more than five days after Tenant's receipt of written notice of such failure, then and in either of such events, Landlord may (but shall not be obligated to) remove any such alterations or property and dispose of the same and/or repair such damage and restore the Premises to the condition required under this Lease, and Tenant shall reimburse Landlord for all costs and expenses incurred in connection with such disposal and/or repairs, together with an additional amount equal to 25% of such costs and expenses, within ten days after receipt of an invoice therefor from Landlord. In the event Tenant fails to pay Landlord all or any portion of the amount requested in such invoice within such ten-day period, the amount shall accrue interest at the Interest Rate from the expiration of such ten-day period.

ARTICLE 20 Eminent Domain

20.1 **Definition/General.** In the event of a taking of all or any part or of any interest in the Premises, the Building, the Common Areas or any other part of the Property by reason of any exercise of the power of eminent domain, or if there is a transfer thereof or of any interest therein, made in avoidance of an exercise of the power of eminent domain (all of the foregoing being hereinafter collectively referred to as a "**Taking**"), the following provisions shall apply. Landlord shall notify Tenant of any pending or threatened Taking and of all related proceedings including the settling of any award.

A. **Total Taking.** In the event of a Taking of all of the Premises, the Building, this Lease shall terminate as of the date of such Taking and all of Tenant's obligations hereunder, including its obligation to pay Rent accruing from and after the date of the Taking shall terminate as of the date of such Taking.

B. **Partial Taking.** In the event of a Taking of the following: **(1)** more than 20% of the Premises; **(2)** more than 40% of the Building or the Building buildings; **(3)** more than 35% of the Common Areas (including the parking areas); or **(4)** more than two of the accessways serving the Building without replacement thereof, then Tenant or Landlord may terminate this Lease by notice to the other within 60 days after possession is taken by the condemning authority; PROVIDED, HOWEVER, in the event Tenant elects to terminate this Lease pursuant to Clause (3) above, Landlord shall have the right to nullify such election by giving Tenant notice of its election to promptly restore the Common Areas so taken or furnish substitute facilities which are functionally equivalent to or better than the Common Areas so taken and within a reasonable distance from those portions taken.

20.2 **Restoration.** In the event this Lease is not canceled as herein provided, then Landlord shall: **(A)** restore, if the condemnation award proceeds are available and sufficient to do so, the affected portion and, if applicable, so much of the remainder of the Premises to a complete architectural unit to the extent that they existed on the date physical delivery thereof was initially delivered to Tenant prior to the Commencement Date (in any event subject to then existing code); and **(B)** turn over to Tenant (for restoration purposes by Tenant) that portion of Landlord's award applicable to Tenant's Work initially installed by Tenant and additional Tenant

Improvements that was awarded to Landlord (rather than to Tenant) and not otherwise received by Tenant from the condemning authority or pursuant to **Section 20.3** (captioned "**Award**") for such element of damage; PROVIDED, HOWEVER, Landlord may terminate this Lease, if no condemnation award proceeds are available or the condemnation award proceeds are insufficient to restore such affected portion or remainder of the Premises as provided above, by written notice to Tenant within 60 days after the date the condemning authority notifies Landlord of the amount of the condemnation award proceeds (if any). Following the physical delivery of the Premises to Tenant, Tenant shall commence and complete restoration of the Premises to at least the extent of Tenant's Work initially installed by Tenant and additional Tenant Improvements. During the period of restoration in the Premises only, the Rent shall be equitably abated in accordance with the nature and extent that Tenant's use and enjoyment of the Premises has been affected.

20.3 Award. All damages awarded for any Taking shall belong to and be the property of Landlord, Tenant hereby assigning to Landlord its interest, if any, in said award. Notwithstanding the foregoing, Tenant shall have the right to prove in any condemnation proceedings and to receive any separate award which may be made for damages to or condemnation of Tenant's movable trade fixtures and equipment and for moving expenses; PROVIDED, HOWEVER, Tenant shall in no event have any right to receive any award for its interest in this Lease or for loss of leasehold, and any such award shall not reduce amounts that would otherwise be available to Landlord. Notwithstanding the foregoing provisions of this Article, Landlord may terminate this Lease with no further liability to Tenant in the event that following any Taking of any part of the Building, or any conveyance in lieu thereof, any party holding a mortgage, trust deed or similar lien on Landlord's interest in the Building elects to require the application of an award or payment for the taking or conveyance in lieu thereof to reduce the indebtedness secured by such mortgage, trust deed or similar lien.

ARTICLE 21

Default

21.1 Default Definition. The occurrence of all or any of the following shall constitute an "**Event of Default**" by Tenant:

A. **Non-payment of Rent or other sums.** Any installment of Rent, Additional Rent or any other sum(s) required to be paid by Tenant hereunder, or any part thereof, shall at any time be in arrears and unpaid following five (5) business days written notice from Landlord to Tenant.

B. **Vacation or Abandonment of Premises.** Tenant has "**vacated or abandoned**" (as defined in this Subsection) the Premises, and such conditions continues for a period of more than five days after Tenant's receipt of written notice thereof. For purposes of this subsection, the term "**vacated or abandoned**" shall mean that Tenant has: **(1)** ceased operating for business in the Premises, and **(2)** has either: **(a)** verbally or in writing expressed to Landlord or its agent its intention to cease performing all or any of its obligations under this Lease; or **(b)** removed such items of Tenant's Property from the Premises so as to render the Premises unsuitable for the operation of Tenant's business therein; or **(c)** tendered the keys to the Premises to Landlord or its agent; PROVIDED, HOWEVER, Tenant hereby agrees that no acceptance of notice or of the keys to the Premises by Landlord or any agent of Landlord shall constitute an acceptance of surrender of the Premises or terminate this Lease or Tenant's liability hereunder.

C. **Non-performance.** There is any default or breach on the part of Tenant in the observance or performance of any of the other covenants, agreements, or conditions of this Lease on the part of Tenant to be kept and performed, and said default or breach shall continue for a period of 30 days after notice thereof from Landlord to Tenant (or, if such default cannot reasonably be cured within 30 days, if Tenant shall fail to commence to cure the default within such 30-day period or thereafter fails to diligently pursue such cure to completion, but in no event shall cure period exceed 90 days).

D. **Bankruptcy.** If: **(1)** Tenant or any Guarantor of Tenant's obligations under this Lease shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors; **(2)** Tenant or any Guarantor of Tenant's obligations under this Lease shall file a petition under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof, or an order for relief relating to Tenant or any Guarantor of Tenant's obligations under this Lease is granted in proceedings filed against Tenant or any guarantor of Tenant's obligations under this Lease; or **(3)** a receiver or trustee shall be appointed for the Premises or for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations under this Lease.

E. **Attachment.** This Lease or the Premises or any part of the Premises are taken upon execution or by other process of law directed against Tenant, or are taken upon or subject to any attachment at the instance of any creditor or claimant against Tenant, and the attachment is not discharged or disposed of within 15 days after its levy.

F. **Failure to Take Possession.** Tenant fails to take possession of the Premises on the Commencement Date as required hereunder.

21.2 **Remedies.** Upon an Event of Default of Tenant hereunder Landlord, at its option, may exercise any or all of the following remedies, which shall be in addition to the exercise of all rights and remedies of Landlord under this Lease, at law or in equity, with respect to such Event of Default:

A. **Terminate.** Cancel and terminate this Lease and all rights of Tenant hereunder and enter the Premises and take possession thereof.

B. **Take Possession.** Without terminating the Lease, re-enter and take possession of the Premises and remove all persons and property therefrom. Tenant hereby grants to Landlord a lien and security interest as security for payment of all Rent, Additional Rent, or any other charges now or hereafter payable by Tenant hereunder, upon all equipment, fixtures, and inventory (and the proceeds thereof within the Premises, including all improvements, equipment, fixtures, inventory, merchandise, and other personal property now or hereafter placed on or in the Premises, to the full extent of Tenant's and any assignee's, or subtenant's interest herein, and such lien shall include the right to prevent removal of the property from the Premises and may be enforced, upon nonpayment of rent to other charges as aforesaid, or any other default by Tenant hereunder, without any type of notice to Tenant, unless notice is required by some other provision of this Lease by the re-entry, taking and sale, lease or other disposition of such property. Landlord shall also have all other rights and remedies upon default provided by law, including those set forth in the Uniform Commercial Code. The sale, lease, or other disposition of the property shall be either public or private after at least ten days notice to Tenant at his last known address, and Landlord shall have the right and privilege to be a purchaser at any such sale. Landlord and Tenant agree that ten days

notice of such sale, lease, or other disposition of the property is reasonable under the circumstances. Landlord shall not be deemed guilty of trespass or liable for any loss or damage occasioned thereby. Should Landlord elect to re-enter, as herein provided, or should Landlord take possession pursuant to legal proceedings or pursuant to any notice provided for by law or by this Lease, Landlord may either cancel this Lease pursuant to the rights reserved elsewhere in this Lease, or Landlord may, from time to time, without canceling this Lease, make such alterations and repairs as may be necessary in order to relet the Premises; and relet said Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable; upon each such reletting all rentals received by Landlord from such reletting shall be applied first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord, second, to the payment of any costs and expenses of such reletting, including brokerage fees and reasonable attorneys' fees, third, to the payment of costs of any alterations and repairs necessary to relet the Premises, fourth, to the payment of Rent due and unpaid hereunder, and the residue, if any, shall be held by Landlord and applied in payment of future Rent or damage as such amounts may become due and payable hereunder during the entire term of the Lease. If such rentals received from such reletting during any month be less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. No such re-entry or taking possession of said Premises by Landlord shall be construed as an election on its part to cancel this Lease unless a notice of such intention is given to Tenant or unless the cancellation thereof is decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to cancel this Lease for such previous Event of Default.

C. **Locks/Security Devices.** Alter locks and other security devices at the Premises in accordance with applicable law.

D. **Tenant Improvement Allowance.** Withhold payment of any unpaid portion of the Tenant Improvement Allowance, if any, regardless of whether Tenant has already paid for all or any portion of the cost of the work, materials or labor to be paid for with the Tenant Improvement Allowance.

E. **Injunctive Relief.** Without limitation, exercise any other right at law or in equity, including specifically, but not by way of limitation, the pursuit of temporary or permanent injunctive relief.

21.3 **Additional Provisions.** If Tenant shall after default voluntarily give up or tender possession of the Premises to Landlord, by delivering the keys to the Premises to Landlord or its agent or property manager, or both, such actions shall be deemed to be in compliance with Landlord's rights and the acceptance thereof by Landlord shall not be deemed to constitute a surrender of the Premises or otherwise affect Landlord's rights in connection with such default; it being understood and agreed that such surrender may be effected only by the written agreement of Landlord and Tenant. Tenant hereby waives (to the extent legally permissible) any and all notices otherwise required under common law, as same presently exist or may be hereafter amended (or any subsequent similar statute relating to notice prior to instituting such action or proceeding). In the event of termination of this Lease or of Tenant's right to possession of the Premises or repossession of the Premises for an Event of Default, Landlord shall not have any obligation to relet or attempt to relet the Premises, or any portion thereof, or to collect rental after reletting (if any); but Landlord shall have the option to relet or attempt to relet and in the event of reletting Landlord may relet the whole or any portion of the Premises for

any period, to any tenant, and for any use and purpose. In the event that Landlord shall have taken possession of the Premises, Landlord shall have the right to use all the furniture, fixtures and equipment at the Premises, including that which is owned by or leased to Tenant, prior to any foreclosure thereon by Landlord or repossession thereof by a Landlord thereof or third party having a lien thereon. Landlord shall also have the right to remove from the Premises (without legal process) all or any portion of such furniture, fixtures, equipment and other property located thereon and place same in storage at any premises elected by Landlord, and in such event, Tenant shall be liable to Landlord for costs incurred by Landlord in connection with such removal and storage, together with interest thereon at the Interest Rate. Landlord shall also have the right to relinquish possession of all or any portion of such furniture, fixtures, equipment and other property to any person ("**Claimant**") claiming to be entitled to possession thereof, without the necessity of making any investigation or inquiry as to the basis upon which Claimant purports to act, and Tenant agrees to indemnify, defend and hold Landlord harmless from all cost, expense, loss, damage and liability incident to Landlord's relinquishment of possession of all or any portion of such furniture, fixtures, equipment or other property. Tenant stipulates and agrees that the rights set forth in this Section are commercially reasonable.

ARTICLE 22

Subordination; Estoppels

22.1 **Subordination.** Tenant covenants and agrees that **(A)** this Lease is and shall automatically and without further act or deed by Tenant be and remain subject and subordinate to any mortgages, deeds of trust, security deeds or other security instruments, and any ground leases or underlying leases presently existing or hereafter placed upon all or any portion of the Building (each a "**Mortgage**") and to any and all advances to be made thereunder, and to any interest accrued thereon, and to all renewals, replacements, modifications, consolidations and extensions thereof or participation thereof, **(B)** any mortgagee, grantee, master lessor, beneficiary or trustee (each a "**Mortgagee**") may elect to have this Lease made a prior lien to its Mortgage, and in the event of such election and upon notification by Landlord or such Mortgagee to Tenant to that effect, this Lease shall without further act or deed by Tenant be deemed prior in lien to said Mortgage, whether this Lease is dated prior to or subsequent to the date of any such Mortgage, and **(C)** Tenant shall execute and deliver whatever instruments may reasonably be required by Landlord or any present or prospective Mortgagee to acknowledge such subordination or priority (as applicable) in recordable form. Tenant's failure to execute such instrument within 20 days after Tenant's receipt of same shall constitute a separate Event of Default for which no cure period applies. If any proceeding is brought for default under any Mortgage to which this Lease is subject, or in the event of foreclosure, deed in lieu of foreclosure or the exercise of the power of sale under any Mortgage covering the Premises (each a "**Foreclosure**") and if requested by Landlord's successor, Tenant shall attorn to such successor and shall recognize that successor as Landlord under this Lease. Tenant agrees that such successor shall not be **(1)** liable for any act or omission of Landlord under this Lease occurring prior to such Foreclosure, **(2)** subject to any offset accruing to Tenant against Landlord prior to such Foreclosure, or **(3)** bound by any previous prepayment of Rent or Security Deposit which have not been expressly delivered by Landlord to such successor. If so requested, Tenant shall enter into a new lease with such successor on the same terms and conditions as are contained in this Lease (for the unexpired Term of this Lease then remaining).

22.2 **Estoppel.** The parties agree that they shall rely solely upon the terms of this Lease to govern their relationship. They further agree that reliance upon any representation, act, or omission outside the terms of this Lease shall be deemed unreasonable, and shall not establish any rights or obligations on the part of either party. Within 20 days after the request of

the other party at any time and from time to time, each of Landlord and Tenant agree to execute, acknowledge and deliver to the other party a written instrument in form reasonably acceptable to Landlord and Tenant, duly executed, acknowledged: **(A)** certifying that this Lease has not been modified except as set forth in such certificate and is in full force and effect as modified; **(B)** specifying the dates to which the Minimum Rent, Additional Rent and other charges hereunder have been paid; **(C)** stating whether or not, to the knowledge of the party executing such instrument, the other party is in default and, if so, stating the nature of such default; **(D)** stating the Commencement Date; **(E)** stating whether the option to extend the Term has been exercised; and **(F)** affirming such other factually accurate matters pertaining to the provisions or subject matter of this Lease as may be required by the other party.

ARTICLE 23 Notices

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if **(A)** delivered to the party at the address set forth below, **(B)** deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or **(C)** given to a recognized and reputable overnight delivery service, to the address set forth below:

If to Tenant:	Phoenix West Commercial, LLC 125 S Avondale Boulevard, Suite 100 Avondale, Arizona 85323 Attn: Bobbie Mastracci
If to the City:	City of Avondale c/o Kennedy Wilson Properties LTD 7375 E. 6th Ave, #11 Scottsdale, Arizona 85251 Attn: Mary Jacobs
With copy to:	Gust Rosenfeld, P.L.C. One East Washington Street, Suite 1600 Phoenix, Arizona 85004-2553 Attn: Andrew J. McGuire, Esq.

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received **(1)** when delivered to the party, **(2)** three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or **(3)** the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

ARTICLE 24
Surrender of Premises

Tenant shall surrender the Premises in broom clean condition and in good order, condition and repair, reasonable wear and tear and insured casualty damage excepted, and shall surrender all keys for the Premises to Landlord at the place then fixed for the payment of Rent and shall inform Landlord of all combinations on locks, safes and vaults, if any, in the Premises. Tenant's obligation to observe or perform this covenant shall survive the expiration or earlier termination of this Lease.

ARTICLE 25
Holding Over

If Tenant remains in possession of the Premises after the expiration of the Term or earlier termination of this Lease, without the execution of a new Lease, then, at Landlord's option, Tenant shall be deemed to be occupying the Premises as a month-to-month holdover Tenant, subject to all the provisions of this Lease insofar as they are applicable to a month-to-month tenancy, but at a daily rental of two times the per day Rent provided under this Lease, computed on the basis of a 30 day month.

ARTICLE 26
Casualty

26.1 **Removal of Debris.** In the event of a casualty, Tenant shall be responsible for the prompt removal of all debris resulting from Tenant Improvements installed in the Premises by Tenant, including Tenant's furniture and fixtures.

26.2 **Termination.** If at any time during the Term, the Premises or any material portion of the Building should be destroyed or damaged by fire or other casualty, Landlord shall have the election to repair and reconstruct the damaged portion of the Premises and/or the Building to substantially the condition which existed at the time of Landlord's tender of possession of the Premises to Tenant or alternatively, to terminate this Lease. Landlord shall notify Tenant of its election within 90 days after such damage or destruction. In the event Landlord elects to terminate this Lease pursuant to this Section, Rent shall be apportioned on a per diem basis and be paid to the date of such damage or destruction and neither party shall have any further rights or obligations hereunder.

26.3 **Repair.** If Landlord elects to repair and restore the Premises: **(A)** this Lease shall continue in full force and effect; **(B)** such repairs shall be made by Landlord within a reasonable period of time; and **(C)** Rent shall abate proportionately only during the period and to the extent that the Premises are unfit for use, and are not otherwise used, by Tenant for any purpose. Notwithstanding the foregoing, if the damage is due to the fault or neglect of Tenant or its employees, there shall be no abatement of Rent. If Landlord elects to repair and restore the Premises, Tenant hereby covenants and agrees to restore the interior of the Premises, pursuant to Landlord's standard construction procedures, and reopen fully stocked and staffed in the Premises promptly thereafter.

26.4 **Notice.** Tenant shall give notice to Landlord within two days after Tenant learns of any accident, damage or destruction at the Premises.

ARTICLE 27
Waiver

One or more waivers of any covenant or condition of this Lease by Landlord shall not be construed as a waiver of a further breach of the same covenant or condition, and the consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to any subsequent similar act by Tenant. No receipt of money by Landlord after a Tenant default has been declared shall, without the consent of Landlord, in any way reinstate, continue or extend the Term of this Lease. Receipt by Landlord of Tenant's keys to the Premises shall not constitute an acceptance of surrender of the Premises without Landlord's acknowledgment thereof.

ARTICLE 28
Quiet Possession

Landlord agrees that, so long as Tenant fully complies with all of the terms, covenants and conditions herein contained on Tenant's part to be kept and performed, Tenant shall peaceably and quietly have, hold and enjoy the Premises free from molestation by Landlord or any party claiming by, through or under Landlord.

ARTICLE 29
Broker's Commission

Tenant represents and warrants that they have not dealt with any broker or finder with respect to the Premises or this Lease. Tenant will indemnify the Landlord against, and hold it harmless from all liabilities and expense (including attorneys' fees and court costs) arising out of claims for fees or commissions from anyone with whom Tenant has dealt with regarding the Premises or this Lease.

ARTICLE 30
Asbestos and Other Hazardous Materials

30.1 **Definitions.** For purposes of this Lease:

A. **"Environmental Laws"** means any federal, state or local statute, regulation or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to any Hazardous Materials, drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water runoff, waste emissions or wells, including, without limiting the generality of the foregoing, the following statutes, and regulations, orders, decrees, permits, licenses and deed restrictions now or hereafter promulgated thereunder, and amendments and successors to such statutes and regulations as may be enacted and promulgated from time to time: Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Hazardous Material Transportation Act, 42 U.S.C. §1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Emergency Planning and Community Right to Know Act, 42 U.S.C. §11001 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Uranium Mill Tailings Radiation Control Act (42 U.S.C. Section 7901

et seq.); the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.); the Noise Control Act (42 U.S.C. § 4901 et seq.); the Safe Drinking Water Act (21 U.S.C. § 349, 42 U.S.C. § 201 and § 300f et seq.); and the National Environmental Policy Act (42 U.S.C. § 4321 et seq.).

B. **"Hazardous Materials"** means each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law.

C. **"Release"** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaking, dumping, discarding, burying, abandoning, using, generating, permitting, producing, introducing, maintaining, disposing or releasing into the Premises, the Building or the environment.

D. **"Environmental Authorities"** means the United States, the State and any political subdivision thereof, the United States Environmental Protection Agency and any and all governmental authorities and the agencies, departments, commissions, boards, bureaus, bodies, councils, offices, authorities, or instrumentality of any of them, of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence having jurisdiction under any Environmental Law.

E. **"Notice"** means any communication, written or oral, actual or threatened, from any governmental authority or any other public or private entity or individual, concerning any violation of any Environmental Law, or any act or omission resulting or which may result in the Release of Hazardous Material, and shall include the imposition of any liens on the Building or revenues or assets of Landlord.

30.2 Tenant Requirements. Neither Tenant, nor its agents, employees, contractors, servants, subtenants, concessionaires or invitees, shall Release any Hazardous Materials in or about any portion of the Premises or the Building, or transport any Hazardous Materials to or from the Premises or the Building, except construction materials (other than asbestos or polychlorinated biphenyls), office equipment, cleaning solutions, other maintenance materials and oil and other petroleum products that are or contain Hazardous Materials may be used, handled or stored on the Premises, provided such materials, equipment, solutions and products are used in de minimis amounts and are used only incidental to and as reasonably necessary for the operation and maintenance of the Premises for the Permitted Use hereunder and in compliance with all applicable Environmental Laws. In addition, neither Tenant, nor its agents, employees, contractors, servants or subtenants, shall install, use or permit the installation or use of storage tanks or other subterranean structures, on, under or adjacent to the Premises. Tenant shall, at Tenant's sole cost and expense, comply with all Environmental Laws applicable to Tenant's operations in the Premises and the Building, and make all submissions to, provide all information required by, and comply with all requirements of all Environmental Authorities. If there is any Release or transportation by Tenant of Hazardous Materials at or from the Premises or the Building, or which arises at any time from Tenant's use or occupancy of the Premises or the Building, and Landlord, any Environmental Authority or any third party demands that a remediation be undertaken, then Tenant, at Tenant's sole cost and expense, shall prepare and submit remediation plans for the demanding party's approval, and Tenant shall carry out all such remediation in accordance with such approved plans. In addition, Tenant shall promptly provide all information regarding the Release or transportation of Hazardous Materials that is requested by Landlord. If remediation is required by Tenant pursuant to the provisions of this Article, then Tenant shall continue to pay any and all Rent that comes due

during such remediation and no abatement of Rent shall apply. If Tenant fails to fulfill or begin to fulfill any obligation imposed under this Section within 30 days after receipt of written notice from Landlord, Landlord may, in its sole discretion, undertake the remediation of such Hazardous Materials from the Premises and/or the Building, in which event Tenant shall cooperate with Landlord in order to prepare all documents Landlord deems necessary or appropriate to determine the applicability of the Environmental Laws to the Premises and the Building, and Tenant's use thereof and for compliance therewith. In addition, Tenant shall execute all documents promptly upon Landlord's request, and reimburse Landlord for all reasonable expenses incurred by Landlord in fulfilling Tenant's obligations set forth in this Section, together with an additional amount equal to 25% of such expenses, within ten days after receipt of an invoice therefor. Notwithstanding the foregoing, Tenant shall have no obligation to undertake any remediation or incur any costs or expenses (as required in this Section) as a result of Hazardous Materials **(A)** existing in the Premises on or before the Delivery Date and not Released by Tenant, or its agents, employees, contractors, servants, subtenants, concessionaires or invitees; or **(B)** Released in the Premises or the Building by Landlord, its agents, contractors or employees.

30.3 Tenant Indemnification. Tenant shall indemnify, protect and save Landlord, its officers, members, managers, agents and servants, and management company (collectively, "**Landlord's Indemnitees**"), harmless for, from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, proceedings or expenses of any kind or of any nature whatsoever (including reasonable attorneys' and experts' fees and disbursements), which may at any time be imposed upon, incurred by or asserted or awarded against Landlord or any of the Landlord Indemnitees, arising out of, or in any way connected with, any breach or violation of the requirements set forth in this Article by Tenant or any of its agents, employees, contractors, servants, subtenants, concessionaires or invitees. In connection with Tenant's indemnification hereunder: **(A)** upon receipt of written notice from Landlord, Tenant agrees to defend any claim or demand brought, or any action, petition, or order filed, against Landlord or the Landlord Indemnitees by counsel reasonably satisfactory to Landlord, whether any such claim or action is rightfully or wrongfully brought or filed; and Tenant shall pay all reasonable expenses incurred in connection with defending against such action or proceeding; and **(B)** Tenant shall pay, satisfy and discharge any judgments, liens, orders or decrees which may be recovered or filed against Landlord, or any of the Landlord Indemnitees, arising out of any such claim, demand, action, petition or order.

30.4 Survival. The provisions of this Article shall extend to and be enforceable by Landlord's liability, health, disability and worker's compensation insurers, and shall survive the expiration or sooner termination of the Term.

ARTICLE 31

Security Deposit; Conflicts; Access; Relationship; Headings & Miscellaneous

31.1 Security Deposit. On or before the Effective Date, Tenant shall deposit with Landlord the sum specified in **ITEM 13** of the Cover Sheet (the "**Security Deposit**"). The Security Deposit shall be held by Landlord without liability for interest as security for the faithful performance by Tenant of all of its obligations under this Lease. The Security Deposit shall not be mortgaged, assigned, transferred or encumbered by Tenant without the prior written consent of Landlord and any such act on the part of Tenant shall be without force and effect and shall not be binding upon Landlord. If any of the Rent or any other sum payable by Tenant to Landlord hereunder shall be overdue and unpaid or paid by Landlord on behalf of Tenant, or if Tenant shall fail to perform any of its obligations under this Lease, then Landlord may, at its

option and without prejudice to any other remedy which Landlord may have on account thereof, appropriate and apply said entire Security Deposit, or so much thereof as may be necessary to compensate Landlord for Minimum Rent, Additional Rent, loss or damage sustained by Landlord as a result thereof, and Tenant shall forthwith upon demand restore the Security Deposit to the original sum deposited. Should Tenant comply with all of said obligations and promptly pay all the rentals when due and all other sums payable by Tenant to Landlord, said Security Deposit shall be refunded in full to Tenant at the expiration or earlier termination of this Lease. In the event of bankruptcy or other debtor-creditor proceedings against Tenant, as specified in **Article 18**, the Security Deposit shall be deemed to be applied first to the payment of rental and other charges due Landlord for the earliest periods prior to the filing of such proceedings. Landlord may deliver the Security Deposit to the purchaser or assignee of Landlord's interest in the Premises in the event that such interest is transferred and thereupon Landlord shall be discharged from any further liability with respect to the Security Deposit. This Section shall also apply to any subsequent transfer of Landlord's interest in the Premises.

31.2 Governing Item. Notwithstanding anything contained in the Lease to the contrary, in the event of a conflict between Tenant's approved Construction Documents, as set forth in **Exhibit B-2**, and the terms and conditions of this Lease, including, but not limited to, **Exhibit B-2**, Tenant's approved Construction Documents, as approved by Landlord in accordance with **Exhibit B-2**, shall govern.

31.3 Landlord Access to Rent. Landlord may, at any time during the last 120 days of the Term, upon reasonable notice to Tenant, enter the Premises at all reasonable hours for the purpose of offering them for rent and may place and keep on the windows and doors of the Premises signs advertising the Premises for rent.

31.4 Relationship. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating a relationship between the parties hereto other than the relationship of landlord and tenant.

31.5 Submission. The submission of this Lease for examination does not constitute a reservation or any option for the Premises and this Lease becomes effective only upon its execution and delivery by both parties hereto.

31.6 Headings. The Article headings used throughout this Lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.

31.7 Construction. Whenever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders. The captions, section numbers, article numbers, and index appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Lease nor in any way affect this Lease.

31.8 Independent Covenants. The doctrine of independent covenants shall apply in all matters relating to this Lease including, without limitation, all obligations of Landlord and Tenant to perform their respective obligations under this Lease. All obligations of Tenant which by their nature involve performance after the end of the Term, or which cannot be ascertained to have been performed until after the end of the Term of this Lease, shall survive the expiration or earlier termination of this Lease.

31.9 [INTENTIONALLY OMITTED]

31.10 [INTENTIONALLY OMITTED]

31.11 **Time of Essence & Binding Nature.** Time is of the essence of all of the terms and provisions of this Lease, and the terms and conditions hereof shall extend to and be binding upon the heirs, executors, successors and assigns of the parties hereto and mention of the singular shall include the plural and the plural shall include the singular.

31.12 **Memorandum of Lease.** In accordance with ARIZ. REV. STAT. § 42.6202(C), the City shall record a memorandum of this Lease in the Maricopa County Recorder's Office.

31.13 **Trial Waiver.**

THE PARTIES HERETO IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, OR TENANT'S USE AND OCCUPANCY OF THE PREMISES.

31.14 **Governing Law.** This Lease shall be subject to the laws of the State of Arizona.

31.15 **Attorneys' Fees.** In the event either party to this Lease brings any legal action to enforce the provisions hereof, the prevailing party in any such action shall be entitled to recover from the non-prevailing party all attorneys' fees and other fees and costs incurred by such prevailing party in connection with any such action.

31.16 **Force Majeure.** In the event either party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Lease by reason of strikes, lockouts, labor troubles, acts of God, inclement weather, including periods of rain, inability to procure materials, failure of power, restrictive governmental law or regulations, riots, insurrections, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease ("**Force Majeure**"), then performance of such act shall be excused for the number of calendar days of such delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. No delay under this Section shall be effective unless Landlord or Tenant shall have notified the other of the delay within 20 days after cessation of the event giving rise to such delay setting forth the nature of such Force Majeure and the duration of such delay. The provisions of this Section shall not: **(A)** operate to excuse Tenant from prompt payment of Minimum Rent, Additional Rent or any other payment required by the terms of this Lease; nor **(B)** be applicable to delays resulting from the inability of a party to obtain financing or to proceed with its obligations under this Lease because of a lack of funds.

31.17 [INTENTIONALLY OMITTED]

31.18 **Guaranty.** Subject to the limitations set forth in **Exhibit E**, this Lease is guaranteed by the parties set forth in **ITEM 12** of the Cover Sheet, and such Guarantor(s) shall execute a Guaranty in the form attached hereto as **Exhibit E ("Form of Lease Guaranty")**. If Landlord, in its sole discretion, determines that the creditworthiness or financial status of Guarantor falls below a level then acceptable to Landlord, or a bankruptcy proceeding is filed by or against a Guarantor, or if the Guarantor defaults under the Guaranty or if the Guarantor dies

(if an individual), Landlord may at any time upon demand, require Tenant to deliver additional or different security for this Lease, and if Tenant fails to provide such additional or different security, Landlord may terminate this Lease with 30 days notice.

31.19 Tenant Liability; Authority. If this Lease is executed by more than one person or entity as "**Tenant**", each such person or entity shall be jointly and severally liable hereunder. It is expressly understood that any one of the parties who have executed this Lease as "**Tenant**" (herein individually referred to as "**Signatory**") shall be empowered to execute any modification, amendment, exhibit, floor plan, or other document ("**Future Instrument**") and bind each such Signatory who has executed this Lease regardless of whether each Signatory, in fact, executes such Future Instrument. If Tenant is a corporation, limited liability company or partnership, each individual executing this Lease on behalf of such entity represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of said entity, in accordance with the organizational documents of said entity, and that this Lease is binding upon said entity.

31.20 Homeland Security. Tenant represents, certifies and warrants to Landlord as follows: **(A)** Tenant is not named by, and is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by, any Executive Order, including without limitation Executive Order 13224, or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enacted, enforced or administered by the Office of Foreign Assets Control; **(B)** Tenant is not engaged in this transaction, directly or indirectly, for or on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation; and **(C)** none of the proceeds used to pay Minimum Rent and Additional Rent have been or will be derived from a "specified unlawful activity" as defined in, and Tenant is not otherwise in violation of, the Money Laundering Control Act of 1986, as amended, or any other applicable laws regarding money laundering activities. Furthermore, Tenant agrees to immediately notify Landlord if Tenant was, is, or in the future becomes a "senior foreign political figure," or an immediate family member or close associate of a "senior foreign political figure," within the meaning of Section 312 of the USA PATRIOT Act of 2001. Notwithstanding anything in this Lease to the contrary, Tenant acknowledges and agrees that this Lease is a continuing transaction and that the foregoing representations, certifications and warranties are ongoing and shall be and remain true and in full force and effect on the date hereof and throughout the Term and that any breach thereof shall constitute an automatic Event of Default giving rise to Landlord's remedies and Tenant agrees to indemnify, defend and hold harmless Landlord and Landlord's management agent from and against all losses, damages, costs and expenses resulting from or relating to any breach of the foregoing representations, certification and warranties.

31.21 Limitation of Landlord's Liability. Notwithstanding any other provision of this Lease, Tenant agrees that neither Landlord nor any of Landlord's officers, directors, partners, shareholders, members or employees shall have any personal liability hereunder. Additionally, notwithstanding anything in this Lease to the contrary, in no event shall Landlord ever be liable to Tenant for consequential damages or special damages. Landlord is obligated only to pay its obligations set forth in this Lease as may lawfully be made from funds appropriated and budgeted for that purpose during Landlord's then current fiscal year. The Landlord's obligations under this Lease are current expenses subject to the "budget law" and the unfettered legislative decision of the Landlord concerning budgeted purposes and appropriation of funds. Should Landlord elect not to appropriate and budget funds to pay its Lease obligations, this Lease shall be deemed terminated at the end of the then current fiscal year term for which such funds were appropriated and budgeted for such purpose and Landlord shall be relieved of any subsequent

obligation under this Lease. The parties agree that the Landlord has no obligation or duty of good faith to budget or appropriate the payment of Landlord's obligations set forth in this Lease in any budget in any fiscal year other than the fiscal year in which this Lease is executed and delivered. Landlord shall be the sole judge and authority in determining the availability of funds for its obligations under this Lease. Landlord shall keep the Tenant informed as to the availability of funds for this Lease. The obligation of Landlord to make any payment pursuant to this Lease is not a general obligation or indebtedness of Landlord. The Tenant hereby waives any and all rights to bring any claim against the Landlord from or relating in any way to Landlord's termination of this Lease pursuant to this Section 31.21.

31.22 Legal Representation of the Parties. This Lease was negotiated by the Parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Lease to be construed or interpreted against any party shall not apply to any construction or interpretation hereof or thereof.

31.23 Agreement; Amendment. This Lease (including all Riders, Exhibits, Addenda and Guaranty, if any) is the complete agreement between Landlord and Tenant concerning the Premises and the Building. There are no oral agreements, understandings, promises or representations between Landlord and Tenant affecting this Lease. All prior negotiations and understandings, if any, between the parties hereto with respect to the Premises and the Building, shall be of no force or effect and shall not be used to interpret this Lease. This Lease shall not be amended, changed or extended except by written instrument signed by both parties hereto. This Lease shall be considered to have been executed by a person if there exists a photocopy, facsimile copy, or a photocopy of a facsimile copy of an original hereof or of a counterpart hereof which has been signed by such person. Any photocopy, facsimile copy, or photocopy of facsimile copy of this Lease or a counterpart hereof shall be admissible into evidence in any proceeding as though it were an original.

31.24 Subsequent Commencement. This Lease shall be effective as of the day and year first above written notwithstanding that the Term shall commence at a date subsequent thereto and Landlord and Tenant intend that each shall have vested rights immediately upon the full execution signing of this Lease and that this Lease shall be fully binding and in full force and effect from and after execution hereof by the last to sign of Landlord and Tenant.

31.25 Severability. If any provision of this Lease or the application of it to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each provision of the Lease shall be valid and enforceable to the fullest extent permitted by law, and the remaining provisions of this Lease shall be interpreted so as to nearly as possible conform to the intent of the parties as indicated in this Lease.

31.26 Conflict of Interest. The Landlord may cancel this Lease pursuant to ARIZ. REV. STAT. § 38-511 without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Lease on behalf of the Landlord is, at any time while the Lease or any extension of the Lease is in effect, an employee of the Tenant in any capacity or a consultant to the Tenant with respect to the subject matter of the Lease. The cancellation shall be effective when written notice from the Landlord is received by the Tenant, unless the notice specifies a later time.

31.27 [INTENTIONALLY OMITTED]

31.28 **Incorporation of Exhibits.** All Exhibits identified in this Lease, including, but not limited to the following listed Exhibits, shall be and are hereby incorporated into this Lease by this reference:

- EXHIBIT A SITE PLAN
- EXHIBIT B-1 DELIVERY DATE CERTIFICATE
- EXHIBIT B-2 CONSTRUCTION GUIDELINES
- EXHIBIT C [INTENTIONALLY OMITTED]
- EXHIBIT D FORM OF COMMENCEMENT DATE MEMORANDUM
- EXHIBIT E FORM OF LEASE GUARANTY

31.29 **First Right of Refusal to Leased Contiguous Space.** During the Term of this Lease, Landlord grants Tenant a First Right of Refusal to lease any vacant space contiguous to the Premises on the first floor. In the event Landlord receives an offer to lease said space acceptable to Landlord, Landlord shall first offer to lease said space to Tenant on the same terms and conditions set forth in this Lease, which shall be evidenced by a written addendum incorporating said space into this Lease. Landlord's notice and offer to lease shall be in writing, include a copy of any offer to lease from third parties, and Tenant shall have 10 days thereafter to accept or reject said offer in writing

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned parties have executed this Lease the day and year first above written.

LANDLORD:

TENANT:

CITY OF AVONDALE,
an Arizona municipal corporation

PHOENIX WEST COMMERCIAL, LLC,
an Arizona limited liability company

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date Executed: _____

Date Executed: _____

ATTEST:

Carmen Martinez, City Clerk

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015 by _____ of CITY OF AVONDALE, an Arizona municipal corporation.

My Commission expires: _____
Notary Public

STATE OF ARIZONA)
) ss.
County of Maricopa)

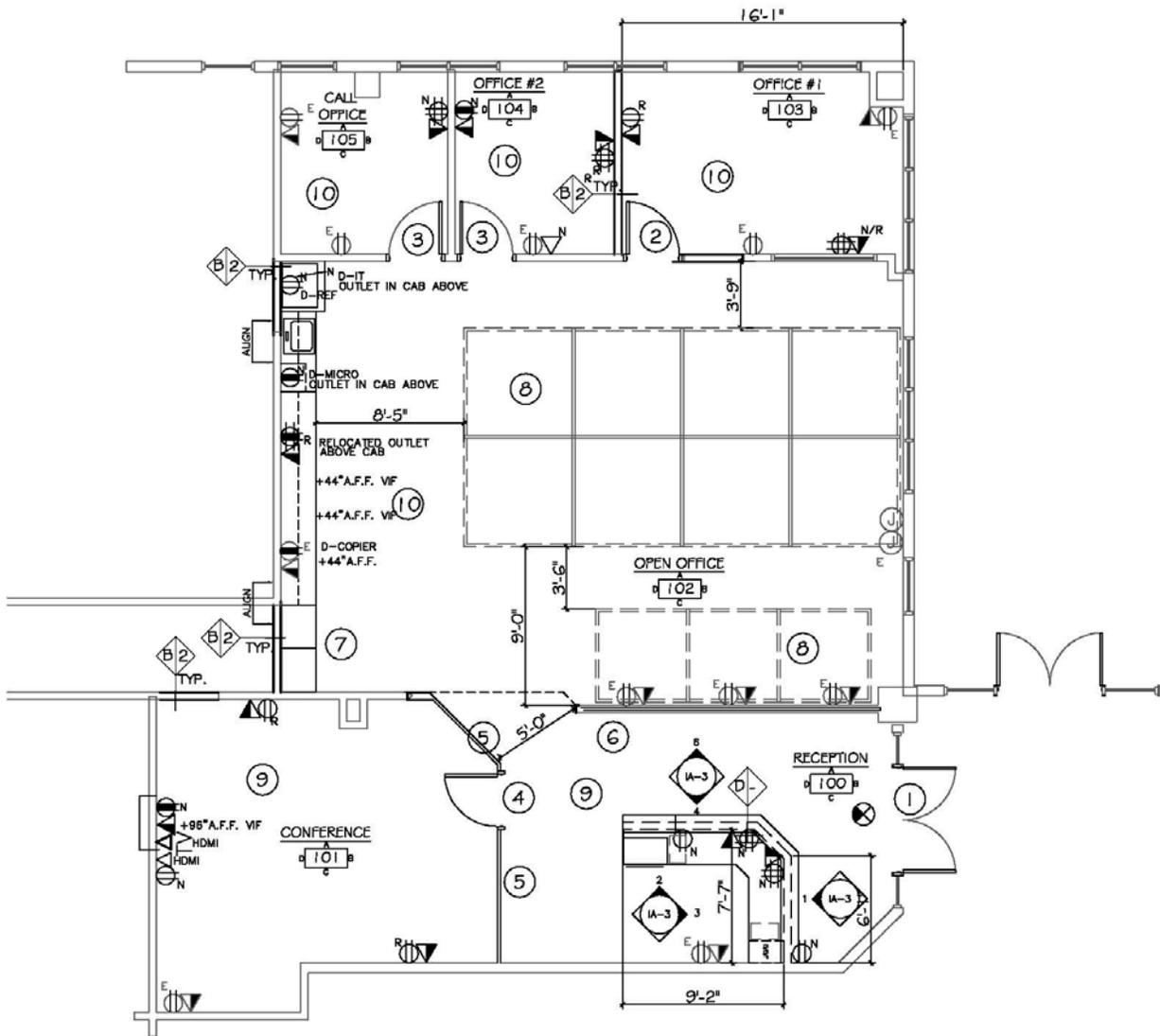
The foregoing instrument was acknowledged before me this ____ day of _____, 2015 by _____ of PHOENIX WEST COMMERCIAL, LLC, an Arizona limited liability company.

My Commission expires: _____
Notary Public

EXHIBIT A

SITE PLAN

Tenant hereby acknowledges that the attached Site Plan is intended to show the approximate layout of the Building and location of the Premises, and Landlord has the right at any time to expand, reduce, remove, demolish, renovate or construct any existing or new improvements in the Building, including, without limitation, the right to change the shape, size, configuration, number, design or extent of such improvements, provided the approximate location, size and configuration of the Premises shall not be materially changed.



 FLOOR PLAN

EXHIBIT B-1

DELIVERY DATE CERTIFICATE

DELIVERY DATE CERTIFICATION

_____, 2015

VIA FEDERAL EXPRESS

Phoenix West Commercial, LLC
125 S. Avondale Boulevard, Suite 100
Avondale, Arizona 85323
Attn: Bobbi Mastracci

Re: Office Lease Agreement, dated _____, 2015, as amended (the "**Lease**"), between THE CITY OF AVONDALE, an Arizona municipal corporation ("**Landlord**"), and PHOENIX WEST COMMERCIAL, LLC, an Arizona limited liability company ("**Tenant**"), with respect to those certain premises contemplated to contain approximately 2,015 square feet, as more particularly depicted and described in **Exhibit A** to the Lease (the "**Premises**") and located at Suite 100 on the first floor of 125 South Avondale Boulevard, Avondale, Arizona

Dear Bobbi:

In accordance with the provisions of the Lease, Landlord hereby certifies to Tenant that the Delivery Date (as such term is defined in the Lease) will be deemed to be _____, 201____. This notice shall constitute the Delivery Date Certification from Landlord to Tenant.

THE CITY OF AVONDALE, an Arizona
municipal corporation

By: _____
Name: _____
Title: _____

cc: _____

EXHIBIT B-2

CONSTRUCTION GUIDELINES

THIS **EXHIBIT B-2** (the "**Construction Guidelines**") supplements the Lease to which it is attached and is incorporated therein as if set out in full. In the event of a conflict between the terms of this **Exhibit B-2** and the Lease, this **Exhibit B-2** shall control. Capitalized terms not defined in this **Exhibit B-2** shall have the meanings given to such terms in the Lease.

1. **Landlord's Work.** Landlord shall, at its own cost and expense, perform only the work described as "**Landlord's Work**" in **ITEM 11** of the Lease. Landlord has made no representations or warranties regarding the condition of the Premises or the Building, except as expressly set forth in this Lease.

2. **Tenant's Work.** Tenant shall, at its own cost and expense, perform all work described as "Tenant's Work" in **ITEM 11** of the Lease in addition to all work not described as "**Landlord's Work**" in the Lease necessary to complete the Premises and to prepare them for the operation of Tenant's business therein (collectively, "**Tenant's Work**"). Notwithstanding anything to the contrary contained in this Lease, the parties acknowledge that Tenant will be required to comply with the public procurement laws for each contract to be entered into by Tenant in connection with the construction of Tenant Improvements, consistent with the obligations of ARIZ. REV. STAT. §§ 34-201 et seq., as may be amended, modified or replaced. Tenant agrees that all Leasehold Improvements to the Premises shall, upon installation, become the property of Landlord and shall remain upon the Premises upon the expiration or earlier termination of this Lease. Tenant shall not do anything upon or in connection with the Premises or the construction of any part thereof which interferes in any way with, or results in a work stoppage in connection with, construction of any part of the Building or any other tenant's space.

3. **Plans and Specifications.**

3.1 **Tenant's Drawings.** Tenant shall prepare and furnish to Landlord, at Tenant's sole cost and expense, and in compliance with applicable laws, statutes, ordinances and codes, a complete set of store finish drawings ("**Tenant's Drawings**") by _____.

3.2 **Approval of Tenant's Drawings.** Landlord shall have 30 days after receipt to approve or disapprove Tenant's Drawings, specifying in detail any reasons for disapproval. If Tenant's Drawings are disapproved, Tenant shall incorporate Landlord's comments and resubmit Tenant's Drawings to Landlord within 15 days. Landlord shall have 15 days after receipt of the resubmitted Drawings to approve or disapprove them, and, in the event of disapproval, the procedures set forth herein shall be repeated until Landlord has approved Tenant's Drawings. Landlord will not unreasonably withhold its approval.

3.3 **Construction Documents.** Tenant shall prepare and furnish to Landlord, at Tenant's sole cost and expense, and in compliance with applicable laws, statutes, ordinances and codes, a complete set of construction plans and specifications ("**Construction Documents**") by _____. A complete set of Construction Documents shall be kept on the Premises at all times until Tenant opens for business therein.

3.4 **Approval of Construction Documents.** Landlord shall have 30 days after receipt to approve or disapprove Tenant's Construction Documents, specifying in detail any reasons for disapproval. If Tenant's Construction Documents are disapproved, Tenant shall

incorporate Landlord's comments and resubmit Tenant's Construction Documents to Landlord within 15 days. Landlord shall have 15 days after receipt of the resubmitted Construction Documents to approve or disapprove them, and, in the event of disapproval, the procedures set forth herein shall be repeated until Landlord has approved Tenant's Construction Documents. Landlord will not unreasonably withhold its approval. A complete set of Construction Documents shall be kept on the Premises at all times until Tenant opens for business therein.

3.5 **Tenant's Architect/Engineer.** Tenant shall cause all architects and engineers engaged by Tenant (each a "**Professional**") to obtain and keep in force, with an insurance company authorized to do business in Arizona which has a general policy rating of A- or better and a financial class of VII or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company is no longer available, a comparable rating from a similar or successor service), a policy of professional liability insurance covering all liability arising out of any negligent acts or errors and omissions committed by such Professional with limits of not less than \$1,000,000.00 per claim and annual aggregate, with a retroactive date prior to the contract date. Each Professional shall maintain such policy for a minimum of two years after completion of work or shall obtain a two-year extended reporting period if the policy is canceled or non-renewed.

4. **Tenant's Contractor.** All contractors engaged by Tenant shall be bondable, licensed contractors, having good labor relations, and capable of performing quality workmanship and working in harmony with Landlord's contractors and other contractors on the job. The term "contractors" as used in this Section shall be deemed to include subcontractors. The City shall have the absolute right to review contractor plans, bids, and estimated costs and, in its reasonable discretion, the City may approve or disapprove Tenant's Contractor, specifying in detail any reasons for disapproval. If the Tenant's Contractor is not approved, the City has authority to solicit a different contractor to perform any and all work according to the specifications of this lease.

4.1 **Insurance.** On or before entry into the Premises, Tenant shall cause its contractor to obtain and to keep in force, with an insurance company authorized to do business in Arizona which has a general policy rating of A- or better and a financial class of VII or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company is no longer available, a comparable rating from a similar or successor service), until Tenant's Work is completed, all of the following insurance:

A. **Commercial General Liability Insurance.** Commercial general liability insurance to protect against claims for bodily injury and property damage arising out of premises operations, products, and completed operations, and advertising and personal injury liability, written on an occurrence basis using ISO Form CG0001 (or its equivalent) with no amendments to the definition of an insured contract, in limits of not less than \$2,000,000.00 inclusive, per occurrence, and \$2,000,000.00 annual aggregate per project, or such higher limits as Landlord may require from time to time during the Term. Completed Operations to remain in force for at least two years following project completion. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

B. **Commercial Automobile Liability Insurance.** Commercial automobile liability insurance to include contractual liability insurance for the indemnities set forth in this contract covering all owned, non-owned and hired automobiles, in limits of not less than \$1,000,000.00 combined single limit (each accident), or such higher limits as

Landlord may require from time to time during the Term. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

C. Employer's Liability Insurance and Workers Compensation. Employer's Liability insurance, with minimum limits of not less than \$500,000 bodily injury each accident, \$500,000.00 bodily injury by disease policy limit and \$500,000.00 bodily injury by disease each employee, and Worker's Compensation, in form and amount as required by applicable state law. To the extent permitted by applicable law, such policy shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

D. Umbrella Liability Insurance. Umbrella liability insurance over the primary general liability, automobile liability and employer's liability insurance policies in limits of not less than \$2,000,000.00 inclusive per occurrence, and \$2,000,000.00 annual aggregate, per project, or such higher limits as Landlord may require from time to time during the Term. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

E. Builder's Risk Insurance. Builder's Risk insurance on a "Special Form" basis (including collapse) using a completed value (non-reporting) form for full replacement cost covering all work which Tenant contracts for or performs in the Building and all materials and equipment used or installed by Tenant in or about the Premises, off site and in transit. This insurance shall include: (1) interests of Tenant, Landlord, Landlord's property manager, all mortgagees of Landlord, Tenant's contractor, subcontractors and sub-subcontractors; and (2) a mutual release and waiver of subrogation for all parties.

F. Insurance Changes. Landlord may require, from time to time, changes or endorsements to Tenant's contractor insurance required herein.

4.2 Policies of Insurance. Tenant's contractor shall have right to satisfy the insurance required by this Section by means of blanket insurance policy(ies), provided that no other loss which may also be insured by the blanket insurance shall affect the insurance coverages required hereunder and further provided that Tenant's contractor delivers to Landlord a certificate specifically stating that such coverages apply to Landlord, Landlord's property manager, all mortgagees of Landlord, the Premises and the Building. All policies of insurance or certificates thereof, except with respect to workers compensation or professional liability, shall name Tenant, Landlord, Landlord's property manager, and all mortgagees of Landlord, as additional insureds, as their respective interests may appear, including products and completed operations. All self insured retentions and deductible amounts shall be subject to Landlord's prior written approval. Any and all deductibles or coinsurance in the above-described policies or inadequacy of limits for coverage shall be assumed by, for the account of, and at Tenant's contractor sole risk. Prior to commencing any work under this Agreement, Tenant will provide Landlord with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Tenant's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in

this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Landlord shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. Tenant agrees to further provide Landlord evidence of renewals of policies not later than 30 days prior to the end of the expiring term. All policies of insurance carried by Tenant's contractor shall be primary and non-contributing in the event of any loss or damage with any insurance required to be maintained by Tenant's contractor under the terms of this Lease. All policies and certificates shall notify Tenant, Landlord and any mortgagee of Landlord, in writing, not less than 30 days before any lapse, non-renewal or cancellation, including cancellation for nonpayment of premium, or other termination thereof and shall include a clause or endorsement denying the insurer any rights or subrogation against Tenant and Landlord, Landlord's property manager, and all mortgagees of Landlord. Landlord reserves the right to request and receive for review certified copies of any and all insurance policies to which the Lease is applicable. The required coverage and or limits referred to and set forth herein shall in no way affect or limit Tenant's contractor's liability with respect to its performance.

4.3 **Conditions to Commencement of Tenant's Work.** On or before entry into the Premises, Tenant shall cause its contractor to: **(A)** review the plans and specifications (including all exhibits, addendums or riders thereto); **(B)** review other related data including "technical data"; **(C)** inspect the Premises; and **(D)** obtain all governmental permits and approvals and pay any associated tax (including, but not limited to, excise tax) to complete Tenant's Work and forward copies to Landlord.

4.4 **Construction of Tenant's Work.** Tenant shall cause its contractor: **(A)** to construct Tenant's Work strictly in accordance with Landlord approved plans and specifications and changes thereto which are stamped approved by Landlord's architect; **(B)** to advise Landlord immediately of any requested change from the plans and specifications; **(C)** to keep a Landlord approved original set of plans and specifications at the job site at all times; and **(D)** not to leave the job site until Landlord's and Tenant's punchlist items are complete, all damage is repaired and the site is free of debris and all unused materials are removed. Daily site clean up is required.

4.5 **[INTENTIONALLY OMITTED]**

4.6 **Damage to Equipment.** Tenant agrees that Landlord shall not be liable and Tenant shall indemnify Landlord against any damage to Tenant's contractor or contractor's employee's property, or any equipment entrusted to Tenant's contractor by others, and for the loss of or damage to any of Tenant's contractor's property or equipment by theft or otherwise, unless caused by Landlord's gross negligence or willful misconduct.

4.7 **Violations by Tenant's Contractors.** In addition to application of the Contractor Deposit, and any and all remedies at law or equity, in the event Tenant's contractor violates the requirements of this Exhibit, Landlord, upon five days notice, may order Tenant's contractors to remove themselves, their equipment and their employees from Landlord's property. Notwithstanding the foregoing, in the event Tenant's contractor violates the requirements of this Exhibit on two occasions, as to the third such occasion, Landlord shall not be required to give notice to Tenant and may order Tenant's contractors to remove themselves, their equipment and their employees from the Building.

5. **Allowance.** In consideration of the performance by Tenant of Tenant's Work in the Premises and the timely fulfillment of all of the terms of this Lease, Landlord agrees to pay to Tenant the Construction Allowance, as described in the Lease, applicable to the "**hard costs**" (as defined below) for Tenant's permanent leasehold improvements for the Premises. For this purpose, "**hard costs**" shall mean and refer only to the cost of labor and materials incorporated into the Premises as permanent leasehold improvements, and shall not include, without limitation, any so called "**soft costs**," design/architectural/engineering fees or the cost of Tenant's trade fixtures, inventory, personal property or any other property constituting "**Tenant's Property**" (as defined in the Lease). The Construction Allowance shall be applicable only to Tenant's Work actually performed and completed to the Premises and shall be paid according to the provisions of **ITEM 11(E)** of the Cover Sheet of this lease. Landlord further agrees to pay Tenant any and all remaining retainage within 21 days of the Certificate of Occupancy, provided **all** of the flowing have occurred:

5.1 **Opened.** Tenant has opened for business in the Premises as required by this Lease and has paid to Landlord the first and any subsequently owed Rent payment(s) or other amounts due under this Lease.

5.2 **Commencement Date Memorandum.** Tenant has executed and delivered to Landlord a Commencement Date Memorandum in the form attached to the Lease as **Exhibit D**;

5.3 **No Default.** Tenant is not in default after notice and the lapse of any applicable cure period.

5.4 **Work Completed.** Tenant's Work is completed in accordance with approved Construction Documents.

5.5 **Debris.** The Premises and the Common Areas surrounding the Premises are free of Tenant's debris, all contractor equipment and materials have been removed from the Premises, and any damage to the Building or the Common Areas caused by Tenant, its agents or contractors, has been repaired.

5.6 **Liens, Judgments, Levies, or Tax Liens.** The Premises, including all installations therein, are free and clear of all liens and there are no judgments, levies, attachments, liens or tax liens pending or in effect with respect to Tenant's Work in the Premises.

5.7 **Required Documentation.** Tenant has submitted the following completed documentation to Landlord:

A. **Lien Waivers.** Full, final and unconditional lien waivers and releases in favor of Landlord, Landlord's lender, any proposed purchaser, or any other person/entity reasonably requested by Landlord, from Tenant's general contractor and from all Tenant's subcontractors having contracts in excess of \$5,000.00.

B. **Certificates.** A copy of the permanent Certificate of Occupancy and any temporary Certificates of Occupancy.

C. **Contractor's Final Billing.** A copy of the final billing from Tenant's general contractor (broken down in reasonable detail and showing the cost of work

performed at the Premises adequate to componentized for tax purposes under either generally accepted accounting principles or Internal Revenue guidelines).

D. **Architect Certificate.** Tenant's design professional's certificate certifying that Tenant's Work is completed in accordance with the approved Construction Documents, including all items on Landlord's representative's punch list.

[Balance of this page intentionally left blank.]

EXHIBIT C

[INTENTIONALLY OMITTED]

EXHIBIT D

FORM OF COMMENCEMENT DATE MEMORANDUM

THIS COMMENCEMENT DATE MEMORANDUM ("**Memorandum**") dated as of _____, 20__, by and between, **CITY OF AVONDALE, an Arizona municipal corporation ("Landlord")**, and, **PHOENIX WEST COMMERCIAL, LLC, an Arizona limited liability company ("Tenant")**.

RECITALS:

A. By that certain Building Lease dated as of _____ between Landlord and Tenant (the "**Lease**"), Landlord leased to Tenant and Tenant leased from Landlord the Premises, subject to the conditions and limitations therein contained.

B. **ITEM 7** of the Cover Sheet of the Lease provides that, upon determination of the Commencement Date, Landlord and Tenant shall execute a memorandum which shall set forth, among other things, the Commencement Date, the date when Tenant may exercise its Option Term pursuant to **ITEM 5** of the Cover Sheet of the Lease, and the date on which the initial term of the Lease shall expire (subject to Tenant's right, if any, to extend the Term of the Lease as provided therein), and shall evidence Tenant's acceptance of the Premises and agreement that Landlord has fully complied with Landlord's covenants and obligations.

C. The Commencement Date and such other dates have been determined and, accordingly, the parties desire to enter into this Memorandum.

D. Unless otherwise provided herein, all capitalized words and terms in this Memorandum shall have the same meanings ascribed to such words and terms in the Lease.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Delivery Date was _____.
2. The Commencement Date is _____. Tenant's obligation to pay Minimum Rent and other charges payable by Tenant under the Lease shall commence as of the Commencement Date set forth above.
3. The Floor Area of the Premises is _____ square feet.
4. Tenant shall exercise its right to the Option Term, if at all, before _____, subject to the conditions and limitations set forth in _____ of the Lease.
5. The date on which the initial Term of the Lease shall expire, unless such Term is extended by Tenant as provided in the Lease, is _____.
6. Tenant hereby acknowledges Tenant's acceptance of possession of the Premises and agrees that Landlord has fully complied with Landlord's covenants and obligations under the Lease.

7. Tenant acknowledges that all Rent is payable to Landlord at the following address, unless further notified:

City of Avondale
c/o Kennedy Wilson Properties LTD
7375 E. 6th Avenue, #11
Scottsdale, Arizona 85251
Attention: Mary Jacobs

8. This Memorandum may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum as of the day and year first above written.

LANDLORD:

CITY OF AVONDALE,
an Arizona municipal corporation

By: _____

Name: _____

Title: _____

Date Executed: _____

TENANT:

PHOENIX WEST COMMERCIAL, LLC,
an Arizona limited liability company

By: _____

Name: _____

Title: _____

Date Executed: _____

ATTEST:

Carmen Martinez, City Clerk

EXHIBIT E

FORM OF LEASE GUARANTY

In order to induce **CITY OF AVONDALE**, an Arizona municipal corporation, its successors and assigns, ("**Landlord**") to enter into that certain Lease Agreement dated _____, (the "**Lease**") between Landlord and **PHOENIX WEST COMMERCIAL, LLC**, an Arizona limited liability company, ("**Tenant**"), and in consideration of the benefits inuring to the undersigned (collectively, the "**Guarantor**") under said Lease, the receipt and sufficiency of which are represented by the Guarantor to Landlord to be sufficient and adequate, the Guarantor hereby unconditionally guarantees the performance of all of Tenant's obligations under the Lease, including, without limitation, the payment of rental as provided therein. This Guaranty shall remain in full force throughout the original lease term and any renewals thereof and any extension or renewal hereinafter agreed upon by Tenant and Landlord.

Guarantor hereby waives notice of acceptance of this Guaranty agreement and all other notices in connection herewith or in connection with the liabilities, obligations and duties guaranteed hereby, including notices to it of default by Tenant under the Lease, and hereby waives diligence, presentment, protest and suit on the part of Landlord in the enforcement of any liability, obligation or duty guaranteed hereby. Guarantor(s) hereby waive the provisions of Section 12-1641 et. seq. of the Arizona Revised Statutes.

Guarantor further agrees that Landlord shall not be first or concurrently required to enforce against Tenant or any other person, any liability, obligation or duty guaranteed hereby before seeking enforcement thereof against Guarantor. The liability of Guarantor shall not be affected by any indulgence, compromise, settlement, or variation of terms which may be extended to Tenant by Landlord, or agreed upon by Landlord or Tenant, and shall not be affected by any assignment or sublease by Tenant of its interest in the Lease, nor shall the liability of the Guarantor be affected by the insolvency, bankruptcy (voluntary or involuntary), or reorganization of Tenant, nor by the voluntary or involuntary liquidation, sale or other disposition of all or substantially all of the assets of Tenant or by action of Landlord, including but not limited to any assignment, pledge, conveyance or transfer of the Lease. Landlord and Tenant, without notice to or consent by Guarantor, may at any time or times enter into such modifications, extensions, amendments, or other covenants respecting the Lease as they may deem appropriate and Guarantor shall not be released thereby, but shall continue to be fully liable for the performance of all obligations and duties of Tenant under the Lease as so modified, extended or amended.

Guarantor further agrees: **(A)** to indemnify, defend and hold Landlord harmless from and against any claims, damages, expenses or losses, including to the extent permitted by law, the reasonable fees of an attorney, resulting from or arising out of any breach of the Lease or any term of the Lease by Tenant or by reason of Tenant's failure to perform any of its obligations thereunder; and **(B)** to the extent permitted by law, to pay any costs or expenses, including the reasonable fees of an attorney, incurred by Landlord in enforcing this Guaranty or the Lease. The Guarantor acknowledges that Landlord shall or may assign its rights under the Lease to anyone as security for a loan to be made by such institutional investor to Landlord OR FOR ANY OTHER REASON, and as long as any indebtedness of Landlord shall be outstanding AND/OR such assignment of the Lease shall exist, such lender or any assignee shall be entitled to bring any suit, action or proceeding against the undersigned for the enforcement of any provision of this Guaranty and it shall not be necessary in any such suit, action or proceeding to make Landlord a party thereto. This Guaranty may not be modified or amended without the prior written consent of such assignee of Landlord's interest in the Lease and any attempted modification or amendment

without such consent shall be void. This Guaranty shall be binding upon Guarantor, his heirs, legal representatives, successors and assigns, and shall inure to the benefit of Landlord and its successors and assigns. This Guaranty shall be governed by and construed and enforced in accordance with the laws of the State of Arizona. If there is more than one Guarantor, the liability of each Guarantor shall be joint and several.

IN WITNESS WHEREOF, Guarantor has caused this instrument to be executed this _____ day of _____, 2015.

"GUARANTOR"

By: Bobbie Lorraine Mastracci

Address: 549 E. Plaza Circle Dr.
Litchfield Park, AZ 85340

Date Executed: _____

By: Joseph A. Mastracci

Address: 549 E. Plaza Circle Dr.
Litchfield Park, AZ 85340

Date Executed: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Bobbie Lorraine Mastracci, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

Notary Public

My Commission Expires: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Joseph A. Mastracci, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

Notary Public

My Commission Expires: _____



CITY COUNCIL AGENDA

SUBJECT:

Greater Maricopa Foreign Trade Zone

MEETING DATE:

11/2/2015

TO: Mayor and Council

FROM: Daniel Davis, Economic Development Director (623) 333-1411

THROUGH: David Fitzhugh, City Manager

PURPOSE:

Staff will provide City Council with an update regarding the Greater Maricopa Foreign Trade Zone (GMFTZ)

BACKGROUND:

A Foreign-Trade Zone (FTZ) is a Federal Program initiated in 1934 to stimulate local economies and to enhance job creation within the United States. The U.S. Foreign Trade Zone Board reviews applications and is the agency that grants FTZ status.

In 2009, staff worked with IMS Worldwide and four other West Valley cities to create the Greater Maricopa Foreign Trade Zone that includes, Goodyear, Surprise, Buckeye and El Mirage. On June 15, 2009 the City Council adopted a resolution authorizing our participation in the GMFTZ and established a local property tax policy.

On December 22, 2010 the Foreign-Trade Zones Board issued a Grant of Authority under Board Order No. 1733 to establish Foreign-Trade Zone No. 277 to serve Western Maricopa County and designated GMFTZ as the Grantee of the Zone.

DISCUSSION:

The Foreign Trade Zone Tax policy that was adopted by City Council in 2009 is scheduled to terminate on December 31, 2015. Staff will provide City Council a detailed history of the Greater Maricopa Foreign Trade Zone, and a summary of how the program works and the benefits for businesses within an activated site.

Staff intends to present a resolution for City Council consideration that extends the Foreign Trade Zone Tax Policy at the December 7th Council meeting.

RECOMMENDATION:

For information and discussion purposes



CITY COUNCIL AGENDA

SUBJECT:

Resolution 3279-1115 - Amendment to
Development Agreement - Lennar Arizona, Inc.
and Desert Springs Village HOA

MEETING DATE:

11/2/2015

TO: Mayor and Council**FROM:** Tracy Stevens, Development and Engineering Services Director**THROUGH:** David Fitzhugh, City Manager**PURPOSE:**

Staff is requesting that the City Council adopt a Resolution approving the first amendment to the Development Agreement with Lennar Arizona, Inc. and the Desert Springs Village Homeowners Association and authorize the Mayor or City Manager and City Clerk to execute the agreement.

BACKGROUND:

The City Center Specific Plan (CCSP) was adopted by the City Council by Resolution in August 2008. The CCSP identified future land uses as urban formed development requiring a drainage channel to convey storm water from the City Center to the Agua Fria River via a proposed conveyance channel running parallel to the north side of Van Buren Street.

On November 26, 2012 the City entered into a Development Agreement with Lennar Homes to allow the City to acquire 12 vacant lots and portions of two landscaping tracts within the Desert Springs Village subdivision for \$180,000. The property acquisition was required for the future construction of the drainage conveyance channel for development of the western portion of the City Center. In exchange, the City offered the home builder a reduction in Development Impact Fees per lot to develop the remaining vacant lots. Initial design concepts identified this area as an approximate 200' wide lush landscaped area to include a 30' wide channel, a 12' multi-use path, and seating area. Since that time, the City Council and the CIP Committee has declined to fully fund the construction of the channel.

DISCUSSION:

Desert Springs Village is a 30.36 acre, 174 lot single-family residential subdivision located at the northwest corner of 119th Avenue and Van Buren Street. The subdivision is partially developed with 76 lots remaining. Upon acquisition of the subdivision in 2012 Lennar built 20 homes. Their product coupled with the weak housing market was unsuccessful.

Lennar is selling the remaining 76 lots to Pinnacle West Homes and Development LLC, who plan to complete the subdivision, subject to the requirements outlined in the attached Development Agreement. Pinnacle West Homes and Development, LLC have been working with the City to design a unique product that will complement the neighborhood and identify specific thresholds to be eligible for the reduction in Development Impact Fees.

The proposed amended Development Agreement is a performance based agreement that requires the home builder to pull a minimum number of building permits on a yearly basis and commence construction in order to qualify for a Partial Development Impact Fee under the original Agreement. Additional requested changes include amendments to the Term of the Agreement and the Time Condition of the Partial Development Impact Fee Payments as identified below:

- Extending the Term of the Agreement an additional year terminating on November 26, 2018.
- Extending the partial payment of Development Impact Fees by the City (the difference between the then-current fee and \$10,000/du - the "City Payment") for an additional 3 years, terminating on November 26, 2018.
 - The developer will pay the current impact fee of \$14,165 (20% discount) and the City will pay the remaining \$4,165 per building permit in lieu of the developer.
- On or before November 26, 2016 developer shall obtain a minimum of twelve (12) building permits and commence construction. If Pinnacle West fails to obtain the required number of permits and commence construction prior to the year one end date, then the City's obligation to make the City Payments shall automatically terminate on November 26, 2016.
- On or before November 26, 2017 developer shall obtain a minimum of thirty-six (36) permits and commence construction. If developer fails to obtain the required number of permits and commence construction prior to year two end date, then the City's obligation to make the City payments shall automatically terminate on November 26, 2017.
- If Developer satisfies the requirements then the City's obligation to make the City payments to developer shall apply to all permits obtained by developer for the lots until November 26, 2018, at which time the City's obligation to make the City payments shall automatically expire.

The house products designed for this neighborhood (attached) will utilize a 5' Use and Benefit Easement (UBE) to enhance the side and rear lot areas to allow for more useable space. The house plans and elevations provided show options to activate the side lot area into useable space.

Following the approval of the amendment the Assignment and Assumption of the Development Agreement will be completed with Lennar Arizona Inc. and Pinnacle West Homes and Development LLC.

The proposed agreement is fair and equitable for the City and is beneficial to the residents of Avondale for several reasons:

- The agreement will help facilitate the full build-out of a subdivision in a timely manner.
- Completion of the subdivision will eliminate the blighted stigma that is attached to unfinished communities.
- The housing product at Desert Springs Village is unique when compared to the bulk of the inventory in Avondale.
- The requirements set forth in the agreement will ensure a high level of performance in exchange for the reduction in permit fees.

BUDGET IMPACT:

The funds for the reduction in the fees as outlined in the Development Agreement have been identified in line item 101-6700-00-6180. This line item includes \$85,000 for this project which would fund 20 homes. It is notable that the current development fee is \$17,707; 20% of this would qualify for the Council's reduction program which leaves \$4,165 to be funded by the line item listed above. $\$85,000/\$4,165 = 20.41$ or 20 homes.

RECOMMENDATION:

Staff recommends that the Mayor and City Council adopt a Resolution approving the first amendment to the Development Agreement with Lennar Arizona Inc. and the Desert Springs Village Homeowners Association and authorize the Mayor or the City Manager and City Clerk to execute the agreement.

ATTACHMENTS:

Description

[PinnacleFloorPlans](#)

[PinnacleFloorplanube](#)

[Resolution 3279-1115](#)



FRONT ELEVATION
HUNTERS HILL

Scheme #10



FRONT ELEVATION
WESTERN COUNTRY

Scheme #9



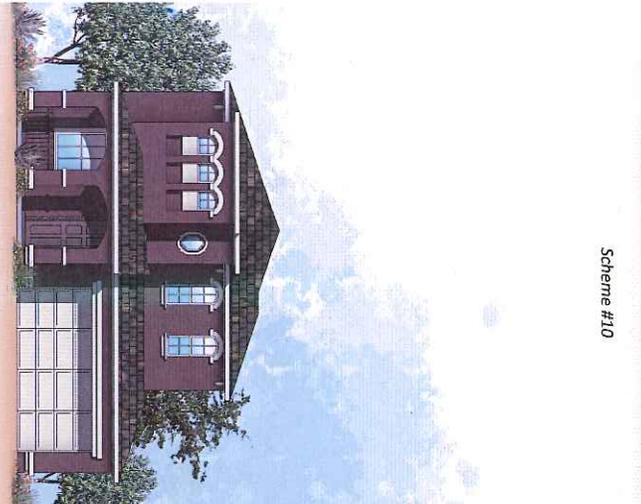
FRONT ELEVATION
TERRAZZO SPARK

Scheme #8



FRONT ELEVATION
SMART COASTLINE

Scheme #1



FRONT ELEVATION
TULANE

Scheme #7



FRONT ELEVATION
COURTNEY

Scheme #6



FRONT ELEVATION
SMART COASTLINE

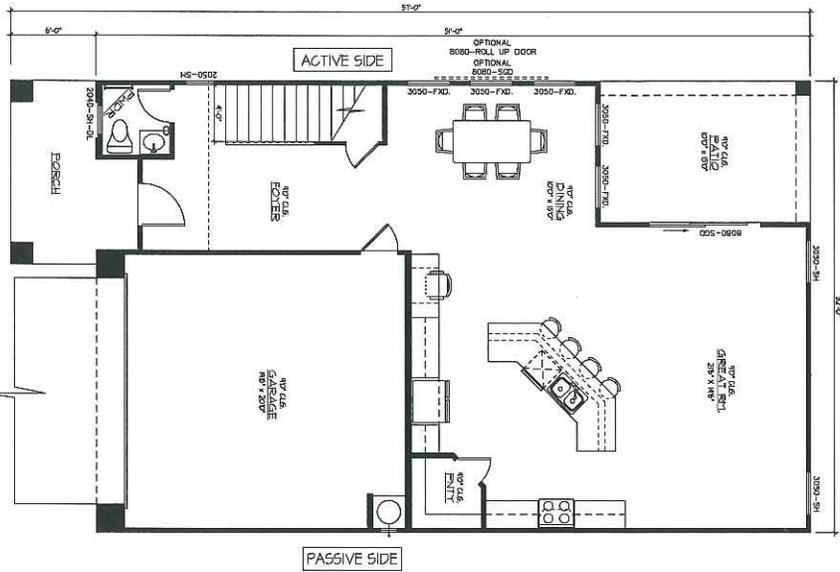
Scheme #2



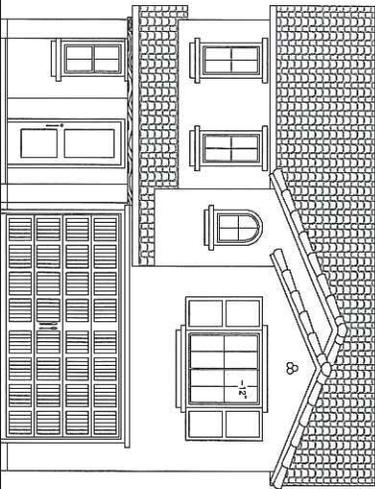
FRONT ELEVATION
TERRAZZO SPARK

Scheme #5

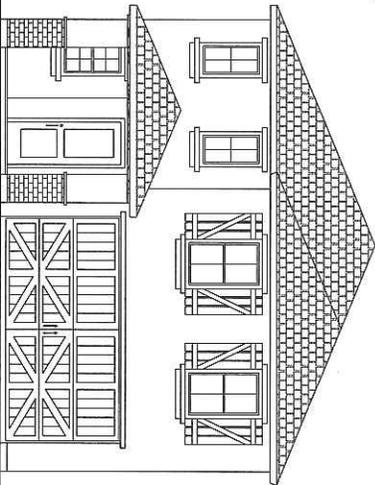
1st FLOOR PLAN
SCALE: 1/8" = 1'-0"



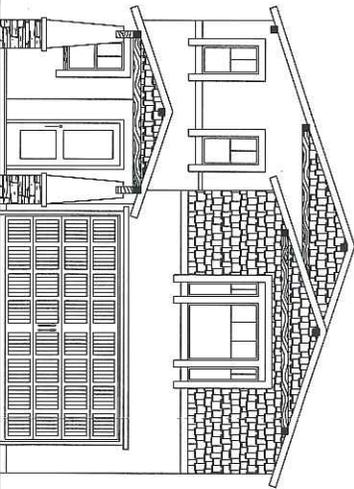
SPANISH COLONIAL



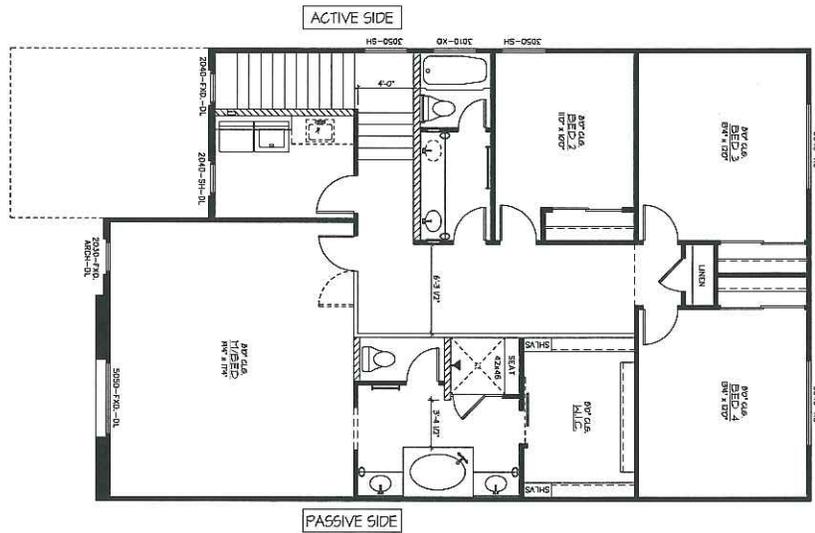
TERRITORIAL RANCH



CRAFTSMAN



2nd FLOOR PLAN
SCALE: 1/8" = 1'-0"



SQUARE FOOTAGE TABLE	
1st FLOOR LUMBLE:	1028 #
2nd FLOOR LUMBLE:	1452 #
TOTAL LUMBLE:	2480 #
PORCH:	97 #
SITL PANO:	150 #
WALK DECK:	126 #
CHARGE:	402 #
TOTAL NON-LUMBLE:	775 #
TOTAL NEW SF:	3255 #

DRAWING TITLE:
DESERT SPRINGS VILLAGE
PRODUCT EXHIBIT
CITY OF AVONDALE

PROJECT:



1512 S. Sunnyvale Circle, Mesa, Arizona, 85206 Ph. 480.265.5276

SHEET NO.
A1.0

Plan
2480

DRAWN BY:
KENDALL
6-15-15

TYPICAL
PLOT PLAN EXHIBIT



RESOLUTION NO. 3279-1115

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH LENNAR ARIZONA, INC. AND DESERT SPRINGS VILLAGE HOMEOWNERS ASSOCIATION.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The First Amendment to the Development Agreement with Lennar Arizona, Inc. and Desert Springs Village Homeowners Association relating to the development of the Desert Springs Village subdivision and conveyance to the City of Avondale certain real property for flood control purposes (the “Amendment”) is hereby approved substantially in the form and substance attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to cause the execution of the Amendment and its related documents and to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Avondale, November 2, 2015.

Kenneth N. Weise, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 3279-1115

[Amendment]

See following pages.

When recorded, return to:

City Clerk
City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323-6809

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this "First Amendment") is entered into as of November 2, 2015, among the CITY OF AVONDALE, an Arizona municipal corporation (the "City"), LENNAR ARIZONA, INC., an Arizona corporation (the "Developer") and DESERT SPRINGS VILLAGE HOMEOWNERS ASSOCIATION, an Arizona non-profit corporation (the "HOA"). City, Developer and HOA are sometimes referred to herein collectively as the "Parties" or individually as a "Party."

RECITALS:

A. City, Developer and HOA are Parties to that certain Development Agreement with an Effective Date of November 26, 2012, as recorded in the office of the County Recorder of Maricopa County, Arizona, on December 10, 2012, Document No. 2012-1118980 (the "Agreement"). All of the capitalized terms not defined in this First Amendment have the same meanings as defined in the Agreement.

B. The Parties desire to enter into this First Amendment, in accordance with Section 12.25 of the Agreement to (i) extend the term of the Agreement, (ii) create performance obligations for Developer to be eligible for the City's partial payment of development impact fees to the Developer for the Developer Lots and (iii) extend the time period for the City's partial payment of development impact fees to the Developer for the Developer Lots.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Term. The term of the Agreement is hereby extended and shall remain in full force and effect until November 26, 2018, at which time the Agreement shall automatically terminate as to the Property without the necessity of any approval, notice, agreement or recording among the Parties.

2. Amendment to Calculation of Payment Amount. Section 6.1 (Calculation of City Payment Amount) of the Agreement is hereby amended as follows:

6.1 Calculation of City Payment Amount. In consideration of the benefits to the City pursuant to this Agreement, the City shall pay a portion of the development impact fees that would otherwise be owed by the Developer to the City for the Developer Lots, such that the end result to the Developer is a total due for development impact fees of not more than \$10,000 per single family residential lot. Each payment shall be in the amount derived by subtracting \$10,000 from the amount ACTUALLY PAID BY THE DEVELOPER FOR ~~of the~~ City development impact fees existing at the time of issuance of a building permit for each Developer Lot (each, a "City Payment"). In the event that the DEVELOPER PAYS A City's total AMOUNT for development impact fees for a Developer Lot is less than \$10,000 at the time the building permit is issued for that lot, no City Payment shall be paid by the City to the Developer.

3. Amendment to Time Condition of Partial Development Impact Fee Payments. Section 6.3 (Time Condition) of the Agreement is hereby amended as follows:

6.3 Time Condition. The provisions of this Section 6 shall be applicable only for a period of time beginning on the Effective Date and continuing for a period of ~~three~~ SIX years thereafter; provided, however, the intent of this sentence is not to excuse the payment by the City of the quarterly City Payment that is payable in the next quarter for building permits pulled by Developer in the last quarter of such ~~three~~ SIX year period. In the event that any building permit for which a City Payment has been made does not result in construction and occupancy within a three-year period after issuance of the permit, which occupancy shall be conclusively proven by an issuance of permanent certificate of occupancy by the City, the applicable City Payment shall be refunded to the City or, at the City's discretion, may be deducted from any current or future payments due from the City to the Developer pursuant to this Section.

4. Annual Performance Requirements. A new Section 6.4 (Annual Performance Requirements) is hereby added to the Agreement to set forth the Developer's performance requirements to qualify for the City Payment, to read as follows:

6.4 Annual Performance Requirements. In order for the Developer to qualify for the City Payment, the following requirements shall be satisfied before City is obligated to make the City Payments to the Developer in accordance with this Section 6:

A. Year One Obligations. On or before November 26, 2016 (the "Year One End Date"), Developer shall (i) obtain a minimum of twelve (12) building permits ("Permits") for Developer Lots and (ii) commence construction of single-family homes on the Developer Lots pursuant to such permits. If Developer fails to obtain the required number of Permits and commence construction prior to the Year One End Date, then the City's obligation to make the City Payments shall automatically terminate on

November 26, 2016, and the City Payments shall not be available to Developer for the remaining balance of the Term.

B. Year Two Obligations. On or before November 26, 2017 (the “Year Two End Date”), Developer shall (i) obtain a minimum of thirty-six (36) Permits for Developer Lots and (ii) commence construction of single-family homes on the Developer Lots pursuant to such permits. If Developer fails to obtain the required number of Permits and commence construction thereon prior to the Year Two End Date, then the City’s obligation to make the City Payments shall automatically terminate on November 26, 2017, and the City Payments shall not be available to Developer for the remaining balance of the Term.

C. Balance of Term. If Developer satisfies the requirements set forth in Subsections 6.4(B) and (C) above, then the City’s obligation to make the City Payments to Developer shall apply to all Permits obtained by Developer for Developer Lots until November 26, 2018, at which time the City’s obligation to make the City Payments shall automatically expire.

D. Construction Commencement. For the purpose of this Section 6, “commence construction” shall mean the Developer has completed, or caused to be completed, sufficient work on a Developer Lot to pass a building inspection for any vertical element.

5. Non-Default. By executing this First Amendment, the Developer and the HOA affirmatively assert that: (i) the City is not currently in default, nor has been in default at any time prior to this First Amendment, under any of the terms or conditions of the Agreement; (ii) the Developer is not currently in default, nor has been in default at any time prior to this First Amendment, under any of the terms or conditions of the Agreement; (iii) the HOA is not currently in default, nor has been in default at any time prior to this First Amendment, under any of the terms or conditions of the Agreement; (iv) any and all claims, known and unknown, relating to the Agreement and existing on or before the date of this First Amendment are forever waived.

6. Conflict of Interest. This First Amendment and the Agreement may be canceled by the City pursuant to ARIZ. REV. STAT. § 38-511.

7. Effect of the Amendment. The Agreement, as amended by this First Amendment, (i) is hereby ratified and reaffirmed, and (ii) constitutes the binding obligation of the Parties hereto. Except as expressly modified herein, all terms and conditions of the Agreement shall remain in full force and effect.

8. Counterparts. This First Amendment may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

9. Recordation of Amendment. This First Amendment shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after its approval and execution by the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment as of the date and year first set forth above.

“City”

CITY OF AVONDALE, an Arizona
municipal corporation

David Fitzhugh, City Manager

ATTEST:

Carmen Martinez, City Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On _____, 2015, before me personally appeared David W. Fitzhugh, the City Manager of the CITY OF AVONDALE, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the City of Avondale.

Notary Public in and for the State of Arizona

(affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

“Developer”

LENNAR ARIZONA, INC.,
an Arizona corporation

By: _____

Name: Jeff Gunderson
Vice President

Title: _____

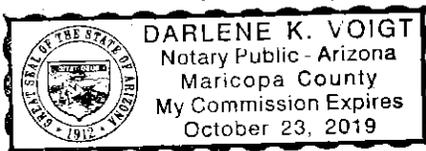
(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On Oct 27, 2015, 2015, before me personally appeared Jeff Gunderson, the Vice President of LENNAR ARIZONA, INC, an Arizona corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document on behalf of the corporation.

Darlene K. Voigt
Notary Public in and for the State of Arizona

(affix notary seal here)



[SIGNATURES CONTINUE ON FOLLOWING PAGE]

“HOA”

DESERT SPRINGS VILLAGE HOMEOWNERS
ASSOCIATION, an Arizona non-profit corporation

By: [Signature]

Name: JASON GEORGE

Title: PRESIDENT

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On Oct 27, 2015, before me personally appeared Jason George, the President of DESERT SPRINGS VILLAGE HOMEOWNERS ASSOCIATION, an Arizona non-corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document on behalf of the corporation.

[Signature: Darlene K. Voigt]
Notary Public in and for the State of Arizona

(affix notary seal here)

