thing License Agreement

OFFICIAL RECORDS OF MARICOPA COUNTY RECORDER HELEN PURCELL 20120043224 01/19/2012 08:15 N ELECTRONIC RECORDING Gilbert685-10-1-1-

When recorded return to:

Town Clerk
Town of Gilbert
50 E Civic Center Drive
Gilbert, AZ 85296

PARKING LICENSE AGREEMENI

This Parking License Agreement is made this 11th day of January 2012, by and between Sonoran Development Partners, LLC, an Arizona limited liability company (hereinafter "Licensee") and the Town of Gilbert, a municipal corporation (hereinafter "Licensor")

Recitals:

- A Pursuant to the terms of a Development and Disposition Agreement (as amended in the First and Second Amendments to the Development and Disposition Agreement) executed concurrently between Licensor and Licensee, Licensee will acquire the Property and subsequently develop the Property with a mixed-use project consistent with the Heritage District zoning designation of the Property (the "Project").
- B. The success of the Project depends on the availability of adequate parking for users and patrons of the Project.
- C Economic development in the Heritage District will depend on the availability of parking for downtown businesses. The parking structure to be constructed pursuant to this Parking License Agreement ("License") will serve the critical roles of (i) promoting continued economic growth and development of the Heritage District, and (ii) attracting Class A office projects into the downtown to provide a strong employment base, support existing retail and restaurant uses and serve as a catalyst to attract desired uses in the Heritage District.
- D Licensor intends to construct or cause to be constructed a public parking garage or similar structure (the "Parking Structure") on the real property described on Exhibit A (the "Property") to provide parking to the general public, including the Property
- E The Town Council finds that the economic development benefits to the Heritage District that will result from the location of the Project in the Heritage District outweigh the cost and burden on Licensor imposed by the allocation of parking spaces for use by the Project in accordance with this License.

In consideration of the covenants and agreements contained herein, Licensor grants to Licensee a license to enter upon and use the Licensed Property under the following terms and conditions:

Terms and Conditions:

- 1. <u>Grant of License</u>: Licensor hereby grants to Licensee a license to use the Parking Structure as follows:
 - (a) Licensor shall retain ownership, title and use of the Parking Structure.
- (b) Licensee shall have the exclusive right, in perpetuity, to use no more than 250 parking stalls within the Parking Structure for exclusive use of patrons of the Property (including employees of tenants, visitors, and guests of Buildings A & B and pad sites 1, 2, 3 & 4 as designated on the Concept Development Plan), as provided in the concurrently executed Development and Disposition Agreement (the "Licensed Property")
- (c) The specific location of the parking stalls constituting the Licensed Property shall be subject to mutual review and approval by the Licenser and Licensee
- (d) For the first seven (7) years after the execution of this License, Licensor shall not charge Licensee for its use of the Licensed Property except as set forth in the concurrently executed Development and Disposition Agreement at paragraphs 4.1.3 and 5.11. At the end of the seven (7) year period, at Licensor's discretion, Licensor may begin to charge for parking, including parking reserved for use by the patrons of Licensee. The charge for parking shall be based upon market rates for parking in similar parking structures as determined by an independent evaluation, as set forth in paragraph 4.1.4 of the concurrently executed Development and Disposition Agreement
- As set forth in the concurrently executed Development and Disposition Agreement at paragraphs 4.1.3 and 5.11, Licensee shall cooperate with Licensor in the leasing of a certain portion of covered and "reserved for individual" parking stalls to employees of tenants of the Project. It is anticipated that between 10% to 15% (approximately 50 spaces) of the total number of stalls constituting the Licensed Property shall be allocated for use by patrons of the Project will be leased from Licensor as covered and "reserved for individual." Licensee agrees to allocate additional "reserved for individual" parking stalls within the Licensed Property if the demand increases in the future, as set forth in paragraph 5.11 of the Development and Disposition Agreement. The "reserved for individual" leased spaces will be reserved between 8:00 AM and 6:00 PM, Monday-Friday, and the rental rate to be charged shall be comparable to other parking structures of Class A buildings in the southeast Phoenix metropolitan area as determined by an independent evaluation. As set forth in paragraph 5 11 of the Development and Disposition Agreement, revenue from "reserved for individual" parking stalls will either be paid directly to Licenson or will pass through the Heritage Marketplace ownership. Revenue estimates and payment terms are set forth more fully in paragraph 5.11 of the Development and Disposition Agreement and are fully incorporated in this License Agreement. Licensee shall be responsible for collecting the parking fees and shall remit all such fees quarterly to Licensor, along with a detailed accounting of such fees. Licensor shall have the right upon reasonable notice to inspect the books and records of Licensee to confirm the

accuracy of the fee submission and Licensee's accounting.

- (f) As set forth in paragraph 5 11.1 of the Development and Disposition Agreement, the balance of the Licensed Property parking stalls will be a combination of covered and non-covered stalls, and those stalls will be located in signed, permit/decal-required areas for exclusive use by the Project and will not be open parking available to the general public between the hours of 8:00 AM and 3:00 PM, Monday-Friday
- 2 Operating Maintenance: During the term of this License Agreement, Licensor shall manage and maintain the Parking Structure
- Improvement, Alterations and Modifications to Parking Facilities: Licensor shall have the right, from time to time during the term of this License Agreement, to make capital improvements and/or alterations and modifications to the Parking Structure or any components therefore at its expense, so long as Licensee continues to have its license rights within the Parking Structure. Notwithstanding the foregoing, Licensor shall have the right to temporarily close portions of the Parking Structure in connection with any construction of any such improvements, alterations or modifications for periods not exceeding ninety (90) consecutive days or affecting more than twenty per cent (20%) of the parking spaces within the Parking Structure at any one time. Further, at its sole option and sole expense, Licensor shall have the right to temporarily relocate the two hundred and fifty (250) parking spaces licensed to Licensee should relocation be deemed necessary as part of any improvement, alteration or modifications. Licensee and Licensor shall use their best efforts to determine where such spaces shall be relocated. If Licensee and Licensor cannot mutually agree on the location of the parking spaces, the decision of Licensor shall be final.
- 4 Term: This License shall be a permanent license, unless: (1) Licensee and Licensor agree in writing to terminate the license; (2) Licensee abandons development of the Property as set forth in the Development and Disposition Agreement; (3) the development of the Property as set forth in the Development and Disposition Agreement is destroyed; (4) the Parking Structure is destroyed by an act of God; or (5) if the whole or any part of the Parking Structure shall be taken or condemned by any competent authority for public use or purpose during the term of this License Agreement. Provided, however, that if the Parking Structure is destroyed by an act of God and Licensor receives any funds from Licensor's insurance carrier for the restoration of any improvements, alterations or additions to the Parking Structure then Licensor shall have an obligation to rebuild the Parking Structure in at least the same condition it was in prior to the act of God if the rest of the Project is unharmed or rebuilt and this License shall automatically be renewed upon the completion of such restored Parking Structure.

5. Indemnification.

5.1 To the fullest extent permitted by law, each party, their agents, officers, officials, and employees shall pay, defend, indemnify and hold harmless the other party, their agents, officers, officials and employees, from and against all demands, claims, proceedings, suits, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), and all claim adjustment and handling expenses, relating to, arising out of, or alleged to have resulted from acts, errors, mistakes, omissions, or services caused in whole or in part by the

other party, their agents, employees, tenants or invitees related to the performance of this License The parties' duty to defend, hold harmless and indemnify each other shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use of resulting therefrom, caused in whole or in part by either parties' acts, errors, mistakes, omissions, or services in the performance of this License.

- 5.2 Insurance provisions set forth in this License are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.
- 6. <u>Insurance</u>: The Licensee shall purchase and maintain such insurance as will protect Licensee and Licensor from claims set forth below which may arise out of or result from Licensee's use of the Licensed Property under this License, whether such use be by Licensee, its agents, employees, those permitted by Licensee to enter upon the Licensed Property and/or Licensee's contractors, their agents and employees.
- (a) Claims for damages because of bodily injury, occupational sickness or disease or death of its employees;
- (b) Claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees;
- (c) Claims for damages insured by usual personal injury liability insurance which are sustained (1) by any person as a result of any offense whether directly or indirectly related to the employment of such person by Licensee, or (2) by any other person;
- (d) Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom; and
- (e) Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle;
- Not a Lease: The Licensee shall not by virtue hereof be deemed to have become the tenant of the Licensor; provided however that as to the location of the Licensed Property, Licensee is entitled to use such property and shall be deemed merely to be a licensee entitled to enter therein for the purpose of exercising the rights and privileges granted by this License. Upon any termination of this License, the Licensor shall have the right through such means as it sees fit to remove and exclude therefrom Licensee and any of Licensee's employees without being deemed guilty of any unlawful entry, trespass or injury of any sort whatsoever.
- 8. <u>Default: Remedies:</u> In the event that either party hereto fails to perform any obligation required hereunder, such party shall be deemed to be in default under this License Agreement if it

thereafter fails to cure the default within thirty (30) days after receipt of written notice from the other party. In the event of default by either party under this License Agreement the non-defaulting party shall have all rights and remedies which may be available at law or in equity. In addition, in the event any such default is not cured within the 30-day period described in the foregoing, the non-defaulting party shall have the right to either: (i) terminate this License Agreement by giving ten (10) days prior written notice to the defaulting party, with termination to occur upon expiration of such ten (10) day period if the defaulting party has not cured the default by the end of such period or (ii) cure the default for and on behalf of the defaulting party, the cost of which performance, upon the proper payment thereof, together with all interest and penalties necessarily paid in connection therewith and any and all other damages incurred by the non-defaulting party as a result of any such default shall be paid to the non-defaulting party by the defaulting party upon demand. If the defaulting party is the Licensee, then, in that event, all of Licensee's rights and the rights of any employees or tenants leasing spaces from Licensee pursuant to the terms of paragraph 1 above, shall have no further right to use the Parking Structure or any portion thereof.

- 9. <u>Attorneys' Fees:</u> Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any damages claimed or portion of the amount payable under this Agreement, then all litigation and collection expenses, witness fees, court costs, and attorneys' fees shall be paid to the prevailing party.
- 10. <u>Service of Notice</u>: All notices and demands required or permitted by this License shall be in writing and shall be deemed to have been given properly when sent by certified mail (postage prepaid), delivered personally or given by facsimile to the party at the address below or to such other address as may be furnished:

Notices to Licensee

Rhett Bordner, Managing Partner Sonoran Development Partners, LLC 1628 East Southern Avenue, Suite 9-131 Tempe, AZ 85282

Brian Martin Sonoran Development Partners, LLC 1628 East Southern Avenue, Suite 9-131 Tempe, AZ 85282

David Sellers LGE Design Build 740 N. 52nd Street Phoenix, AZ 85008

Notices to Licenson

Town Manager 50 East Civic Center Drive Gilbert, Arizona 85296

Assignment and Subletting: Licensee shall have the right to assign or sublet the parking spaces to tenants and owners of lots within the Heritage Marketplace development as provided hereunder without the written consent of the Licensor, so long as such assignment and subletting does not violate the Development and Disposition Agreement.

- 12. <u>Binding Effects: Recordation</u>: It is the intention of the parties that this License shall run with the land and be binding upon the heirs and successors of the parties. This License shall be recorded in the office of the official records of Maricopa County, Arizona.
- Conflict of Interest: In the event Licensee elects to cancel this Agreement due to a conflict of interest as outlined in A R.S. § 38-511, as amended, Licensee agrees to immediately give notice thereof to Licenson

[SIGNATURES ON FOLLOWING PAGES]

INWIINESS WHEREOF, the parties hereto have executed this License this 2012.
LICENSEE: SONORAN DEVELOPMENT PARTNERS, LLC
By: A PAS
Its: Owner
ACKNOWLEDGMENT
STATE OF ARIZONA)
County of Maricopa) ss.
The foregoing instrument was acknowledged before me, the undersigned Notary Public, this day of 2012 by BRIAN P MARTN, who personally appeared and acknowledged himself to be the Managing Partner of Sonoran Development Partners, LLC, an Arizona limited liability company, and that he as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained
IN WITNESS WHEREOF, I hereunto set my hand and official seal.
My Commission Expires My Comm. Expires 10-8-15 Cassie C Smith Notary Public Maricopa County, Arizona Commission #281160 My Comm. Expires 10-8-15 Notary Public
10.8.15

LICENSOR: IOWN OF GILBERT
By: John Sai
Its: MAYOR, TOWN OF GIUBERT
ACKNOWLEDGMENI
SIATE OF ARIZONA)
County of Maricopa)
The foregoing instrument was acknowledged before me, the undersigned Notary Public, this day of <u>foregoing</u> 2012, by <u>John W. Lew.</u> , who personally appeared and acknowledged himself/herself to be the <u>May or</u> of the Town of Gilbert, a municipal corporation, and that he/she as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.
N WIINESS WHEREOF, I hereunto set my hand and official seal.
My Commission Expires: Notary Public
4/12/2015



"Exhibit A"

That portion of the Southeast Quarter of Section 12, Township 1 South, Range 5 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Southeast Corner of said Section 12 from which the East Quarter Corner of said Section 12 bears North 00 Degrees 50 Minutes 48 Seconds West 2629 01 feet;

THENCE along the East line of said Section 12 North 00 Degrees 50 Minutes 48 Seconds West 2200 82 Feet to a Town of Gilbert Brass Cap in Hand Hole marking the intersection of Gilbert Road and Vaughn Avenue;

THENCE along the centerline of Vaughn Avenue South 89 Degrees 07 Minutes 31 Seconds West 592 36 Feet:

THENCE North 00 Degrees 52 Minutes 29 Seconds West 30 00 Feet to a point on the North Right of Way line of Vaughn Avenue and the **POINT OF BEGINNING**;

THENCE North 00 Degrees 00 Minutes 00 Seconds East 315 18 Feet;

THENCE South 89 Degrees 30 minutes 53 Seconds East 155 00 Feet;

THENCE South 00 Degrees 52 Minutes 29 Seconds East 35 06 Feet;

THENCE South 89 Degrees 58 Minutes 06 Seconds East 10 61 Feet;

THENCE South 00 Degrees 52 Minutes 29 Seconds East 119 20 Feet;

THENCE South 89 Degrees 11 Minutes 03 Seconds West 6 11 Feet;

THENCE South 00 Degrees 52 Minutes 29 Seconds East 157 05 Feet to a point on the North Right of Way line of Vaughn Avenue;

THENCE along said Right of Way line South 89 Degrees 07 Minutes 31 Seconds West 164 26 Feet to the **POINT OF BEGINNING**

Said Parcel Contains 51277 13 Square Feet or 1.177 Acres More or Less

Digitally signed by Adrian M. Burcham, PLS Date: 2011.03.31 13:15:14

ADRIAN M

'-07'00



1840 S. Stapley Dr. Suite 137 Mesa, AZ 85204 Ph: 480.892.3313

www_hubbardengineeringacom

