

# CITY COUNCIL REPORT



Meeting Date: January 12, 2021  
 General Plan Element: *Public Services and Facilities*  
 General Plan Goal: *Provide city service facilities to meet the governmental, administrative, public safety, emergency, social, human, cultural, informational, and maintenance needs of the community.*

## ACTION

**Authorize a Revocable Driveway License Agreement with The Arizona Conference Corporation of Seventh-Day Adventists.** Adopt Resolution 11998 authorizing Revocable License Agreement 2020-191-COS with The Arizona Conference Corporation of Seventh-Day Adventists, a domestic nonprofit corporation, permitting access and improvements to the city-owned parcel known as the Park and Ride facility at the southeast corner of Scottsdale and Thunderbird Roads.

## BACKGROUND

The purpose of this action is to approve a revocable license agreement ("License") with The Arizona Conference Corporation of Seventh-Day Adventists, a domestic nonprofit corporation ("Licensee") for the construction of a new driveway from the Licensee's property onto and across the City's Park and Ride parcel and connecting with the existing traffic signal at 73<sup>rd</sup> St. and Thunderbird. This access will allow employees of the future development on the Licensee's property, per Zoning Case No. 14-ZN-2019 as approved on November 11, 2020, to turn left onto Thunderbird Road using the existing traffic signal at 73<sup>rd</sup> St. and then proceed to the signal at Scottsdale Road where there is the ability to continue in three different directions. The Transportation Department and neighbors to the south of the Licensee's property preferred this route to one that would require exiting onto Sutton Drive, a residential street, and then continuing on Scottsdale Road, either without the assistance of a traffic signal or requiring a new traffic signal that would be in close proximity to the signal existing at Thunderbird Road. The traffic study provided by Licensee estimates that, after full build-out of the future development, the AM peak hour use of this access will be about 50 users and the PM peak hour use will be about 273 pm users. As a part of the stipulations in the approved zoning case, the Licensee is required to provide a right turn lane into the Park and Ride facility and traffic monitoring cameras for the traffic signal at 73<sup>rd</sup> St.

## ANALYSIS & ASSESSMENT

### Recent Staff Action

Staff negotiated License terms based on similar language for other such agreements and with an initial term that expires in 2033 to coincide with the end of the agreement between Aviation and

Transportation for the use of the Park and Ride facility. Two 10-year extensions allow for the City (Airport Director) and Licensee to mutually agree to the continued access through the Park and Ride Parcel. The Park and Ride Parcel is a part of the City's Greater Airport properties and is also subject to oversight by the Federal Aviation Administration ("FAA"). The FAA has already approved this incidental use and License agreement through Gary Mascaro, Aviation Director.

**Significant Issues to be Addressed**

Due to the use of the parcel as a federally-funded Park and Ride facility, the Federal Transit Administration (FTA) must give approval for this incidental use on the parcel and for the license to be effective. Discussions regarding this approval have taken place and Transportation staff anticipates the FTA approval to be forthcoming in the next few weeks.

**Community Involvement**

Outreach into the community was made as a part of the zoning case 14-ZN-2019, with support for this accessway. The zoning case was approved by City Council on November 11, 2020.

**RESOURCE IMPACTS**

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**Available funding**

This action will require the Licensee to pay an annual use fee of \$500 per year until construction is started on the driveway. Thereafter, the annual use fee will be \$3,352.70 with 4% increases annually.

**Staffing, Workload Impact**

All costs to construct and maintain the new and existing driveway within the Use Area is assumed by the Licensee. The License will be administered by existing Real Estate staff.

**Maintenance Requirements**

No significant maintenance requirements will result from this action.

**OPTIONS & STAFF RECOMMENDATION**

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**Recommended Approach**

Adopt Resolution 11998 approving License Agreement 2020-191-COS with the Licensee for the future construction of a new driveway and use of the existing driveway on the City's Park and Ride Parcel at the southeast corner of Scottsdale and Thunderbird Roads.

**Proposed Next Steps**

If Council adopts Resolution 11998, the Licensee will have the City's approval to construct a driveway access that connects with the existing driveway on the Park and Ride Parcel at Scottsdale and Thunderbird Roads, subject to FTA concurrence.

**RESPONSIBLE DEPARTMENT(S)**

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Public Works Division, Capital Project Management, Real Estate

Public Works Division, Transportation

Community and Economic Development Division, Aviation

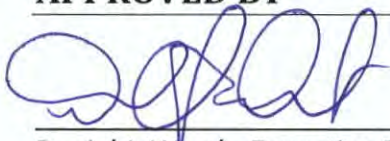
**STAFF CONTACTS (S)**

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Laurel Edgar, Real Estate Management Specialist, (480) 312-7692 [ledgar@scottsdaleaz.gov](mailto:ledgar@scottsdaleaz.gov)

**APPROVED BY**

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Daniel J. Worth, Executive Director, Public Works  
(480) 312-5555, [dworth@scottsdaleaz.gov](mailto:dworth@scottsdaleaz.gov)

11-16-20

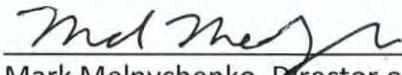
Date



Gary Mascaro, Aviation Director  
(480) 312-7735, [gmascaro@scottsdaleaz.gov](mailto:gmascaro@scottsdaleaz.gov)

11/16/2020

Date



Mark Melnychenko, Director of Transportation  
(480) 312-76517, [mmelnychenko@scottsdaleaz.gov](mailto:mmelnychenko@scottsdaleaz.gov)

11/13/2020

Date

**ATTACHMENTS**

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1. Resolution 11998
2. Location Map
3. License Agreement 2020-191-COS

**RESOLUTION NO. 11998**

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE REVOCABLE DRIVEWAY LICENSE AGREEMENT NO. 2020-191-COS BETWEEN THE CITY OF SCOTTSDALE AND THE ARIZONA CONFERENCE CORPORATION OF SEVENTH DAY ADVENTISTS, FOR USE OF A LIMITED PORTION OF THE PARK AND RIDE (PNR) PARCEL LOCATED AT SCOTTSDALE ROAD AND THUNDERBIRD ROAD, SCOTTSDALE AZ

(Licensee Site Name – PNR Parcel)  
(7<sup>th</sup> Day Adventists driveway license)

WHEREAS:

A. City of Scottsdale ("City") owns interests in certain real property known as the Park and Ride (PNR) Parcel, in the City of Scottsdale at the south east corner of Scottsdale Road and Thunderbird Road in Scottsdale, AZ.

B. The Arizona Conference Corporation of Seventh Day Adventists, a domestic nonprofit corporation, desires to enter into a new agreement with City for use of a portion of the Park and Ride location for construction and operation of a driveway and supporting improvements and use of the existing driveway on the site.

C. City desires to allow The Arizona Conference Corporation of Seventh Day Adventists to use said property for that purpose.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Scottsdale, Arizona, as follows:

Section 1. The Mayor is authorized and directed to execute Revocable Driveway License Agreement No. 2020-191-COS with The Arizona Conference Corporation of Seventh Day Adventists for the construction and operation of a driveway at the PNR location.

Section 2. The City Council hereby authorizes the City Manager or his designee to execute any other documents and take such other actions as are necessary to carry out the intent of this resolution.

PASSED AND ADOPTED by the Council of the City of Scottsdale this \_\_\_\_\_ day of \_\_\_\_\_ 2021.


CITY OF SCOTTSDALE, an Arizona  
municipal corporation

ATTEST:

\_\_\_\_\_  
David D. Ortega, Mayor

\_\_\_\_\_  
Carolyn Jagger, City Clerk

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY



Sherry R. Scott, City Attorney

By: Margaret Wilson, Senior Assistant City Attorney



<b>ATTACHMENT 2</b>					
PROJECT TITLE					
LOCATION MAP					
DEPT.	L.E.	DRAWN	DATE	SCALE	SHT.
CPM		RAH	11/20	NTS	1 OF 1



**WHEN RECORDED RETURN TO:**  
CITY OF SCOTTSDALE  
ONE STOP SHOP/RECORDS  
(Real Estate Asset Manager)  
7447 East Indian School Road, Suite 100  
Scottsdale, AZ 85251

City of Scottsdale Contract No. 2020-191-COS  
Res. No. 11998  
(7<sup>th</sup> Day Adventists-driveway license)

### REVOCABLE DRIVEWAY LICENSE AGREEMENT

THIS REVOCABLE DRIVEWAY LICENSE AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by the City of Scottsdale, an Arizona municipal corporation ("Licensor"), and The Arizona Conference Corporation of Seventh-Day Adventists, a domestic nonprofit corporation ("Licensee").

#### RECITALS

A. Licensor owns or holds an interest in the following parcel of land:

1) Park and Ride ("PNR") Parcel. A large parcel of land comprising approximately 8.75 acres located at the southeast corner of Scottsdale and Thunderbird Roads, as described on **Exhibit "A"** attached hereto.

B. The PNR Parcel is currently improved with driveways, parking spaces, buildings, hardscape, and landscape features associate with Licensor's park and ride lot all of which are owned by Licensor. The driveway will allow vehicles to efficiently enter and exit the adjoining property of the Adventists and will lessen traffic on Sutton Avenue. Both the City and the Adventists recognize the desirability of reducing traffic on Sutton Drive to benefit the residents living along and near Sutton Drive.

C. This Agreement allows Licensee to use a limited portion of the PNR Parcel. The Park and Ride Parcel, as defined in the Agreement, is subject to the jurisdiction of the Federal Aviation Administration ("FAA").

D. The portion of the Northeast section of the PNR Parcel that this Agreement allows Licensee to use (the "Use Area") is described on **Exhibit "B"** attached hereto.

E. Licensee desires to use a portion of the PNR Parcel's existing driveway with access to 73<sup>rd</sup> Street and construct an additional driveway that extends from the Licensee's western property line to the existing driveway on the PNR Parcel. In constructing this additional driveway, Licensee shall make improvements to the PNR parcel that, at a minimum, shall consist of two 40' long box culverts or alternative pipes sized to handle the water flow in the drainage area, an asphalt driveway over the culverts wide enough to handle two lanes of traffic, painted or raised directional island and right turn signage (collectively the "Project") as shown on the drawing ("Driveway Improvement Plan") attached hereto as **Exhibit "C"**. All improvements to be as per permitted plans and to City of Scottsdale's DS&PM. Additionally, Licensee shall, as stipulated in Zoning Case 14-ZN-2019, provide a right turn only deceleration lane on Thunderbird Road turning into the existing PNR Parcel driveway at the 73<sup>rd</sup> St access point and provide traffic monitoring cameras for the existing traffic light at the 73<sup>rd</sup> St and Thunderbird Road intersection. The Project is to serve a certain Parcel of real property (the "7<sup>th</sup> Day Adventists Parcel") comprising approximately 65.16 acres whose legal description is shown in **Exhibit "D"** attached hereto and located immediately east of and adjacent to the PNR Parcel. Licensee represents to Licensor to be the holder of the fee title to the 7<sup>th</sup> Day Adventists Parcel.

F. Licensee shall complete the entire Project no later than Six (6) months after pulling its first permit for vertical construction, and no later than December 31, 2030 (the "Completion Deadline").

G. Licensor desires to grant to Licensee a non-exclusive license to install, maintain, operate and repair the Project to be used by Licensee solely for vehicle access from the 7<sup>th</sup> Day Adventist Parcel to the intersection of 73rd Street and Thunderbird Road (the "Permitted Uses") subject to the requirements of this Agreement.

H. Licensor desires to reserve rights to construct and use and allow others to construct and use all manner of additional improvements upon the Use Area, subject to the requirements of this Agreement.

I. The term of the License Agreement extends until November 5, 2033. Section 2.2.1 of the Agreement grants the Adventists the right to extend the term of the License Agreement by two (2) 10-year periods, subject to the consent of the City. The City confirms its intention to grant such consent for each of the 10-year periods; provided that the City's Airport Director or his/her designee does not take action that would cause the City to withhold such consent.

J. Section 2.4 of the License Agreement grants the City the right to terminate the License Agreement at any time upon at least one year prior notice. City confirms its intention not to exercise the termination right unless the City were to take action that would conflict with the continuing use of the driveway.

NOW, THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Licensee, and the covenants and agreements contained herein to be kept and performed by Licensee, and other good and valuable consideration, Licensor and Licensee agree as follows:



## I. USE AREA

1. Use Area. Licensor hereby grants to Licensee a non-exclusive license to use the Use Area as follows:

1.1 Limitations. Notwithstanding anything in this Agreement to the contrary, the Use Area includes and is limited to only the Use Area. The Use Area excludes other parts of the PNR Parcel and all other land. The Use Area is limited to the following areas:

1.1.1 A passenger motor vehicle access route (the "Vehicle Route") labeled as the "Vehicle Route" described on the Site Plan. Access for construction vehicles to be used for construction projects on Licensee's property is not allowed.

1.1.2 A landscaping area (the "Landscaping Area") labeled as the "Landscape Area" described on the Site Plan to be used by Licensee solely for landscaping.

1.2 Off Site Power and Telephone Service. This Agreement does not grant permission for any utility routes, if any, that lie in public street right-of-way or in public utility easements. (Use of the public street right-of-way or public utility easements for these purposes, if any, is governed by normal city right-of-way rules and policies and by the franchise between the city and the electrical and telephone service providers, and not by this Agreement.)

1.3 Variation in Area. In the event the Use Area consists of more or less than any stated area, this Agreement shall nevertheless continue and Licensee's obligations hereunder shall not be increased or diminished.

1.4 Reservations. Licensor specifically reserves to itself and excludes from this Agreement a non-exclusive delegable right (the "Reserved Right") over the entire Use Area for any and all purposes that do not in Licensor's discretion materially and substantially interfere with Licensee's lawful conduct of the Permitted Uses under this Agreement. Except in an emergency, prior to closing the Project, Licensor shall inform Licensee forty-eight (48) hours in advance.

1.5 Condition of Title. Licensee's rights hereunder are subject to all covenants, conditions, restrictions, easements, agreements, liens, reservations and encumbrances upon, and all other recorded or unrecorded matters or conditions of title to or agreements or documents regarding the Use Areas (collectively the "Site Documents"). Licensee's rights to use the Use Areas under this Agreement are limited to a subset of the interests held by Licensor under the Site Documents. Licensee shall not violate the Site Documents. Licensee shall not have power to amend, modify, terminate, or otherwise change the Site Documents or create new Site Documents.

1.6 Condition of Use Areas. Licensee has examined, studied and inspected the PNR Parcel and the Use Area and all other property associated with this Agreement and their environs. All of such property is being made available in an "as is" condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to their condition or fitness for any use. Licensee has obtained such information and professional advice as Licensee has determined to be necessary related to the Use Area, the PNR Parcel, this Agreement or this transaction.

1.7 No Real Property Interest. Licensors and Licensee do not by this instrument intend to create a lease, easement or other real property interest. Licensee shall have no real property interest in the Use Area.

1.8 Use Area and 7<sup>th</sup> Day Adventists Parcel. Licensee warrants and represents that instruments in substantially the form attached to this Agreement as **Exhibit "E"** (the "Lienholder Confirmations") have been executed and acknowledged by each person having or claiming a lien, lease, easement or other interest in the 7<sup>th</sup> Day Adventists Parcel whereby such persons join in this Agreement and subject their interests to this Agreement and all requirements, provisions and conveyances of this Agreement. Developer shall attach such Lienholder Confirmations to this Agreement and record them with this Agreement.

## II. TERM OF AGREEMENT

2. Term of Agreement. The term of this Agreement is as follows:

2.1 Original Term. The original term of this Agreement shall be for a period commencing on the date of this Agreement and expiring on November 5, 2033.

2.2 Extensions. The term of this Agreement may be extended as follows:

2.2.1 The term of this Agreement may be extended for two (2) ten (10) year periods subject to consent by Licensors and Licensee, which either may withhold in its sole and absolute discretion.

2.2.2 Both Licensors and Licensee shall be deemed to have elected to extend unless Licensors or Licensee, respectively, gives notice to the contrary to the other at least ninety (90) days (but not more than twenty-four (24) months) prior to the end of the original term or the current extension.

2.3 Holding Over. In any circumstance whereby Licensee would remain in possession or occupancy of the Use Areas after the expiration of this Agreement, such holding over shall operate as a limited renewal or extension of this Agreement from month to month that may be terminated at any time by Licensors upon thirty (30) days notice to Licensee, or by Licensee upon sixty (60) days notice to Licensors.

2.4 Licensors Right to Terminate. In addition to its other rights hereunder, Licensors shall have the unconditional right, with or without cause, to terminate this Agreement for any reason whatsoever or for no reason upon at least one year prior written notice given at any time. If Licensors gives such notice after Licensee commences constructing the Project, but before December 31, 2025, then Licensors shall pay to Licensee the lesser of the amount of Ten Thousand Dollars (\$10,000.00) or the amount Licensee has paid or obligated itself to that point for project design and construction.

2.5 Licensee's Right to Terminate. Licensee shall have the unilateral right to terminate this Agreement without cause upon One Hundred Eighty (180) days written notice. Licensee has no right to terminate any time after an event of default by Licensee has occurred (or an event has occurred that would become a default after passage of time or giving of notice).

### III. LICENSEE'S PAYMENTS

3. Licensee's Payments. Licensee shall make payments to Licensor as follows:

3.1 Use Fee Items. Licensee shall pay to Licensor the following amounts annually ("Use Fee"):

3.1.1 A Pre-Construction Use Fee of \$500.00 shall be in effect from the approval of this License until such time as the Project receives its construction permit.

3.1.2 A fixed amount (the "Base Use Fee"), which shall be determined by the following formula [ $\$0.26/\text{sf} \times 12,895 \text{ square feet of Use Area} = \text{Use Fee}$ ] for a total annual Base Use Fee of \$3,352.70

3.1.3 All other amounts required by this Agreement.

3.2 Use Fee Cumulative. All items of Use Fees shall be non-refundable and cumulative and separate from each other.

3.3 Use Fee Payment Date. All Use Fees shall be payable one year in advance on January 1st. If an amount is not known in advance, Licensor shall have the right to estimate the amount, with an adjustment to be made within sixty (60) days after the actual amount becomes known. Use Fee is deemed paid only when Licensor actually receives good payment.

3.4 First Use Fee Payment. The Use Fee for the year in which this Agreement is executed shall be prorated from that date based on a Three Hundred Sixty-Five (365) day year.

3.5 Method and Place of Payment. Unless and until Licensor gives notice otherwise, Licensee shall deliver all Use Fee payments to City of Scottsdale, Remittance Processing, P.O. Box 1570, Scottsdale, AZ 85252-1570. All payments shall reference this contract number (2020-191-COS).

3.6 Base Use Fee Adjustment. The Base Use Fee shall be automatically adjusted upward each year of this Agreement by adding four percent (4%) to the amount of the Base Use Fee that this Agreement provides for the preceding year. Any delayed adjustment shall be effective retroactively.

3.7 Holdover Use Fee. In the event of a holdover, Base Use Fee and all other Use Fee, and every element thereof, shall be increased by an additional fifty percent (50%) over the amount of Use Fee that would otherwise be payable under this Agreement.

3.8 Late Fees. Should any Use Fee not be paid on or before 30 days after the date due, a late fee shall be added to the amount due in the amount of the greater of ten percent (10%) of the amount due, or Fifty Dollars (\$50). Furthermore, any Use Fee that is not timely paid shall accrue simple interest at the rate of one and one-half percent (1 ½ %) per month from thirty days after the date the amount first came due until paid. Licensee expressly agrees that the foregoing represent fair and reasonable estimates by Licensor and Licensee of Licensor's costs (such as accounting, administrative, legal and processing costs, etc.) in the event of a delay in payment of

Use Fee. Licensor shall have the right to allocate payments received from Licensee among Licensee's obligations.

3.9 Licensee Payments Cumulative. All amounts payable by Licensee hereunder or under any tax, assessment or other existing or future obligation shall be cumulative and payable in addition to each other obligation, and such amounts shall not be credited toward, substituted for, or set off against each other in any manner.

#### IV. USE RESTRICTIONS

4. Use Restrictions. Licensee's use and occupation of the Use Areas shall in all respects conform to all and each of the following cumulative provisions:

4.1 Permitted Uses. Licensee shall use the Use Area solely for access by passenger motor vehicle and delivery trucks (such as Fed Ex, USPS, UPS, Staples and trucks of similar size) ("Permitted Uses"), and shall conduct no other activity at or from the Use Area. No construction trucks or equipment shall be allowed.

4.2 Signs. All signage is prohibited except in compliance with the following requirements:

4.2.1 Licensee shall install and thereafter maintain the following:

4.2.1.1 All signs and markings required for safe use of the Use Area by any persons who may be at the Use Area at any time for any reason.

4.2.1.2 Any signage Licensor may request directing parking, deliveries and other vehicles and other users to comply with this Agreement.

4.2.2 All signage not expressly allowed by this Agreement is prohibited.

4.2.3 Licensee shall not erect, install, apply for a permit for, or display any sign until Licensee has submitted a written request, together with descriptions and drawings showing the intended locations, size, style and colors of such signs to Licensor, and has received notice of Licensor's approval of the sign. Licensee signs shall also be subject to the plans review and other requirements that apply to other construction work by Licensee under this Agreement.

4.3 Licensee's Lighting. Except for driveway lighting operated with Licensor's approval from time to time, Licensee shall not operate lights at the Use Area.

4.4 Standards of Service. Licensee shall operate the Use Area in a first-class manner, and shall keep the Use Areas attractively maintained, orderly, clean, neat and tidy at all times. Without limitation, Licensee shall remove all litter from the Use Area at least daily.

4.5 Toxic Substances. Licensee's activities upon or about the Use Areas shall be subject to the following regarding any hazardous or toxic substances, waste or materials or any substance now or hereafter subject to regulation under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq., the Arizona Hazardous

Waste Management Act, A.R.S. §§ 49-901, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq., or any other federal, state, county, or local law pertaining to hazardous substances, waste or toxic substances and their reporting requirements (collectively "Toxic Substances"):

4.5.1 Licensee shall not produce, dispose, transport, treat, use or store any Toxic Substances upon or about the Use Areas. The prohibitions of the preceding sentence only shall not apply to gasoline, diesel fuel or other ordinary fuels or lubricants necessary for use in motor vehicles and ordinary construction machinery.

4.5.2 Licensee shall dispose of any Toxic Substances away from the Use Area as required by law and as reasonably required by Licensor.

4.5.3 Licensee shall not use the Use Area in a manner inconsistent with regulations issued by the Arizona Department of Health Services, or in a manner that would require a permit or approval from the Arizona Department of Health Services or any other governmental agency. The preceding sentence does not prohibit ordinary permits required for routine dust control measures.

4.5.4 In addition to and without limitation of any other indemnities or obligations, Licensee shall pay, indemnify, defend and hold Licensor harmless against any loss or liability incurred by reason of any Toxic Substance on or affecting the Use Area or nearby lands attributable to or caused by Licensee or anyone using the Use Area pursuant to this Agreement.

4.5.5 Licensee understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. Licensor has made no warranties as to whether the Use Areas contain actual or presumed asbestos or other Toxic Substances.

4.5.6 Within twenty-four (24) hours after discovery by Licensee of any Toxic Substances, Licensee shall report such Toxic Substances to Licensor in writing. Within ten (10) days thereafter, Licensee shall give Licensor notice of the Toxic Substances.

4.5.7 Vehicle Size. Vehicle size, weight, length, and height shall be limited to the engineering design limits of the improvements over which the vehicles pass. Further, no vehicles weighing more than Thirty-three Thousand (33,000) pounds gross or rated at more than Thirty-three Thousand (33,000) pounds GVWR are permitted to use the Use Areas pursuant to this Agreement. In no event shall any construction equipment or vehicles drive within the Use Area.

4.6 Parking. Vehicle loading, unloading, parking or standing on the Use Area is prohibited.

#### V. IMPROVEMENTS BY LICENSOR

5. Improvements by Licensor. Licensor has not promised to and is not obligated in any manner to make any improvements or perform any other construction work at the Use Area.

## VI. LICENSEE'S IMPROVEMENTS GENERALLY

6. Licensee's Improvements Generally. All of Licensee's improvements and other construction work whether or not specifically described herein upon or related to the Use Areas (collectively "Licensee's Improvements") shall comply with the following:

6.1 Licensee's Improvements. Licensee's Improvements include without limitation, all modification, replacement, repairs, installation, construction, grading, structural, utility, lighting, plumbing, sewer or other alterations, parking or traffic alterations, removal, demolition or other cumulatively significant construction or similar work of any description.

6.2 Zoning and Similar Approval Process. The zoning processes, building permit processes, right-of-way management policies and similar regulatory requirements that apply to Licensee's Improvements are completely separate from the plans approval processes under this Agreement. Licensee's satisfaction of any requirement of this Agreement does not count toward compliance with any regulatory requirement. Licensee's satisfaction of any regulatory requirement does not count toward compliance with any requirement of this Agreement. Licensee must make all submittals and communications regarding the requirements of this Agreement through Licensors contract administrator for this Agreement and not through planning, zoning, building safety or other staff. Licensee shall be responsible to directly obtain all necessary permits and approvals from any and all governmental or other entities having standing or jurisdiction over the Use Areas. Licensee bears sole responsibility to comply with all stipulations and conditions that are required in order to secure such rezoning and other approvals.

6.3 Relationship of Plans Approval to Regulatory Processes. Licensee's submission of plans under this Agreement, Licensors approval of plans for purposes of this Agreement, and the plans approval process under this Agreement, shall be separate and independent of all development, zoning, design review and other regulatory or similar plans submittal and approval processes, all of which shall continue to apply in addition to the requirements of this Agreement and its approvals. BUILDING PERMITS, ZONING CLEARANCES, OR ANY OTHER GOVERNMENTAL REVIEWS OR ACTIONS DO NOT CONSTITUTE APPROVAL OF ANY PLANS FOR PURPOSES OF THIS AGREEMENT.

6.4 Contract Administrators. Upon execution of this Agreement, Licensor and Licensee shall each designate a contract administrator to coordinate the respective party's participation in carrying out its obligations under this Agreement. Each party will notify the other party of any changes to its respective contract administrator and provide contact information for the contract administrator. Licensor's initial contract administrator shall be Martha West, Real Estate Asset Manager, [MWest@scottsdaleaz.gov](mailto:MWest@scottsdaleaz.gov), 480-312-7042. Licensee's initial contract administrator shall be Reggie Leach, Treasurer, email [rleach@azconference.org](mailto:rleach@azconference.org).

6.5 Licensors Contract Administrator. Licensor's contract administrator's authority with respect to the Use Areas is limited to the administration of the requirements of this Agreement. No approval, consent or direction by Licensor's contract administrator or other persons affiliated with Licensor inconsistent with this Agreement shall be binding upon Licensor. Licensee shall be responsible for securing all zoning approvals, development review, and other governmental approvals and for satisfying all governmental requirements pertaining to the Project and shall not rely on Licensor or Licensor's contract administrator for any of the same.

6.6 Licensors's Fixtures and Personality. Licensee shall not remove, alter or damage in any way any improvements or any personal property of Licensor upon the Use Areas without Licensor's prior written approval. In all cases, Licensee will repair any damage or other alteration to Licensor's property caused by Licensee or its contractors, employees or agents to as good or better condition than existed before the damage or alteration.

6.7 Blue Stake. Licensee shall register with and comply with the local Blue Stake program. Before any work that could damage water, sewer, electric, irrigation, communications, remote sensing and automation wiring, or other facilities, Licensee shall cause all of such facilities to be located and marked in the field.

6.8 Design Requirements. All Licensee's Improvements shall comply with the following design requirements:

6.8.1 All Licensee's Improvements shall be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other improvements located at the PNR Parcel.

6.9 All Licensee's Improvements shall be contained entirely within the Use Area and without any encroachment or dependence upon any other property, except for permitted utility service for lighting or landscaping.

6.10 Approval Required. Licensee shall not construct any Licensee's Improvements (including work on adjacent public lands, if applicable) without having first received written plans approval from Licensor. Such plans approval requirement shall apply to all improvements, furnishings, equipment, fixtures, paint, wall treatments, utilities of every description, communications cabling and other construction work of any description as described in all plans heretofore or hereafter delivered by Licensee to Licensor.

6.11 Effect of Plans Approval. Licensor's approval of plans submitted shall be for purposes of this Agreement only and shall constitute irrevocable approval (but only at the level of detail of the applicable stage of the review process) of the matters plainly shown on the plans approved. Licensor shall not reject subsequent plans to the extent the matter to which Licensor objects was plainly shown on plans previously approved by Licensor. However, Licensor is not precluded from objecting to matters not previously approved, changes to plans, matters not previously clearly disclosed on approved plans, or refinements or implementation of matters previously approved.

6.12 Plans Required. Licensee's design of all Licensee's Improvements shall occur in three stages culminating in final working construction documents for the Licensee's Improvements (the "Final Plans"). The three stages are, in order of submission and in increasing order of detail, as follows:

6.12.1 Conceptual plans showing the general layout, locations, elevations, configuration, and capacities of all significant improvements, topographical features, pedestrian and vehicular ways, buildings, utilities, and other features significantly affecting the appearance, design, function or operation of each element of Licensee's Improvements.

6.12.2 Preliminary plans showing all surface finishes and treatments, finished elevations, general internal and external design (including without limitation colors, textures and materials), mechanical, communications, electrical, plumbing and other utility systems, building materials, landscaping and all other elements necessary prior to preparation of final working construction documents and showing compliance with all requirements of this Agreement. The preliminary plans shall show all detail necessary prior to preparation of Final Plans.

### 6.12.3 Final Plans.

6.13 Approval Process. The following procedure shall govern Licensee's submission to Licensor of all plans for Licensee's Improvements, including any proposed changes by Licensee to previously approved plans:

6.13.1 All plans Licensee submits under this Agreement shall show such design, appearance, capacity, views, and other information as Licensor deems necessary for a complete understanding of the work proposed, all in such detail as Licensor deems appropriate for the level of plans required by this Agreement.

6.13.2 Licensee shall deliver all plans submissions for non-regulatory approvals under this Agreement directly to Licensor's contract administrator and shall clearly label the submissions to indicate that they are submitted pursuant to this Agreement and not for building permits, zoning or other approvals. Each submittal of plans by Licensee for Licensor's review shall include two (2) complete sets of the plans on paper and, if requested, two (2) copies of the plans in electronic form.

6.13.3 All plans delivered to Licensor in electronic form shall include vector line drawings of the improvements and such other information as this Agreement requires, all in a machine readable and manipulable form. The format of such data and the media upon which such data is supplied shall be such then reasonably common data format and media as specified from time to time by Licensor.

6.13.4 Licensee shall coordinate with Licensor as necessary on significant design issues prior to preparing plans to be submitted.

6.13.5 In addition to other submissions required under this Agreement, Licensee shall simultaneously deliver to Licensor's contract administrator copies of all applications and approvals and supplemental, supporting and related materials for all zoning, development review, building permits, and similar processes for the Licensee's Improvements.

6.13.6 No plans shall be deemed approved by Licensor until Licensor's contract administrator stamps them "APPROVED ONLY FOR PURPOSES OF THE PLANS APPROVAL REQUIREMENTS OF ARTICLE SIX OF REVOCABLE DRIVEWAY LICENSE AGREEMENT NO. 2020-191-COS" and Licensor's contract administrator initials and dates the stamp (collectively "Stamped").

6.13.7 The engineer shall place these words on each sheet of engineering work for Licensee's Improvements: "The engineer has performed this work for the benefit and reliance of the City of Scottsdale and assures the City of Scottsdale that the engineer's work is properly



performed and that it complies with any engineering requirements set out in the Revocable Driveway License Agreement No. 2020-191-COS.”

6.13.8 All construction plans shall be prepared by qualified registered engineers acceptable to Licensor.

6.13.9 All Licensor plans reviews, inspections, standards and other rights and actions with relation to Licensee's Improvements are for Licensor's sole and exclusive benefit and neither Licensee nor any other person shall rely thereon or have any rights related thereto.

6.13.10 Licensor has the right to require Licensee to obtain approval for any Licensee Improvements from the City of Scottsdale Development Review Board and any similar body. The preceding sentence does not apply to original Project construction.

6.13.11 Licensee shall hand deliver all plans to Licensor no later than each submission date. Submission dates shall be such dates as are necessary for Licensee to timely obtain the approvals required by this Agreement. Licensee is responsible to allow adequate time for all communications and plans revisions necessary to obtain approvals and shall schedule its performances hereunder and revise its plans as necessary to timely obtain all approvals.

6.13.12 Within thirty (30) days after Licensor receives plans from Licensee, Licensor shall make available to Licensee one (1) copy of the plans Licensee submitted either Stamped or marked to indicate the reasons that Licensor does not approve the plans.

6.13.13 If changes are required, Licensee shall revise the plans incorporating the changes requested by Licensor and shall within thirty (30) days after Licensor returns the marked up plans to Licensee submit revised plans to Licensor. Within twenty-one (21) days after Licensor's receipt of the revised plans, Licensor shall make available to Licensee one (1) copy of the revised plans either Stamped or marked to indicate the reasons that Licensor does not approve the plans.

6.13.14 Licensor and Licensee shall endeavor to resolve design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason or however arising, in light of Licensor's ownership and other uses of the Use Areas, and as a condition of Licensor's entering into this Agreement, final decision authority regarding all design and construction issues shall rest with Licensor.

6.13.15 Within ninety (90) days after completion of any construction, Licensee shall deliver to Licensor's contract administrator a complete set of as-built plans showing that the construction was completed according to the approved plans.

6.13.16 Licensee shall provide to Licensor copies of any and all designs or plans for improvements upon the Use Areas for Licensor's unrestricted use at the Use Areas or elsewhere.

6.13.17 All Licensee's Improvements shall comply with all requirements of law, any applicable insurance contracts and this Agreement.

6.14 Cost of Licensee Improvements. All Licensee's Improvements shall be designed and constructed by Licensee at Licensee's sole cost and expense. In no event, including without limitation termination of this Agreement for any reason, shall Licensor be obligated to compensate Licensee in any manner for any of Licensee's Improvements or other work provided by Licensee during or related to this Agreement. Licensee shall timely pay for all labor, materials, work, and all professional and other services related thereto and shall pay, protect, indemnify, defend and hold harmless Licensor and Licensor's employees, officers, contractors and agents against all claims related to such items. Licensee shall bear the cost of all work required from time to time to cause the Use Areas and other nearby property owned by Licensor to comply with local zoning rules, the Americans with Disabilities Act, building codes and all similar rules, regulations and other laws if such work is required because of work performed by Licensee, by Licensee's use of the Use Areas, or by any exercise of the rights granted to Licensee under this Agreement.

6.15 Contractor Assurances. In addition to any other payment, deposit or performance required under this Agreement, Lessee shall at least two (2) weeks prior to the commencement of any construction work by Lessee having an estimated cost of more than Fifty Thousand Dollars (\$50,000.00) provide to Lessor the following assurances in favor of Lessee that Lessee's contractors will timely and properly complete and pay all suppliers and subcontractors for the work completed (the "Contractor Assurances") as follows:

6.15.1 Contractor Assurance Amount. Each Contractor Assurance shall be in an amount (the "Contractor Assurance Amount") equal to one hundred percent (100%) of the full contract amount payable directly or indirectly to all persons for the construction work.

6.15.2 Contractor Assurances Required. Lessee's obligation to cause its contractors to provide Contractor Assurances includes a covenant to construct and a performance bond in favor of Lessee and the City of Scottsdale covering all the contracted work, according to standard City processes.

6.15.3 Contractor Assurance Qualifications. Each Contractor Assurance shall be in form and substance acceptable to Lessor. Each bond shall be executed solely by a surety company or companies holding a Certificate of Authority to transact surety business in the State of Arizona issued by the Director of the State Department of Insurance pursuant to Arizona Revised Statutes Title 20, Chapter 2, Article 1. The bonds shall not be executed by an individual or personal surety or sureties. Additionally, the surety company issuing any bond shall have an A.M. Best Company Inc. Financial Strength Rating of not less than "A-VI". Each Contractor Assurance shall at a minimum meet the requirements of A.R.S. Title 34 that would apply if Lessor were engaging a contractor and paying for the work.

6.16 Design and Construction Professionals. All construction and plans preparation for the Project from initial proposals through final construction documents and completion of construction shall be performed by professionals selected and paid by Licensee. All of Licensee's design and construction contractors shall have substantial experience in timely and successfully constructing projects similar to the Project.

6.17 Improvement Quality. Any and all work performed on the Use Areas by Licensee shall be performed in a workman-like manner as determined by Licensor and shall be diligently pursued to completion and in conformance with all building codes and similar rules. All of

Licensee's Improvements shall be high quality, safe, fire resistant, modern in design, and attractive in appearance, all as approved by Licensor through the plans approval processes described in this Agreement in addition to any zoning, building code or other regulatory processes that may apply. Licensee's Improvements shall not be deemed complete until so certified in writing to Licensor by the architect or engineer who designed the Licensee's Improvements.

6.18 Ownership of Licensee's Improvements. All Licensee's Improvements shall be and become part of the real property of Licensor "brick by brick" as constructed or installed.

6.19 Damage During Removal. Upon removal at any time of any item installed in or attached to the Use Area, Licensee shall simultaneously restore the Use Area to their prior condition, or to a condition matching Licensor's surrounding property and improvements, as directed by Licensor, and repair any holes, mounting surfaces or other damage whatsoever to the Use Area. Such work shall include revegetation and appropriate irrigation systems for revegetated areas. Licensee shall not remove any item at any time without first submitting to Licensor at least fourteen (14) days in advance a notice describing the item to be removed. Said notice shall describe the work to be done to restore the Use Areas and be accompanied by a cash deposit in an amount determined by Licensor to completely protect Licensor and the Use Areas from any failure by Licensee to fully and timely perform its obligations under this Agreement relating to said items or their removal.

6.20 Disturbance of Toxic Substances. Prior to undertaking any construction or other significant work, Licensee shall cause the Use Areas to be inspected to prevent disturbance of potential asbestos or other Toxic Substances. Prior to any work of any description that bears a material risk of disturbing potential asbestos or other Toxic Substances, Licensee shall cause the contractor or other person performing such work to give to Licensor notice by the method described in this Agreement to the effect that the person will inspect for Toxic Substances, will not disturb Toxic Substances, and will indemnify, defend and hold Licensor harmless against any disturbance in Toxic Substances in the course of the contractor's or other person's work. Licensee shall cause any on-site or off-site storage, inspection, treatment, transportation, disposal, handling, or other work involving Toxic Substances by Licensee in connection with the Use Areas to be performed by persons, equipment, facilities and other resources who are at all times properly and lawfully trained, authorized, licensed, permitted and otherwise qualified to perform such services. Licensee shall promptly deliver to Licensor copies of all reports or other information regarding Toxic Substances.

6.21 Construction Coordination. Licensee shall conduct all of its construction activities at and about the Use Area so as not to interfere with activities, operation, and other construction upon the PNR Parcel, upon adjacent streets, or elsewhere in the vicinity of the Project. All construction by Licensee must also comply with applicable right-of-way, noise, light, timing, event planning, dust and other policies in effect from time to time.

6.22 Time for Completion. Licensee shall diligently and expeditiously pursue to completion the construction of all approved Licensee's Improvements. Licensee shall complete initial construction of the Project no later than the Completion Deadline. Licensee shall complete construction of all other Licensee's Improvements to the Use Area no later than the earlier of i) six (6) months after the date of plans approval, or ii) any earlier date required by this Agreement or the plans approval.

6.23 Other Requirements. All Licensee's Improvements shall comply with all requirements of law, any applicable insurance contracts, all Site Documents, and this Agreement.

## VII. LICENSEE'S INITIAL PROJECT CONSTRUCTION

7. Licensee's Initial Project Construction. Licensee shall complete construction of the Project in accordance with all requirements of this Agreement, including without limitation those governing Licensee's Improvements, and the following:

7.1 Initial Plans Approved. By entering into this Agreement, Licensor approves only for purposes of Licensee's initial Project construction under this Agreement the design of Licensee's Improvements comprising the Project to the extent set forth in the Site Plan. To that extent, said approval partially satisfies the requirement under this Agreement that Licensee obtain Licensor's approval of plans. However, changes, modifications, refinements and particular implementations of any proposed Licensee's Improvements and all other matters not shown on the Site Plan are subject to this Agreement's requirement that Licensee obtain Licensor's approval for all Licensee's Improvements.

7.2 Project Definition. As of the date of this Agreement, the Project is only designed to the extent depicted in the Site Plan. Unless Licensor gives notice of consent otherwise, the Project shall conform to the Site Plan and to all other requirements of this Agreement.

7.3 Project Construction Schedule. Licensee shall design and construct the entire Project according to the following schedule:

7.3.1 Licensee shall obtain Licensor's approval of preliminary plans for the entire Project no later than ninety (90) days prior to the Completion Deadline.

7.3.2 Licensee shall obtain Licensor's approval of Final Plans for the entire Project no later than sixty (60) days prior to the Completion Deadline.

7.3.3 Licensee shall commence constructing the entire Project no later than thirty (30) days prior to the Completion Deadline.

7.3.4 Licensee shall complete and commence operating the entire Project no later than the Completion Deadline.

## VIII. MAINTENANCE AND UTILITIES

8. Maintenance and Utilities. Except as expressly provided below, Licensee shall be solely responsible for all maintenance, repair and utilities for the improvements to the Use Areas during the term of this Agreement. Without limitation, Licensee shall perform the following:

8.1 Maintenance by Licensor. Licensor shall continue to repair the portion of the Use Area that existed prior to the construction of the Project.

8.2 Maintenance by Licensee. Licensee and Licensor shall at all times repair and maintain the Use Area at Licensee's sole expense in a first-class, sound, clean, safe and attractive

manner, meeting or exceeding the manner of maintenance at first class comparable facilities in Maricopa County, Arizona, as determined in Licensor's reasonable discretion.

8.3 Utility Service. Licensee shall contract for and pay all charges, fees, deposits and other amounts for any new electricity service required for Licensee's improvements to the Use Area at the rates applicable thereto. The preceding sentence does not require Licensee to pay for electricity for Licensor's facilities at the Use Area unless such cost is attributable in whole or in part to Licensee's use of the Use Area. Licensee shall use no other utilities at the Use Area. All utilities for the Project shall be supplied from the 7<sup>th</sup> Day Adventist Parcel at Licensee's expense.

8.4 Utility Interruptions. Licensor is not responsible for any interruption of utilities to or upon the Use Areas or other difficulties related to utilities at the Use Area.

## IX. BREACH BY LICENSEE

9. Breach by Licensee. Licensee shall comply with, perform and do each performance and thing required of Licensee herein and shall cause all persons using the Use Areas through or under Licensee or this Agreement to do the same. Licensee's failure to do so shall be a material breach by Licensee of this Agreement.

9.1 Events of Default. This entire Agreement is made upon the condition that each and every one of the following events shall be deemed an "Event of Default" by Licensee of Licensee's material obligations under this Agreement:

9.1.1 If Licensee shall be in arrears in the payment of Use Fee and shall not cure such arrearage within ten (10) days after Licensor has notified Licensee of such arrearage.

9.1.2 If Licensee shall fail to maintain any insurance required by this Agreement. Notwithstanding the preceding sentence, such failure shall not be a default if within five (5) business days after notice from Licensor, Licensee provides to Licensor the required insurance and the required evidence thereof. Such insurance must cover the past for a period adequate that there is no gap in the insurance coverage required by this Agreement.

9.1.3 If Licensee or any other person or entity having liability for all or part of Licensee's obligations under this Agreement shall be the subject of a voluntary or involuntary bankruptcy, receivership, insolvency or similar proceeding or if any assignment of any of Licensee's or such other person's property shall be made for the benefit of creditors or if Licensee or such other person is not regularly paying its debts as they come due (collectively a "Licensee Insolvency").

9.1.4 If any circumstance, occurrence, action or inaction by Licensee shall occur contrary to the provisions of the Site Documents.

9.1.5 If Licensee does not commence and diligently pursue to completion each required stage of construction of the Project within the times required by this Agreement. The times specified for concluding each stage of required construction have been established far enough in advance, and have taken into account the likelihood of construction or other delays, so that no cure period is provided.

9.1.6 If Licensee shall engage in a pattern of repeated failure (or neglect) to timely do or perform or observe any provision contained herein. The following shall constitute a repeated failure by Licensee to comply with such provision:

9.1.6.1 Three (3) or more failures to comply with any provision of this Agreement during any ninety (90) day period.

9.1.6.2 Six (6) or more failures to comply with any provision of this Agreement during any twelve (12) month period.

9.1.7 If Licensee shall fail to or neglect to timely and completely do or perform or observe any other provisions contained herein and such failure or neglect shall continue for a period of thirty (30) days after Licensor has notified Licensee in writing of such failure or neglect.

9.2 Licensor's Remedies. Upon the occurrence of any Event of Default, Licensor may, at its option and from time to time, after any required demand or notice, exercise at Licensee's expense any or all or any combination of the following cumulative remedies in any order and repetitively at Licensor's option:

9.2.1 Terminate this Agreement and be excused without any liability to Licensee therefor from further performance of any obligations under this Agreement.

9.2.2 Terminate or suspend any and all of Licensee's rights or any and all of Licensor's obligations under this Agreement.

9.2.3 Enforce a lien (which Licensee hereby grants to Licensor in addition to any statutory or other lien that may exist) upon all of Licensee's real or personal property now or at any time hereafter at or pertaining or related to the Use Areas securing all of Licensee's obligations hereunder.

9.2.4 Pay or perform, for Licensee's account, in Licensee's name, and at Licensee's expense, any or all payments or performances required hereunder to be paid or performed by Licensee.

9.2.5 Abate at Licensee's expense any violation of this Agreement.

9.2.6 Notwithstanding anything in this Agreement to the contrary, unilaterally and without Licensee's or any other person's consent or approval, draw upon, withdraw or otherwise realize upon or obtain the value of any letter-of-credit, escrowed funds, insurance policies, or other deposits, sureties, bonds or other funds or security held by Licensor or pledged or otherwise obligated to Licensor by Licensee or by any third party pursuant to this Agreement (whether or not specifically mentioned herein) and use the proceeds for any remedy permitted by this Agreement.

9.2.7 Insist upon Licensee's full and faithful performance under this Agreement and upon Licensee's full and timely payment of all amounts during the entire remaining term of this Agreement.

9.2.8 Require an additional security deposit adequate in Licensor's sole discretion to protect Licensor and the Use Areas.

9.2.9 Declare to be terminated any rights Licensee may have related to any extension of this Agreement.

9.2.10 Assert, exercise or otherwise pursue at Licensee's expense any and all other rights or remedies, legal or equitable, to which Licensor may be entitled.

9.3 Notice of Licensee's Breach. Licensee shall promptly give notice to Licensor of any event or circumstance that is (or that with the passing of time or the giving of notice or both will become) an Event of Default under this Agreement. Licensee shall also promptly give to Licensor notice of any notice or claim given by any third party alleging that an event or circumstance has occurred that is (or that with the passing of time or the giving of notice or both will become) an Event of Default under this Agreement.

9.4 Non-waiver. Licensee acknowledges Licensee's unconditional obligation to comply with this Agreement. No failure by Licensor to demand any performance required of Licensee under this Agreement, and no acceptance by Licensor of any imperfect or partial performances under this Agreement, shall excuse such performance or impair in any way Licensor's ability to insist, prospectively and retroactively, upon full compliance with this Agreement. No acceptance by Licensor of Use Fee payments or other performances hereunder shall be deemed a compromise or settlement of any right Licensor may have for additional, different or further payments or performances. Any waiver by Licensor of any breach of condition or covenant herein contained to be kept and performed by Licensee shall not be deemed or considered as a continuing waiver and shall not operate to bar or otherwise prevent Licensor from declaring a default for any breach or succeeding or continuing breach either of the same condition or covenant or otherwise. No statement, bill or notice by Licensor or Licensee concerning payments or other performances due hereunder, or failure by Licensor to demand any performance hereunder, shall excuse Licensee from compliance with this Agreement nor estop Licensor (or otherwise impair Licensor's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this Agreement. No waiver of any description (INCLUDING ANY WAIVER OF THIS SENTENCE OR PARAGRAPH) shall be effective against Licensor unless made in writing by a duly authorized representative of Licensor specifically identifying the particular provision being waived and specifically stating the scope of the waiver. LICENSEE EXPRESSLY DISCLAIMS AND SHALL NOT HAVE THE RIGHT TO RELY ON ANY SUPPOSED WAIVER OR OTHER CHANGE OR MODIFICATION, WHETHER BY WORD OR CONDUCT OR OTHERWISE, NOT CONFORMING TO THIS PARAGRAPH.

9.5 Reimbursement of Licensor's Expenses. Licensee shall pay to Licensor upon demand any and all amounts expended or incurred by Licensor in performing Licensee's obligations when authorized by this Agreement.

9.6 Inspection. Licensor shall have access to all portions of the Use Area at all times upon reasonable notice (and at all times and without notice in the event of an emergency) for the purpose of examining, inspecting, evaluating, planning, repairing, designing, maintaining or showing the Use Areas or exercising Licensor's other rights hereunder. Licensee shall promptly undertake appropriate action to rectify any deficiency (identified by Licensor during such

inspections or otherwise) in Licensee's compliance with this Agreement. This paragraph does not limit Licensor's other rights of access to the Use Areas elsewhere in this Agreement or otherwise. This right of access is in addition to access rights for Licensor inspectors or other employees and officers acting within their legal authority.

9.7 Breach by Licensor. Notwithstanding anything in this Agreement to the contrary, if Licensor at any time is required to pay to Licensee any amount or render any performance, such amount or performance is not due until thirty (30) days after notice by Licensee to Licensor that the amount has become payable or that the performance is due. If a cure cannot be effected during that period, Licensor shall not be in default so long as Licensor commences cure during the period and diligently prosecutes the cure to completion provided such cure must be completed within ninety (90) days after the notice.

9.8 Right to Setoff and Credit. In addition to its other rights and remedies under this Agreement, Licensor shall have the right to setoff and credit, from time to time and at any time, any and all amounts due from Licensee to Licensor, whether pursuant to this Agreement or otherwise, against any sum that may be due from Licensor to Licensee.

## X. TERMINATION

10. Rights at Termination. The following provisions shall apply at the expiration of the term hereof or upon any other termination of this Agreement:

10.1 Surviving Obligations. Expiration of this Agreement (or termination of this Agreement due to an Event of Default or any other reason) does not terminate Licensee's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or events leading to or occurring before termination.

10.2 Delivery of Possession. Licensee shall cease using the Use Areas. Licensee shall without demand, peaceably and quietly quit and deliver up the Use Areas to Licensor thoroughly cleaned, in good repair with the Use Areas maintained and repaired and in as good order and condition, reasonable use and wear excepted, as the Use Areas now are or in such better condition as the Use Areas may hereafter be placed.

10.3 Confirmation of Termination. Licensee shall provide to Licensor upon demand recordable disclaimers covering the Use Areas executed and acknowledged by Licensee and by all persons claiming through this Agreement or Licensee any interest in or right to use the Use Areas.

10.4 Removal of Improvements. Licensee shall remove all Licensee's Improvements and other property and improvements as directed by Licensor, at Licensee's expense prior to normal expiration of the term of this Agreement or within thirty (30) days after termination of this Agreement for any other reason whatsoever. Without limitation, such work shall include restoration and other work otherwise required by this Agreement. Notwithstanding anything in this Agreement to the contrary, Licensor may elect to require Licensee to leave any or all construction or other items in place, and all such items shall be owned by Licensor. Unless Licensor directs otherwise, all wiring, pipes and conduits shall be left in good and safe condition, in working order, with each end properly labeled and enclosed in proper junction boxes. Any Licensee property remaining on or about the Use Areas after the time for removal shall be considered abandoned and subject to



removal, storage and disposal by Licensor at Licensee's expense and without compensation or accounting.

10.5 Use Fee Refunds. Use Fee is not refundable under any circumstances.

## XI. INDEMNITY AND INSURANCE

11. Insurance Responsibility. During the entire term of this Agreement, Licensee shall insure the Use Areas and property and activities at and about the Use Areas pursuant to or under this Agreement and provide indemnification as follows:

11.1 Insurance Required. Prior to entering, occupying or using the Use Areas in any way, and in any event not later than the date ten (10) days after the date of this Agreement, and at all times thereafter, Licensee shall obtain and cause to be in force and effect the following insurance:

11.1.1 Commercial General Liability. Commercial general liability insurance with a limit of Five Million Dollars (\$5,000,000) for each occurrence, a limit of Five Million Dollars (\$5,000,000) for products and completed operations annual aggregate, and a limit of Five Million and No/100 Dollars (\$5,000,000.00) general aggregate limit per policy year. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, bodily injury, advertising injury, and liability assumed under an "insured contract" including this Agreement. The policy shall contain a "separation of insureds" clause.

11.1.2 Automobile Liability. Automobile liability insurance with a combined single limit of One Million and No/100 Dollars (\$1,000,000.00) for each accident covering any and all owned, hired, and non-owned vehicles assigned to or used in any way in connection with Licensee's use of the Use Areas. Without limitation, such insurance shall cover hazards of motor vehicle use for loading and off loading.

11.1.3 Workers' Compensation. Such workers' compensation and similar insurance as is required by law and employer's liability insurance with a minimum limit of One Hundred Thousand Dollars (\$100,000) for each accident, One Hundred Thousand Dollars (\$100,000) disease for each employee, Five Hundred Thousand Dollars (\$500,000) policy limit for disease. All contractors and subcontractors must provide like insurance.

11.1.4 Other Insurance. Any other insurance Licensor may reasonably require for the protection of Licensor and Licensor's employees, officials, representatives, officers, and agents (all of whom, including Licensor, are collectively "Additional Insureds"), the Use Areas, surrounding property, Licensee, or the activities carried on or about the Use Areas. Likewise, not more often than once in any thirty-six (36) month period, Licensor may elect by not less than thirty (30) days prior notice to Licensee to increase the amount or type of any insurance to account for inflation, changes in risk, or any other factor that Licensor reasonably determines to affect the prudent amount of insurance to be provided.

11.2 Form of All Insurance. All insurance provided by Licensee with respect to the Use Areas, whether required by this Agreement or not, and all insurance provided by third parties under this Agreement, shall meet the following requirements:

11.2.1 "Occurrence" coverage is required. "Claims made" insurance is not permitted.

11.2.2 Licensee's insurance required by this Agreement shall be primary insurance as to the risks it covers.

11.2.3 All policies, including workers' compensation, shall waive transfer rights of recovery (subrogation) against Licensor and the other Additional Insureds.

11.2.4 All deductibles, retentions or "self-insured" amounts shall be subject to the following:

11.2.4.1 Licensee shall be solely responsible for all such amounts.

11.2.4.2 No such amount for any policy during any year may exceed One Hundred Thousand and No/100 Dollars (\$100,000.00).

11.2.5 All general liability and automobile policies must cover Licensor and the other Additional Insureds as additional insureds.

11.2.6 Coverages may be provided directly in the body of the policy or be incorporated into the insurance policy by endorsement.

11.2.7 All applicable property policies must cover Licensor as a loss payee regarding proceeds relating to Licensor land.

11.2.8 All policies must require the insurer to provide Licensor with at least thirty (30) days prior notice of any cancellation or reduction in coverage below the coverage required by this Agreement.

11.2.9 All policies shall require that notices be given to Licensor at the addresses specified for notices to Licensor under this Agreement.

11.2.10 Licensee may elect to use excess insurance to meet the insurance requirements of this Agreement, but such excess insurance shall be "follow form" equal to or broader in coverage than the underlying insurance.

11.3 Evidence of Insurance. Licensee shall provide evidence of all insurance as follows:

11.3.1 Certificates must be in ACORD form or equivalent acceptable to Licensor.

11.3.2 Licensee shall provide to Licensor certificates of insurance annually. Licensee shall provide certificates at other times at Licensor's request.

11.3.3 Certificates must evidence that the policy described by the certificate is in full force and effect and that the policy satisfies each requirement of this Agreement applicable to the policy. For example, certificates must evidence that Licensor and the other Additional Insureds are additional insureds.

11.3.4 Each insurance certificate provided to Licensor constitutes a warranty and representation by Licensee to Licensor that policies, coverages and other matters are actually in effect as described in the certificate.

11.3.5 Upon Licensor's request, Licensee shall provide to Licensor copies of actual insurance policies.

11.4 Acceptable Insurers. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted) by the State of Arizona, Department of Insurance. At a minimum, all insurers, or if a Captive, all reinsurers shall have and maintain an A.M. Best, Inc. rating of B++6.

11.5 Licensor's Election to Provide Insurance. Licensor is not required to carry any insurance covering or affecting the Use Areas or use of Licensor's property related to this Agreement. Any insurance or self insurance maintained by Licensor shall not contribute to Licensee's insurance.

11.6 Representation of Coverage Adequacy. By requiring insurance herein, Licensor does not represent that coverage and limits will be adequate to protect Licensee. Failure to demand evidence of compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Licensee from, nor be construed or deemed a waiver of, Licensee's obligation to maintain the required insurance at all times during this Agreement.

11.7 Indemnity. In addition to all other indemnities and other obligations hereunder, to the fullest extent permitted by law, throughout the term of this Agreement and until all obligations and performances under or related to this Agreement are satisfied and all matters described in this paragraph are completely resolved, Licensee (and all other persons using, acting, working or claiming through or for Licensee or this Agreement (if they or their subcontractor, employee or other person or entity hired or directed by them participated in causing the claim in question)) shall jointly and severally pay, indemnify, defend and hold harmless Licensor and all other Additional Insureds for, from and against any and all claims or harm related to the Use Areas or this Agreement (the "Indemnity"). Without limitation, the Indemnity shall include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, and the cost of appellate proceedings) that may arise in any manner out of any use of the Use Areas or other property related to this Agreement or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to this Agreement, including any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the Use Areas or surrounding areas related to this Agreement, including without limitation, claims, liability, harm or damages caused in part by Licensor or any other Additional Insured or anyone for whose mistakes, errors, omissions or negligence Licensee or Licensor may be liable. As a condition to Licensor's executing this Agreement, Licensee specifically agrees that to the extent any provision of this paragraph is not fully enforceable against Licensee for any reason whatsoever, this paragraph shall be deemed automatically reformed to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law. Notwithstanding the foregoing, the Indemnity does not apply to:

11.7.1 Claims arising only from the sole gross negligence of Licensor and its employees.

11.7.2 Claims that the law prohibits from being imposed upon the indemnitor.

11.8 Risk of Loss. Licensee assumes the risk of any and all loss, damage or claims related to Licensee's use of the Use Areas or other property owned by Licensor, Licensee or third

parties. Licensee shall be responsible for any and all damage to Licensee's property and equipment related to Licensee's use of the Use Areas.

11.9 Indemnities and Insurance Cumulative. Licensee's obligations to indemnify do not diminish in any way Licensee's obligations to insure; and Licensee's obligations to insure do not diminish in any way Licensee's obligations to indemnify. Licensee's obligations to indemnify and provide insurance are in addition to, and do not limit, any and all other liabilities or obligations of Licensee under or connected with this Agreement. The amount and type of insurance coverage required by this Agreement will in no way be construed as limiting the scope of the indemnities or other requirements of this Agreement.

## XII. CONDEMNATION

12 Condemnation. The following shall govern any condemnation of any part of or interest in the Use Areas and any conveyance to Licensor or another condemnor in avoidance or settlement of condemnation or a threat of condemnation:

12.1 Termination for Condemnation. This Agreement shall terminate on the date (the "Condemnation Date") that is the earlier of the date title vests in the condemnor, or the date upon which the condemnor is let into possession. Notwithstanding the foregoing, if Licensor reasonably determines that the Use Areas continue to be suitable for Licensee to conduct the Permitted Uses, Licensor may elect to cause this Agreement to continue to remain in effect as to the part of the Use Areas not taken and the Use Fee shall not be reduced or abated. Nevertheless, if Licensee reasonably determines that the Use Areas are not suitable for Licensee to conduct the Permitted Uses, then this Agreement shall terminate.

12.2 Condemnation Proceeds. Licensee hereby assigns and transfers to Licensor Licensee's entire interest in all condemnation damages, interest, severance damages, and any other payments or proceeds of any kind relating to the condemnation (collectively the "Condemnation Proceeds"). Licensee shall execute and deliver to Licensor assignments or other instruments requested by Licensor confirming such assignment and transfer. Licensee shall immediately pay to Licensor any Condemnation Proceeds Licensee may receive.

12.3 Power to Condemn. Licensee acknowledges that Licensor and others from time-to-time may use the power to condemn the Use Areas or any interest therein or rights thereto. Licensor has not relinquished any right of condemnation or eminent domain over the Use Areas. Licensor does not warrant that Licensor will not condemn the Use Areas during the term of this Agreement, but Licensor does not presently have intentions to condemn the Use Areas.

## XIII. DAMAGE TO OR DESTRUCTION OF USE AREA

13. Damage to or Destruction of the Use Areas. If the Project is damaged by fire, flood, explosion, the elements, the public enemy, or other casualty, then Licensee shall complete the restoration or removal work within thirty (30) days after commencement. Such work shall be subject to the plans approval process and all other requirements for Licensee's Improvements. Licensee shall perform all restoration work at Licensee's sole cost and expense. Licensee shall provide to Licensor no later than the tenth day of each month a written narrative report of the progress of the restoration work.

#### XIV. LICENSEE'S RECORDS

14. Licensee's Records. During the entire term of this Agreement, Licensee shall keep records and provide information to Licensor as follows:

14.1 Scope of Information. Unless otherwise specified, all of Licensee's recordkeeping and disclosure obligations under this article are limited to the following (collectively the "Covered Information"):

14.1.1 The status of the construction, repair or restoration of Licensee Improvements.

14.1.2 Information relating to Licensor's or Licensee's other rights or obligations under this Agreement.

14.2 Limitation on Covered Information. Covered Information excludes information that is not relevant to Licensor's or Licensee's rights or obligations under this Agreement. For example, Covered Information does not include the following:

14.2.1 Licensee's revenues with respect to the 7<sup>th</sup> Day Adventists Parcel.

14.2.2 Information that is not relevant to this Agreement.

14.3 Records Inspection. At Licensee's expense, Licensee shall:

14.3.1 Permit and assist Licensor and its representatives at all reasonable times to inspect, audit, and copy Licensee's records of Covered Information.

14.3.2 Make the records of Covered Information (and reasonable accommodations for Licensor's audit and inspection) available to Licensor at Licensee's offices in Maricopa County, Arizona.

14.3.3 Cause Licensee's employees and agents and accountants to give their full cooperation and assistance in connection with Licensor's access to the Covered Information.

14.4 Record Retention. Licensee shall preserve records of the Covered Information in a secure place at Licensee's corporate headquarters in Maricopa County, Arizona, for a period ending seven (7) years after the time period reported by the records.

14.5 Record Media Included. Licensor's and Licensee's rights and obligations regarding the Covered Information apply regardless of the type of media, materials, or data repositories that may contain the Covered Information. Licensor shall have access to Covered Information contained, without limitation, in records, books, papers, documents, recordings, computer data, contracts, logs, notes, ledgers, correspondence, reports, drawings, and memoranda, and any and all other sources, records and repositories of Covered Information.

14.6 Standards for Records. Licensee shall maintain a standard, modern system of recordkeeping for the Covered Information and shall keep and maintain proper and accurate books and other repositories of information relating to the Covered Information in accordance with 17784170v10

generally accepted accounting principles applied on a consistent basis. If Licensor does not receive Covered Information, Licensor shall have the right to estimate the information that is not provided, which estimate shall be binding upon Licensee.

## XV. COMPLIANCE WITH LAW

15. Compliance with Law. Licensee shall perform its obligations under this Agreement in accordance with all federal, state, county and local laws, ordinances, regulations or other rules or policies as are now in effect or as may hereafter be adopted or amended. Without limiting in any way the generality of the foregoing, Licensee shall comply with all and each of the following:

15.1 Applicability of Municipal Law. Without limitation, Licensee shall comply with municipal laws as follows:

15.1.1 Licensee acknowledges that this Agreement does not constitute, and Licensor has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to Licensee with regard to) any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Scottsdale or any other governmental body upon or affecting Licensee, the Use Areas, the Large Pump Parcel or the Large Street Parcel.

15.1.2 All of Licensee's obligations hereunder are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of), all existing or future laws and regulations applicable to Licensee.

15.1.3 This Agreement is not intended to diminish any performances that would be required of Licensee by law if this Agreement had been made between Licensee and a private citizen.

15.1.4 Licensor by this Agreement cannot and has not relinquished or limited any right of condemnation or eminent domain over any property related to this Agreement.

15.1.5 This Agreement does not impair City of Scottsdale's power to enact, apply or enforce any laws or regulations, or exercise any governmental powers affecting in any way Licensee, the Use Areas, the Large Pump Parcel, the Large Street Parcel or the Shopping Parcel.

15.1.6 Licensor's rights and remedies hereunder for Licensee's failure to comply with all applicable laws supplement and are in addition to and do not replace otherwise existing powers of the City of Scottsdale or any other governmental body.

15.2 Government Property Lease Excise Tax. Licensee shall be responsible for any and all property taxes and all government property lease excise taxes described in A.R.S. § 42-6201 *et seq.* or similar laws in force from time to time. Pursuant to A.R.S. § 42-6206, failure by Licensee to pay the taxes after notice and an opportunity to cure is an event of default that could result in divesting Licensee of any interest in or right of occupancy of the Use Areas.

15.3 Taxes, Liens and Assessments. In addition to all other amounts herein provided, Licensee shall pay, when the same become due and payable, all taxes and general and special

fees, charges and assessments of every description that during the term of this Agreement may be levied upon or assessed upon or with respect to Licensee's use of the Use Areas, the operations conducted therein, any amounts paid or other performances under this Agreement by either party, and all possessory interest in the Use Areas and improvements and other property thereon, whether belonging to Licensor or Licensee. Licensee shall pay, indemnify, defend and hold harmless Licensor and the Use Areas and all interests therein and improvements thereon from any and all such taxes and assessments, including any interest, penalties and other expenses that may be imposed, and from any lien therefor or sale or other proceedings to enforce payment thereof. Licensor shall have the right from time to time to require that all of the foregoing payments be made by Licensee through Licensor. Licensee shall pay all sales, transaction privilege, and other taxes arising from this Agreement or Licensee's activities hereunder.

## XVI. ASSIGNABILITY

16. Assignability. This Agreement is not assignable by Licensee except in strict compliance with the following:

16.1 Assignments Prohibited. References in this Agreement to assignments or subleases by Licensee shall be deemed to apply to all of the following transactions, circumstances and conditions:

16.1.1 Any voluntary or involuntary assignment, conveyance, or transfer of the Use Areas or any interest therein or any rights under this Agreement, in whole or in part.

16.1.2 Any voluntary or involuntary pledge, lien, mortgage, security interest, judgment, deed of trust, claim or demand, whether arising from any contract, any agreement, any work of construction, repair, restoration, maintenance or removal, or otherwise affecting the Use Areas (collectively "Liens").

16.1.3 The use, occupation, management, control or operation of the Use Areas or any part thereof by others.

16.1.4 Any transaction (or series of related or unrelated transactions) transferring a substantial part of the corporate stock (or other evidence of ownership, as applicable) or any other direct or indirect transfer of any substantial part of the ownership, management or control of Licensee or the Use Areas.

16.1.5 Any assignment for the benefit of creditors, voluntary or involuntary.

16.1.6 Any bankruptcy or reorganization.

16.1.7 The occurrence of any of the foregoing by operation of law.

16.2 Assignment Remedies. Any prohibited assignment shall be void and vest no rights in the assignee. Nevertheless, Licensor may, in its sole discretion and in addition to all other remedies available to Licensor under this Agreement or otherwise and in any combination, collect Use Fee from the assignee, sublicensee or occupant and apply the net amount collected to the Use Fee required to be paid thereunder and/or void the assignment, all without prejudicing any

other right or remedy of Licensor under this Agreement. No cure or grace periods shall apply to assignments prohibited by this Agreement or to enforcement of this Agreement against an assignee who did not receive Licensor's consent. Licensor may elect to increase Use Fee as a condition to consenting to an assignment.

16.3 No Waiver. No consent or collection or other action or inaction by Licensor shall be deemed a waiver of the prohibition on assignments or any other provision of this Agreement, or the acceptance of the assignee, sublicensee or occupant as Licensee, or a release of Licensee from the further performance by Licensee of the provisions of this Agreement. The consent by Licensor to an assignment or subletting shall not relieve Licensee from obtaining the consent in writing of Licensor to any further assignment or sublease. Upon assigning, transferring or subletting the Use Areas, Licensee shall not be released of any liability hereunder but shall remain fully and personally obligated under this Agreement.

16.4 Enforceability after Assignment. This Agreement shall be enforceable personally and in total against Licensee and each successor, partial or total, and regardless of the method of succession, to Licensee's interest hereunder. Each successor having actual or constructive notice of this Agreement shall be deemed to have agreed to the preceding sentence.

16.5 Grounds for Refusal. Licensor has the absolute right for any reason or for no reason in its sole discretion to give or withhold consent to any assignment or to impose any conditions upon any assignment. Licensee shall pay to Licensor the sum of One Thousand Dollars (\$1,000.00) for legal and administrative expenses related to any request for consent, except for pre-approved assignments.

16.6 Form of Assignment. Any assignment shall be by agreement in form and content acceptable to Licensor. Without limitation, any assignment shall specify and require that each assignee acquiring any interest under this Agreement shall assume and be bound by, and be obligated to perform the terms and conditions of this Agreement, and that in the event Licensor terminates this Agreement because of default by Licensee, Licensor at Licensor's sole option may succeed to the position of Licensee as to any assignee of Licensee without liability for any prior breaches or performances by persons other than Licensor.

16.7 Lien Payment. Licensee shall pay all Liens as the same become due, and in any event before any judicial or non-judicial action or proceeding is commenced to enforce a Lien. Licensee shall pay, indemnify, defend and hold Licensor and the Use Areas free and harmless for, from and against any and all Liens, together with all liability, costs and expenses in connection therewith, including attorney's fees. Licensor shall have the right at any time to post and maintain on the Use Areas such notices, pay such amounts, file or record such notices, or take such other actions as Licensor may deem necessary to protect Licensor and its property interests against all Liens.

16.8 Assignment of 7<sup>th</sup> Day Adventists Parcel. Licensee's rights and obligations under Agreement touch and concern the 7<sup>th</sup> Day Adventists Parcel, and run with, benefit and burden the 7<sup>th</sup> Day Adventists Parcel for the benefit of Licensor and the Use Area, and bind future owners of the 7<sup>th</sup> Day Adventists Parcel, or any portion thereof. In addition:



16.8.1 No grant or other transfer of fee title to the 7<sup>th</sup> Day Adventists Parcel shall occur without a corresponding assignment of Licensee's rights under this Agreement to the grantee and assumption of Licensee's obligations under this Agreement by the grantee.

16.8.2 Licensee shall give Licensor Sixty (60) days advance notice of any assignment of the 7<sup>th</sup> Day Adventists Parcel.

16.9 Pre-approved Assignments. Licensor consents to the following:

16.9.1 Collateral assignment of all of Licensee's rights under this Agreement to secure any debt that is also secured by a recorded lien upon the entire 7<sup>th</sup> Day Adventists Parcel.

16.9.2 Assignments of a portion of Licensee's rights under this Agreement to a new fee title owner or a ground lessee of all or a portion of 7<sup>th</sup> Day Adventists Parcel.

16.9.3 The transfer of ownership interests in Licensee.

## XVII. MISCELLANEOUS

17. Miscellaneous. This Agreement is subject to the following additional provisions:

17.1 Amendments. This Agreement may not be amended except by a formal writing executed by all of the parties.

17.2 Dates. Any reference to a year shall refer to a calendar year unless a fiscal year is specifically stated. Sunday, Saturday and Arizona legal holidays are holidays for purposes of this Agreement.

17.3 Limited Severability. In the event any term, condition, covenant, stipulation, agreement or provision herein contained is held to be invalid or unenforceable for any reason, the invalidity of such term, condition, covenant, stipulation, agreement or provision shall in no way affect any other term, condition, covenant, stipulation, agreement or provision herein contained. Further, this Agreement shall be deemed automatically reformed to secure to Licensor the legal, equitable, practical and other benefits of the written provisions of this Agreement to the very maximum extent permitted by law.

17.4 Conflicts of Interest. No officer or employee of Licensor shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement, that is prohibited by law.

17.5 Nonliability of Licensor Officials and Employees. No official, representative or employee of Licensor shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by Licensor or for any amount that may become due to any party or successor, or with respect to any obligation of Licensor or otherwise under the terms of this Agreement or related to this Agreement.

17.6 Notices. Notices hereunder shall be given in writing mailed by registered or certified mail, return receipt requested, postage prepaid (or delivered by hand delivery, or by Fed-Ex or a similar nationally recognized delivery service) addressed to:

If to Licensor: Real Estate Asset Manager  
City of Scottsdale  
Suite 205  
7447 East Indian School Road  
Scottsdale, AZ 85251

Copy to: City Attorney  
City of Scottsdale  
3939 N. Drinkwater Blvd.  
Scottsdale, AZ 85251

If to Licensee: Reginald Leach, Treasurer  
Arizona Conference of Seventh-day Adventists  
13405 N. Scottsdale Road  
Scottsdale, AZ 85254  
(480) 991-6777 [rleach@azconference.org](mailto:rleach@azconference.org)

Copy to: Thomas E. Halter, Esq.  
Gust Rosenfeld, P.L.C.  
One E. Washington St # 1600  
Phoenix, AZ 85004  
602-257-7991 (direct) [tehalter@gustlaw.com](mailto:tehalter@gustlaw.com)

By notice from time to time, a person may designate any other street address within Maricopa County, Arizona as its address for giving notice hereunder. Service of notice by mail shall be deemed to be complete three (3) days (excluding holidays) after the notice is deposited in the United States mail.

17.7 Time of Essence. Time is of the essence of each and every provision of this Agreement.

17.8 Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, draft agreements, discussion outlines, correspondence, memoranda, and representation regarding the Use Areas.

17.9 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, that might otherwise favor Licensee.

17.10 Funding. This subparagraph shall control notwithstanding any provision of this Agreement or any exhibit or other agreement or document related hereto. If funds necessary to fulfill Licensor's obligations under this Agreement are not appropriated by the Scottsdale City Council, Licensor may terminate this Agreement by ninety (90) days notice to Licensee. Termination in accordance with this provision shall not constitute a breach of this Agreement by Licensor. No person will be entitled to any compensation or damages from Licensor if this Agreement is terminated pursuant to the terms of this subsection.

17.11 Paragraph Headings. The paragraph headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.

17.12 No Third-Party Beneficiaries. No person or entity shall be a third-party beneficiary to this Agreement or shall have any right or cause of action hereunder. Licensor shall have no liability to third parties for any approval of plans, Licensee's construction of improvements, Licensee's negligence, Licensee's failure to comply with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by Licensee), or otherwise as a result of the existence of this Agreement.

17.13 Exhibits. All exhibits specifically stated to be attached hereto as specified herein are hereby incorporated into and made an integral part of this Agreement for all purposes.

17.14 No Partnership. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.

17.15 Choice of Law. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules. Licensor has not waived its claims procedures as respects this Agreement. Exclusive proper venue for any action regarding this Agreement shall be Maricopa County.

17.16 Approvals and Inspections. All approvals, reviews and inspections by Licensor under this Agreement or otherwise are for Licensor's sole benefit and not for the benefit of Licensee, its contractors, engineers or other consultants or agents, or any other person.

17.17 Recording. Within ten (10) days after the date of this Agreement, Licensee shall cause this Agreement to be recorded in the office of the Maricopa County Recorder. Within ten (10) days after any amendment or termination of this Agreement, Licensee shall cause the amendment or termination document to be recorded.

17.18 Statutory Cancellation Right. In addition to its other rights hereunder, Licensor shall have the rights specified in A.R.S. § 38-511.

17.19 Licensee Authority. The person executing this Agreement on behalf of Licensee personally warrants to Licensor his authority to do so.

EXECUTED as of the date first given above.





## TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Paragraph</u>	<u>Description</u>
A	A(1)	Legal description for the City of Scottsdale Park and Ride Parcel
B	A(2)	Depiction for the Use Area Parcel
C	C(1)	Driveway Improvement Plan
D	C(2)	Legal description for the 7 <sup>th</sup> Day Adventist Parcel
E	1.8	Form of lienholder confirmation: 1. For 7 <sup>th</sup> Day Adventist Parcel 2. New Development lien holder

## LEGAL DESCRIPTION

### PARK AND RIDE PARCEL

That part of the northwest quarter of the northwest quarter of Section 14, Township 3 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the northwest corner of said Section 14;

thence along the north line of said northwest quarter South 89° 36'42" East 80.02 feet;

thence departing said north line South 00° 24'18" West 40.00 foot to the south right-of-way line of Thunderbird Road according to Docket 11885 Page 643, records of said County, and the POINT OF BEGINNING:

thence parallel with and 40.00 feet south of said north line along said south right-of-way line South 89° 35'42" East 721.63 feet to the beginning of a curve concave to the north having a radius of 340.00 feet;

thence continuing along said south right-of-way northeasterly along said curve through a central angle of 28° 04'24" a distance of 158.59 feet to said north line;

thence departing said south right-of-way line along said north line South 89° 36'42" East 70.16 feet to point on the easterly line of that real property as recorded in Docket 6126 Pages 203 & 204, records of said County

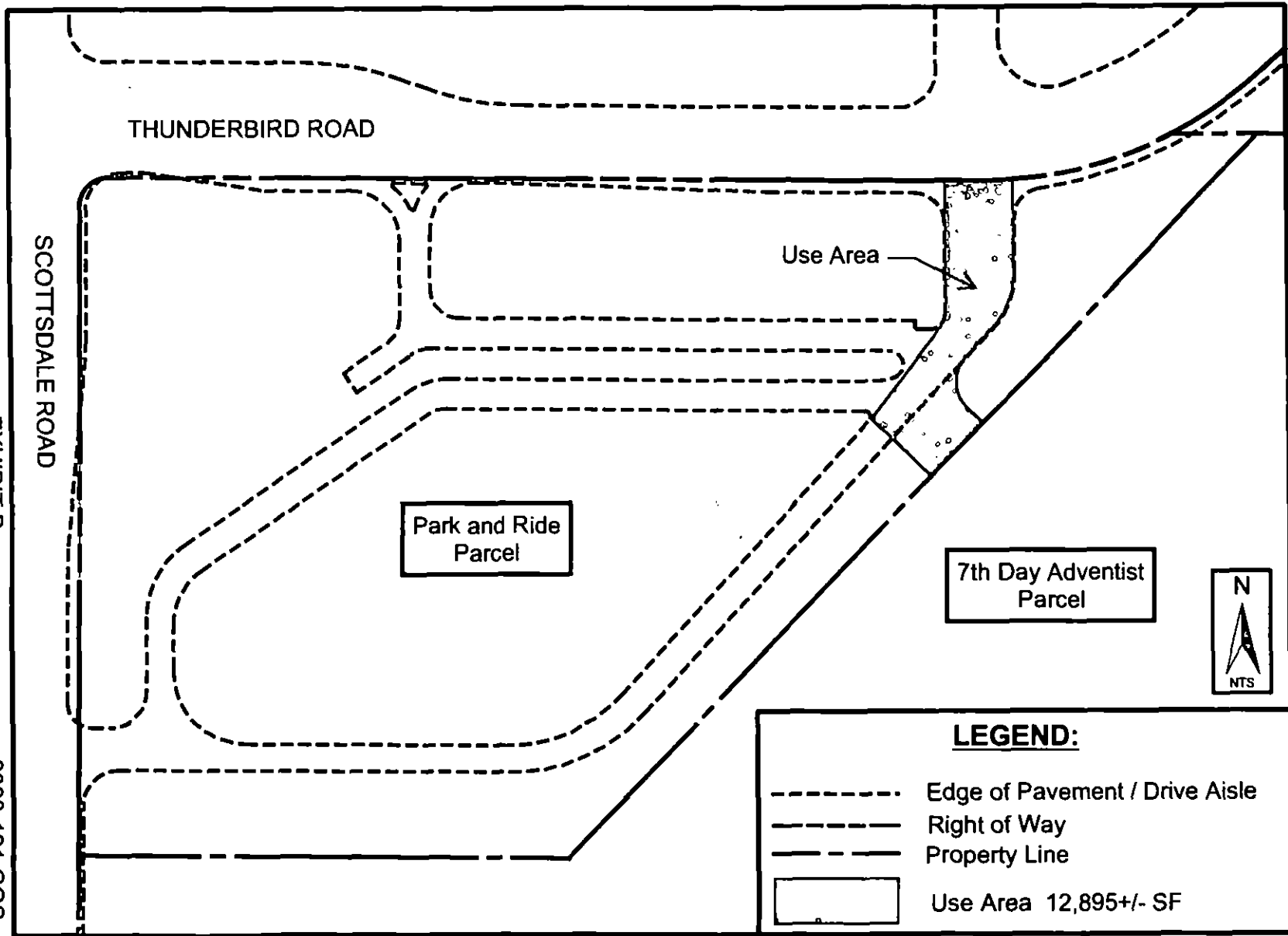
thence departing said north line along said easterly line South 43° 55' 00" West 828.15 feet;

thence departing said easterly line along the south line of said real property North 89° 37'00" West 407.77 feet to a point on the east right-of-way line of Scottsdale Road according to Docket 8210 Page 963 records of said County, said point being 65.00 feet east of the west line of the said northwest quarter;

thence departing said south line along said east right-of-way line parallel with and 65.00 feet east of said west line North 00° 23;00" East 534.30 feet to the beginning of a curve concave to the southeast having a radius of 25.00 feet;

thence northeasterly along said curve through a central angle of 90° 01'18" a distance of 39.28 feet to the POINT OF BEGINNING.

Continuing 380.501 square feet or 8.7361 acres, more or less.

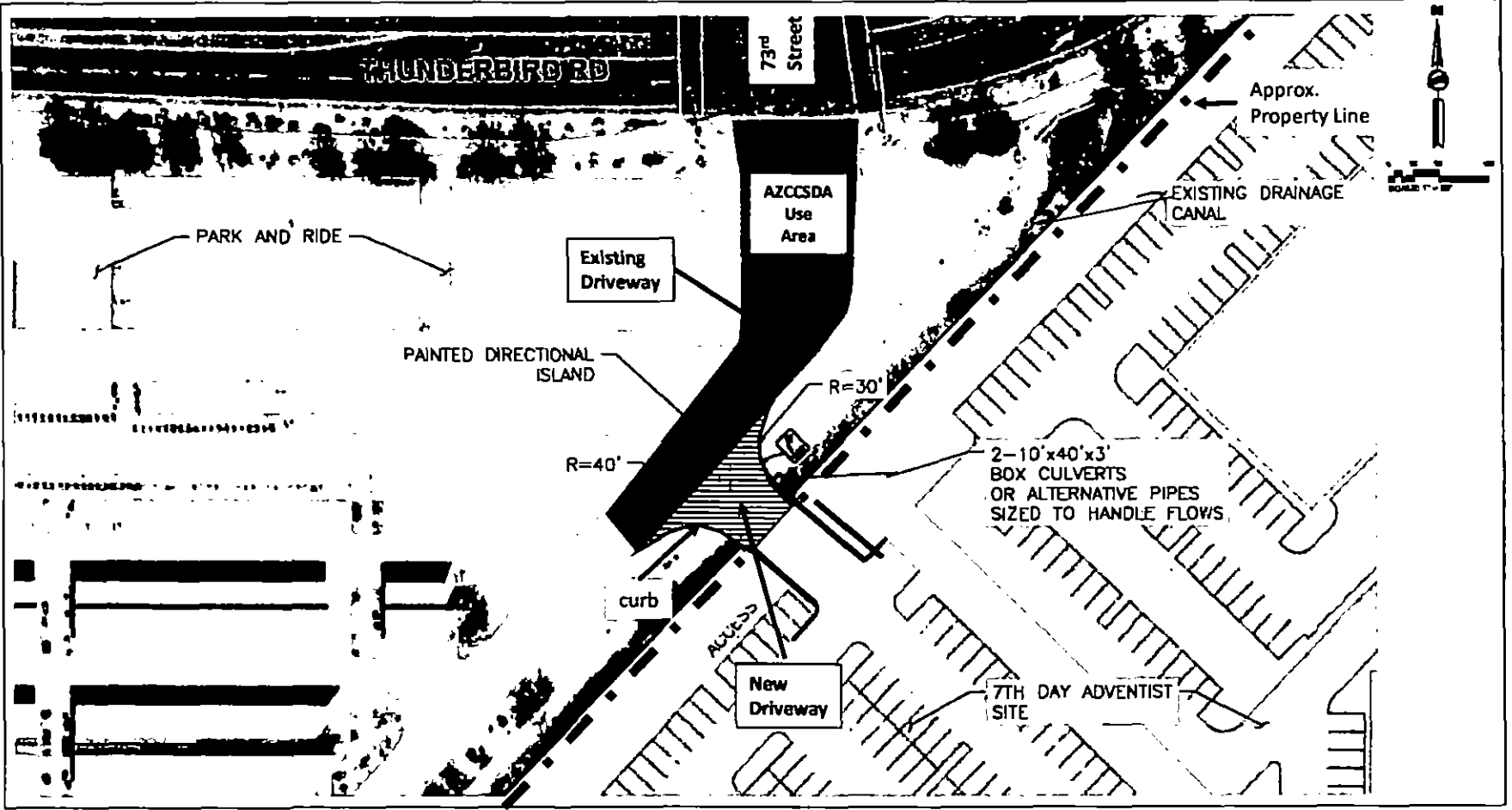


USE AREA

**LEGEND:**

- Edge of Pavement / Drive Aisle
- Right of Way
- Property Line
- Use Area 12,895+/- SF





**Legal Description  
7<sup>th</sup> Day Adventist Parcel**

The Land referred to herein below is situated in the County of Maricopa, State of Arizona, and is described as follows:

PART OF THE SOUTHWEST QUARTER OF SECTION 11 AND PART OF THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 3 NORTH, RANGE 4 EAST, GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LYING SOUTH 89 DEGREES 36 MINUTES EAST A DISTANCE OF 1,041.97 FEET AND NORTH 43 DEGREES 55 MINUTES EAST A DISTANCE OF 397.73 FEET FROM THE SOUTHWEST CORNER OF SECTION 11;

THENCE SOUTH 89 DEGREES 36 MINUTES EAST A DISTANCE OF 1,324.48 FEET;

THENCE SOUTH 0 DEGREES 22 MINUTES WEST A DISTANCE OF 248.00 FEET;

THENCE NORTH 89 DEGREES 36 MINUTES WEST A DISTANCE OF 40.00 FEET;

THENCE SOUTH 0 DEGREES 22 MINUTES WEST A DISTANCE OF 40.00 FEET TO THE SOUTH LINE OF SECTION 11;

THENCE SOUTH 0 DEGREES 22 MINUTES WEST A DISTANCE OF 1,262.66 FEET;

THENCE A DISTANCE OF 31.43 FEET TO THE RIGHT ALONG THE ARC OF A CURVE WHOSE RADIUS IS 20.00 FEET;

THENCE NORTH 89 DEGREES 36 MINUTES WEST A DISTANCE OF 2,505.98 FEET;

THENCE A DISTANCE OF 31.41 FEET TO THE RIGHT ALONG THE ARC OF A CURVE WHOSE RADIUS IS 20.00 FEET; THENCE NORTH 0 DEGREES 23 MINUTES EAST A DISTANCE OF 663.27 FEET;

THENCE SOUTH 89 DEGREES 37 MINUTES EAST A DISTANCE OF 418.77 FEET;

THENCE NORTH 43 DEGREES 55 MINUTES EAST A DISTANCE OF 826.39 FEET TO THE NORTH LINE OF SECTION 14;

THENCE NORTH 43 DEGREES 55 MINUTES EAST A DISTANCE OF 397.73 FEET TO THE POINT OF BEGINNING;

EXCEPT THAT PARCEL OF LAND CONVEYED TO CITY OF SCOTTSDALE, A MUNICIPAL CORPORATION RECORDED NOVEMBER 04, 1996 AS 96-0782195 OF OFFICIAL RECORDS, AND

EXCEPT ANY PORTION LYING WITHIN THE FOLLOWING DESCRIBED PARCEL:

EXHIBIT D  
Page 1 of 2

Contract No. 2020-191-COS

COMMENCING AT THE SOUTHERLY MOST, SOUTHEAST CORNER OF ABOVE DESCRIBED PARCEL;

THENCE ALONG THE SOUTH LINE OF SAID PARCEL NORTH 89 DEGREES 36 MINUTES WEST, A DISTANCE OF 1307.79 FEET, TO THE POINT OF BEGINNING;

THENCE LEAVING SAID SOUTH LINE, NORTH 00°39'34" EAST, A DISTANCE OF 343.95 FEET;

THENCE NORTH 89°11'47" WEST, A DISTANCE OF 9.08 FEET, TO THE BEGINNING OF A CURVE;

THENCE NORTHWESTERLY ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 45.00 FEET, CONCAVE NORTHEASTERLY, THROUGH A CENTRAL ANGLE OF 89°48'12", A DISTANCE OF 70.53 FEET, TO THE CURVES END;

THENCE NORTH 00°36'25" EAST, A DISTANCE OF 601.44 FEET, TO THE BEGINNING OF A CURVE;

THENCE NORTHEASTERLY ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 45.00 FEET, CONCAVE SOUTHEASTERLY, THROUGH A CENTRAL ANGLE OF 89°52'06", A DISTANCE OF 70.58 FEET, TO THE CURVES END;

THENCE SOUTH 89°31'29" EAST, A DISTANCE OF 646.06 FEET TO THE BEGINNING OF A CURVE;

THENCE SOUTHEASTERLY ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 45.00 FEET, CONCAVE SOUTHWESTERLY, THROUGH A CENTRAL ANGLE OF 90°05'30", A DISTANCE OF 70.76 FEET, TO THE CURVES END;

THENCE SOUTH 00°34'01" WEST, A DISTANCE OF 277.25 FEET;

THENCE NORTH 89°27'05" EAST, A DISTANCE OF 682.26 FEET;

THENCE SOUTH 00°22'00" WEST, A DISTANCE OF 763.51 FEET;

THENCE NORTH 89°36'00" WEST, A DISTANCE OF 1,368.01 FEET;

THENCE NORTH 00°39'34" EAST, A DISTANCE OF 40.00 FEET, TO THE POINT OF BEGINNING.

65.16 Acres Total



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Ventura )

On December 2, 2020 before me, Etelia Warden  
Date Here Insert Name and Title of the Officer

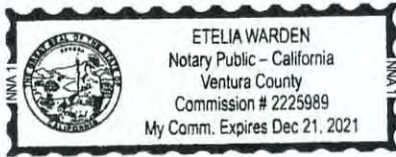
personally appeared Stephen V. Mayer And  
Name(s) of Signer(s)

Timothy Jon Stubbert

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Consent to Revocable Driveway License Agreement

Document Date: December 2, 2020 Number of Pages: 1

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_