

Staff Summary Report REVISED



Council Meeting Date: 02/21/08

Agenda Item Number: 56

SUBJECT: Request approval of a resolution approving a Supplemental Development Agreement with US Airways with regard to Phase II of their development at Third Street and Mill Avenue.

DOCUMENT NAME: 20080221cdcm01 **DEVELOPMENT PROJECT (0406)** Resolution No. 2008.18

SUPPORTING DOCS: Yes

COMMENTS: US Airways will be building a 238,000 square foot building and a new 1017 space parking structure. The Supplemental Development Agreement will give the City 72 parking spaces in the new parking structure. These parking spaces will be available 24 hours a day and 365 days a year. The Agreement will also give the City rights to all parking spaces in the garage during the evenings (6pm to 6am) and all day on weekends and Holidays. The Parking Spaces will be leased to the City for an initial 40 year term.

In exchange for the parking, an 8 year Government Property Lease Excise Tax (GPLET) abatement shall be given to US Airways. US Airways will also be responsible for an annual \$50,000.00 in-lieu payment for the school districts.

PREPARED BY: Chris Messer, Principle Planner (Ext. 8562)

REVIEWED BY: Chris Salomone, Community Development Director (Ext. 8294)

LEGAL REVIEW BY: Cynthia McCoy, Assistant City Attorney (Ext 2187)

FISCAL NOTE: The City of Tempe would pay its proportional share of O&M Costs. This cost should be offset by revenue from parking.

RECOMMENDATION: Staff recommends approval of the Supplemental Development Agreement.

RESOLUTION NO. 2008.18

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE A SUPPLEMENTARY DEVELOPMENT AGREEMENT BETWEEN THE CITY OF TEMPE AND US AIRWAYS, INC., A DELAWARE CORPORATION.

WHEREAS, US Airways intends to combine the phase two and phase three expansions contemplated by that certain Development Agreement [c97-250] between US Air (as successor in interest to America West Holdings Corporation) and the City dated February 18, 1998, as amended by that certain First Amendment to Development Agreement dated September 12, 2002, and that certain Second Amendment to Development Agreement dated June 23, 2004 (the "**Development Agreement**").into a single phase (the "**Project**"); and

WHEREAS, the Project will be located on certain real property owned by USAir at the northwest corner of Mill Avenue and Third Street (the "**Property**") in Tempe Arizona; and

WHEREAS, the Development Agreement allowed for the negotiation of a Government Property Lease Excise Tax abatement for the second and third phases of development; and

WHEREAS, the City and US Airways desire to supplement the Development Agreement to set forth their agreements regarding development of the Property, and such other related matters as they deem appropriate.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1: That the Mayor or his designee be and hereby is authorized to execute the Supplementary Development Agreement and other documents referenced therein, copies of which are on file with the City Clerk's office and to take such further actions as are necessary to implement its terms.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY
OF TEMPE, ARIZONA, this _____ day of _____, 2008.**

Hugh L. Hallman, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

When recorded, return to:

City of Tempe
31 East Fifth Street
Tempe, Arizona 85281
Attention: City Clerk

SUPPLEMENTARY DEVELOPMENT AGREEMENT
(Tempe Gateway)
Resolution No. 2008.18

THIS SUPPLEMENTARY DEVELOPMENT AGREEMENT (the “**Agreement**”) is made as of the ____ day of _____, 2008, by and between the CITY OF TEMPE, an Arizona municipal corporation (“**City**”), and US AIRWAYS, INC., a Delaware corporation, as successor in interest to America West Holdings Corporation (“**US Air**”).

RECITALS

A. US Air is the owner of a parcel of real property approximately 3.54 acres in size located on the northwest corner of Mill Avenue and Third Street and legally described in *Exhibit “A”* attached hereto and incorporated herein by this reference (the “**Property**”).

B. The Property is located in the University-Hayden Butte Redevelopment Area 1, as described in A.R.S. §36-1471, *et seq.*

C. Development of the Property is subject to that certain Development Agreement [c97-250] between US Air (as successor in interest to America West Holdings Corporation) and the City dated February 18, 1998, and recorded on February 26, 1998 in the Official Records of Maricopa County, Arizona as Instrument No. 98-0147245, as amended by that certain First Amendment to Development Agreement dated September 12, 2002, and recorded on September 24, 2002 in the Official Records of Maricopa County, Arizona as Instrument No. 2002-0978976, and that certain Second Amendment to Development Agreement dated June 23, 2004 and recorded on July 2, 2004 in the Official Records of Maricopa County, Arizona as Instrument No. 2004-0764287 (as amended, the “**Development Agreement**”).

D. The Property consists of Phase Two and Phase Three only and does not consist of or affect any portion of Phase One (as defined in the Development Agreement).

E. Pursuant to that certain Partial Assignment of Development Agreement with Estoppel and Consent of City of Tempe dated February 18, 1998, and recorded on February 26, 1998 in the Official Records of Maricopa County, Arizona as Instrument No. 98-0147246 (the “**Partial Assignment**”), America West Holdings Corporation, as predecessor in interest to US Air, partially assigned to FLY (CD) LLC, a Delaware limited liability company (“**Fly**”), and

AWHQ LLC, an Arizona limited liability company (“AWHQ”) (Fly and AWHQ are hereinafter collectively referred to as the “Phase One Owner”), certain of its rights under the Development Agreement relating to Phase One (as defined in the Development Agreement).

F. US Air has now adjusted its development plans for the Property and desires to combine Phase Two and Phase Three (as each such term is defined in the Development Agreement) into one phase, to be developed as a mixed use development consisting of (i) approximately 238,000 s.f. of office space, (ii) approximately 25,000 s.f. of retail space, and (iii) structured parking containing approximately 1,107 parking spaces (the “Project”).

G. The City approved a Planned Area Development (PAD) for the Property on August 2, 2007 as described in *Exhibit “B”* attached hereto and incorporated herein by this reference (the “PAD”).

H. US Air and the City desire to enter into this Agreement to supplement and amend the Development Agreement, as it relates to the Property, in order to permit the development of the Project on the Property in accordance with the PAD.

I. The City and US Air acknowledge that the Development Agreement as supplemented and modified by this Agreement is a development agreement for the Property pursuant to the provisions of A.R.S. §9-500.05.

J. The parties hereto acknowledge that the redevelopment of the Property as contemplated in this Agreement will result in improvements to the Property, and that the City and the general public will directly and indirectly realize substantial tangible and intangible benefits from the redevelopment of the Property as described in this Agreement, including, without limitation, the addition of public parking.

K. As contemplated by the Development Agreement, the parties intend that, after completion of the Project, the Property upon which the Project is situated and certain of the improvements constituting the Project may be conveyed to the City and thereupon become “Government Property Improvements” as defined in A.R.S. § 42-6201. Any such improvements and property conveyed to the City shall immediately thereafter be leased by the City to US Air or a third party designated as a “Prime Lessee,” as defined by A.R.S. § 42-6201, in accordance with and pursuant to the terms and conditions of a Lease to be entered into between the City and US Air or such third party designee as hereinafter described and consistent with applicable provisions of A.R.S. § 42-6201 through § 42-6209.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto state, confirm and agree as follows:

A G R E E M E N T

1. **Definitions.** Capitalized terms used herein without definition shall have the meanings given such terms in the Development Agreement. All references to the Development Agreement hereafter shall refer to the Development Agreement as supplemented

by this Agreement. The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

1.1 “**City**” shall mean and refer to the City of Tempe, Arizona, an Arizona municipal corporation, and any successor public body or entity.

1.2 “**Developer**” shall mean and refer to US Air and any permitted successor-in-interest or assignee of US Air, which shall include Gateway (as hereinafter defined). The parties agree that, if US Air conveys the Property to Gateway, then such conveyance shall be deemed to include all rights of US Air hereunder as the Developer, and upon recordation of the deed of the Property from US Air to Gateway, Gateway shall be deemed to be the Developer hereunder.

1.3 “**Gateway**” shall mean Tempe Gateway, L.L.C., a Delaware limited liability company.

1.4 “**PAD**” shall mean and refer to the PAD approved by the City on August 2, 2007, and any other planned area development hereafter approved by the City with respect to the development of any Phase of the Project that sets forth the specific uses, densities, features and other development matters with respect to such Phases.

1.5 “**Improvements**” shall mean and refer to all public and private improvements that may be constructed from time to time on the Property, including, without limitation, all structures, buildings, roads, driveways, parking areas, walls, landscaping and other improvements of any type or kind, or any other alteration built by Developer or the City, as the case may be, pursuant to the terms of this Agreement.

1.6 “**Parties**” shall mean and refer to the City and Developer.

1.7 “**Project**” shall mean and refer to the development of the Property for the uses, intensities and densities currently shown in the PAD.

2. **Development Obligations.**

2.1 **Scope of Development Agreement.** This Agreement supplements and amends those portions of the Development Agreement specifically referenced herein that relate to construction of Phase Two and Phase Three. The Development Agreement called for construction in three phases; however, Developer has combined Phase Two and Phase Three into the Project. Therefore, all references in the Development Agreement to Phase Two or Phase Three shall henceforth be deemed references to the Project. Developer’s construction of the Project shall satisfy those obligations specifically referenced herein that relate to Phase Two, the Phase Two Property, Phase Three, the Phase Two Improvements, the Phase Three Improvements and the Phase Three Parking Garage. Except as otherwise designated or set forth in this Agreement, the City acknowledges that the Phase One Owner shall be obligated to perform only those obligations and covenants set forth in the Development Agreement that pertain to Phase One, the Phase One Improvements, the Phase One Parking Garage, the Phase One Parking License (and Developer and the Property shall have no obligation therefor), and that the Developer shall be obligated under the Development Agreement to perform only those

obligations and covenants set forth in Sections 2.1.2 and 2.3.2 (as modified herein) of the Development Agreement that relate to Phase Two and Phase Three; provided, however, that a default by the Phase One Owner, or its successors or assigns, or relating to the Phase One Property, shall not be a default of the Developer, or its successors or assigns, or with respect to Phase Two, Phase Three or the Property; similarly, a default by Developer, or its successors or assigns, or relating to Phase Two, Phase Three or the Property, shall not be a default of the Phase One Owner, or its successors or assigns, or with respect to the Phase One Property; and further provided, however, that in the event of a breach or default relating to only one of the Phase One Property or the Property, all remedies exercisable by the City as a result of such breach or default shall be exercisable only against the parcel of property to which such breach or default relates and shall not be exercisable against any other parcel of property or the owner thereof.

2.2 Construction. The Development Agreement currently defines the Phase Two Commencement Date as February 18, 2008; by execution hereof, the parties agree that the "Phase Two Commencement Date" shall be changed to May 18, 2008. As provided in Section 2.1.2 of the Development Agreement, Developer shall at its sole cost and expense commence construction of the Project by May 18, 2008 in accordance with the approved PAD.

2.3 Phase One Owner Obligations. Neither the Phase One Owner nor the Phase One Property shall have any obligation, duty or liability under this Agreement and this Agreement does not amend, modify, alter or change any of the liabilities, obligations or duties of the Phase One Owner under the Development Agreement.

2.4 Obligations Under the Development Agreement. The City acknowledges that the obligations under Section 2.1.1, 2.1.5 and 2.1.6 of the Development Agreement have been timely satisfied. The City acknowledges that the obligations of AWH contained in Sections 2.1.3, 2.1.7, 2.1.8 and 2.1.9 of the Development Agreement and as set forth in the Partial Assignment are obligations of the Phase One Owner and are not obligations of either the Developer or the Property. Developer shall have no duty or obligation to perform any such obligations.

2.5 Assignment to Gateway. The City acknowledges that, subsequent to the date of this Agreement, US Air may assign its rights, duties and obligations under the Development Agreement and this Agreement with respect to the Property to Gateway. The City hereby consents to the assignment by US Air of its rights, duties and obligations under the Development Agreement and this Agreement with respect to the Property to Gateway. The City represents and warrants to US Air and Gateway that, to its knowledge, the Development Agreement is in full force and effect and neither the City, US Air nor any other party under the Development Agreement is in default thereunder.

2.6 City Approvals. The City hereby acknowledges and agrees that, in connection with the development of the Property, the City will use reasonable efforts to timely review and respond to any requests for approvals of site plans, infrastructure plans, design plans and building plans, and the City further agrees that no unusual or extraordinary plan or review requirements, conditions or stipulations will be imposed on Developer in connection with the development of the Property and construction of the Project. Among other things, development will require (a) Design Review; (b) Engineering Review to assess on-site retention, water and

sewer and storm drainage connections, and traffic flow; and (c) normal permits and fees for construction.

3. Tax Abatement and Parking.

3.1 Certificate of Completion. After the Development Services Department of the City of Tempe issues a certificate of occupancy for the Improvements, the City will provide Developer with a Certificate of Completion substantially in the form attached hereto as *Exhibit "C"* (the "**Certificate of Completion**").

3.2 Tax Abatement. In accordance with Section 2.3.2 of the Development Agreement, the City has agreed to provide the Developer with the benefit of all statutorily-authorized property tax abatements for the Project, including, without limitation, all such abatements currently available pursuant to the provisions of A.R.S. §§ 42-6201 through 42-6209. Developer would not be financially able to proceed with the construction and development of the Project without the benefits provided by the City set forth in the preceding sentence. Developer shall be responsible for an annual in-lieu payment to the City of \$50,000.00 per year during the property tax abatement period under A.R.S. §§ 42-6201 through 42-6209. On or before one year after the issuance of the Certificate of Completion, Developer may transfer ownership of all or a portion of the Property and Project Improvements to the City, and the City shall lease such Property and Project Improvements back to the Developer for a term expiring eight (8) years after the date of issuance of the certificate of occupancy for the Project Improvements. The conveyance to the City shall be made by recordation of a deed in substantially the form of *Exhibit "D"* hereto (the "**Deed**"). The lease shall be in substantially the form attached as Exhibit B to the Development Agreement, subject to modification of the term of the Lease as set forth in this Section 3.2 and such other modifications as mutually agreed on by the City and Developer. To the extent the provisions of A.R.S. §§ 42-6201 through 42-6209 are amended or repealed resulting in increased or additional tax burdens or obligations for Developer with respect to the Property, the \$50,000 annual payment described in this Section 3.2 shall be credited against any such increased tax burdens or obligations. As required under A.R.S. § 42-6206, Developer and its permitted assignees are hereby notified of its tax liability under the Government Property Lease Excise Tax provisions of A.R.S. § 42-6201, *et seq.* Failure of Developer to pay the tax after written notice and an opportunity to cure is an event of default that could result in divesting of the Developer of any interest in or right of occupancy of the Property and Project Improvements. City represents and warrants that it has not taken any steps to repeal Resolutions 1163, 1842, 89.09, 92.49 or 94.67. Pursuant to its authority as a government lessor (as defined in A.R.S. § 42-6201(1)), the City hereby waives the requirement that Developer or its permitted assignees apply for the tax abatement provided by A.R.S. § 42-6209(B).

3.3 Parking. Prior to, or at the same time as, the execution of the Lease, the Parties shall enter into a Parking Use License and Operating Agreement, in the form of *Exhibit "E"* (the "**Parking License**") hereto. Subject to the specific terms of the Parking License, among other things, the Parking License shall generally: (a) provide the City with eighty six (86) entrance cards or permits to the parking garage to be constructed on the Property for use of up to seventy-two (72) unreserved parking spaces by the City's employees or by other typical downtown office and/or employee users that shall be available to the City 7 days per week, 24 hours per day; (b) allow the City to use the parking spaces within the Project on all

nights (6:00 p.m. to 6:00 a.m.) and weekends; (c) allow the City to retain all revenues generated during the night and weekend use of the parking spaces so long as the City operates the garage at such times; (d) allow the City to sublicense its rights to the parking spaces; (e) provide for the proportional cost sharing of operating and maintaining the parking structure; and (f) in the event the provisions of A.R.S. §§ 42-6201 through 42-6209 are amended or repealed and the transaction described in Section 3.2 above is terminated or otherwise changed so Developer does not receive the contemplated benefits as a result thereof, then the Parking License shall remain in full force and effect except that it shall be deemed amended to provide that the City shall have the option to retain the 86 entrance cards or permits for use of 72 unreserved spaces and if the City elects to retain such cards, it shall pay monthly to Developer (or its successors or assigns) the hourly parking rate per permit equal to the rate then charged other users of the garage.

3.4 Utilities. The Developer shall extend water and electric utilities to the south face of the parking structure to allow for the future possibility of providing retail building space along the ground level of the south face of the parking structure.

4. General.

4.1 Liability and Indemnification. Developer shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents, for, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, including, without limitation, reasonable attorneys' fees and costs of defense arising, directly or indirectly, in whole or in part, out of the performance of this Agreement by City or Developer in accordance with the terms hereof, or nonperformance of this Agreement by the Developer.

4.2 Captions. The captions used herein are for convenience only and not a part of this Agreement and do not in any way limit or amplify the terms or provisions hereof.

4.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been made and entered into in Maricopa County, Arizona.

4.4 Waiver. No waiver by either party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

4.5 Attorneys' Fees. In the event of any actual litigation between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

4.6 Severability. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be

illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law.

4.7 Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein by this reference is if fully set forth herein.

4.8 Entire Agreement. Except as supplemented and amended hereby in connection with the Property, the Development Agreement shall remain in full force and effect. The Development Agreement, as amended by this Agreement, constitutes the entire agreement between the parties hereto pertaining to the Property and the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, with regard to the matters covered herein are hereby superseded and merged herein. In the event of any conflict or inconsistency between the Development Agreement and this Agreement pertaining to Phase Two or Phase Three, the terms and provisions of this Agreement shall control and govern.

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

4.10 Recordation. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona within ten (10) days after its approval and execution by the City.

4.11 Warranty Against Payment of Consideration for Agreement; Conflict of Interest. The Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services (such as architects, engineers and attorneys). To the best knowledge of Developer, no member, official or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any agreement relating to the Agreement which is prohibited by law.

4.12 No Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Developer and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

4.13 Authority. Each of the parties hereto represents and warrants to the other that the individual executing this Agreement on behalf of the respective parties are authorized and empowered to bind the party on whose behalf such individual is signing and that this Agreement shall be binding upon such parties.

4.14 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any

decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested.

4.15 Cancellation. This Agreement is subject to cancellation pursuant to A.R.S. §38-511.

4.16 Term of Agreement. Section 7 of the Development Agreement is hereby amended to provide that upon the sale or other conveyance by Developer of all or any portion of the Property, Developer shall be relieved of all further obligations under the Development Agreement accruing after the effective date of such transfer with respect to the property or interest so transferred.

4.17 Assignment. Without the prior consent of the City, Developer shall have the right to assign, transfer, convey, hypothecate, or encumber the leasehold interest in the Property with a mortgage, deed of trust, or other similar financial arrangement to secure payment of any financial obligations Developer may have with respect to the Project, subject to compliance with the terms of the Lease.

4.18 Amendment. This Agreement or any provision hereof may not be waived, modified, amended, discharged or terminated except by an instrument in writing signed City, on the one hand, and Developer or its successors and assigns, on the other hand.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the parties hereto have executed this Supplementary Development Agreement as of the day and year first above written.

WITNESSETH:

CITY OF TEMPE,
an Arizona municipal corporation

City Clerk

By _____
Hugh L. Hallman
Mayor

Approved as to form:

City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 2008 before me, the undersigned officer, personally appeared Hugh L. Hallman, who acknowledged himself to be Mayor of the City of Tempe, an Arizona municipal corporation, and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

USAIRWAYS, INC., a Delaware corporation, as
successor in interest to AMERICA WEST
HOLDINGS CORPORATION

By _____
Name _____
Title _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 2008 before me, the undersigned officer,
personally appeared _____, who
acknowledged him/herself to be _____ of
USAIRWAYS, INC., a Delaware corporation, as successor in interest to **AMERICA WEST
HOLDINGS CORPORATION**, a Delaware corporation:

_____ whom I know personally;
_____ whose identity was proven to me on the oath of
_____, a credible witness by
me duly sworn;
_____ whose identity I verified on the basis of his/her
_____;

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the
purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

List of Exhibits

- Exhibit "A"* - The Property
- Exhibit "B"* - The Project
- Exhibit "C"* - The Certificate of Completion
- Exhibit "D"* - The Deed
- Exhibit "E"* - The Parking License

Exhibit "A"
The Property

PARCEL NO. 1:

OFFICE PLAZA 222 CONDOMINIUM PLAT ACCORDING TO BOOK 236 OF MAPS, PAGE 48, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHEAST CORNER OF BLOCK 61, MAP OF TEMPE ACCORDING TO BOOK 2 OF MAPS, PAGE 26;

THENCE SOUTH 89 DEGREES 59 MINUTES 37 SECONDS WEST ALONG THE SOUTH LINE OF SAID BLOCK 61, SAID LINE ALSO BEING THE NORTHERLY RIGHT-OF-WAY OF 3RD STREET 123.43 FEET TO THE POINT OF BEGINNING, SAID POINT BEING ON THE WESTERLY RIGHT-OF-WAY OF MILL AVENUE PER OFFICE PLACE 222;

THENCE CONTINUING SOUTH 89 DEGREES 59 MINUTES 37 SECONDS WEST ALONG SAID SOUTH LINE 211.80 FEET;

THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST CONTINUING ALONG SAID SOUTH LINE 302.97 FEET;

THENCE NORTH 44 DEGREES 56 MINUTES 38 SECONDS WEST, 21.19 FEET TO AN ANGLE POINT ON THE WEST LINE OF SAID OFFICE PLAZA 222, SAID LINE ALSO BEING THE EASTERLY RIGHT-OF-WAY OF ASH AVENUE;

THENCE NORTH 00 DEGREES 06 MINUTES 45 SECONDS EAST ALONG SAID WEST LINE AND 650.69 FEET TO THE NORTHWEST CORNER OF SAID OFFICE PLAZA 222;

THENCE SOUTH 89 DEGREES 45 MINUTES 10 SECONDS EAST ALONG THE NORTH LINE OF SAID OFFICE PLAZA 222, SAID LINE ALSO BEING THE SOUTHERLY RIGHT-OF-WAY OF 1ST STREET 318.67 FEET TO A CORNER OF SAID OFFICE PLAZA 222;

THENCE SOUTH 00 DEGREES 09 MINUTES 57 SECONDS WEST ALONG THE EAST LINE OF SAID OFFICE PLAZA 222, 329.82 FEET TO A CORNER OF SAID OFFICE PLAZA 222;

THENCE NORTH 89 DEGREES 57 MINUTES 25 SECONDS EAST ALONG THE NORTH LINE OF SAID OFFICE PLAZA 222, 329.97 FEET TO A POINT ON SAID WESTERLY RIGHT-OF-WAY OF MILL AVENUE, SAID POINT BEING ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 533.50 FEET, THE CENTER OF SAID CURVE BEARS NORTH 89 DEGREES 50 MINUTES 49 SECONDS WEST;

THENCE SOUTHERLY ALONG SAID CURVE AND SAID RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 38 DEGREES 54 MINUTES 10 SECONDS AN ARC LENGTH OF 362.24 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THAT PORTION OF OFFICE PLAZA 222, CONDOMINIUM PLAT, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 236 OF MAPS, PAGE 48, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID OFFICE PLAZA 222, SAID CORNER LYING ON THE EASTERLY RIGHT-OF-WAY OF ASH AVENUE;

THENCE NORTH 00 DEGREES 06 MINUTES 16 SECOND EAST ALONG THE WEST LINE OF SAID OFFICE PLAZA 222, A DISTANCE OF 120.38 FEET TO A SET ½" REBAR WITH CAP #26404, BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUING NORTH 00 DEGREES 06 MINUTES 16 SECONDS EAST ALONG SAID WEST LINE A DISTANCE OF 198.70 FEET TO A SET ½" REBAR WITH CAP #26404;

THENCE NORTH 00 DEGREES 15 MINUTES 06 SECONDS EAST CONTINUING ALONG SAID WEST LINE A DISTANCE OF 331.52 FEET TO THE NORTHWEST CORNER OF SAID OFFICE PLAZA 222, SAID CORNER BEING A SET ½" REBAR WITH CAP #26404;

THENCE SOUTH 89 DEGREES 45 MINUTES 11 SECONDS EAST ALONG THE NORTH LINE OF SAID OFFICE PLAZA 222, SAID LINE ALSO BEING THE SOUTHERLY RIGHT-OF-WAY OF 1ST STREET A DISTANCE OF 317.77 FEET TO A CORNER OF SAID OFFICE PLAZA 222, LAST SAID CORNER BEING A FOUND COTTON PICKER SPINDLE;

THENCE SOUTH 00 DEGREES 09 MINUTES 42 SECONDS WEST ALONG THE EAST LINE OF SAID OFFICE PLAZA 222, A DISTANCE OF 329.73 FEET TO A CORNER OF SAID OFFICE PLAZA 222, LAST SAID CORNER BEING A FOUND COTTON PICKER SPINDLE;

THENCE SOUTH 00 DEGREES 10 MINUTES 15 SECONDS WEST A DISTANCE OF 199.32 FEET TO A SET ½" REBAR WITH CAP #26404;

THENCE NORTH 89 DEGREES 57 MINUTES 52 SECONDS WEST A DISTANCE OF 318.06 FEET TO THE TRUE POINT OF BEGINNING; AND

EXCEPT A PART OF OFFICE PLAZA 222 SUBDIVISION, AS RECORDED IN BOOK 236 OF MAPS, PAGE 48 AND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 1 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF MILL AVENUE AND 3RD STREET (FOUND BRASS CAP IN HANDHOLE);

THENCE SOUTH 89 DEGREES 36 MINUTES 01 SECONDS WEST, ALONG THE CENTERLINE OF SAID 3RD STREET (CONTROL LINE TO OFFICE PLAZA 222, AS RECORDED IN BOOK 236 OF MAPS, PAGE 48, MCR), A DISTANCE OF 385.14 FEET;

THENCE SOUTH 89 DEGREES 36 MINUTES 24 SECONDS WEST, A DISTANCE OF 231.04 FEET;

THENCE NORTH 00 DEGREES 23 MINUTES 36 SECONDS WEST, A DISTANCE OF 69.00 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 89 DEGREES 36 MINUTES 24 SECONDS WEST, A DISTANCE OF 71.60 FEET;

THENCE NORTH 45 DEGREES 20 MINUTES 13 SECONDS WEST, A DISTANCE OF 21.19 FEET;

THENCE NORTH 00 DEGREES 16 MINUTES 51 SECONDS WEST, A DISTANCE OF 8.40 FEET TO THE POINT OF CUSP OF A CURVE WHOSE 459.50 FOOT RADIUS BEARS NORTH 20 DEGREES 19 MINUTES 58 SECONDS EAST AND IS CONCAVE NORTHEASTERLY;

THENCE SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 11 DEGREES 11 MINUTES 53 SECONDS, A DISTANCE OF 89.80 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 2:

THAT PORTION OF BLOCK 61, MAP OF TEMPE, ACCORDING TO BOOK 2 OF MAPS, PAGE 26, MARICOPA COUNTY, ARIZONA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID BLOCK 61;

THENCE SOUTH 89 DEGREES 59 MINUTES 37 SECONDS WEST ALONG THE SOUTH LINE OF SAID BLOCK 61, SAID LINE ALSO BEING THE NORTHERLY RIGHT-OF-WAY OF 3RD STREET 123.43 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY OF MILL AVENUE PER THE PLAT OF OFFICE PLAZA 222 ACCORDING TO BOOK 236 OF MAPS, PAGE 48, SAID POINT BEING ON A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 533.50 FEET, THE CENTER OF SAID CURVE BEARS NORTH 50 DEGREES 54 MINUTES 36 SECONDS WEST;

THENCE NORTHERLY ALONG SAID CURVE AND LAST SAID RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 38 DEGREES 55 MINUTES 26 SECONDS AN ARC LENGTH OF 362.40 FEET TO THE CENTERLINE OF 2ND STREET PER SAID MAP OF TEMPE;

THENCE NORTH 89 DEGREES 58 MINUTES 00 SECONDS EAST ALONG SAID CENTERLINE 5.00 FEET TO A POINT ON THE NORTHERLY PROLONGATION OF THE EAST LINE OF SAID BLOCK 61;

THENCE SOUTH 00 DEGREES 10 MINUTES 08 SECONDS WEST ALONG SAID PROLONGATION AND SAID EAST LINE 334.84 FEET TO THE POINT OF BEGINNING.

Exhibit "B"
The Project

The Planned Area Development was approved by the Tempe City Council on August 2, 2007 and can be found on file with the City Clerk and in the Development Services Department (Reference Number DS061340/PL060616).

Exhibit "D"
The Deed

WHEN RECORDED, RETURN TO:

City of Tempe

EXEMPT from the
requirement for an
Affidavit per
A.R.S. § 11-1134(A)(3)

QUIT CLAIM DEED

For consideration of Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the undersigned, USAIRWAYS, INC., a Delaware corporation, as successor in interest to AMERICA WEST HOLDINGS CORPORATION ("**Grantor**"), does hereby convey, remise, release, sell and quit-claim to **CITY OF TEMPE**, an Arizona municipal corporation, and their respective successors and assigns forever, that certain real property described on *Exhibit A* attached hereto, including all improvements thereon and all appurtenances and privileges thereto (the "**Property**").

Dated _____, 2008.

USAIRWAYS, INC., a Delaware corporation, as
successor by merger to **AMERICA WEST
HOLDINGS CORPORATION**

By _____
Name _____
Title _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 2008 before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be _____ of USAIRWAYS, INC., a Delaware corporation, as successor in interest to AMERICA WEST HOLDINGS CORPORATION:

_____ whom I know personally;
_____ whose identity was proven to me on the oath of _____, a credible witness by

me duly sworn;
_____ whose identity I verified on the basis of his/her _____,

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

Exhibit "E"
The Parking License

When recorded, return to:

City of Tempe
31 East Fifth Street
Tempe, Arizona 85281
Attention: City Clerk

**PARKING USE LICENSE
AND OPERATING AGREEMENT**

THIS PARKING USE LICENSE AND OPERATING AGREEMENT (this "Agreement") is entered into between the CITY OF TEMPE, an Arizona municipal corporation and a political subdivision of the State of Arizona (the "Licensee"), and TEMPE GATEWAY, L.L.C., a Delaware limited liability company ("Licensor"), this _____ day of _____, 20____.

RECITALS

A. This Agreement is entered pursuant to Section 1.8 of the Supplementary Development Agreement (the "Supplementary Agreement") dated _____, 2008 and recorded _____, 2008 at Recorder's No. ??-???????, records of Maricopa County, Arizona; and

B. The initial capitalized terms and phrases used in this Agreement shall have the meanings ascribed thereto in the Development Agreement (as hereinafter defined) unless otherwise specifically defined herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as:

AGREEMENT

11. **Definitions.** The following initial capitalized terms used in this Agreement shall have the meanings hereinafter set forth:

1.1 **“Declaration”** shall mean that certain Declaration of Covenants, Conditions, Restrictions and Easements for Tempe Gateway dated _____, 2008 and recorded as Instrument No. _____ in the Official Records of Maricopa County, Arizona.

1.2 **“Development Agreement”** shall mean that Development Agreement [c97-250] executed by America West Holdings Corporation, a Delaware corporation, as predecessor in interest to Licensor, and Licensee, dated February 18, 1998, and recorded on February 26, 1998 in the Official Records of Maricopa County, Arizona as Instrument No. 98-0147245, as amended by that certain First Amendment to Development Agreement dated September 12, 2002, and recorded on September 24, 2002 in the Official Records of Maricopa County, Arizona as Instrument No. 2002-0987976, and that certain Second Amendment to Development Agreement dated June 23, 2004, and recorded on July 2, 2004 in the Official Records of Maricopa County, Arizona as Instrument No. 2004-0764287, and partially assigned to the Phase One Owner pursuant to that certain Partial Assignment of Development Agreement with Estoppel and Consent of City of Tempe dated February 18, 1998, and recorded on February 26, 1998 in the Official Records of Maricopa County, Arizona as Instrument No. 98-0147246, as thereafter amended from time to time, and as supplemented and modified by the Supplementary Agreement.

1.3 **“Excess Usage”** shall mean all such additional hours of use of the Parking Facility by Licensor’s Permitted Users to the extent that such use exceeds an aggregate of six hundred (600) hours in any single twenty-four (24) hour period, commencing at 12:01 a.m. and ending at 12:00 p.m. midnight.

1.4 **“Licensee”** shall mean CITY OF TEMPE, an Arizona municipal corporation and a political subdivision of the State of Arizona, its permitted successors and assigns.

1.5 **“Licensee Business Parking Spaces”** shall mean 72 unreserved parking spaces located in the Parking Facility.

1.6 **“Licensee Business Use Period”** shall mean with respect to the Licensee Business Parking Spaces, 24 hours a day, 365/366 days a year.

1.7 **“Licensee Use Periods”** shall mean with respect to all other parking spaces in the Parking Facility that are not Licensee Business Parking Spaces (a) the hours between 6:00 p.m. and 6:00 a.m. on every day that is not a weekend or holiday, and (b) the hours between 6:00 p.m. on Friday (or the day preceding any day that is not a business day) and 6:00 a.m. on the following Monday (or next succeeding business day).

1.8 “**Licensor**” shall initially mean TEMPE GATEWAY, L.L.C., a Delaware limited liability company.

1.9 “**Licensor Exclusive Use Period**” shall mean all hours between 6:00 a.m. and 6:00 p.m. on every business day.

1.10 “**Licensor’s Permitted Users**” shall mean Licensor’s tenants and subtenants, and their respective employees, agents, customers and invitees, and all other persons who are authorized by Licensor to use the Parking Facility.

1.11 “**O & M Costs**” shall mean all costs allocated to Licensor under the Declaration in connection with the operation, maintenance, security and repairs (including capital repairs) of the Parking Facility including, without limitation all taxes and insurance, utilities, management fees and costs.

1.12 “**Parking Facility**” shall mean the five story approximately 1,107 space parking garage located on the real property legally described on *Exhibit “A”* attached hereto (the “Property”); provided, however, that only 967 parking spaces in the Parking Facility will be subject to this Agreement as 140 parking spaces in the Parking Facility are subject to the Phase One Parking License (as defined in Section 15.13).

1.13 “**Reconciliation Statement**” shall have the meaning set forth in *Section 4.2* below.

2. Grant of License; Licensor Allocation of Parking. Licensor hereby grants to Licensee a license to use portions of the Parking Facility as follows:

2.1 Licensor hereby grants to Licensee a license to use the Licensee Business Parking Spaces during the Licensee Business Use Periods for use of up to seventy-two (72) unreserved parking spaces by the City’s employees or by other typical downtown office and/or employee users. Upon execution hereof, Licensor shall provide Licensee with 86 permits that will allow access to the Licensee Business Parking Spaces. If applicable, Licensee shall pay therefor the charges described in the last sentence of Section 9 hereof.

2.2 Licensor hereby grants to Licensee a non-exclusive license to use the Parking Facility during all Licensee Use Periods, subject to the terms and conditions of this Agreement, including, without limitation, (a) the rights reserved by Licensor to any exclusive parking within the Parking Facility during the Licensor Exclusive Use Period, and (b) the Licensor Exclusive Use Period may be extended so long as Licensor’s vehicles have entered the Parking Facility during the Licensor Exclusive Use Period. In addition, Licensee shall have the right to pedestrian ingress and egress to and from the Parking Facility and all adjacent public or private pedestrian thoroughfares over and across the Property as may be designated for such use from time to time by Licensor.

2.3 If at any time the parking needs of Licensor’s tenants or users of the Property require parking spaces in the Parking Facility at times other than during the Licensor Exclusive Use Period, Licensor shall have the right to secure and designate up to 103 additional

Licensor parking spaces in the Parking Facility by delivering written notice to Licensee of such designation and the commencement thereof within thirty (30) days after any such spaces are granted to a user. No such designation shall have the effect of reducing the number of Licensee Business Parking Spaces or impairing Licensee's access to the Parking Facility or the Licensee Business Parking Spaces during the Licensee Business Use Period. Upon commencement of such additional Licensor parking rights, the O&M Costs shall be adjusted pursuant to the formula set forth in Section 4.1 to reflect the use by Licensor of additional parking spaces at designated times. Such additional uses by Licensor or its tenants or users may include valet parking during times and in locations in the Parking Facility designated by Licensor. Any such additional parking spaces designated by Licensor pursuant to this Section 2.3 shall not constitute Excess Usage by Licensor and Licensor shall not be liable for any payment under Section 5 as a result thereof. Licensor and Licensee shall meet periodically (but not less often than annually) to assess and reevaluate the use of the designated spaces and shall make such adjustments in usage as they find mutually acceptable.

3. Operation and Maintenance. During the term of this Agreement, Licensor or an Independent Parking Operator (as defined in the Declaration) shall operate and maintain the Parking Facility, subject to the terms and conditions of this Agreement, in a manner consistent with normal and customary practices for similar commercial parking facilities in Tempe, Arizona. In the exercise of its duties, Licensor may, without limitation, (a) enter into contracts with professional managers having experience with similar properties for the day-to-day operation and maintenance of the Parking Facility, (b) establish reasonable rules and regulations governing the use of all parking spaces within the Parking Facility, (c) determine the manner in which the Parking Facility shall be operated, (d) evaluate and implement appropriate security measures, and (e) obtain and maintain appropriate amounts of liability insurance and replacement cost casualty loss insurance (and, unless Licensee otherwise agrees in writing, the deductibles on such policies shall not exceed \$100,000.00) with insurance companies licensed to do business in Arizona and acceptable to Licensor. Notwithstanding anything contained in the foregoing or elsewhere herein to the contrary, Licensee shall have the right to set and regulate the parking fees charged by Licensee during Licensee Use Periods, but such fees cannot be adversely discriminatory against Licensor or its tenants and their employees, visitors or customers. In addition, Licensee may, from time to time, to accommodate or satisfy parking requirements during the Licensee Use Periods in connection with special events or otherwise, request appropriate reasonable modifications or adjustments to the operation of the Parking Facility or the addition to or modification of security measures; provided that any such modifications, adjustments or additions shall be implemented only during Licensee Use Periods (unless Licensor agrees to their general implementation). Before implementing any such modifications, adjustments or additions, Licensee shall obtain Licensor's consent, which consent shall not be unreasonably withheld, delayed or conditioned. The management company retained by Licensor to operate the Parking Facility, if any, shall implement any operational modifications, adjustments or additions desired by Licensee and approved by Licensor, and any incremental costs incurred to implement such modifications or adjustments shall be the sole responsibility of Licensee (unless Licensor has agreed to implement any such modifications or adjustments during Licensor Exclusive Use Periods, in which event the additional or incremental costs and fees shall be allocated between the parties as provided in **Section 4** below).

4. Allocation and Payment of Costs of Operation, Maintenance, and Repair.

4.1 Allocation of Costs. The O&M Costs with respect to the Parking Facility allocated to Licensor under the Declaration shall be shared by Licensor and Licensee on an equitable and proportionate basis based on a fraction, the numerator of which shall be calculated by multiplying a party's total number of allocated parking spaces in the Parking Facility times the number of hours per week such party has exclusive use thereto, and the denominator of which shall be 162,456 (i.e. the total number of parking spaces in the Parking Facility subject to this Agreement multiplied by the number of hours in a week). The O&M Costs allocated to Licensor under the Declaration in connection with the Parking Facility shall initially be allocated between the parties based on parking use in accordance with the schedule attached hereto as **Exhibit "B"** (the "Estimated Parking Use"). Based on the Estimated Parking Use the initial O&M Costs of the Parking Facility shall be split as follows: thirty-three percent (33%) shall be paid by Licensor and sixty-seven percent (67%) shall be paid by Licensee. The parties acknowledge that the Estimated Parking Use is based upon hours of active usage in some cases, and hours of permitted usage in other cases. The Estimated Parking Use may be modified and adjusted by the parties from time to time based on a reallocation of parking spaces by Licensor pursuant to Section 2.3 only by a written amendment hereto or other written agreement. Except for the allocation of O&M Costs set forth in this Section 4.1, and except with respect to the determination of the non-discriminatory parking fees to be charged by Licensee during Licensee Use Periods, Licensor shall have the authority in its sole and absolute discretion to make all decisions regarding the operation, maintenance, insurance, security and repair of the Parking Facility.

4.2 Payment. On a periodic basis during the term of this Agreement, Licensee shall remit to Licensor its allocable share of the O&M Costs for such period, not later than thirty (30) days after the receipt of written request therefor accompanied by supporting documentation. Notwithstanding the foregoing, Licensor may elect to make a reasonable estimate of the O&M Costs anticipated to be incurred for any calendar year during the term of this Agreement. If Licensor elects to make such estimate, it shall deliver written notice thereof to Licensee not later than December 1 of the calendar year immediately preceding the year for which such estimate is made and, commencing January 1 of the year for which the estimate is made, and on the first day of each calendar month thereafter, Licensee shall pay to Licensor one-twelfth (1/12th) of its allocable share of the O&M Costs as estimated by Licensor. Within ninety (90) days after the expiration of such calendar year, Licensor shall deliver to Licensee a statement of the actual O&M Costs incurred for such year (a "Reconciliation Statement"). If the Reconciliation Statement indicates that Licensee has underpaid its allocable share of the O&M Costs for such year, it shall remit to Licensor the amount of such underpayment within thirty (30) days after the receipt of the Reconciliation Statement. If the Reconciliation Statement indicates that Licensee has overpaid its allocable share of the O&M Costs, Licensee shall receive a credit for such overpaid amount against its next monthly installment(s) of O&M Costs payable hereunder (provided that in the last year of the term of this Agreement, any overpayment shall be remitted to Licensee in cash within thirty (30) days after the day the Reconciliation Statement for such year is provided to Licensee).

5. Licensor Permitted Usage. In addition to the right to use the Parking Facility during the Licensor Exclusive Use Period, Licensor and Licensor's Permitted Users shall have the right to use the Parking Facility during any Licensee Use Periods without cost or charge; provided, however, that Licensor shall be charged for all Excess Usage at hourly parking rates equal to the lesser of (a) the rate then charged by Licensee to all other users during the Licensee Use Periods, or (b) a rate which is equal to those rates then charged in similar parking facilities in the downtown Tempe area. All such charges for Excess Usage, if any, shall be applied as a credit against Licensee's allocable share of the O&M Costs. Such credit shall be determined each calendar month during the term of this Agreement by multiplying the applicable hourly parking fee then charged by Licensee, as limited pursuant to the initial sentence of this Section 5, by the number of hours of Excess Usage. Licensor shall, at its expense, install such equipment or initiate such monitoring and control procedures as may be reasonably required in order to determine on a daily basis the hours of Excess Usage of the Parking Facility by Licensor's Permitted Users. Licensor shall also have the right to designate and mark a reasonable number of parking spaces in the Parking Facility as "Reserved" and/or "Visitor" parking during the periods of time that Licensor has exclusive use of such Parking Facility pursuant and subject to the terms and conditions hereof. Licensee shall not cover over or mask any such designations during the Licensee Use Periods without the prior written approval of Licensor.

6. Revenue. Licensor shall be entitled to retain all revenues allocated to it under the Declaration from the use of the Parking Facility during the Licensor Exclusive Use Period. Licensee shall be entitled to retain all revenues allocated to Licensor under the Declaration from the use of the Parking Facility during all Licensee Use Periods and all revenues received by Licensee in connection with any fees charged by Licensee to its employees for use of the Licensee Business Parking Spaces. Except as set forth in the preceding sentence, Licensee shall not be entitled to any revenue derived from the use of the Parking Facility.

7. Capital Improvements, Alterations, and Modifications to Parking Facility. Licensor shall have the right, from time to time during the term of this Agreement, to make capital improvements, alterations or modifications to the Parking Facility or any components thereof, and Licensor shall use reasonable efforts to try to provide Licensee as much access to the Licensee Business Parking Spaces and the use of the Parking Facility during Licensee Use Periods as may be reasonable during such work. Notwithstanding the foregoing, Licensor shall have the right to temporarily close portions of the Parking Facility in connection with the construction of any such improvements, alterations or modifications for a reasonable amount of time in order to construct any such improvements, alterations or modifications.

8. Sublicensing; Assignment. Licensor may sublicense any or all of the parking spaces during the Licensor Exclusive Use Period and Licensee may sublicense any or all of the parking spaces during the Licensee Use Period or Licensee Business Use Period; provided, however, that Licensee shall at all times remain primarily responsible to Licensor for its allocable share of all O&M Costs. If a party sublicenses its parking spaces pursuant to this Section 8, such sublicensing party shall diligently enforce the terms and conditions of any such sublicense. Each party shall deliver written notice to the other party of any sublicense of parking spaces. Such notice shall set forth the name of the sublicensee and the number of parking spaces and permitted parking times sublicensed to any such sublicensee.

9. Term. The term of this Agreement shall commence immediately upon the date both parties have executed this Agreement and shall continue thereafter in full force and effect for an initial term of forty (40) years (the "Initial Term") unless otherwise agreed in writing by the parties hereto. Upon the expiration of the Initial Term, this Agreement shall automatically be renewed for additional successive periods of ten (10) years each, on the same terms and conditions contained herein, so long as Licensor is, at the time of the expiration of the Initial terms, or any successive ten-year terms as the case may be, using and operating the Parking Facility for vehicular parking as part of the Project. If, upon the expiration of the Initial Term of any successive ten-year term, the Parking Facility has outlived its useful life or vehicular parking is no longer necessary as part of the actual use of the remainder of the Project and Licensor has provided written notice to Licensee of such fact at least 90 days prior to the expiration of the then current term, then the term of this Agreement shall not be extended and, upon the expiration of the then current term of this Agreement, all further rights and obligations of Licensee under this Agreement with respect to the Parking Facility shall terminate and be of no further force or effect. Notwithstanding the foregoing, this Agreement if the provisions of A.R.S. §§ 42-6201 through 42-6209 are amended or repealed and the transaction described in Section 3.2 of the Supplementary Agreement is terminated or otherwise changed so Developer does not receive the contemplated benefits as a result thereof, then this Agreement shall remain in full force and effect except that it shall be deemed amended to provide that Licensee shall have the option to retain the 86 permits for use of the Licensee Business Parking Spaces by written notice to Licensor, and in the event Licensee elects to retain the Licensee Business Parking Spaces, it shall pay monthly to Licensor (or its successors or assigns) the hourly parking rate per permit equal to the rate then charged other users of the Parking Facility.

10. Damage and Destruction. If, at any time during the term of this Agreement any portion of the Parking Facility is damaged or destroyed as a result of an insured casualty then, in that event, Licensor shall cause such portions of the Parking Facility to be reconstructed, rebuilt, or restored, as soon as reasonably possible thereafter, utilizing the proceeds of all available insurance; provided, however, that Licensor shall not be required to expend funds to rebuild, reconstruct, or restore such damaged portions of the Parking Facility beyond the proceeds of the insurance received as a result of such damage or destruction. All insurance proceeds for property damage to the Parking Facility shall be paid to Licensor for the purpose of repairing any partial or complete damage to or destruction of the Parking Facility. If the damage or destruction to any portion of the Parking Facility is the result of negligence or intentional misconduct of Licensor, then Licensor shall be responsible for the payment of the amount of any deductible under the casualty loss insurance policy and, if the particular nature of the negligent or intentionally wrongful act of Licensor which results in the damage or destruction is not covered by the casualty loss insurance maintained by Licensor with respect to the Parking Facility, then Licensor shall have the right to repair and restore the damaged portions of the Parking Facility at its sole cost and expense. If the damage or destruction to any portion of the Parking Facility is the result of negligence or intentional misconduct of Licensee or any sublicensee or assignee of Licensee, then Licensee shall be responsible for the payment of the amount of any deductible under the casualty loss insurance policy and, if the particular nature of the negligent or intentionally wrongful act of Licensee or any sublicensee or assignee which results in the damage or destruction is not covered by the casualty loss insurance maintained by Licensor with respect to the Parking Facility, then Licensor shall have the right to repair and restore the

damaged portions of the Parking Facility at Licensee's sole cost and expense. In addition, to the extent that the insurance premiums payable with respect to the Parking Facility are increased as a direct result of the negligence or intentional misconduct of Licensor or Licensee or any sublicensee or assignee of Licensee, as the case may be, then, in that event, Licensor shall have the right to charge to such party the additional premiums payable as a result of such negligent or wrongful acts. Notwithstanding anything contained in the foregoing or elsewhere in this Agreement to the contrary, Licensor and Licensee each hereby waive all rights of recovery against the other, and their respective tenants, subtenants, sublicensees, assignees, agents and contractors, to the extent of the receipt of insurance proceeds from any insurance policy in force at the time of the damage or destruction to the Parking Facility.

11. Condemnation. If the whole or any part of the Parking Facility shall be taken or condemned by any competent authority for any public use or purpose during the term of this Agreement (a "Condemnation"), then this Agreement shall terminate with respect to the part of the Parking Facility so taken. Licensor reserves unto itself the right to claim and prosecute its claim in all appropriate courts and agencies for any award or damages based upon loss, damage or injury to its interest in the Parking Facility. Licensee, for itself, its successors and assigns, including, without limitation, any sublicensees, hereby waives and otherwise assigns to Licensor all claims, awards and entitlements relating to the Parking Facility arising from such Condemnation, including, without limitation, any claim for loss of its interest as Licensee hereunder.

12. Default; Remedies. It shall be a default if either party fails to perform any of its obligations hereunder within any time period required for such performance, and such failure is not cured within thirty (30) days after receipt of written notice from the other party. In the event of a default, the non-defaulting party shall have all rights and remedies available at law or in equity. In addition, the non-defaulting party shall have the right to terminate this Agreement immediately upon written notice to the defaulting party. If Licensee is the defaulting party and Licensor elects to terminate this Agreement, then all of Licensee's rights and the rights of any sublicensee or assignee of Licensee under this Agreement shall immediately terminate, and Licensee and its sublicensees or assignees shall have no further right to (a) use the Parking Facility or any portion thereof, or (b) collect any revenues allocated thereto after the date of termination.

13. Estoppel Certificate. Within fifteen (15) days after receipt of request therefor, Licensee shall execute and deliver to Licensor, or to any party for whom the benefit of such request is made, an estoppel certificate ("Estoppel Certificate") stating, if true, (a) that this Agreement is in full force and effect; (b) that all obligations of the parties have been performed to date in accordance with the terms of this Agreement; (c) that to the best of Licensee's knowledge, (i) Licensor or its successor in interest, as the case may be, is not in default under this Agreement, and (ii) no amendments have been made to this Agreement other than as expressly set forth in such estoppel certificate, and (d) such other matters as may be reasonably requested by Licensor or the party for whose benefit the request has been made. Any third party receiving an executed Estoppel Certificate shall be entitled to rely thereon in connection with any matter pertaining to this Agreement. Upon issuance of an Estoppel Certificate, the Licensee shall be estopped to deny the truth of any statement made in such Estoppel Certificate.

14. Subordination, Nondisturbance and Attornment. This Agreement shall be subject and subordinate to the lien of all mortgages, deeds of trust or other security instruments now or hereafter placed on or against Licensor's interest herein, and Licensee shall, at Licensor's request, promptly execute any required or appropriate certificate, subordination agreement or other document evidencing or confirming such subordination; provided, however, that such mortgagee or beneficiary named in any such mortgage, deed of trust or security instrument executes and delivers to Licensee, for its benefit, a nondisturbance agreement providing, in essence, that so long as Licensee is not in default under this Agreement, neither this Agreement nor any of Licensee's rights hereunder shall be terminated as a result of any trustee's sale or proceeding to foreclose any such mortgage, deed of trust or security instrument. In the event of any such trustee's sale, foreclosure or deed-in-lieu thereof, Licensee hereby covenants and agrees to attorn to any successor to Licensor's interest herein and this Agreement shall continue as a direct license agreement between Licensee and Licensor's successor, subject to all of the terms and conditions set forth herein.

15. General.

13.1 Notices. All notices under this Agreement shall be in writing and (a) delivered personally, (b) delivered by a reputable, nationally recognized overnight courier service, (c) mailed by registered or certified mail, postage prepaid, return receipt requested, or (d) sent by a facsimile transmission, to the parties at the following addresses:

If to Licensee: City of Tempe
City Manager's Office
31 East 5th Street
Tempe, Arizona 85281

With a copy to: City of Tempe
City Attorney's Office
31 East 5th Street
Tempe, Arizona 85281

If to Licensor: Tempe Gateway, L.L.C.
c/o Opus West Corporation
2555 East Camelback Road
Phoenix, Arizona 85016
Attention: Vice President – Real Estate

With a copy to: Opus West Corporation
2555 East Camelback Road
Phoenix, Arizona 85016
Attention: Legal Department

And to: Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016

Attention: Gregory L. Mast

or to such other street address as may be designated by the respective parties in writing from time to time.

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

15.3 Attorneys' Fees. In the event any action, suit or proceeding is brought by any party to enforce compliance with this Agreement, to exercise any rights or remedies under this Agreement or to declare the rights of the parties to this Agreement, the party prevailing in such action shall be entitled to receive from the non-prevailing party all costs and expenses of such action, suit or proceeding, together with such sum as the court, and not the jury, may adjudge as reasonable attorneys' fees.

15.4 No Third-Party Beneficiaries. Except as otherwise specifically set forth in this Agreement, no person or entity shall be a third-party beneficiary to this Agreement.

15.5 Further Assurances. Each party hereby agrees to perform such further acts and to execute and deliver such additional agreements, documents, acknowledgments and instruments as the other party may reasonably require to consummate, evidence, confirm, or carry out the transactions contemplated by this Agreement.

15.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been made and entered into in Maricopa County, Arizona.

15.7 Force Majeure. In the event that performance of any non-monetary obligation hereunder by either party hereto shall be delayed as a result of a force majeure event, such as war, insurrection, acts of God or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform, such event shall operate to extend the time required for the performance of such obligation for the period of such force majeure event.

15.8 Relationship of Parties. No partnership, joint venture or other business relationship is established between the parties to this Agreement. Neither party to this Agreement shall be liable for any acts, omissions or negligence on the part of the other party, its employees, agents, independent contractors, licensees and invitees resulting in either personal injury or property damages to any person.

15.9 Consents and Approvals. Wherever this Agreement requires the consent or approval of a party to any act, document, use or other matter, such consent or approval may be given or denied by such party in its reasonable discretion, unless this Agreement expressly provides otherwise.

15.10 Successors and Assigns. This Agreement shall run with the land and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

15.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

15.12 Waiver. No waiver by either party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained.

15.13 Conflicts with Development Agreement and Phase One Parking License. Except to the extent specifically referenced or incorporated as part of this Agreement, this Agreement shall supersede the terms and conditions of the Development Agreement with respect to that certain Parking License and Operating Agreement between the City and the Phase One Owner dated June 30, 1999 as evidenced by that certain Memorandum of Parking License dated June 30, 1999 recorded on May 10, 2000 as Instrument No. 00-0354467 in the Official Records of Maricopa County, Arizona (the "Phase One Parking License"). The City acknowledges that, pursuant to the terms of the Phase One Parking License, the City has certain parking rights in the Parking Facility and that it shall only seek to enforce those rights against the Phase One Owner. To the extent of any conflicts between this Agreement and the terms and conditions of the Development Agreement, the terms and conditions which are set forth in this Agreement shall govern and control, and the conflicting provisions which are set forth in the Development Agreement shall be deemed to be null and void and of no further force or effect.

15.14 Amendment. This Agreement or any provision hereof may not be waived, modified, amended, discharged or terminated except by an instrument in writing signed by Licensee, on the one hand, and Licensor or its successors and assigns, on the other hand, and in no event shall the consent of any sublicensee be necessary.

{Signature Pages Follow}

IN WITNESS WHEREOF, the parties hereto have set forth their hands in the City of Tempe, Arizona, on the day and year first above written.

CITY OF TEMPE,
an Arizona Municipal Corporation

By: _____
Hugh L. Hallman, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

TEMPE GATEWAY, L.L.C., a Delaware limited liability company

By OWC Tempe, Inc., a Delaware corporation
Its Manager

By _____
Name: _____
Title: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 200__, before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of OWC Tempe, Inc., a Delaware corporation, the Manager of TEMPE GATEWAY, L.L.C., a Delaware limited liability company:

_____ whom I know personally;
_____ whose identity was proven to me on the oath of _____, a credible witness by me duly sworn;
_____ whose identity I verified on the basis of his/her _____

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

List of Exhibits

Exhibit "A" - the "Property"

Exhibit "B" - the "Estimated Parking Use"

Exhibit A
Of the Parking License
Legal Description of the Property

PARCEL NO. 1:

OFFICE PLAZA 222 CONDOMINIUM PLAT ACCORDING TO BOOK 236 OF MAPS, PAGE 48, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHEAST CORNER OF BLOCK 61, MAP OF TEMPE ACCORDING TO BOOK 2 OF MAPS, PAGE 26;

THENCE SOUTH 89 DEGREES 59 MINUTES 37 SECONDS WEST ALONG THE SOUTH LINE OF SAID BLOCK 61, SAID LINE ALSO BEING THE NORTHERLY RIGHT-OF-WAY OF 3RD STREET 123.43 FEET TO THE POINT OF BEGINNING, SAID POINT BEING ON THE WESTERLY RIGHT-OF-WAY OF MILL AVENUE PER OFFICE PLACE 222;

THENCE CONTINUING SOUTH 89 DEGREES 59 MINUTES 37 SECONDS WEST ALONG SAID SOUTH LINE 211.80 FEET;

THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST CONTINUING ALONG SAID SOUTH LINE 302.97 FEET;

THENCE NORTH 44 DEGREES 56 MINUTES 38 SECONDS WEST, 21.19 FEET TO AN ANGLE POINT ON THE WEST LINE OF SAID OFFICE PLAZA 222, SAID LINE ALSO BEING THE EASTERLY RIGHT-OF-WAY OF ASH AVENUE;

THENCE NORTH 00 DEGREES 06 MINUTES 45 SECONDS EAST ALONG SAID WEST LINE AND 650.69 FEET TO THE NORTHWEST CORNER OF SAID OFFICE PLAZA 222;

THENCE SOUTH 89 DEGREES 45 MINUTES 10 SECONDS EAST ALONG THE NORTH LINE OF SAID OFFICE PLAZA 222, SAID LINE ALSO BEING THE SOUTHERLY RIGHT-OF-WAY OF 1ST STREET 318.67 FEET TO A CORNER OF SAID OFFICE PLAZA 222;

THENCE SOUTH 00 DEGREES 09 MINUTES 57 SECONDS WEST ALONG THE EAST LINE OF SAID OFFICE PLAZA 222, 329.82 FEET TO A CORNER OF SAID OFFICE PLAZA 222;

THENCE NORTH 89 DEGREES 57 MINUTES 25 SECONDS EAST ALONG THE NORTH LINE OF SAID OFFICE PLAZA 222, 329.97 FEET TO A POINT ON SAID WESTERLY RIGHT-OF-WAY OF MILL AVENUE, SAID POINT BEING ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 533.50 FEET, THE CENTER OF SAID CURVE BEARS NORTH 89 DEGREES 50 MINUTES 49 SECONDS WEST;

THENCE SOUTHERLY ALONG SAID CURVE AND SAID RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 38 DEGREES 54 MINUTES 10 SECONDS AN ARC LENGTH OF 362.24 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THAT PORTION OF OFFICE PLAZA 222, CONDOMINIUM PLAT, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA

COUNTY, ARIZONA, RECORDED IN BOOK 236 OF MAPS, PAGE 48, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID OFFICE PLAZA 222, SAID CORNER LYING ON THE EASTERLY RIGHT-OF-WAY OF ASH AVENUE;

THENCE NORTH 00 DEGREES 06 MINUTES 16 SECOND EAST ALONG THE WEST LINE OF SAID OFFICE PLAZA 222, A DISTANCE OF 120.38 FEET TO A SET ½" REBAR WITH CAP #26404, BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUING NORTH 00 DEGREES 06 MINUTES 16 SECONDS EAST ALONG SAID WEST LINE A DISTANCE OF 198.70 FEET TO A SET ½" REBAR WITH CAP #26404;

THENCE NORTH 00 DEGREES 15 MINUTES 06 SECONDS EAST CONTINUING ALONG SAID WEST LINE A DISTANCE OF 331.52 FEET TO THE NORTHWEST CORNER OF SAID OFFICE PLAZA 222, SAID CORNER BEING A SET ½" REBAR WITH CAP #26404;

THENCE SOUTH 89 DEGREES 45 MINUTES 11 SECONDS EAST ALONG THE NORTH LINE OF SAID OFFICE PLAZA 222, SAID LINE ALSO BEING THE SOUTHERLY RIGHT-OF-WAY OF 1ST STREET A DISTANCE OF 317.77 FEET TO A CORNER OF SAID OFFICE PLAZA 222, LAST SAID CORNER BEING A FOUND COTTON PICKER SPINDLE;

THENCE SOUTH 00 DEGREES 09 MINUTES 42 SECONDS WEST ALONG THE EAST LINE OF SAID OFFICE PLAZA 222, A DISTANCE OF 329.73 FEET TO A CORNER OF SAID OFFICE PLAZA 222, LAST SAID CORNER BEING A FOUND COTTON PICKER SPINDLE;

THENCE SOUTH 00 DEGREES 10 MINUTES 15 SECONDS WEST A DISTANCE OF 199.32 FEET TO A SET ½" REBAR WITH CAP #26404;

THENCE NORTH 89 DEGREES 57 MINUTES 52 SECONDS WEST A DISTANCE OF 318.06 FEET TO THE TRUE POINT OF BEGINNING; AND

EXCEPT A PART OF OFFICE PLAZA 222 SUBDIVISION, AS RECORDED IN BOOK 236 OF MAPS, PAGE 48 AND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 1 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF MILL AVENUE AND 3RD STREET (FOUND BRASS CAP IN HANDHOLE);

THENCE SOUTH 89 DEGREES 36 MINUTES 01 SECONDS WEST, ALONG THE CENTERLINE OF SAID 3RD STREET (CONTROL LINE TO OFFICE PLAZA 222, AS RECORDED IN BOOK 236 OF MAPS, PAGE 48, MCR), A DISTANCE OF 385.14 FEET;

THENCE SOUTH 89 DEGREES 36 MINUTES 24 SECONDS WEST, A DISTANCE OF 231.04 FEET;

THENCE NORTH 00 DEGREES 23 MINUTES 36 SECONDS WEST, A DISTANCE OF 69.00 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 89 DEGREES 36 MINUTES 24 SECONDS WEST, A DISTANCE OF 71.60 FEET;

THENCE NORTH 45 DEGREES 20 MINUTES 13 SECONDS WEST, A DISTANCE OF 21.19 FEET;

THENCE NORTH 00 DEGREES 16 MINUTES 51 SECONDS WEST, A DISTANCE OF 8.40 FEET TO THE POINT OF CUSP OF A CURVE WHOSE 459.50 FOOT RADIUS BEARS NORTH 20 DEGREES 19 MINUTES 58 SECONDS EAST AND IS CONCAVE NORTHEASTERLY;

THENCE SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 11 DEGREES 11 MINUTES 53 SECONDS, A DISTANCE OF 89.80 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 2:

THAT PORTION OF BLOCK 61, MAP OF TEMPE, ACCORDING TO BOOK 2 OF MAPS, PAGE 26, MARICOPA COUNTY, ARIZONA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID BLOCK 61;

THENCE SOUTH 89 DEGREES 59 MINUTES 37 SECONDS WEST ALONG THE SOUTH LINE OF SAID BLOCK 61, SAID LINE ALSO BEING THE NORTHERLY RIGHT-OF-WAY OF 3RD STREET 123.43 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY OF MILL AVENUE PER THE PLAT OF OFFICE PLAZA 222 ACCORDING TO BOOK 236 OF MAPS, PAGE 48, SAID POINT BEING ON A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 533.50 FEET, THE CENTER OF SAID CURVE BEARS NORTH 50 DEGREES 54 MINUTES 36 SECONDS WEST;

THENCE NORTHERLY ALONG SAID CURVE AND LAST SAID RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 38 DEGREES 55 MINUTES 26 SECONDS AN ARC LENGTH OF 362.40 FEET TO THE CENTERLINE OF 2ND STREET PER SAID MAP OF TEMPE;

THENCE NORTH 89 DEGREES 58 MINUTES 00 SECONDS EAST ALONG SAID CENTERLINE 5.00 FEET TO A POINT ON THE NORTHERLY PROLONGATION OF THE EAST LINE OF SAID BLOCK 61;

THENCE SOUTH 00 DEGREES 10 MINUTES 08 SECONDS WEST ALONG SAID PROLONGATION AND SAID EAST LINE 334.84 FEET TO THE POINT OF BEGINNING.

Exhibit B
Of the Parking License
The “Estimated Parking Use”

Estimated Parking Usage

Weekdays

	Parking Spaces	Time of day	Hrs/space/wk	Total hours
Gateway	895	6am to 6 pm	60	53700
				53700

Tempe	72	6am to 6 pm	60	4320
	967	6pm to 6am	60	58020
				62340

Weekends

	Parking Spaces	Time of day	Hrs/space/wk	Total hours
Tempe	967	6am Saturday to 6am Monday	48	46416

Total hours per week				O&M Costs Allocation
US Air			53700	33%
Tempe			108756	67%
			162456	

Notes:

1. The Parking Facility has approximately 1,107 parking spaces. The total number of parking spaces available in the Parking Facility for purposes of this Agreement is 967, as 140 parking spaces in the Parking Facility are subject to the Phase One Parking License.
2. The O&M Costs payable by, and revenues received by, Licensor and Licensee under this Agreement shall be subject to and based on the operation and maintenance costs and revenues allocated to Licensor pursuant to the Declaration. By way of example, if Licensor is required to pay \$5,000.00 in operation and maintenance costs under the Declaration, Licensee will be required to pay \$3,350.00 in O&M Costs under this Agreement.
3. The City is responsible for payment of operating and maintenance costs for the 140 parking spaces located in the Parking Facility allocated to the City pursuant to the Phase One Parking License, which costs are also subject to payment by the Phase One Owner pursuant to Section 3.7 of the Declaration.