Staff Summary Report

Tempe

Council Meeting Date: September 11, 2008 **Agenda Item Number:** _____

SUBJECT: This is the second public hearing for Ordinance No 2008.41 authorizing the execution of a Development and Disposition Agreement with Wisdom Tree Institute, Inc., an Arizona corporation.

DOCUMENT NAME: 20080911cdcm02 **COMMUNITY DEVELOPMENT/REDEVELOPMENT ADMIN (0403-01)**

SUPPORTING DOCS: Yes

COMMENTS: Request approval of Ordinance No. 2008.41 authorizing the Mayor to execute a Development and Disposition Agreement with Wisdom Tree Institute, Inc., an Arizona corporation (the "Developer").

PREPARED BY: Chris Salomone, Community Development Manager 480-350-8294

LEGAL REVIEW BY: Cynthia McCoy, Assistant City Attorney 480-350-2187

FISCAL NOTE: The cost to the City for infrastructure and environmental remediation is estimated to be $6,500,000.00 for the entire Elements at TCA site

RECOMMENDATION: Approval of Ordinance No 2008.41 As presented

ADDITIONAL INFO: City granted Developer the exclusive right to negotiate a development agreement for the acquisition and development of a portion of property within the project currently known as "Elements at TCA, a Planned Arts and Culture Community" adjacent to the Tempe Center for the Arts. Submitted for approval is a Development and Disposition Agreement that lays the path to developing this site.

The City will, at its expense: subdivide and Plat the project area, develop CC&R's that addresses specific uses for the site, remediate existing environmental conditions on the site, construct the infrastructure and off-site improvements identified on the Plat, convey individual property to the developer or lease the land as part of a Government Property Lease.

The Developer will, at its own expense: construct all improvements on its site and participate in a public arts program.

ORDINANCE NO. 2008.41

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AND DISPOSITION AGREEMENT AND RELATED DOCUMENTS AND TRANSFER REAL PROPERTY TO WISDOM TREE INSTITUTE, INC.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

A. WHEREAS, Wisdom Tree Institute, Inc. ("Developer") proposes to develop a portion of the property West of the Tempe Center for the Arts within the project currently known as Elements at TCA, a Planned Arts and Culture Community more particularly described on the attached ***Exhibit A***;

B. WHEREAS the City has determined that it is in the best interest of the City to convey or lease the Property to the Developer; and

C. WHEREAS the City will enter into a Development and Disposition Agreement, in substantially the form on file with the City Clerk.

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

Section 1: That the conveyance of the City Property in the manner stated in the Development and Disposition Agreement is hereby approved subject to compliance with the terms of the Development and Disposition Agreement.

Section 2: That the Mayor is authorized to execute the Development and Disposition Agreement, the documents referenced therein (including, without limitation, the Land and Improvements Lease, and the Special Warranty Deed), and all other documents reasonably required to effectuate the conveyance of the Property, and the other transactions contemplated by the Development and Disposition Agreement, or that may be necessary to carry out the provisions of this Ordinance.

Section 3: Pursuant to City Charter, Section 2.12, this ordinance will be effective thirty (30) days after adoption.

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

_____
MAYOR

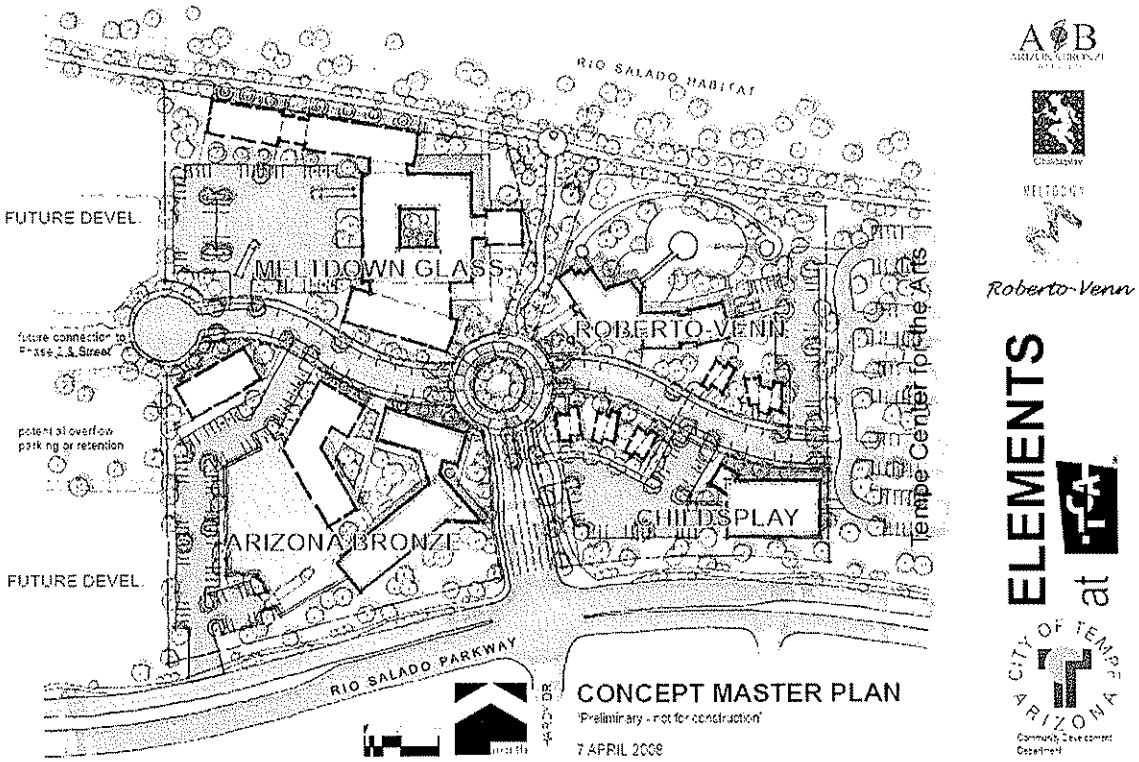
ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

Exhibit A


RIO SALADO HABITAT
FUTURE DEVEL.
MELTDOWN GLASS
ROBERTO-VENN
Tempe Center for the Arts
future connection to Priest Dr. & Street
potential overflow parking or retention
CHIHULY DISPLAY
ARIZONA BRONZE
FUTURE DEVEL.
RIO SALADO PARKWAY
CONCEPT MASTER PLAN
'Preliminary - not for construction'
7 APRIL 2008
Roberto-Venn
ELEMENTS
at
CITY OF TEMPE
ARIZONA

When recorded, return to:

City of Tempe Basket

MASTER DEVELOPMENT AND DISPOSITION AGREEMENT

THIS MASTER DEVELOPMENT AND DISPOSITION AGREEMENT ("Agreement") is made as of the _____ day of August, 2008, by and between THE CITY OF TEMPE, an Arizona municipal corporation ("City"), and Wisdom Tree Institute, an Arizona corporation ("Developer").

RECITALS

A. City is authorized to enter Development and Disposition Agreements pursuant to A.R.S. section 9-500.05.

B. City has granted Developer the exclusive right to negotiate a development agreement for the acquisition and development of certain property within the project currently known as "Elements at TCA, a Planned Arts and Culture Community" adjacent to the Tempe Center for the Arts, more particularly identified on attached ***Exhibit "A"*** and to be identified on the Plat referenced in Section 2.2 hereof (the "Property").

C. The Property is subject to certain restrictions and limitations on the use, development and conveyance of the Property pursuant to the terms and conditions of the patent pursuant to which the City acquired title to the Property and other matters.

D. This Agreement is a development agreement within the meaning of A.R.S. Section 9-500.05 and shall be construed as such.

NOW, THEREFORE, in consideration of the premises, the promises contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE I
DEFINITIONS

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

1.1 **"Certificate of Completion"** means a written statement issued by the Public Works Department as to completion of those matters specified in Section 2.3 hereof.

1.2 **"City"** means the City of Tempe, an Arizona municipal corporation, and any successor public body or entity.

1.3 **"Closing Date"** means the date on which the Property is conveyed to Developer.

1.4 **"Developer"** means Wisdom Tree Institute, an Arizona corporation, and its permitted successors and assigns.

1.5 **"Development Plan"** means the general conceptual plan for development of the Property, as set forth in "***Exhibit B***" to this Agreement, as it may be amended and revised in accordance with this Agreement.

1.6 **"Effective Date"** means the date on which this Agreement is signed by the parties which shall occur no later than 14 days after its approval by the City Council.

1.7 **"PAD"** means the planned area development approved by the City with respect to the development of the Property or building pad, and which sets forth the specific uses, densities, features and other development matters with respect to the Property.

1.8 **"Improvements"** means all improvements to be constructed by Developer 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 of the natural terrain.

1.9 **"Project"** means the components of the Development Plan as a whole.

1.10 **"Property"** means the real property legally described in "***Exhibit A"*** attached hereto and incorporated herein by this reference.

1.11 **"Schedule of Performance"** means the schedule of performance set forth in "***Exhibit C"*** attached hereto and incorporated herein by this reference.

ARTICLE II
DEVELOPMENT ACTIVITIES

2.1 **City Property.** As of the Effective Date, the City owns fee title to the Property and shall retain fee title to the Property until it is conveyed to the Developer pursuant to the terms of this Agreement.

2.2 **Development Plan; Rezoning; Recordation of Plat.** City and Developer have worked together to formulate and agree upon the Development Plan. Using the general concepts contained in the Development Plan, City will subdivide the Property by recording a Plat that includes and identifies the lot number of the Property (the "Plat"), and the City also will record a set of master covenants, conditions and restrictions limiting use of the Property to arts-related purposes as defined therein and containing such other terms as City deems appropriate (the "Master CCRs"). Developer has been provided with a copy of the current draft of the Master CCRs. The plat shall include

appropriate public dedications of rights of way and easements, shall identify utility locations, the location of each building pad and identify the common areas and limited common elements. The Plat will include more property than that to be conveyed to Developer, and City reserves the right to add property and additional developers by amending the Plat, the Master CCRs or entering a new development agreement, without the consent of or other authorization from the Developer so long as such addition does not alter the building pad reserved for Developer and does not create any material additional burdens on Developer. If such consent is requested, it shall not be unreasonably withheld, delayed or conditioned.

The Property is currently zoned light industrial and mixed use. Developer has advised City that it intends to operate a lutherie school and related business and activities on its Property. City confirms that such use is consistent with existing zoning of the Property.

Developer shall at its sole cost and expense, develop the Property in general conformance with the Development Plan and the Schedule of Performance. The Development Plan depicts the types of basic land uses, proposed location of the buildings, structures and other improvements, and a permissible range in the relative height, bulk, and size of those buildings and structures. The parties acknowledge that the Development Plan initially attached to this Agreement reflects Developer's general intent regarding development of the Property, and that as Developer finalizes its plans, the Development Plan may require modification with mutual agreement of Developer and the City.

2.3 Remediation. Prior to commencement of construction of the Improvements, the City shall take such actions as are reasonably required to compact the soil on and otherwise remediate existing environmental conditions on the Property, in either case, to the extent required to enable Developer to construct the Improvements. The City does not contemplate preparing the building pad for construction until immediately prior to commencement of construction, of the specific "building pads" as more fully set forth in the Development Plan, and therefore this process probably will take place after the Property has been conveyed to the Developer. Developer hereby grants to the City an irrevocable license to enter upon the Property for the purpose of conducting such remediation.

2.4 Schedule of Performance. The City and the Developer intend that the planning and development of the Property shall be achieved within the times established in the Schedule of Performance. From time to time following the date of this Agreement, however, the Developer and the City shall, by mutual written agreement, refine and revise the Schedule of Performance as may be necessary to accommodate any unforeseen factors, events or unexpected occurrences which may necessitate such refinement or revision. The Developer and the City shall each use their best efforts to ensure that development of the Property occurs in accordance with the Development Plan and Schedule of Performance.

2.5 Approval of PAD. The Property shall be developed in general conformance with the Development Plan. Within one hundred eighty (180) days after the Effective Date, Developer shall submit to the City a PAD for its Property in accordance with normally applicable City submission requirements for such applications, including a list of variances,

modifications, or other authorizations required to construct the Improvements to be constructed on the Property. The Developer and the City shall work cooperatively using their reasonable best efforts to resolve any outstanding issues concerning the PAD such that the PAD will be approved by the City as soon as possible after its submittal. The City's approval of the PAD is a condition precedent to conveyance of the Property. Developer may elect not to move forward with the Project at any time in its discretion, including its determination that any conditions or stipulations imposed on approval of its PAD are unacceptable.

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 Improvements. 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. Developer shall pay all costs and fees associated with any permits, licenses, applications and other processes associated with development of the Property.

2.7 General Cooperation. The City and Developer acknowledge and agree that they shall cooperate in good faith with each other and use their respective good-faith and commercially reasonable efforts to pursue development of the Project as contemplated by this Agreement. To further the commitment of the City and Developer to cooperate in the implementation of this Agreement, the City shall designate and appoint a representative to act as liaison between the City and its various departments and the Developer, and the Developer shall designate and appoint a representative to act on its behalf under this Agreement. The initial representative for the City ("City Representative") shall be the Deputy Director of Community Development (currently Neil Calfee), or his designee (and Mr. Calfee hereby designates the City Architect (currently Mark Vinson) as his designee for all matters pertaining to the Development Plan), and the initial representative for the Developer ("Developer Representative") shall be William Eaton. Each of the City Representative and the Developer Representative shall be available at all reasonable times to discuss and review the performance of the City and Developer under this Agreement and the development of the Project.

2.8 Shared Parking. City agrees to allow Developer to use the adjacent Tempe Center for the Arts parking facilities to satisfy the parking requirements for employees, students and visitors applicable to its Property, on a nonexclusive basis, subject to prior use. At or prior to completion of the Improvements, City and Developer shall enter into a license or shared parking agreement to memorialize their agreements with regard to nonexclusive use of parking spaces within the Tempe Center for the Arts.

ARTICLE III
CONVEYANCE OF PROPERTY

3.1 Construction of Common Areas. City will at its cost and expense construct the infrastructure and off-site improvements identified on the Plat (i.e., public streets, public street lighting, and landscaping of dedicated streets). The parties have not yet delineated which areas on the Plat (if any) will constitute common areas except to describe them generally to include: (i) entry signage; (ii) shared entry drive on the eastern boundary of the Property (which the City will maintain) and (iii) the project entry monument/rotating art display. City will coordinate with Developer and other owners and potential owners of adjacent property to prepare and record a separate set of covenants, conditions and restrictions against the Property prior to its conveyance to Developer, and City shall transfer ownership of any common areas to a nonprofit corporation, which will assume the responsibility of maintaining the common areas.

3.2 Agreement to Convey, Terms and Other Considerations. Subject to all terms, covenants and conditions of this Agreement, the City agrees to sell or lease the Property to Developer and Developer agrees to purchase or lease the Property. The consideration for such conveyance consists of Developer's construction of the Improvements and agreement to abide by the use restrictions stated herein and in the Plat and Master CCRs.

3.3 Conveyance Notice. The City hereby authorizes the conveyance of the Property to Developer pursuant to the terms of this Agreement; however, the City shall continue to hold fee title to all of the City Property until Developer submits a written request for conveyance as hereafter provided. When Developer desires to acquire or enter into a lease of the Property, and so long as Developer is not then in breach of this Agreement, it shall deliver a written notice to the City, referring to this Agreement and specifying the date by which Developer desires to close the conveyance or lease and shall include a copy of a loan commitment or similar document evidencing that Developer has secured the necessary financing for construction of its Improvements or otherwise demonstrates to City's satisfaction its ability to construct the improvements in conformance with the Development Plan. The date set for close of escrow and transfer of title or execution of a lease (the "Closing Date") shall be the date specified in Developer's written notice; provided, that the Closing Date shall not occur earlier than the 31st day after the Tempe City Council adopts an ordinance approving this Agreement at a regularly scheduled City Council meeting nor later than two (2) years after the Effective Date.

3.4 Escrow. If Developer requests conveyance of fee title to the Property, the City and the Developer shall promptly open an escrow with Fidelity National Title Insurance Company Inc. ("Escrow Agent"), located at 60 E. Rio Salado Parkway, 11th Floor, Tempe, AZ 85281, Attn: Barbara Teel. Escrow Agent shall hold all documents and perform such other acts as are normal and customary for a commercial escrow agent in similar transactions. Escrow Agent shall issue a preliminary title report concerning the Property within thirty (30) days after the opening of escrow.

3.4.1 Escrow Fees. If Developer desires to obtain title insurance, it shall pay the cost of the title policy. The City and Developer shall each bear their own costs, including attorney's fees in connection with the negotiation, due diligence, investigation and conduct of the transaction regarding the purchase of the City Property. Developer shall pay all customary escrow fees and recording fees.

3.4.2 Prorations. All real property taxes and assessments shall be prorated between the City and Developer as of the Closing Date, based upon the latest available information.

3.5 Lease. Developer may request that City lease the Property to Developer pursuant to a lease in substantially the form attached hereto as Exhibit E, with the intent that such lease operate as a "Government Property Lease" as defined and contemplated by the provisions of A.R.S. §§ 42-6201, et seq. Such lease shall contain all the provisions required by applicable statutes in addition to other terms and conditions set forth therein. Subject to approval by The Tempe City Council on a finding that the Property meets the statutory requirements, including proof of need by Developer, the lease may contain the statutorily-authorized eight-year property tax abatement, subject to such in lieu payments as the Council may require. In this regard, Developer has represented to City that because of the increased costs associated with the unique development constraints and challenges associated with the Property as well as the arts and cultural use restrictions, development of the Property is economically feasible only by the commitment of the City to provide Developer with the benefit of the eight-year statutorily-authorized property tax abatement currently available pursuant to the provisions of A.R.S. §§ 42-6201 through 42-6209, inclusive. In consideration of the granting of a lease, Developer has agreed to provide City with the consideration described in the attached form of lease. 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 Improvements. The Property 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. 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 3.5 shall be credited against any such increased tax burdens or obligations. Developer shall pay a proportionate share based on the number of owners within the Project whose properties are subject to similar leases. 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). Upon expiration or termination of any such lease, the Property shall be conveyed to Developer by quit-claim deed.

3.6 Legal Description. The legal description of the Property shall be established by the recorded Plat.

3.7 Form of Deed. The City shall convey fee title to the Developer by Special Warranty Deed in substantially the form attached hereto as **Exhibit "D"** (the "Deed"), subject to all liens and encumbrances of record, and all matters that an accurate survey would reveal.

3.8 As-Is Conveyance. Developer acknowledges and agrees that it is acquiring the Property AS IS, WHERE IS, and that the only representations or warranties made by the City with respect to the Property are those set forth in this Agreement and the Deed by which the Property will be conveyed. Developer acknowledges that it is accepting its interest in the Property in its AS IS condition, and except as provided in Section 2.3 hereof, assumes the risks associated with the condition of the Property, and shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees and agents from any and all third party 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, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the performance of this agreement by Developer, including, any third party claims related to environmental conditions on the Property.

Developer shall have the right to survey and examine the Property and any improvements thereon, including, but not limited to, the physical condition of the property, the availability of access, water, sewer and other utilities and services to the Property and the costs of securing same, the existence of hazardous or toxic substances or pollutants, and the zoning and applicable governmental regulations, statutes and ordinances pertaining to the Property, at any time after the execution of this Agreement, with any persons whom it shall designate, including, without limitation of the foregoing, appraisers, contractors, engineers and soil testing personnel. City shall permit access to the Property to Developer and any persons designated by Developer, and City shall afford them the opportunity to conduct, prepare and perform any surveys, appraisals, and any hydrological, topographical, environmental, traffic, feasibility and other engineering tests, studies, and reports upon the Property that Developer deems necessary or appropriate to assist it in determining whether the Property is appropriate for the purposes contemplated by Developer. Upon completion of all such tests, studies and reports, Developer shall fill all holes produced by it and restore the Property to its condition existing prior to any tests or inspections. Developer shall indemnify, protect, defend and hold City harmless from all claims, costs, fees or liability of any kind arising out of the acts of Developer or Developer's agents pursuant to this Section, except that Developer shall have no liability for discovery of pre-existing conditions (e.g. Developer shall not be responsible for remediating environmental contamination discovered by Developer).

3.9 Noise Mitigation. Developer acknowledges that the Property lies within a noise mitigation area identified by the City of Phoenix in connection with the operation of Phoenix Sky Harbor International Airport, and that it is incumbent upon the Developer to obtain the most current noise contour maps from the City of Phoenix. City recommends that the Developer adhere to the FAA Noise Mitigation measures identified in Phoenix Sky Harbor International Airport F.A.R. Part 150 Noise Compatibility Study Update dated September 2000 for all new construction in the area within which the Property is located.

ARTICLE IV
DEFAULT; REMEDIES

4.1 Default. It shall be a default hereunder if either party fails to perform any of its obligations hereunder. The default may be cured within thirty (30) days after written notice from the non-defaulting party specifying in reasonable detail the nature of the failure; provided that if the nature of the default is such that it cannot reasonably be cured within the thirty-day period, the non-defaulting party's right to exercise its default remedies shall be suspended if the defaulting party commences a cure within that thirty-day period and diligently and expeditiously pursues such cure to completion.

4.1.1 Additional Developer Defaults. In addition to the foregoing, it shall be a default hereunder if: (a) Developer sells, assigns, conveys, or alienates the Property, or any part thereof, or any interest therein, or shall be divested of title or any interest therein in any manner or way, whether voluntarily or involuntarily other than in accordance with this Agreement; (b) any petition or application for a custodian, as defined by Title 11, United States Code, as amended from time to time (the "Bankruptcy Code") or for any form of relief under any provision of the Bankruptcy Code or any other law pertaining to reorganization, insolvency or readjustment of debts is filed by or against Developer or any partnership of which Developer is a partner, their respective assets or affairs, and such petition or application is not dismissed within ninety (90) days of such filing, (c) Developer makes an assignment for the benefit of creditors, is not paying material debts as they become due, or is granted an order for relief under any chapter of the Bankruptcy Code; (d) a custodian, as defined by the Bankruptcy Code, takes charge of any property of Developer or any property of any partnership of which Developer is a partner; (e) garnishment, attachment, levy or execution in an amount in excess of an amount equal to ten percent (10%) of its net worth is issued against any of the property or effects of Developer, or any partnership of which Developer is a partner, and such issuance is not bonded against within ninety (90) days; (f) the dissolution or termination of existence of Developer; or (g) there is a material default or material breach of any representation, warranty or covenant, or there is a material false statement or material omission, by Developer under any other document forming part of the transaction in respect of which this Agreement is made.

4.2 Dispute Resolution. If the parties cannot resolve any dispute that arises out of this agreement between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Developer and the City. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the City and the Developer shall request the presiding judge of the Superior Court in and for the County of Maricopa, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to commercial property development. The cost of any such mediation shall be divided equally between the City and Developer, or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation upon the conclusion of mediation.

4.3 Developer's Remedies. If the City is in default under this Agreement and the parties do not resolve the City's default pursuant to the nonbinding mediation described in Section 4.2 Developer shall have the right to terminate this Agreement upon written notice to the City. The Developer shall have the right to pursue all other legal and equitable remedies which the Developer may have at law or in equity, including, without limitation, the right to seek specific performance, the right to seek and obtain damages and the right to self-help; provided that in no event shall the City be liable for consequential or special damages, including lost profits.

4.4 City's Remedies. If the Developer is in default under this Agreement and the parties do not resolve the Developer's default pursuant to the nonbinding mediation described in Section 4.2, then the City shall have the right to terminate this Agreement immediately upon written notice to Developer and to pursue any other rights or remedies provided hereunder, at law or in equity.

4.5 Excused Delays in Performance as a Result of Force Majeure. In addition to any specific provisions of this Agreement, the performance by either party hereunder shall not be deemed to be in default where there is a delay in performance caused by or resulting from war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargos, lack of transportation, governmental restrictions or priority, unusually severe weather, inability (when the party required to perform is faultless) of any contractor, interruption in utilities (that is not the fault of the Developer), subcontractor or supplier to perform acts for such party, or acts or the failure to act of any public or governmental agent or entity, litigation relating to the Property initiated by a third party other than Developer or the City (and where the party claiming the executed delay is without fault in connection with such litigation) or any other causes beyond the control or without the fault of the party claiming an extension of time to perform (a "*force majeure*"), and the party affected by the force majeure event gives notice to the other party within five (5) business days after the occurrence of such event. In the event that any party to this Agreement is unable or fails to perform due to an event constituting a *force majeure* and such party has given the notice as provided above, and such excused delay is the proximate cause of the other party being unable or failing to perform in accordance with the terms of this Agreement, then the time for the performance of the other party shall also be extended for a period of time equal to the period of the delay plus a reasonable start-up period. Any extension of time resulting from a *force majeure* shall only be for the period of the *force majeure*.

ARTICLE V
TERMINATION

5.1 Termination of Development Rights. If City terminates this Agreement, the Developer shall have no further rights to develop the Property pursuant to this Development Agreement, and the City shall have no obligation to convey the Property to Developer.

ARTICLE VI
CONFLICT OF INTEREST; REPRESENTATIVES NOT INDIVIDUALLY LIABLE

6.1 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.

6.2 No Personal Liability. No member, manager, officer or employee of Developer shall be personally liable to City, or any successor or assignee, (a) in the event of any default or breach by the Developer, (b) for any amount which may become due to the City or its successor or assign, or (c) pursuant to any obligation of Developer under the terms of this Agreement.

6.3 No Personal Liability. No member, official or employee of the City shall be personally liable to Developer, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to the Developer or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

6.4 Liability and Indemnification. Developer hereby agrees to indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents from 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, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the performance of this Agreement by the Developer.

ARTICLE VII
NOTICES

7.1 Notices. All Notices which shall or may be given pursuant to this Agreement shall be in writing and transmitted by registered or certified mail, return receipt requested, addressed as follows:

If to Developer: Wisdom Tree Institute
4011 S. 16th St.
Phoenix, AZ 85040
PHONE: 602-243-1179
FAX: 602-304-1175

If to City: City of Tempe
31 E. 5th Street
Tempe, AZ 85281
ATTN: City Manager
PHONE: (480) 350-8884
FAX: (480) 350-8930

With a copy to: City Attorney
City of Tempe
PO BOX 5002
Tempe, Arizona 85280

Either party may designate any other address for this purpose by written notice to the other party in the manner described herein.

ARTICLE VIII
GENERAL PROVISIONS

8.1 Cooperation. The City and Developer hereby acknowledge and agree that they shall cooperate in good faith with each other and use best efforts to pursue the economic development of the Property as contemplated by this Agreement.

8.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

8.3 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 permitted successors and assigns of the parties hereto. Without the prior written consent of City, Developer shall not assign all or any portion of its interest in or rights to the Property or under this Agreement.

8.4 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.

8.5 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.

8.6 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 provided that the overall intent of the parties is not materially vitiated by such severability.

8.7 Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

8.8 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

8.9 Recordation of Agreement. 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.

8.10 Manager's Power to Consent. The City hereby acknowledges and agrees that any unnecessary delay hereunder would adversely affect the Developer and/or the development of the Property, and hereby authorizes and empowers the City Manager to consent to any and all requests of the Developer requiring the consent of the City hereunder without further action of the City Council, except for any actions requiring City Council approval as a matter of law, including, without limitation, any amendment or modification of this Agreement.

[THE BALANCE OF THIS PAGE IS BLANK INTENTIONALLY.
SIGNATURES APPEAR ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested to by the City Clerk, and the Developer has executed and sealed the same on or as of the day and year first above written.

ATTEST:

"CITY"

THE CITY OF TEMPE, an Arizona municipal corporation

_____
City Clerk

APPROVED AS TO FORM:

By_____
Hugh L. Hallman, Mayor

_____
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, whom I know personally to be the person whose name is subscribed to this instrument, 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

"DEVELOPER"

Wisdom Tree Institute,
an Arizona corporation

By:_____

Title:_____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 2008, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the _____ _____, of Wisdom Tree Institute, an Arizona corporation, whom I know personally to be the person whose name is subscribed to this instrument, 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 Public

NOTARY SEAL:

LIST OF EXHIBITS

Exhibit "A": Legal Description
Exhibit "B": Development Plan
Exhibit "C": Schedule of Performance
Exhibit "D": Form of Warranty Deed
Exhibit "E": Form of Lease

Exhibit A
Legal Description

A portion of City-owned property north of Rio Salado Parkway on either side of Hardy Drive, and currently known as ELEMENTS at TCA, a Planned Arts and Culture Community PHASE I

Exhibit B
Development Plan

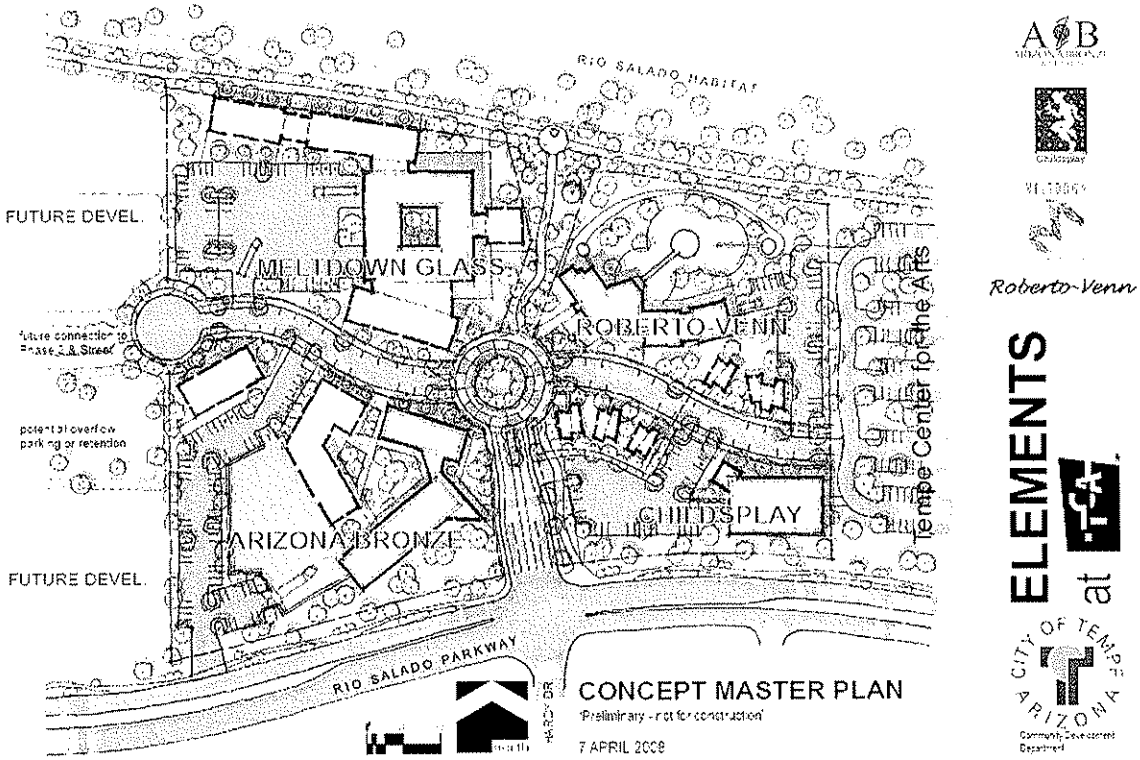


Exhibit C
Schedule of Performance

1. Effective Date + 90 days: Finalize Development Plan

2. Effective Date + 180 days: Finalize and record Plat

3. Effective Date + 240 days: Developer submits PAD

4. Thirty days after PAD approval, but not more than Effective Date + 2 years: Convey or Lease Property to Developer

5. Effective Date + 36 months: Construction of Improvements must have commenced and Developer shall thereafter diligently pursue construction to completion

Exhibit D
Deed

WHEN RECORDED, RETURN TO:

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

EXEMPT per ARS 11-1134.A.3

SPECIAL WARRANTY 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, **CITY OF TEMPE**, an Arizona municipal corporation (**"Grantor"**) does hereby convey to

_____ (**"Grantee"**) that certain real property described on Exhibit B attached hereto, including all improvements thereon and all appurtenances thereto (the **"Property"**).

Subject to taxes and assessments, reservations and all easements, rights-of-way, covenants, conditions, restrictions, liens and encumbrances of record or that would be shown by an accurate survey and to all possessory interests, Grantor does warrant and agree to defend the title against its acts and none other.

Exhibit E
Lease

GROUND LEASE AND AGREEMENT FOR CONSTRUCTION OF IMPROVEMENTS

This Ground Lease and Agreement for Construction of Improvements is entered this _____ of _____, 2008, between the City of Tempe ("Landlord" or "City"), a municipal corporation, and Wisdom Tree Institute, LLC, an Arizona limited liability company ("Tenant").

RECITALS

A. Landlord owns that parcel of land described in ***Exhibit "A"*** hereto, together with all rights and privileges appurtenant thereto and all future additions thereto or alterations thereof (collectively, the "Leased Premises").

B. Landlord and Tenant are parties to that certain Development and Disposition Agreement [Ordinance No. ____] dated _____, 2008, and recorded as Instrument No. 2008-_____in the Official Records of Maricopa County, Arizona (the "Development Agreement"), pursuant to which, subject to the satisfaction of the conditions described therein, the Landlord agreed to lease to Tenant, and the Tenant agreed to lease from Landlord, the Leased Premises.

C. Capitalized terms used herein without definition shall have the meanings given such terms in the Development Agreement.

AGREEMENT

NOW THEREFORE, the parties hereby agree as follows:

CONSTRUCTION OF IMPROVEMENTS.

A. Plans. Tenant shall diligently undertake to develop plans and specifications for the construction of the Improvements as described in the Development Agreement.

B. Construction. Tenant shall, at its own expense, commence construction of the Improvements, together with all on-site and off-site improvements required for proper operation of the Improvements. Commencement of construction shall mean the obtaining of required and necessary permits from the City, and the actual on-site continuous construction of the Improvements. If not previously provided, prior to commencement of construction, Tenant shall furnish to Landlord reasonably satisfactory evidence that Tenant has available sufficient funds to complete the construction.

All construction shall be performed pursuant to, and consistent with, all applicable state and local laws and regulation. In addition to any other access rights granted to

Landlord in this Lease, Landlord shall have the right to enter the Leased Premises during construction to verify compliance with all applicable laws and the provisions of this Lease. Tenant shall provide security for the construction site at its own expense, and shall be responsible for any vandalism, theft or criminal damage during construction. Construction of the Improvements shall be completed in accordance with the Schedule of Performance included in the Development Agreement, as it may be amended.

C. Parking. The Improvements shall include such parking facilities as are required by applicable zoning ordinances.

2. LEASED PREMISES.

The Leased Premises consist of the real property described on Exhibit A attached hereto and incorporated herein by reference, and references herein to the Leased Premises shall include the Improvements and all improvements to the real property constructed pursuant to this Lease, whether or not Landlord has obtained title to the Improvements and other improvements.

3. TERM; TERMINATION OPTION.

The term of this Lease shall be for a period of _____ (_____) years, commencing _____, 2008 and ending _____.

In the event changes in applicable law nullify, remove, reduce or vitiate the economic benefit to Tenant provided by this Lease, or if for any other reason, Tenant wishes to do so, or if any person or entity succeeds to Tenant's interest hereunder by foreclosure sale, trustee's sale, or deed in lieu of foreclosure (collectively, "Foreclosure"), Tenant or Tenant's successor by Foreclosure shall have the option, exercisable by written notice to Landlord, to terminate this Lease effective sixty (60) days after the date of the notice.

4. CONSIDERATION FOR LEASE.

Tenant shall pay to Landlord as rent for the Leased Premises the sum of One Dollar ($1.00) per year, payable in full in advance upon execution of this Lease.

[Insert additional arts-related consideration--scholarships and free performances]

5. USE OF PREMISES.

Tenant shall use the Leased Premises only for the purpose of constructing the Improvements and operating the business described in the Development Agreement, including any ancillary uses permitted by the Master CCRs. All operations and activities on the Leased Premises shall comply with applicable laws. The Leased Premises shall not be used for any purposes in violation of any zoning or other laws or of any regulation of any governmental body having jurisdiction over the Leased Premises. Tenant shall not discriminate against any individual in any way on account of such individual's race, color, religion, sex, age, handicap,

national origin, or sexual orientation. The Leased Premises shall not be used for any regularly organized/scheduled activity having, as its primary purpose, religious instruction.

6. UTILITIES.

A. Tenant shall be responsible for constructing all utility connections (such as sewer, power, water, etc.) required for proper operation of the Improvements, and shall pay the cost of all utilities associated with operating the Leased Premises and the Improvements, including without limitation, water, sewer, refuse collection, electric, gas, and telecommunications. Tenant shall obtain separate metering for all such utility charges and shall, at its own expense, see that such separate meters are installed on the Leased Premises. Tenant shall keep the Leased Premises free of any liens created by the Tenant's failure to make such utility payments.

B. Landlord Nonresponsibility. Except as otherwise set forth in the Development Agreement, as may be amended, Landlord shall have no responsibility, obligation or liability under this Lease whatsoever with respect to any of the following:

(i) utilities, including gas, heat, water, light, power, telephone, sewage, and any other utilities supplied to the Leased Premises;

(ii) disruption in the supply of services or utilities to the Leased Premises;

(iii) maintenance, repair or restoration of the Leased Premises;

(iv) any other cost, expense, duty, obligation, service or function related to the Leased Premises.

C. Tenant's Responsibility. Tenant shall have the responsibility, obligation, and liability for any and all expenses set forth in this ***Section 6***. In addition, Tenant shall pay upon demand by Landlord, all charges related to any improvement district liens together with any interest or late charges connected therewith which exist against the Leased Premises or which are imposed upon the Leased Premises during the existence of this Lease. If, during the term of this Lease, Landlord is required to pay any costs or expenses in connection with the ownership of the Leased Premises, Tenant shall indemnify, hold harmless, and immediately reimburse Landlord for any costs or expenses. Landlord during the term of this Lease shall not encumber or cause any lien to be imposed upon the Leased Premises except for any cost or expense that is imposed upon the Leased Premises during the normal course of government actions or is imposed by law.

7. INDEMNIFICATION.

Tenant shall indemnify and hold Landlord, its officers, directors, employees, and representatives harmless from and against any and all actions, claims, demands, judgments, reasonable attorneys' fees, costs, damages to persons or property, penalties, obligations, expenses or liabilities of any kind that may be asserted against Landlord arising from any use, nonuse, or condition of the Leased Premises created by or attributable to Tenant or its employees, customers, agents, invitees, licensees, or guests unless due to Landlord's gross negligence intentional misconduct. In the event that any action or proceeding shall be brought

against Landlord by reason of any claim referred to in this Paragraph, Tenant, upon written notice from Landlord, shall at Tenant's sole cost and expense, resist or defend the same through counsel selected by Tenant and reasonably approved by Landlord.

8. INSURANCE

A. Tenant shall not take possession of the Leased Premises or commence construction activities until Tenant has obtained all of the insurance required herein from a company or companies licensed to do business in the State of Arizona, and acceptable to Landlord, not to be unreasonably withheld or delayed, and Tenant shall continue to maintain all such insurance in full force and effect from the commencement construction activities until termination or expiration or termination of this Lease.

B. Tenant shall obtain and maintain the insurance coverage specified in ***"Exhibit B"*** attached hereto and incorporated herein; provided that Tenant need not obtain Worker's Compensation coverage until the first day that Tenant has engaged any person as an employee, and need not obtain Fire and Casualty Coverage until Tenant has completed construction of the Improvements.

C. On or prior to the Commencement Date, Tenant shall furnish Landlord with original certificates (or certified copies) of the aforementioned insurance policies, in form and with insurers acceptable to the City's Risk Manager (or designee). Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, and/or cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City's Risk Manager.

D. Tenant shall include all contractors and subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each contractor and subcontractor. All insurance coverage for contractors and subcontractors shall be subject to all of the requirements stated herein for Tenant.

9. FIRE AND OTHER CASUALTY.

A. Obligation to Rebuild. If some or all of the Leased Premises (including the Improvements and any other improvements) are damaged or destroyed, partially or totally from any cause whatsoever, whether or not such damage or destruction is covered by insurance, then Tenant shall repair, restore and rebuild the Leased Premises to its condition existing immediately prior to such damage or destruction and this Lease shall remain in full force and effect. Such repair, restoration and rebuilding (all of which are herein called "repair") shall be commenced within a reasonable time after such damage or destruction has occurred and shall be diligently pursued to completion.

B. Insurance Proceeds. The proceeds of any insurance maintained under this Lease shall be made available to Tenant for payment of costs and expense of repair, provided however, that such proceeds may be made available to Tenant subject to reasonable conditions, including, but not limited to contractor's certification of cost, retention of a percentage of such proceeds

pending, recordation of a notice of completion and a lien and completion bond to insure against mechanic's or materialmen's liens, all at the expense of Tenant. If the insurance proceeds are insufficient to cover the cost of repair, then any amounts required over the amount of the insurance proceeds received that are required to complete said repair shall be paid by Tenant. If the insurance proceeds are not made available to Tenant within 120 days after such damage or destruction, unless the amount of insurance coverage is in dispute with the insurance carrier, Tenant shall have the option for 30 days, commencing on the expiration of such 120-day period, to cancel this Lease. If Tenant exercises such option, Tenant shall have no further obligation hereunder and shall have no claim against Landlord. To exercise said option, Tenant shall give written notice to Landlord within said 30-day period, time being of the essence.

C. Damage Near End of Term. If the Leased Premises are partially destroyed or damaged during the last six months of the term of this Lease, Landlord may at its option, cancel and terminate this Lease as of the date of occurrence of such damage by giving written notice to Tenant within 30 days after the date of occurrence of such damage.

D. Abatement of Rent. Notwithstanding the partial or total destruction of the Leased Premises and any part thereof, and notwithstanding whether the casualty is insured or not, there shall be no abatement of rent or of any other obligation of Tenant hereunder by reason of such damage or destruction unless the Lease is terminated by virtue of other express terms of this Lease.

E. Waiver. Tenant waives any provision of Arizona Revised Statutes which relate to termination of leases when the thing leased is destroyed and agrees that such event shall be governed by the terms of this Lease.

10. LIENS.

Tenant shall not permit any liens to be placed on Leased Premises, but if the Leased Premises or any part thereof, or Tenant's leasehold interest therein, shall at any time during the term of this Lease become subject to any vendor's, mechanic's, laborer's, or materialmen's lien based upon the furnishing of material or labor to Tenant, Tenant shall cause the same, at Tenant's expense, to be discharged or bonded over within forty-five (45) days after notice thereof.

11. MAINTENANCE AND REPAIRS.

Tenant shall at all times, at its sole cost and expense, keep and maintain in good condition and in substantial repair the Leased Premises, including the Improvements and all other improvements of any kind erected, installed or made on or within the Leased Premises and including landscaping. Tenant shall at all times in the maintenance and use of the Leased Premises and the buildings, structures, facilities, improvements and equipment thereon, comply with all laws, ordinances and regulations pertaining thereto, and all conditions and restrictions set forth herein.

12. IMPROVEMENTS.

Other than the Improvements, Tenant shall not make any material alternation, improvement, addition or other installation at the Leased Premises without Landlord's prior written consent. If Tenant desires to make any such material alteration, improvement, addition or utility installation, Tenant shall submit a written request to Landlord, together with plans of the proposed alteration, improvement, addition or installation, and Tenant shall not commence such work unless and until the Landlord has granted its approval thereto in writing, which approval shall not be unreasonably withheld or delayed. Landlord may require that the work will be completed free and clear of liens and in a manner satisfactory to Landlord. Any alteration or improvement made by Tenant shall be completed expeditiously, subject to any delays beyond the control of Tenant, and in compliance with all laws and ordinances and all rules and regulations of any and all governmental authorities having jurisdiction of or over the Leased Premises.

13. NUISANCE.

Notwithstanding anything in this Lease to the contrary, Tenant shall not commit or permit any nuisance or other act, whether noise, odor, smoke, sewage, chemical wastes, or otherwise, which may disturb the quiet enjoyment of any owners of property in the area. Tenant shall not obstruct or cause to be obstructed any public or private roadways.

14. ASSIGNMENT.

A. Assignment, Subletting Prohibited. Tenant covenants not to assign this Lease nor to sublet the Leased Premises or any portion thereof, without the prior written consent of Landlord. No such assignment or subletting nor any written consent of Landlord to such assignment or subletting shall release or discharge Tenant from liability for full and complete performance of its obligation under this Lease.

B. Actions Constituting Assignment. If Tenant is a partnership, corporation, limited liability company or other legal entity, each of the following (voluntary, involuntary, by operation of law, or otherwise) shall constitute a prohibited assignment: (a) any change in the persons who are the owners or managers of Tenant, including without limitation any change between or among the persons who are the owners as of the date of this Lease, (b) any change in the persons who are the owners of the members and managers of Tenant, including without limitation any change between or among such persons, (c) any merger or consolidation of Tenant (whether in one transaction or in a series of transactions) with or into any other entity; (d) any sale, lease, transfer or other disposition of 20% or more of Tenant's assets (in one or a series of transactions); (e) any reorganization, dissolution or liquidation of Tenant; and (f) any pledge, hypothecation or encumbrance of any interest in Tenant.

15. MORTGAGE OF LEASED PREMISES.

A. Subject to the applicable provisions of this Lease, Tenant is hereby given the absolute right without the Landlord's consent to create a security interest in Tenant's leasehold interest under this Lease (and in any subleases and the rents, income and profits therefrom) by mortgage, deed of trust or collateral assignment or otherwise. Any such security interest shall be

referred to herein as a "Leasehold Mortgage," and the holder of a Leasehold Mortgage shall be referred to herein as a "Leasehold Mortgagee."

B. No liability for the performance of Tenant's covenants and agreements hereunder shall attach to or be imposed upon any Leasehold Mortgagee, unless such Leasehold Mortgagee forecloses its interest and becomes the Tenant hereunder, following which the liability shall attach only during the term of ownership of the leasehold estate by said Leasehold Mortgagee.

C. Landlord and Tenant shall cooperate in including in this Lease by suitable amendment from time to time any provision which may be reasonably requested by any proposed Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Lease, of allowing that Leasehold Mortgagee reasonable means to protect or preserve the lien of its Leasehold Mortgage upon the occurrence of a default under the terms of this Lease and of confirming the elimination of the ability of Tenant to modify, terminate or waive this Lease or any of its provisions without the prior written approval of the Leasehold Mortgagee. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the term or rent under this Lease nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

16. Taxes; Ground Lease Obligations.

A. Excise Tax . The Landlord and Tenant intend that the Leased Premises shall be subject to the government property lease excise tax rate pursuant to the provisions of A.R.S. § 42-6201-42-6209. In connection therewith, Landlord and Tenant shall cooperate with each other to cause to be prepared, executed and delivered such documents and instruments, and to process such applications and other materials, as may be necessary in order to effect the application of the government property lease excise tax as contemplated pursuant to the terms of the Development Agreement. Landlord shall cooperate with the Tenant in connection with ensuring the application of the government property lease excise tax to the Leased Premises and in connection with any protest or appeal made by Tenant as hereinafter contemplated.

B. Payment. Tenant shall pay and discharge all general and special real estate and/or personal property taxes and assessments levied or assessed against or with respect to the Improvements and the Leased Premises during the term hereof and all charges, assessments or other fees payable with respect to or arising out of the ground lease and all recorded deed restrictions affecting or relating to the Leased Premises. Any sales, use, excise or transaction privilege tax consequence incurred by Landlord because of this Lease or in relation to the Leased Premises or improvements included therein may be passed on to the Tenant either directly if applicable or as "additional rent."

C. Protest. Tenant may, at its own cost and expense protest and contest, by legal proceedings or otherwise, the validity or amount of any such tax or assessment herein agreed to be paid by Tenant and shall first pay said tax or assessment under protest if legally required as a condition to such protest and contest, and the Tenant shall not in the event of and during the bona

fide prosecution of such protest or proceedings be considered as in default with respect to the payment of such taxes or assessments in accordance with the terms of this Lease.

D. Procedure. Landlord agrees that any proceedings contesting the amount or validity of taxes or assessments levied against the Leased Premises or against the rentals payable hereunder may be filed or instituted in the name of Landlord or Tenant, as the case may require or permit, and the Landlord does hereby appoint the Tenant as its agent and attorney-in-fact, during the term of this Lease, to execute and deliver in the name of the Landlord any document, instrument or pleading as may be reasonably necessary or required in order to carry on any contest, protest or proceeding contemplated in this section. Tenant shall hold the Landlord harmless from any liability, damage or expense incurred or suffered in connection with such proceedings.

E. Allocation. All payments contemplated by this Section 6 shall be prorated for partial years at the commencement date and at the end of the Lease term.

F. Tax Attributes. Tenant shall be solely entitled to any tax attributes attributable to the Premises including, but not limited to, any depreciation, tax credits or other tax benefits.

17. QUIET ENJOYMENT.

Landlord covenants that, so long as Tenant shall faithfully perform the agreements and terms of this Lease, Tenant shall and may peaceably and quietly have, hold and enjoy the Leased Premises for the term hereby granted along with any extensions as provided hereunder.

18. SURRENDER.

A. Termination or Expiration. On the last day of the term of this Lease or upon any termination of this Lease, title to the Leased Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant; provided that upon request from Tenant Landlord shall execute and deliver: (i) a deed or bill of sale conveying without representation or warranty all of Landlord's right title and interest in the land and improvements to Tenant; (ii) a memorandum in recordable form reflecting the termination of this Lease; (iii) an assignment of Landlord's right, title and interest in and to all licenses, permits, guaranties and warranties relating to the ownership or operation of the Leased Premises to which Landlord is a party and which are assignable by Landlord, and (iv) such other reasonable and customary documents as may be required by Tenant or its title insurer including, without limitation, FIRPTA and mechanic's lien affidavits, to confirm the termination of this Lease and the vesting of title to the Leased Premises in Tenant.

B. Title and Warranties. Notwithstanding anything to the contrary in this section, Landlord shall convey the Leased Premises subject only to: (i) matters affecting title as of the date of this Lease, and (ii) matters created by or with the consent of Tenant. The Leased Premises shall be conveyed "AS IS" without representation or warranty whatsoever. Upon any reconveyance, Landlord shall satisfy all liens and monetary encumbrances on the Premises created by Landlord.

C. Expenses. All costs of title insurance, escrow fees, recording fees and other expenses of the reconveyance, except Landlord's own attorneys' fees, shall be paid by Tenant.

19. TRADE FIXTURES, MACHINERY AND EQUIPMENT.

Landlord agrees that all trade fixtures, machinery, equipment, furniture or other personal property of whatever kind and nature kept or installed on the Leased Premises by Tenant or Tenant's subtenants may be removed by Tenant or Tenant's subtenants, or their agents and employees, in their discretion, at any time and from time to time during the entire term or upon the expiration of this Lease. Tenant agrees that in the event of damage to the Leased Premises due to such removal it will reasonably repair or restore the same. For the benefit of any vendor, equipment lessor, chattel mortgagees or holders or owners of any trade fixtures, machinery, equipment, furniture or other personal property of any kind and description kept or installed on the Leased Premises by any subtenant, Landlord hereby waives, in favor of such vendor, equipment lessor, chattel mortgagee or any holder or owner, any lien, claim, interest or other right therein superior to that of such vendor, equipment lessor, chattel mortgagee, owner or holder.

20. ESTOPPEL CERTIFICATE.

Landlord shall at any time and from time to time upon not less then ten (10) days' prior written notice from Tenant or any Leasehold Mortgagee, without charge, execute, acknowledge and deliver to Tenant or the Leasehold Mortgagee a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the dates to which the rental and other charges are paid in advance, if any; (ii) acknowledging that there are not, to Landlord's knowledge, any uncured defaults on the part of Tenant hereunder, or specifying such defaults if they are claimed; and (iii) certifying such other matters relating to this Lease as Tenant or the Leasehold Mortgagee may reasonably request. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the leasehold estate and/or the improvements.

21. DEFAULT.

A. Default. The occurrence of any one or more of the following events and the continuance of such event beyond any applicable Grace Period, shall constitute a Default on the part of Tenant:

(i) Tenant fails to pay Rent or any other sum required to be paid by Tenant hereunder; or

(ii) Tenant fails to perform any covenant, condition, or agreement to be performed by Tenant pursuant to this Lease or breaches any representation or warranty made by Tenant in this Lease or otherwise in connection with the transaction of which this Lease is a part; or

(iii) Tenant abandons or evidences an intention to abandon the Premises, including without limitation the failure to commence reconstruction of the Improvements within a reasonable time after a casualty; or

(iv) Garnishment, attachment, levy or execution is issued against any of Tenant's property or effects; or

(v) A receiver, custodian or other similar officer is appointed to or does take charge of any part of the property of, or wind up the affairs of Tenant; or

(vi) Any petition or application for a custodian or for any form of relief under any provision of federal, state or local law pertaining to reorganization, insolvency or readjustment of debts is filed by or against Tenant and it is not discharged within 30 days; or

(vii) Tenant makes an assignment for the benefit of creditors, is not paying debts as they become due, or is granted an order for relief under any provision of federal, state or local law pertaining to reorganization, insolvency or readjustment of debts; or

(viii) Tenant is dissolved, liquidated or its existence is terminated voluntarily or by operation of law.

B. Grace Periods. "Grace Period" means the number of calendar days after Landlord gives notice in accordance with Section 29. If a Default involves Tenant's obligation to pay money, the applicable Grace Period shall be 10 days. If a Default involves the performance or non-performance of an act, or the occurrence or non-occurrence of an event or circumstance, the Grace Period shall be 90 days; provided that if the nature of the Default is such that it cannot reasonably be cured within 90 days, then no Default shall exist if Tenant commences the cure within 30 days and diligently pursues the same to completion within 180 days. Notwithstanding the foregoing, there shall be no Grace Period applicable to a Default based upon a breach of a representation or warranty of Tenant, or in the breach of Tenant's covenant to maintain insurance.

C. Landlord's Remedies. Landlord shall have the following remedies upon Tenant's default, which remedies shall not be exclusive, and are cumulative in addition to any remedies now or later allowed by law:

i. Landlord may cure the default at Tenant's expense. The cost of such cure shall be deemed Rent and shall be payable by Tenant upon demand by Landlord.

ii. Landlord may continue this Lease in full force and effect, and this Lease will continue in effect so long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to collect Rent when due. Tenant shall on demand peaceably surrender possession of the Leased Premises to Landlord. While Tenant is in Default, Landlord, in its own name or in the name of Tenant, may (to the extent allowable by law) operate and maintain all or any part of the Leased Premises (including the Improvements) to such extent as Beneficiary deems advisable, and may rent and lease the same to such persons, for such periods of time, and on such terms and conditions as Landlord in its sole discretion may determine. In such event, Landlord shall not be subject to any liability, charge, or obligation therefor to Tenant, other than for willful misconduct, and shall be entitled to operate any business then (to the extent allowable by law) being conducted or which could be conducted thereon or therewith at the expense of and for the account of Tenant, to the same extent as the owner thereof could do, and to apply the proceeds to the costs and expenses of such operation, including amount payable as rent hereunder. No act by Landlord allowed by this paragraph shall terminate this Lease unless Landlord notifies Tenant that Landlord elects to terminate this Lease.

iii. Landlord may terminate Tenant's right to possession of the Leased Premises at any time. Landlord may immediately reenter the Premises and distrain for Rent due and remove any property of Tenant or others remaining at the Premises, without liability or obligation of any kind to Tenant or any other person, without prior notice and without releasing Tenant from any of its obligations under this Lease. Landlord shall be entitled to recover from Tenant all damages incurred by reason of Tenant's Default.

iv. Landlord shall be entitled to recover from Tenant all of Landlords expenses, costs and damages arising out of any Default, including, but not limited to, cleanup, repair, alterations, refurbishing, security expenses, accounting costs, legal expenses (whether or not suit is brought), and costs and expenses of litigation.

v. Landlord may at any time thereafter, by written notice to Tenant terminate this Lease, in which case Tenant shall immediately surrender possession of the Premises to Landlord. This section constitutes the provision required under A.R.S. §42-6206(2) that failure by the prime lessee to pay the Tax after notice and an opportunity to cure is an event of default that could result in divesting the prime lessee of any interest or right or occupancy of the government property improvement.

vi. Landlord may also exercise any other rights Landlord may have at law or in equity. Landlord may exercise any remedy without court action, or by one or more court actions, and in exercising any remedy may obtain partial relief without waiving its right to further relief. The exercise of any remedy by Landlord shall not waive Landlord's right to exercise any other remedy.

vii. Except as otherwise provided herein, Landlord shall also be entitled to collect interest on any unpaid sums due from the date due or the date advanced until paid at the Default Rate.

D. Landlord Default. If Landlord fails to perform any of its obligations under this Lease, and such failure continues for thirty (30) days after written notice of default (or if more than thirty (30) days shall be required because of the nature of the default, if Landlord shall fail to commence the curing of such default within such thirty (30) day period and proceed diligently thereafter), then Landlord shall be responsible to Tenant for any actual damages sustained by Tenant as a result of Landlord's breach, but not special or consequential damages. Tenant shall have no right to terminate this Lease, except as expressly provided elsewhere in this Lease.

E. Leasehold Mortgagee Default Protections. If any Leasehold Mortgagee shall give written notice to Landlord of its Leasehold Mortgage, together with the name and address of the Leasehold Mortgagee, then, notwithstanding anything to the contrary in this Lease, until the time, if any, that the Leasehold Mortgage shall be satisfied and released of record or the Leasehold Mortgagee shall give to Landlord written notice that said Leasehold Mortgage has been satisfied:

i. No act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender, amend, or modify this Lease or Tenant's right to possession shall be binding upon or effective as against the Leasehold Mortgagee without its prior written consent.

ii. If Landlord shall give any notice, demand, election or other communication required hereunder (hereafter collectively "Notices") to Tenant hereunder, Landlord shall concurrently give a copy of each such Notice to the Leasehold Mortgagee at the address designated by the Leasehold Mortgagee. Such copies of Notices shall be sent by registered or certified mail, return receipt requested, and shall be deemed given seventy-two hours after the time such copy is deposited in a United States Post Office with postage charges prepaid, addressed to the Leasehold Mortgagee. No Notice given by Landlord to Tenant shall be binding upon or affect Tenant or the Leasehold Mortgagee unless a copy of the Notice shall be given to the Leasehold Mortgagee pursuant to this subsection. In the case of an assignment of the Leasehold Mortgage or change in address of the Leasehold Mortgagee, the assignee or Leasehold Mortgagee, by written notice to Landlord, may change the address to which such copies of Notices are to be sent.

iii. The Leasehold Mortgagee shall have the right for a period of sixty days after the expiration of any grace period afforded Tenant to perform any term, covenant, or condition and to remedy any default by Tenant hereunder or such longer period as the Leasehold Mortgagee may reasonably require to affect a cure, and Landlord shall accept such performance with the same force and effect as if furnished by Tenant, and the Leasehold Mortgagee shall thereby and hereby be subrogated to the rights of Landlord. The Leasehold Mortgagee shall have the right to enter upon the Premises to give such performance.

iv. In case of a default by Tenant in the performance or observance of any nonmonetary term, covenant or condition to be performed by it hereunder, if such default cannot practicably by cured by the Leasehold Mortgagee without taking possession of the Premises, in such Leasehold Mortgagee's reasonable opinion, or if such default is not susceptible of being cured by the Leasehold Mortgagee, then Landlord shall not serve a notice of lease termination, if and so long as the Leasehold Mortgagee proceeds diligently to obtain possession of the Premises

as mortgagee (including possession by a receiver), and, upon obtaining such possession, proceeds diligently to cure such defaults as are reasonably susceptible of cure (subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession); or the Leasehold Mortgagee institutes foreclosure proceedings and diligently prosecutes the same to completion (unless in the meantime it shall acquire Tenant's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure and subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession).

(v) The Leasehold Mortgagee shall not be required to obtain possession or to continue in possession as mortgagee of the Premises, or to continue to prosecute foreclosure proceedings, if and when the default is cured. If a Leasehold Mortgagee, its nominee, or a purchaser at a foreclosure sale shall acquire title to Tenant's leasehold estate hereunder, a default that is not reasonably susceptible to cure by the person succeeding to the leasehold interest shall no longer be deemed a default hereunder.

(vi) If any Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant, the times specified above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

(vii) No option of Tenant hereunder may be exercised, and no consent of Tenant allowed or required hereunder shall be effective without the prior written consent of any Leasehold Mortgagee.

F. Protection of Subtenants. Landlord covenants that notwithstanding any default under or termination of this Lease or of Tenant's possessory rights, Landlord: (i) so long as a subtenant within the Premises complies with the terms and conditions of its sublease, shall not disturb the peaceful possession of the subtenant under its sublease, and in the event of a default by a subtenant, Landlord may only disturb the possession or other rights of the subtenant as provided in the subtenant's sublease, (ii) shall recognize the continued existence of the sublease, (iii) shall accept the subtenant's attornment, as subtenant under the sublease, to Landlord, as landlord under the sublease, and (iv) shall be bound by the provisions of the sublease, including all options. Notwithstanding anything to the contrary in this Lease, no act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender or modify this Lease or Tenant's right to possession shall be binding upon or effective as against any subtenant without its prior written consent. The provisions of this subparagraph shall survive the expiration or any termination of this Lease, are intended to be self operative and no further agreement shall be required to implement the foregoing non-disturbance and recognition provisions.

G. Right to Lease. Landlord agrees that, in the event of termination of this Lease for any reason (including but not limited to any default by Tenant or a rejection of this Lease in bankruptcy by Tenant), Landlord, if requested by any Leasehold Mortgagee, will enter into a new lease of the Premises with the most senior Leasehold Mortgagee requesting a new lease, which new lease shall commence as of the date of termination of this Lease and shall run for the

remainder of the original term of this Lease, at the rent and upon the terms, covenants and conditions herein contained, provided:

Such Leasehold Mortgagee shall make written request upon Landlord for the new lease within sixty days after the date such Leasehold Mortgagee receives written notice from Landlord that the Lease has been terminated;

Such Leasehold Mortgagee shall pay to Landlord at the time of the execution and delivery of the new lease any and all sums which would, at that time, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto all reasonable expenses, including reasonable attorneys fees, which Landlord shall have incurred by reason of such termination;

Such Leasehold Mortgagee shall perform and observe all covenants in this Lease to be performed and observed by Tenant, and shall further remedy any other conditions which Tenant under the Lease was obligated to perform under its terms, to the extent the same are reasonably susceptible of being cured by the Leasehold Mortgagee; and

The Tenant under the new lease shall have the same right of occupancy to the buildings and improvements on the Premises as Tenant had under the Lease immediately prior to its termination.

Notwithstanding anything to the contrary expressed or implied in this Lease, any new lease made pursuant to this Section shall have the same priority as this Lease with respect to any mortgage, deed of trust, or other lien, charge, or encumbrance on the fee of the Premises, and any sublease under this Lease shall be a sublease under the new Lease and shall not be deemed to have been terminated by their termination of this Lease.

H. No Obligation. Nothing herein contained shall require any Leasehold Mortgagee to enter into a new lease pursuant or to cure any default of Tenant referred to above.

I. Possession. If any Leasehold Mortgagee shall demand a new lease, Landlord agrees, at the request of, on behalf of and at the expense of the Leasehold Mortgagee, upon a guaranty from it reasonably satisfactory to Landlord, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove the original Tenant from the Premises, but not any subtenants actually occupying the Premises or any part thereof.

22. INTEGRATION AND CONSTRUCTION.

This Lease represents the entire understanding of Landlord and Tenant as to those matters contained herein, and no prior oral or written understanding shall be of any force or effect with respect to those matters covered thereby. This Lease shall be governed by the laws of the State of Arizona and construed as if drafted by both Landlord and Tenant. This Lease is the product of an arms-length negotiation, and should not be presumably construed against either party.

23. AMENDMENT.

Any changes to this Lease must be approved by the Tempe City Council and the Tenant or its designee, unless said changes are to clarify and explain portions of this Lease and which will not effect the basic structure thereof. Any amendment hereto shall be in writing.

24. ATTORNEYS' FEES.

In the event that either party brings legal action to enforce any terms of this Lease, the prevailing party in said litigation shall be entitled to attorneys' fees in a reasonable amount.

25. TIME OF ESSENCE.

Time shall be of the essence in the performance of every term, covenant, and condition of this Lease.

26. HEADINGS.

The Paragraph Headings contained herein are inserted only for convenience of reference and are in no way to be construed as a part of this Lease or as a limitation of the scope of the particular paragraph to which they refer.

27. BENEFIT.

This Lease shall insure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrator, legal representatives, successors, and assigns.

28. RIGHT OF ENTRY.

Landlord or any of its agents shall have the right upon reasonable notice to enter upon the Leased Premises at any time during the term of this Lease to examine same for any purpose whatsoever.

29. NOTICES.

Notices as provided by this Lease shall be sent to the respective parties at the addresses set forth below.

Landlord:	City of Tempe City Manager's Office 31 East 5th Street Tempe, AZ 85281
With a copy to:	City of Tempe City Attorney's Office 21 East Sixth Street, Suite 201

Tempe, AZ 85281

Tenant: Wisdom Tree Institute

With a copy to:

IN WITNESS WHEREOF, the parties hereto have executed this Lease this ___ day of _____ 2008.

Landlord:

CITY OF TEMPE, a municipal corporation

By:_____
Hugh L. Hallman, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

Tenant:

Wisdom Tree Institute,
an Arizona corporation

By:_____
Title:_____

Exhibit A
Leased Premises

Exhibit B
(Insurance Requirements)

Minimum levels of insurance:

A. Commercial General Liability: $5,000,000 combined single limit per occurrence for bodily injury and property damage, including coverage for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products and completed operations. The general aggregate limit shall apply separately to the activities contemplated by this Agreement or the general aggregate shall be twice the required occurrence limit.

B. Liquor Liability: $5,000,000 single limit.

C. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage, including coverage for owned, hired, and non-owned vehicles as applicable.

D. Workers' Compensation and Employers' Liability: Workers' Compensation and Employers' Liability statutory limits as required by the State of Arizona.

E. Property: Property insurance, including an installation floater, on an all-risk form, including earthquake and flood, for 100% of the replacement value, with any deductible, not to exceed $5,000 (2% earthquake and flood). Such policy shall include the Tempe as a named insured as its interest may appear.

F. Fire and Extended Coverage. Tenant shall obtain and carry course-of-construction insurance while Tenant is constructing the community center and shall insure all Tenant constructed buildings, facilities and improvements to 100% of their replacement cost, using a standard form fire insurance policy containing the "Extended Coverage" endorsement.

G. Fidelity Bond: Tenant shall maintain throughout the term of this Agreement, at its expense, a blanket fidelity bond covering all officers and employees, in an amount not less than $7,500, with any deductible not to exceed $1,000, including Tempe as an additional oblige or loss payee as its interest may appear.

II. Deductibles and Self-Insured Retentions

A. Any deductibles or self-insured retentions must be declared and approved by the Tempe. At the option of Tempe, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Tempe, its officials, employees, and volunteers or Tenant shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

III. Other Insurance Provisions

The policies or self insurance certifications are to contain, or be endorsed to contain, the following provisions:

A. Commercial General Liability and Automobile Liability Coverage

1. Tempe, its officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of activities

performed by or on behalf of Tenant including the insured's general supervision of Tenant; products and completed operations of Tenant; premises owned, occupied or used by Tenant, or automobiles owned, leased, hired or borrowed by Tenant. The coverage shall contain no special limitations on the scope of protection afforded to Tempe, its officials, employees, or volunteers related to Tenant's, its employees', agents', subcontractors', or sub-subcontractors' activities pursuant to this Agreement.

2. Tenant's insurance coverage shall be primary as respects the Tempe, its officials, employees, and volunteers. Any insurance or self-insurance maintained by Tempe, its officials, employees, or volunteers shall be excess of Tenant's insurance and shall not contribute to it.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Tempe, its officials, employees, or volunteers.
4. Coverage shall state that Tenant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

B. Workers' Compensation and Employers' Liability Coverage

1. The insurer shall agree to waive all rights of subrogation against Tempe, its officials, employees and volunteers for losses arising from the activities performed by Tenant for Tempe pursuant to this Agreement.

C. All Coverages

1. Each insurance policy required by this Agreement shall be endorsed to state the coverage shall not be suspended, voided, and/or canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to Tempe.

IV. Other Insurance Requirements:

Tenant shall:

A. Prior to commencement of services, furnish Tempe with certificates of insurance, in form and with insurers acceptable to Tempe's Risk Manager (or designee) which shall clearly evidence all insurance required in this Agreement and provide that such insurance shall not be canceled, allowed to expire or be materially reduced in coverage except on thirty (30) days prior written notice to and approval by Tempe, and in accord with the stated insurance requirements of this Exhibit. Tempe shall not be obligated, however, to review same or to advise Tenant of any deficiencies in such policies and endorsements, and such receipt shall not relieve Tenant from, or be deemed a waiver of the Tempe's right to insist on, strict fulfillment of Tenant's obligations under this Agreement.

B. Provide certified copies of endorsements and policies if requested by Tempe in lieu of or in addition to certificates of insurance.

C. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of services.

D. Maintain such insurance from the time services commence until services are completed. Should any required insurance lapse during this Agreement term, requests for payments originating after such lapse shall not be processed until Tempe receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, Tempe may at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

E. Place such insurance with insurers and agents licensed and authorized to do business in Arizona and having a "Best's" rating of no less than A-VII.

F. Maintain such coverage continuously throughout the term of this Agreement and without lapse for a period of two years beyond this Agreement expiration, should any of the required insurance be provided under a claims-made form, to the extent that should occurrences during the Agreement term give rise to the claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies. Such extension of coverage shall be evidenced by annual certificates of insurance.

V. Subcontractors and Sub-Subcontractors

Tenant shall include all subcontractors and sub-subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor and sub-subcontractor. All coverage for subcontractors and sub-subcontractors shall be subject to all of the requirements stated herein for Tenant.

VI. Safety

Tenant shall be solely and completely responsible for conditions of the sites used pursuant to this Agreement, including the safety of all persons (including employees) and property at the sites, including any set-up at the sites and any take-down at the sites. This requirement shall apply continuously and not be limited to normal hours of the sites. Safety provisions shall conform to all applicable federal (including OSHA), state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. Tenant's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve it from compliance with the obligations set forth therein.