

EXHIBIT C
FORM OF LAND AND IMPROVEMENTS LEASE

LAND AND IMPROVEMENTS LEASE

THIS LAND AND IMPROVEMENTS LEASE (“Lease”) is made and entered into as of the _____ day of _____, 201____ (the “Effective Date”) by and between the CITY OF TEMPE, a municipal corporation (“Landlord”), and KBSII FOUNTAINHEAD, LLC, a Delaware limited liability company (“Tenant”).

RECITALS

- A. Landlord has title of record to the real property as described in *Exhibit A* hereto (the “Land”), together with all rights and privileges appurtenant thereto and all improvements and future additions thereto or alterations thereof (collectively with the Land, the “Premises”). A certificate of occupancy for the buildings currently located on the Premises was issued on _____. A Certificate of Occupancy (within the meaning of the hereafter-defined Development Agreement) for certain tenant improvements on the Premises was issued on _____.
- B. The buildings and other improvements on the Premises are "Government Property Improvements" under A.R.S. §42-6201(2). Landlord is a "Government Lessor" under A.R.S. §42-6201(1), and Tenant is a "Prime Lessee" under A.R.S. §42-6201(4).
- C. The Premises will be subject to the Government Property Lease Excise Tax as provided for under A.R.S. §42-6203 (A).
- D. The Premises will be subject to the Government Property Lease Excise Tax (the “Tax”) as pursuant to the provisions of A.R.S. §§ 42-6201 through 42-6209, inclusive, as in effect on May 20, 2010 which were reserved for the Premises in Resolution 2010.76. Landlord acknowledges that construction of tenant improvements on the Premises will result in improvements to and new uses of the Premises, in that Landlord and the general public will directly and indirectly realize substantial tangible and intangible benefits from such construction of the Premises described herein, including, without limitation, the facilitation of the expansion of the employment base within the City of Tempe, and other benefits more particularly described in that certain Development Agreement between Landlord and Bank of the West, a California banking corporation (“Bank”), and consented to by Tenant, dated _____, and recorded on _____ as Instrument No. _____, Official Records of

Maricopa County, Arizona (collectively, the "**Development Agreement**"). But for this Lease, and the benefits realized by this Lease that are being passed through to Bank, Bank would not have caused significant tenant improvements on the Premises to be constructed.

AGREEMENT

For and in consideration of the rental and of the covenants and agreements hereinafter set forth to be kept and performed by Tenant, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises for the term, at the rental and subject to and upon all of the terms, covenants and agreements hereinafter set forth.

1. Quiet Enjoyment. Landlord covenants and agrees with Tenant that conditioned upon Tenant's paying the Total Rent (defined in Section 3) herein provided and performing and fulfilling, in all material respects, the covenants, agreements, conditions and provisions herein to be kept, observed or performed by Tenant (taking into account any applicable cure period), Tenant may at all times during the term hereof peaceably, quietly and exclusively have, hold and enjoy the Premises.

2. Term. The Lease shall commence on the Effective Date and end upon the satisfaction of all, or, in connection with the Lease Termination Conditions set forth in Sections 2.2 and 2.3 below, the waiver by Tenant in writing of any portion or all of, such Lease Termination Conditions. For purposes of this Lease, the "**Lease Termination Conditions**" shall mean the following:

2.1 One of the following events has occurred (each an "**End of Term Event**"): (i) the time period of seven (7) years, commencing on the Effective Date and ending, at midnight on seventh (7th) anniversary of the Effective Date, (ii) an event has occurred that permits an earlier termination of this Lease and Landlord, Tenant or the applicable party has elected to exercise its rights to terminate this Lease, in each instance pursuant to the terms and conditions hereof, (iii) the Bank has elected to exercise its rights to terminate this Lease pursuant to the terms of the Development Agreement, (iv) the Bank or its permitted assignee is no longer in occupancy of the Property; or (v) this Lease is terminated by operation of applicable law;

2.2 The Reconveyance Documents (as defined in Section 31.2 below) have been properly executed and delivered by Landlord to Tenant or to a nationally recognized title insurance company selected by Tenant in its sole and absolute discretion (the "**Title Company**") no later than ten (10) days after the applicable End of Term Event, including, without the limitation, the Deed (as such term is defined in Section 31.2 below); and

2.3 Landlord has executed and delivered to the Title Company a confirmation by the City of Tempe attorney that the Landlord's resolution and/or ordinance that authorized this Lease remains in effect for purposes of authorizing the conveyance described in Section 2.2 above, and affidavits in the form of Exhibit E (the "**Landlord**

Title Affidavits"), and Landlord has caused to be removed and released from the Land any liens, encumbrances or other matters caused by or through Landlord, including any matters alleged to have been caused by or through Landlord.

Notwithstanding anything stated to the contrary in this Lease or the Development Agreement, the Lease shall not terminate (and shall continue in full force and effect) unless and until each of the Lease Termination Conditions have been satisfied in full.

3. Rental.

3.1 General Method of Calculation. Tenant covenants to pay to Landlord as rental for the Premises the sum calculated as set forth below per year on January 1 of each calendar year (the "**Rent Payment Date**"), commencing with January 1, 2018, and if the Effective Date falls on a date other than January 1, 2018, then also upon the Effective Date, for the portion of the calendar year that elapses between the Effective Date and January 1, 2018 (the "**Total Rent**"). Subject to further clarification set forth in **Sections 3.2, 3.3 and 3.4**, the Total Rent shall be calculated as follows: the Landlord's share of ad valorem taxes that would have been assessed by the Maricopa County Treasurer for the Premises during the calendar year that precedes the Rent Payment Date ("**Ad Valorem Taxes**"), as reasonably determined using the tax rates and valuations applicable for such period, less the Landlord's share of the Government Property Lease Excise Taxes (or equivalent taxes) ("**GPLET Taxes**") as set forth in the Arizona Revised Statutes sections 42-6203 and 42-6205 respectively, for the calendar year that precedes the Rent Payment Date.

3.2 Rent Due on January 1, 2018. For the calendar year of 2018, the Total Rent shall be \$192,646. This amount was calculated as follows: the Ad Valorem Taxes applicable to the Premises for 2017 are established, as depicted on the detailed tax statement attached hereto as **Exhibit F** and total \$1,629,828, with the Landlord's proportion being \$285,913 or 17.5425% [i.e., Landlord's proportion is comprised of the line item "City of Tempe" for \$106,022, and the line item "City of Tempe Bonds" for \$179,891]. The GPLET Taxes for 2017 (calculated as if this Lease was in effect during calendar year 2017) total \$1,332,407 with the Landlord's proportion (i.e., 7% as stated in A.R.S. §§ 42-6205) being calculated as \$93,268. The difference between the Landlord's portion of Ad Valorem Taxes of \$285,913 minus the Landlord's portion of the GPLET Taxes of \$93,268 results in a Total Rent payment of \$192,646 for calendar year 2018, and such sum shall be due and payable on or before January 1, 2018.

3.3 Rent Due on Effective Date. If the Effective Date of this Lease occurs prior to January 1, 2018, then the Total Rent for the period commencing on the Effective Date and ending on December 1, 2017 shall be \$16,050, which is calculated as follows: the annualized sum of \$192,646, prorated on a daily basis for the number of days in such period (i.e., 30 days). The foregoing sum shall be due and payable on the Effective Date.

3.4 Rent Due for each Calendar Year after 2018. For the calendar year of 2019, and each calendar year thereafter during the term of this Lease, the Total Rent shall be calculated in accordance with the formula set forth in **Section 3.1**. On or before October 15, 2018, and continuing on October 15 of each calendar year thereafter during the term of this

Lease, Tenant shall provide to Landlord the calculation of the Total Rent due by Tenant on or before January 1 immediately following such October 15 date. Tenant's calculation shall include the tax rates and valuations from the Maricopa County Treasurer applicable to the Premises received immediately prior to Tenant's calculation (i.e., the tax rates and valuations attributable to the calendar year in which Tenant is preparing the calculation), and the GPLET Taxes for the same calendar year, together with Landlord's portion of the Ad Valorem Taxes and GPLET Taxes as established by the Maricopa County Treasurer. If Tenant's calculation of the Total Rent does not comply with the requirements of this Lease, then Landlord shall notify Tenant within fifteen (15) days after receipt of Tenant's calculation, and Landlord and Tenant shall promptly mutually calculate the Total Rent based on the requirements of this Lease. If Tenant fails to provide to Landlord the calculation of the Total Rent on or before October 15 of any applicable year during the Lease term, then Landlord shall determine the Total Rent in accordance with this Lease and deliver the calculation to Tenant on or before November 15 of such year.

3.5 Prepayment of Rent. Tenant, at its option and without prejudice to its right to terminate this Lease as provided herein, may prepay the Total Rent for the entire Lease term (in which event the sum shall be reasonably estimated and agreed upon by both the Landlord and Tenant), but upon any early termination of this Lease, Landlord shall not be obligated to refund any portion of the prepaid Total Rent.

4. Leasehold Mortgage of Premises and Protections.

4.1 Tenant's Right to Encumber Leasehold Estate. 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, 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.**"

4.2 No Liability for Tenant's Performance. 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.

4.3 Landlord's Consents. Landlord hereby consents to, and agrees that any Leasehold Mortgage may contain any provisions agreed upon between Tenant and Leasehold Mortgagee and Landlord shall not have any right to approve the same; provided that Landlord shall have no responsibility, obligation or liability for any such amounts secured by such Leasehold Mortgage, and any Leasehold Mortgagee shall only have the right to foreclose under its Leasehold Mortgage and Landlord shall have no personal liability thereunder. Furthermore, Landlord hereby consents to, and agrees that any such Leasehold Mortgage may provide for an assignment of Tenant's right, if any, to terminate, cancel, modify, change, supplement, alter or amend this Lease, including without limitation Tenant's right under Section 365(h)(1) of the

Federal Bankruptcy Code to elect to treat this Lease as terminated, and an assignment of all of Tenant's other rights under the Federal Bankruptcy Code.

4.4 No Voluntary Surrender. Without the written consent of all Leasehold Mortgagees, Landlord agrees not to accept a voluntary surrender of this Lease at any time while the Leasehold Mortgage of any Leasehold Mortgagee shall remain a lien on the leasehold estate hereunder. It shall be Tenant's responsibility to provide such written consent to Landlord if and when Tenant offers such voluntary surrender to Landlord.

4.5 Permitted Transfers.

4.5.1 Notwithstanding anything stated to the contrary in this Lease, the following transfers shall be permitted and shall not require the approval or consent of Landlord:

(i) A transfer of this Lease at foreclosure sale under the Leasehold Mortgage, whether pursuant to the power of sale contained therein or a judicial foreclosure decree, or by an assignment in lieu of foreclosure, or

(ii) Any subsequent transfer by the Leasehold Mortgagee or its nominee or designee if the Leasehold Mortgagee, or such nominee or designee, is the purchaser at such foreclosure sale or under such assignment in lieu of foreclosure.

4.5.2 Any such transferee shall be liable to perform the obligations of Tenant under this Lease only so long as such transferee holds title to the leasehold estate hereunder, provided that upon any conveyance of title, such transferee's transferee expressly assumes and agrees to perform all of the obligations of this Lease first arising after the date of such conveyance; provided, however, if there is an existing monetary default or curable non-monetary default (e.g., a bankruptcy of the Tenant) under this Lease prior to such transfer, such transfer shall not be deemed to cure such monetary default or curable non-monetary default and Landlord shall be entitled to exercise its remedies under this Lease relating to such uncured default. For avoidance of doubt, any default that can be cured with the payment of money shall be a monetary default for purposes of this **Section 4.5.2**.

4.6 Waiver of Subrogation. Any policy of hazard insurance insuring Landlord shall contain an endorsement waiving the insurer's right of subrogation as against the Leasehold Mortgagee and Tenant.

4.7 Accommodation Mortgage. Landlord will duly consider (but does not hereby commit to agree to same) any request of any Leasehold Mortgagee and Landlord that Landlord execute and deliver to such Leasehold Mortgagee a deed of trust or mortgage (the "**Fee Mortgage**"), in the form of Leasehold Mortgagee's Leasehold Mortgage, encumbering the Premises and securing all amounts secured by the Leasehold Mortgage; provided that Landlord shall have no responsibility, obligation or liability for any such amounts secured by such Leasehold Mortgage and/or Fee Mortgage, and any Leasehold Mortgagee shall only have the

right to foreclose under its Leasehold Mortgage and/or Fee Mortgage and Landlord shall have no personal liability thereunder.

5. Taxes; Lease Obligations.

5.1 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 Premises during the term hereof and all charges, assessments or other fees payable with respect to or arising out of this Lease and all recorded deed restrictions affecting or relating to the Premises. Any sales, use, excise or transaction privilege tax consequence incurred by Landlord because of this Lease or in relation to the Premises or improvements included therein may be passed on to the Tenant either directly if applicable or as “additional rent.”

5.2 Payment of Government Property Lease Excise Tax. Tenant shall be obligated to pay pursuant to applicable law all Government Property Lease Excise Taxes with respect to this Lease. As required under A.R.S. §42-6206, Tenant is hereby notified of its tax liability under the Government Property Lease Excise Tax provisions of A.R.S. §42-6201 through 42-6209, as now or hereafter amended. Failure by Tenant to pay the Tax after notice and an opportunity to cure could result in divesting Tenant of any interest in or occupancy of the Government Property Improvements to which this Lease applies.

5.3 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 Tenant shall not in the event of and during the bona fide prosecution of such protest or proceedings be considered in default with respect to the payment of such taxes or assessments in accordance with the terms of this Lease.

5.4 Procedure. In connection with any Tenant protest and contest referenced in **Section 5.3** above that Tenant affirmatively elects to, and/or actively, pursues, Landlord agrees that any proceedings contesting the amount or validity of taxes or assessments levied against the 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 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 Landlord harmless from any liability, damage or expense incurred or suffered in connection with any Tenant protest and contest referenced in **Section 5.3** above that Tenant affirmatively elects to, and/or actively, pursues.

5.5 Indemnity Obligations. Notwithstanding anything stated to the contrary contained in this Lease, and without limiting Tenant’s express indemnity obligations contained in **Section 5.4** above or **Section 12** below, Landlord hereby acknowledges and agrees that Tenant shall have no duty to defend or obligation to indemnify the City from any liability, damage or expense incurred or suffered in connection with any claims, legal proceedings or other contests of the validity or enforceability of this Lease or the amounts of any government property lease

excise tax or similar tax agreed to be paid by Tenant under this Lease that are brought against Landlord that are unrelated to any Tenant protest and/or contest of such tax referenced in **Section 5.3** of this Lease.

5.6 **Allocation.** All payments contemplated by this **Section 5** shall be prorated for partial years at the Effective Date and at the end of the Lease term.

6. **Use.** Subject to the applicable provisions of this Lease and A.R.S. §42-6201(2), the Premises may be used and occupied by Tenant for any lawful purpose, including without limitation the sale of alcoholic beverages, subject to Tenant obtaining all required permits, licenses, and approvals from the Arizona Department of Liquor Licenses and Control.

7. **Landlord Non-Responsibility.** Landlord shall have no responsibility, obligation or liability under this Lease whatsoever with respect to any of the following:

7.1 Utilities, including gas, heat, water, light, power, telephone, sewage, and any other utilities supplied to the Premises;

7.2 Disruption in the supply of services or utilities to the Premises;

7.3 Maintenance, repair or restoration of the Premises; and

7.4 Any other cost, expense, duty, obligation, service or function related to the Premises.

8. **Entry by Landlord.** Landlord and Landlord's agents shall have the right at reasonable times and upon reasonable notice to enter upon the Premises for inspection, except that Landlord shall have no right to enter portions of any building on the Premises without the prior written consent of the occupant or as provided by law.

9. **Alterations.** Subject to the applicable provisions of this Lease, Tenant shall have the right, in its sole and absolute discretion, and without the consent of Landlord, to construct additional improvements on the Premises, and to make subsequent alterations, additions or other changes to any improvements or fixtures on the Premises existing from time to time, and the Premises shall constitute all such improvements as they exist from time to time. In connection with any action which Tenant may take with respect to Tenant's rights pursuant hereto, Landlord shall not be responsible for and Tenant shall pay all costs, expenses and liabilities arising out of or in any way connected with such improvements, alterations, additions or other changes made by Tenant, including without limitation materialmen's and mechanics' liens. Tenant covenants and agrees that Landlord shall not be called upon or be obligated to make any improvements, alterations or repairs whatsoever in or about the Premises, and Landlord shall not be liable or accountable for any damages to the Premises or any property located thereon. Tenant shall have the right, in its sole and absolute discretion, and without the consent of Landlord, at any time to demolish or substantially demolish improvements located upon the Premises; provided, however, that this Lease shall terminate if the improvements are demolished (subject to satisfaction of the Lease Termination Conditions). In making improvements and alterations, Tenant shall not be

deemed Landlord's agent and shall hold Landlord harmless from any expense or damage Landlord may incur or suffer. During the term of this Lease, title to all improvements shall at all times be vested in Landlord.

10. Easements, Dedications and Other Matters. At the request of Tenant, and provided that no Event of Default (as defined in **Section 17.1**) shall have then occurred and be continuing, Landlord shall dedicate or initiate a request for dedication to public use of the improvements owned by Landlord within any roads, alleys or easements and convey any portion so dedicated to the appropriate governmental authority, execute (or participate in a request for initiation by the appropriate commission or department of) petitions seeking annexation or change in zoning for all or a portion of the Premises, consent to the making and recording, or either, of any map, plat, condominium documents, or declaration of covenants, conditions and restrictions of or relating to the Premises or any part thereof, join in granting any easements on the Premises, and execute and deliver (in recordable form where appropriate) all other instruments and perform all other acts reasonably necessary or appropriate to the development, construction, demolition, redevelopment or reconstruction of the Premises.

11. Insurance. During the term of this Lease, the Tenant shall, at Tenant's expense, maintain general public liability insurance against claims for personal injury, death or property damage occurring in, upon or about the Premises with limits of liability no less than \$5,000,000.00 combined single limit. All of Tenant's policies of liability insurance shall name Landlord and all Leasehold Mortgagees as additional insureds, and, at the written request of Landlord, certificates with respect to all policies of insurance or copies thereof required to be carried by Tenant under this Section 11 shall be delivered to Landlord. Each policy shall contain an endorsement prohibiting cancellation or non-renewal without at least thirty (30) days prior notice to Landlord (ten (10) days for nonpayment). Tenant may self-insure the coverages required by this Section with the prior approval of Landlord, which will not be unreasonably withheld, and may maintain such reasonable deductibles and retention amounts as Tenant may determine.

12. Liability; Indemnity. Tenant covenants and agrees that Landlord is to be free from liability and claim for damages by reason of any injury to any person or persons, including Tenant, or property of any kind whatsoever and to whomsoever while in, upon or in any way connected with the Premises during the term of this Lease or any extension hereof, or any occupancy hereunder, Tenant hereby covenanting and agreeing to indemnify and save harmless Landlord from all liability, loss, costs and obligations on account of or arising out of any such injuries or losses, however occurring, unless caused by the sole negligence or willful misconduct of Landlord, its agents, employees, or invitees. Landlord agrees that Tenant shall have the right to contest the validity of any and all such claims and defend, settle and compromise any and all such claims of any kind or character and by whomsoever claimed, in the name of Landlord, as Tenant may deem necessary, provided that the expenses thereof shall be paid by Tenant. The provisions of this Section shall survive the expiration or other termination of this Lease for a period of two (2) years.

13. Fire and Other Casualty. In the event that all or any portion of any improvements or fixtures within the Premises shall be totally or partially destroyed or damaged by fire or other

casualty, then this Lease shall continue in full force and effect, and Tenant, at Tenant's sole cost and expense, may, but shall not be obligated to, rebuild or repair the same. Landlord and Tenant agree that the provisions of A.R.S. § 33-343 shall not apply to this Lease. In the event that Tenant elects to repair or rebuild the improvements, any such repair or rebuilding shall be performed at the sole cost and expense of Tenant. If there are insurance proceeds resulting from such damage or destruction, Tenant shall be solely entitled to such proceeds, whether or not Tenant rebuilds or repairs the improvements or fixtures, subject to the applicable provisions of any Leasehold Mortgage.

14. Condemnation.

14.1 Entire or Partial Condemnation. If the whole or any part of the Premises shall be taken or condemned by any competent authority for any public use or purposes during the term of the Lease, this Lease shall terminate with respect to the part of the Premises so taken and Tenant reserves unto itself the exclusive right to claim and prosecute its claim in all appropriate courts and agencies for any award or damages based upon loss, damage or injury to its leasehold interest (as well as relocation and moving costs). In consideration of Bank's payment for all of the cost of construction of significant tenant improvements constituting the Premises, Landlord hereby assigns to Tenant all claims, awards and entitlements relating to the Premises arising from the exercise of the power of condemnation or eminent domain. Notwithstanding anything stated to the contrary in this Lease, Tenant shall also have the exclusive right (and the Landlord shall have no right) to claim and prosecute any claim in all appropriate courts and agencies for any award or damages based upon loss, damage or injury related to the fee interest in the Premises (including, but not limited to, receiving payment for the full value of the fee interest in the Premises), and Landlord hereby covenants to execute and deliver in the name of Landlord any document, instrument or pleading as may be reasonably necessary or required in order for Tenant to pursue its rights as contemplated in this Section.

14.2 Continuation of Lease. In the event of a taking of less than all of the Premises, this Lease shall continue in effect with respect to the portion of the Premises not so taken.

14.3 Temporary Taking. If the temporary use of the whole or any part of the Premises or the appurtenances thereto shall be taken, the term of this Lease shall not be reduced or affected in any way. The entire award of such taking (whether paid by way of damages, rent, or otherwise) shall be payable to Tenant, subject to the applicable provisions of any Leasehold Mortgage.

14.4 Notice of Condemnation. In the event any action is filed to condemn the Premises or Tenant's leasehold estate or any part thereof by any public or quasi-public authority under the power of eminent domain or in the event that an action is filed to acquire the temporary use of the Premises or Tenant's leasehold estate or any part thereof, or in the event that action is threatened or any public or quasi-public authority communicates to Landlord or Tenant its desire to acquire the temporary use thereof, by a voluntary conveyance or transfer in lieu of condemnation, either Landlord or Tenant shall give prompt notice thereof to the other and to any Leasehold Mortgagee. Landlord, Tenant and each Leasehold Mortgagee shall each have the

right, at its own cost and expense, to represent its respective interest in each proceeding, negotiation or settlement with respect to any taking or threatened taking. No agreement, settlement, conveyance or transfer to or with the condemning authority affecting Tenant's leasehold interest shall be made without the consent of Tenant and each Leasehold Mortgagee.

15. Termination Option.

15.1 Grant of Option. 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**"), such successor by Foreclosure shall have the option ("**Option**"), exercisable by written notice to Landlord, to terminate this Lease, effective thirty (30) days after the date of the notice, subject to the satisfaction of the Lease Termination Conditions. Upon default under the Leasehold Mortgage (after giving effect to all applicable notice and cure rights), Leasehold Mortgagee shall have the option, exercisable by written notice to Landlord, to terminate this Lease effective twenty (20) days after the date of the notice, subject to the satisfaction (or waiver by such person succeeding to Tenant's interest thereunder) of the Lease Termination Conditions.

15.2 Title Vesting in Tenant. Simultaneously with, and effective as of, any termination of this Lease, title to the Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant and, without limitation of the foregoing, Landlord shall comply with the Lease Termination Conditions and the obligations under **Article 31**.

15.3 Termination Right of Tenant. Notwithstanding anything stated to the contrary contained herein, Tenant shall have the right to terminate this Lease effective thirty (30) days after the date written notice to Landlord, subject to the satisfaction (or waiver by Tenant) of the Lease Termination Conditions and Tenant obtaining the prior written consent of any Leasehold Mortgagee, which consent may be granted or withheld in such Leasehold Mortgagee's sole and absolute discretion.

16. Assignment; Subletting.

16.1 Transfer by Tenant. At any time and from time to time Tenant shall have the right (in its sole discretion) to assign this Lease and Tenant's leasehold interest or to sublease all of or any part of the Premises to any person or entity for any use permitted under this Lease, without the consent of the Landlord.

16.2 Liability. Each assignee, other than any residential subtenant, hereby assumes all of the obligations of Tenant under this Lease (but not for liabilities or obligations arising prior to such assignment becoming effective). Each assignment shall automatically release the assignor from any personal liability in respect of any obligations or liabilities arising under this Lease from and after the date of assignment, and Landlord shall not seek recourse for any such liability against any assignor or its personal assets. Landlord agrees that performance by a subtenant or assignee of Tenant's obligations under this Lease shall satisfy Tenant's obligations hereunder and Landlord shall accept performance by any such subtenant.

17. Default Remedies; Protection of Leasehold Mortgagee and Subtenants.

17.1 Default. The failure by Tenant to observe and perform any material provision of this Lease to be observed or performed by Tenant, or a failure by Tenant to pay any Tax when due, where such failure continues for sixty (60) days after written notice thereof by Landlord to Tenant, shall constitute an “**Event of Default**”; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such sixty (60) day period, no Event of Default shall be deemed to have occurred if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.

17.2 Remedies. Upon the occurrence of an Event of Default, Landlord may at any time during the continuance thereof, by written notice to Tenant, terminate this Lease (subject to satisfaction of the Lease Termination Conditions), 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. Tenant acknowledges that Landlord may also terminate this Lease upon the occurrence of certain Events of Default (as defined in the Development Agreement), subject to satisfaction of the Lease Termination Conditions.

17.3 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, Landlord shall provide written notice of any default under this Lease to Leasehold Mortgagee and Leasehold Mortgagee shall have the rights described in **Section 20** of this Lease.

18. Consent of Leasehold Mortgagee. 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.

19. Notice to Leasehold Mortgagee. 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 to the Leasehold Mortgagee shall be sent by registered or certified mail, return receipt requested or by overnight delivery, and shall be deemed given seventy-two (72) hours after the time such copy is deposited in a United States Post Office with postage charges prepaid, addressed to the Leasehold Mortgagee or when received if sent by overnight mail. 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 Section. Tenant irrevocably directs that Landlord accept, and Landlord agrees to accept, performance and compliance by any such Leasehold Mortgagee of and with any term, covenant, agreement,

provision, condition or limitation on Tenant's part to be kept, observed or performed hereunder with the same force and effect as though kept, observed or performed by Tenant. 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.

20. Leasehold Mortgagee Cure Rights. Notwithstanding anything stated to the contrary in this Lease, this Lease shall not be terminated because of a default or breach hereunder on the part of Tenant until and unless:

20.1 Written notice of any such default or breach has been delivered to Leasehold Mortgagee in accordance with the provisions of **Section 19** above;

20.2 With respect to a default or breach that is curable solely by the payment of money, Leasehold Mortgagee and Tenant have failed to cure such default or breach within sixty (60) days following the expiration of any of Tenant's notice and cure periods set forth herein; and

20.3 With respect to a default or breach that is not curable solely by the payment of money, Leasehold Mortgagee and Tenant have failed to cure such default or breach within ninety (90) days following the expiration of any of Tenant's notice and cure periods set forth herein or, if such default or breach is curable but cannot be cured within such time period, (A) Leasehold Mortgagee and/or Tenant has failed to notify Landlord within such time period that Leasehold Mortgagee intends to cure such default or breach, (B) Leasehold Mortgagee and/or Tenant fails to diligently commence to cure such default or breach, or (C) Leasehold Mortgagee and/or Tenant fails to prosecute such cure to completion. It is expressly understood and agreed that no Leasehold Mortgagee shall have any obligation hereunder to cure or complete any cure of any breach or default by Tenant hereunder.

The Leasehold Mortgagee shall have the right to enter upon the Premises to give such performance.

21. Prosecution of Foreclosure or Other Proceedings. In case of an Event of 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 be 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 pursuant to **Section 17.2**, if and so long as:

(i) the Leasehold Mortgagee shall proceed diligently to obtain possession of the Premises as mortgagee (including possession by a receiver), and, upon obtaining such possession, shall proceed diligently to cure Events of Default 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

(ii) the Leasehold Mortgagee shall institute foreclosure proceedings and diligently prosecute 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).

22. Effect of Cure Upon Event of Default. The Leasehold Mortgagee shall not be required to obtain possession or to continue in possession as mortgagee of the Premises pursuant to **Section 21(i)** above, or to continue to prosecute foreclosure proceedings pursuant to **Section 21(ii)** above, if and when such Event of Default shall be cured. If a Leasehold Mortgagee, its nominee, or a purchaser at a foreclosure sale shall acquire title to Tenant's leasehold estate hereunder, an Event of Default that is not reasonably susceptible to cure by the person succeeding to the leasehold interest shall no longer be deemed an Event of Default hereunder.

23. Extension of Foreclosure or Other Proceedings. 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 in **Sections 21(i) and (ii)** above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

24. Additional Consent of Leasehold Mortgagee. 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.

24.1 Protection of Subtenant. 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 Tenant'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, and shall execute documents as may be reasonably required by such subtenants to evidence these agreements. 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.

25. New Lease.

25.1 Right to Lease. Subject to the provisions of **Section 25.4** below, and subject to Leasehold Mortgagee's rights hereunder or reconveyance to Tenant of the fee interest in the Premises by Landlord pursuant to the terms of this Lease, Landlord agrees that, upon the occurrence of an End of Term Event (including but not limited to any Event of Default 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, and shall be at the same rent and upon the same terms, covenants and conditions of this Lease, provided:

a. Such Leasehold Mortgagee shall make written request upon Landlord for the new lease within sixty (60) days after the date such Leasehold Mortgagee receives written notice from Landlord that the Lease has been terminated;

b. 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; and

c. 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.

25.2 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.

25.3 Notwithstanding anything to the contrary expressed or implied in this Lease, any new lease made pursuant to this **Section 25** 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.

25.4 Notwithstanding anything stated to the contrary in this **Section 25**, in lieu of Landlord entering into a new lease of the Premises with the most senior Leasehold Mortgagee requesting a new lease, Landlord may elect to convey its fee interest in the Premises to Leasehold Mortgagee consistent with the terms and conditions set forth in **Sections 2.2** and **2.3**.

26. No Obligation. Nothing herein contained shall require any Leasehold Mortgagee to cure any default of Tenant referred to above.

27. [Intentionally deleted]

28. Grace Period. Unless and until Landlord has received notice from each Leasehold Mortgagee that the Leasehold Mortgagee elects not to demand a new lease as provided in **Section 25** (or to receive fee title to the Premises in accordance with the provisions of **Section 25.4** above), or until the period therefore has expired, Landlord shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new leases or subleases with respect to the Premises without the prior written consent of each Leasehold Mortgagee.

29. Effect of Transfer. Neither the foreclosure of any Leasehold Mortgage (whether by judicial proceedings or by virtue of any power of sale contained in the Leasehold Mortgage), nor any conveyance of the leasehold estate created by this Lease by Tenant to any Leasehold Mortgagee or its designee by an assignment or by a deed in lieu of foreclosure or other similar instrument shall require the consent of Landlord under, or constitute a default under, this Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize the purchaser or other transferee in connection therewith as the Tenant under this Lease, and such purchaser or other transferee shall be entitled to all of the rights and remedies of the Tenant under this Lease.

30. No Merger. In no event shall the leasehold interest, estate or rights of Tenant hereunder, or of any Leasehold Mortgagee, merge with any interest, estate or rights of Landlord in or to the Premises. Such leasehold interest, estate and rights of Tenant hereunder, and of any Leasehold Mortgagee, shall be deemed to be separate and distinct from Landlord's interest, estate and rights in or to the Premises, notwithstanding that any such interests, estates or rights shall at any time be held by or vested in the same person, corporation or other entity.

31. Surrender, Reconveyance.

31.1 Reconveyance Upon Termination or Expiration. Upon the occurrence of any End of Term Event, and subject to the satisfaction (or waiver by Tenant) in full of all of the Lease Termination Conditions, title to the Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant at no cost or expense to Tenant other than as set forth in **Section 33** below.

31.2 Reconveyance Documents. Without limiting the foregoing, Landlord shall execute and deliver to Tenant within ten (10) days after any End of Term Event: (i) a special warranty deed reconveying all of Landlord's right title and interest in the Premises (including all improvements constituting a part thereof) to Tenant in the form of **Exhibit C-1** attached hereto and incorporated herein by reference (the "**Deed**"); (ii) a memorandum in recordable form reflecting the termination of this Lease in the form of **Exhibit C-2** attached hereto and incorporated herein by reference (the "**Notice of Termination**"); (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 Premises to which Landlord is a party and which are assignable by Landlord in the form of **Exhibit C-3** attached hereto and incorporated herein by reference (the "**Assignment of Intangible Property**"); and (iv) updated City Title Affidavits (as hereafter defined) and a confirmation by the City of Tempe attorney that the City Authorization

(as hereafter defined) remains in effect for purposes of authorizing the conveyance described in this **Section 31.2** (collectively, the "**Reconveyance Documents**").

32. **Title and Warranties.** Notwithstanding anything to the contrary in this Section, Landlord shall convey the Premises to Tenant subject only to: (i) matters affecting title that are set forth in **Exhibit D** attached hereto and incorporated herein by reference, and (ii) matters created by or with the written consent of Tenant or resulting from Tenant's acts or omissions (collectively, the "**Permitted Exceptions**"). Landlord shall cause the removal and release from the Land any liens, encumbrances or other matters caused by or through Landlord, including any matters alleged to have been caused by or through Landlord. The Premises shall be conveyed "AS IS" without representation or warranty whatsoever. Notwithstanding the prohibition on the creation of any liens by or through Landlord set forth in this Section, upon any reconveyance, Landlord shall satisfy all liens and monetary encumbrances on the Premises created by Landlord.

33. **Expenses.** All costs of title insurance, escrow fees, recording fees and other expenses of the reconveyance to Tenant, except Landlord's own attorneys' fees and any commissions payable to any broker retained by Landlord, shall be paid by Tenant.

34. **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 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 Premises due to such removal it will repair or restore the same. Upon request of Tenant or Tenant's assignees or any subtenant, Landlord shall execute and deliver any consent or waiver forms submitted by any vendors, landlords, 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 Premises by any subtenant setting forth the fact that Landlord waives, in favor of such vendor, landlord, chattel mortgagee or any holder or owner, any lien, claim, interest or other right therein superior to that of such vendor, Landlord, chattel mortgagee, owner or holder. Landlord shall further acknowledge that property covered by such consent or waiver forms is personal property and is not to become a part of the realty no matter how affixed thereto and that such property may be removed from the Premises by the vendor, landlord, chattel mortgagee, owner or holder at any time upon default by the Tenant or the subtenant in the terms of such chattel mortgage or other similar documents, free and clear of any claim or lien of Landlord.

35. **Estoppel Certificate.** Landlord shall at any time and from time to time upon not less than ten (10) days' prior written notice from Tenant or any Leasehold Mortgagee 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.

Landlord's failure to deliver a statement within the time prescribed shall be conclusive upon Landlord (i) that this Lease is in full force and effect, without modification except as may be represented by Tenant; (ii) that there are no uncured defaults in Tenant's performance; and (iii) the accuracy of such other matters relating to this Lease as Tenant may have set forth in the request.

36. General Provisions.

36.1 Attorneys' Fees. In the event of any suit instituted by either party against the other in any way connected with this Lease or for the recovery of possession of the Premises, the parties respectively agree that the successful party to any such action shall recover from the other party a reasonable sum for its attorneys' fees and costs in connection with said suit, such attorneys' fees and costs to be fixed by the court.

36.2 Transfer or Encumbrance of Landlord's Interest. Landlord may not transfer or convey its interest in this Lease or in the Premises during the term of this Lease without the prior written consent of Tenant and Leasehold Mortgagee, which consent may be given or withheld in Tenant's and any such Leasehold Mortgagee's sole and absolute discretion, and any such transfer or conveyance without the foregoing consent shall be null and void and of no force and effect. In the event of the permitted sale or conveyance by Landlord of Landlord's interest in the Premises, other than a transfer for security purposes only, Landlord shall be relieved, from and after the date specified in such notice of transfer, of all obligations and liabilities accruing thereafter on the part of the Landlord, provided that any funds in the hands of Landlord at the time of transfer in which Tenant has an interest, shall be delivered to the successor of Landlord. This Lease shall not be affected by any such sale and Tenant agrees to attorn to the purchaser or assignee provided all of Landlord's obligations hereunder are assumed in writing by the transferee. Landlord shall not grant or create mortgages, deeds of trust or other encumbrances of any kind against the Premises or rights of Landlord hereunder, and, without limiting the generality of the foregoing, Landlord shall have no right or power to grant or create mortgages, deeds of trust or other encumbrances without the consent of Tenant and Leasehold Mortgagee in their respective sole and absolute discretion, and any such mortgages, deeds of trust or other encumbrances shall be deemed null and void and of no force and effect. Any mortgage, deed of trust or other encumbrance granted or created by Landlord shall be subject to this Lease, all subleases and all their respective provisions including, without limitations, the options under this Lease and any subleases with respect to the purchase of the Premises.

36.3 Captions; Attachments; Defined Terms.

a. The captions of the sections of this Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Lease.

b. Exhibits attached hereto, and addendums and schedules initialed by the parties, are deemed by attachment to constitute part of this Lease and are incorporated herein.

c. The words "Landlord" and "Tenant", as used herein, shall include the plural as well as the singular. The obligations contained in this Lease to be performed by Tenant and Landlord shall be binding on Tenant's and Landlord's successors and assigns only during their respective periods of ownership.

36.4. Entire Agreement. This Lease and Section 2.3.3 of the Development Agreement between Landlord and Bank, along with any addenda, exhibits and attachments hereto or thereto, constitutes the entire agreement between Landlord and Tenant relative to the Premises and this Lease, Section 2.3.3 of the Development Agreement and the addenda, exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by the party to be bound thereby. Landlord and Tenant agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing of the Premises are merged in or revoked by this Lease and Section 2.3.3 of the Development Agreement, except as set forth in any addenda hereto or thereto.

36.5 Severability. If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

36.6 Binding Effect; Choice of Law. The parties hereto agree that all the provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate paragraph hereof. All of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall be governed by the laws of the State of Arizona.

36.7 Memorandum of Land and Improvements Lease. The parties shall, concurrently with the execution of this Lease, complete, execute, acknowledge and record (at Tenant's expense) a Memorandum of Land and Improvements Lease, a form of which is attached hereto as **Exhibit B** (the "**Memo of Lease**"). Concurrently with the execution and delivery of this Lease and the recording of the Memo of Lease in the Official Records of Maricopa County, Arizona, Landlord shall have executed and delivered to the Title Company a resolution and/or ordinance authorizing the conveyance ("**City Authorization**"), and affidavits in the form of **Exhibit E** (the "**City Title Affidavits**"). Tenant's obligation to accept this Lease pursuant to Section 2.3.2 of the Development Agreement shall be conditioned upon, among other conditions set forth in Section 2.3.2 of the Development Agreement, the commitment by Title Company to issue (or to be irrevocably committed to issue) to Tenant, an ALTA Extended Coverage Owner's Policy of Title Insurance (2006 Form), together with an ALTA 13-06 endorsement, effective as of the date and time of the recording of the Memo of Lease, in the amount of the then current fair market value of the Land, as reasonably determined by Tenant,

insuring Tenant as the owner of a good, marketable and indefeasible leasehold estate in the Land, and subject only to the Permitted Exceptions (as defined in **Section 32** above) (the “**Leasehold Title Policy**”).

36.8 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or if mailed by United States certified or registered mail, return receipt requested, postage prepaid, or by overnight mail, as follows:

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

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

If to Tenant: KBSII Fountainhead, LLC
c/o CB Richard Ellis
313 Camelback Road, Suite 325
Phoenix, Arizona 85016
Attn: Lease Administrator

and

KBSII Fountainhead, LLC
c/o KBS Capital Advisors LLC
800 Newport Center Drive, Suite 700
Newport Beach, CA 92660
Attn: Rodney Richerson and Tim Helgeson

and

James Chiboucas, Esq.
800 Newport Center Drive, Suite 700
Newport Beach, CA 92660

and

Greenberg Traurig, LLP
3161 Michelson Drive, Suite 1000
Irvine, CA 92612
Attn: L. Bruce Fischer, Esq.

or at such other place or to such other persons as any party shall from time to time notify the other in writing as provided herein. The date of service of any communication hereunder shall be the date of personal delivery or seventy-two (72) hours after the postmark on the certified or registered mail, or the date received if sent by overnight mail, as the case may be.

36.9 Waiver. No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition.

36.10 Negation of Partnership. Landlord shall not become or be deemed a partner or a joint venturer with Tenant by reason of the provisions of this Lease.

36.11 Hold Over. If Tenant shall continue to occupy the Premises after the expiration of the term hereof without the consent of Landlord, such tenancy shall be from month to month on the same terms and conditions as are set forth herein.

36.12 Leasehold Mortgagee Further Assurances. Landlord and Tenant shall cooperate in, including by suitable amendment from time to time of any provision of this Lease which may be reasonably requested by any proposed Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Lease, 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.

37. Nonrecourse. Landlord's sole recourse for collection or enforcement of any judgment as against Tenant shall be solely against Tenant and the assets of Tenant, including without limitation Tenant's leasehold interest under this Lease and the improvements on the Premises, and may not be enforced against, or collected out of any assets of, any of the beneficiaries, joint venturers, owners, partners, shareholders, members or other related parties of Tenant, directly or indirectly.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date and year first written above.

LANDLORD:

CITY OF TEMPE, an Arizona municipal corporation

By: _____
Mark W. Mitchell, Mayor

ATTEST:

By: _____
Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

By: _____
Judith R. Baumann, City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Mark W. Mitchell, the Mayor of the City of Tempe, an Arizona municipal corporation.

Notary Public

My Commission Expires:

[SIGNATURES CONTINUE ON FOLLOWING PAGE.]

SIGNATURE PAGE TO LAND AND IMPROVEMENTS LEASE

TENANT:

KBSII FOUNTAINHEAD, LLC,
a Delaware limited liability company

By: KBSII REIT ACQUISITION XXIV, LLC,
a Delaware limited liability company,
its sole member

By: KBS REIT PROPERTIES II, LLC,
a Delaware limited liability company,
its sole member

By: KBS LIMITED PARTNERSHIP II,
a Delaware limited partnership,
its sole member

By: KBS REAL ESTATE INVESTMENT TRUST II, INC.,
a Maryland corporation,
general partner

By: _____
Charles J. Schreiber, Jr.,
Chief Executive Officer

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

STATE OF CALIFORNIA

COUNTY OF ORANGE

On _____ before me, _____
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A
of Land and Improvements Lease

Land

PARCEL NO. 1:

Lot 7A of FOUNTAINHEAD LOT 7, a Replat of Lot 7, FOUNTAINHEAD CORPORATE PARK AMENDED, according to the plat of said subdivision recorded in Book 864 of Maps, page 8 of the records of Maricopa County, Arizona;

EXCEPT that portion that was conveyed in instrument recorded as 2008-1071568 of Official Records, more particularly described as follows:

That portion of Lot 7A, FOUNTAINHEAD Lot 7 Replat, according to Book 864 of Maps, page 8, records of Maricopa County, Arizona, located in the Northeast quarter (NE 1/4) of Section 29, Township 1 North, Range 4 East, Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at a 3/8" iron bar 1 foot below ground tagged "RLS 42014" marking the center of said Section 29, being South 89 degrees 40 minutes 03 seconds West, 2676.43 feet from a City of Tempe (COT) brass cap in hand hole labeled GDAC 64022-1, marking the East quarter corner of said Section 29;

THENCE along the East-West midsection line of said Section 29, North 89 degrees 40 minutes 03 seconds East, 799.18 feet to the existing Easterly right of way line of Interstate Highway 10 (Phoenix-Casa Grande Highway);

THENCE along said existing Easterly right of way line, North 00 degrees 35 minutes 19 seconds East, 201.01 feet;

THENCE continuing along said existing Easterly right of way line, from a local tangent bearing of North 01 degrees 00 minutes 23 seconds West along a curve to the left having a radius of 3969.72 feet, a length of 354.65 feet to the Southwest corner of said Lot 7A and the POINT OF BEGINNING;

THENCE continuing along said existing Easterly right of way line also being the Westerly line of said Lot 7A, from a local tangent bearing of North 06 degrees 07 minutes 31 seconds West along said curve to the left, having a radius of 3969.72 feet, a length of 186.29 feet;

THENCE continuing along said Westerly line of Lot 7A, North 89 degrees 37 minutes 35 seconds East, 101.07 feet;

THENCE continuing along said Westerly line, from a local tangent bearing of North 08 degrees 36 minutes 18 seconds West, along a curve to the left, having a radius of 4069.72 feet, a length of 200.40 feet;

THENCE continuing along said Westerly line, North 89 degrees 38 minutes 42 seconds East, 13.02 feet;

THENCE from a local tangent bearing of South 11 degrees 22 minutes 44 seconds East, along a curve to the right, having a radius of 4082.72 feet, a length of 386.66 feet to the Southerly line of said Lot 7A;

THENCE along said Southerly line, South 89 degrees 40 minutes 03 seconds West, 113.25 feet to the POINT OF BEGINNING.

PARCEL NO. 2:

Nonexclusive easements and rights of pedestrian and vehicular access over and across private roads and streets, including but not limited to Fountainhead Parkway and 55th Street, by or pursuant to that certain “Declaration of Covenants, Conditions, Restrictions and Easements for Fountainhead Corporate Park” recorded February 25, 2005, in Document No. 20050232522, and re-recorded March 9, 2005, in Document No. 20050288447, Official Records of Maricopa County, Arizona, as amended in a First Amendment recorded April 1, 2009, in Document No. 20090288536, and in a Second Amendment recorded April 13, 2010, in Document No. 20100308375, Official Records of Maricopa County, Arizona.

PARCEL NO. 3:

A nonexclusive easement for a Water System by or pursuant to that certain “Water Delivery Agreement, Covenants Running with the Land and Easements” recorded December 26, 2006, in Document No. 20061691569, and re-recorded April 19, 2007, in Document No. 20070457533, Official Records of Maricopa County, Arizona, as amended in a First Amendment recorded August 4, 2009, in Document No. 20090719807 and in a Second Amendment recorded December 17, 2009, in Document No. 20091154258, Official Records of Maricopa County, Arizona.

EXHIBIT B
of Land and Improvements Lease

WHEN RECORDED, RETURN TO:

MEMORANDUM OF LAND AND IMPROVEMENTS LEASE

THIS MEMORANDUM OF LAND AND IMPROVEMENTS LEASE (“**Memorandum**”) is made and entered into as of the ____ day of _____, 201__, by and between the CITY OF TEMPE, an Arizona municipal corporation (“**City**”), and KBSII FOUNTAINHEAD, LLC, a Delaware limited liability company (“**Tenant**”). The City and Tenant agree as follows:

1. The City and Tenant have entered into that certain Land and Improvements Lease, dated _____, 201__ (“**Lease**”), whereby the City leases to Tenant and Tenant Leases from the City that real property and all current and future improvements more particularly described in **Exhibit A** attached hereto and by this reference incorporated herein (“**Property**”), for a term commencing on _____ and expiring seven (7) years thereafter, except as the same may be terminated earlier pursuant to the terms of the Lease, and any termination of the Lease shall be subject to the City reconveying the Property in fee to Tenant or its successors and assigns subject only to the permitted exceptions set forth on **Exhibit B** attached hereto and by this reference incorporated herein (the “**Permitted Exceptions**”) and the satisfaction of certain other lease termination conditions as expressly set forth in the Lease. The transfer of the City’s fee interest in the Property shall be concurrent with the effectiveness of any termination of the Lease.

2. This Memorandum is being recorded to give constructive notice to all persons dealing with the Property that the City leases to Tenant the Property, and that the City and Tenant consider the Lease to be a binding agreement between the City and Tenant regarding the Property, creating vested rights in and for Tenant superior to the right, title and interest of any third party later acquiring any interest in the Property.

3. This Memorandum is not a complete summary of the Lease. The Lease sets forth all terms and provisions relative to the lease of the Premises by the City to Tenant. Without limiting the generality of the foregoing, Tenant has the right to mortgage its leasehold interest (and any such leasehold mortgagee has the right to require the City to execute and deliver a mortgage or deed of trust encumbering the Property) and there are restrictions on the right of the City to transfer or encumber its interest in the Property or the Lease. The provisions of this Memorandum shall not be used in interpreting the Lease. In the event of any conflict between the terms and provisions of this Memorandum and the Lease, the terms and provisions of the Lease shall govern and control.

IN WITNESS WHEREOF, this Memorandum has been executed as of the day and year first set forth above.

[Signatures appear on following pages]

SIGNATURE PAGE TO MEMORANDUM OF LAND AND IMPROVEMENTS LEASE

CITY OF TEMPE, an Arizona municipal corporation

By: _____
Mark W. Mitchell, Mayor

ATTEST:

By: _____
Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

By: _____
Judith R. Baumann, City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Mark W. Mitchell, the Mayor of the City of Tempe, an Arizona municipal corporation.

Notary Public

My Commission Expires:

[SIGNATURES CONTINUE ON FOLLOWING PAGE.]

SIGNATURE PAGE TO MEMORANDUM OF LAND AND IMPROVEMENTS LEASE

TENANT:

KBSII FOUNTAINHEAD, LLC,
a Delaware limited liability company

By: KBSII REIT ACQUISITION XXIV, LLC,
a Delaware limited liability company,
its sole member

By: KBS REIT PROPERTIES II, LLC,
a Delaware limited liability company,
its sole member

By: KBS LIMITED PARTNERSHIP II,
a Delaware limited partnership,
its sole member

By: KBS REAL ESTATE INVESTMENT TRUST II, INC.,
a Maryland corporation,
general partner

By: _____
Charles J. Schreiber, Jr.,
Chief Executive Officer

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

STATE OF CALIFORNIA

COUNTY OF ORANGE

On _____ before me, _____
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

**Exhibit C-1
of Land and Improvements Lease**

Form of Deed

When Recorded Return To:

SPECIAL WARRANTY DEED

The "Grantor", CITY OF TEMPE, an Arizona municipal corporation, whose mailing address is c/o City Manager's Office, 31 East 5th Street, Tempe, Arizona 85281, in consideration of ten dollars and other valuable consideration received from "Grantee", [_____
_____] a [_____
_____], whose mailing address is [_____
_____], hereby grants, sells and conveys to the Grantee the real property located in Maricopa County, Arizona, that is described on **Exhibit A** attached hereto and incorporated herein by reference, together with all improvements thereon and fixtures thereto and all privileges, easements, tenements and appurtenances thereon or in any way appertaining to such real property (the "***Real Property***"), subject to the matters set forth on **Exhibit B** attached hereto and made a part hereof by this reference.

TO HAVE AND TO HOLD the Real Property with all rights, privileges, appurtenances, and immunities thereto belonging or in any way appertaining unto the said Grantee and unto Grantee's heirs, successors, and assigns forever and Grantor does hereby covenant that it will warrant specially against every person lawfully claiming by, though, or under Grantor, but not otherwise, the Real Property hereby conveyed. No other covenants and warranties, express or implied, are given by this Special Warranty Deed.

BY ACCEPTING THIS SPECIAL WARRANTY DEED (AS EVIDENCED BY THE RECORDING OF THIS SPECIAL WARRANTY DEED IN THE OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA), GRANTEE ACKNOWLEDGES AND AGREES THAT GRANTEE IS TAKING THE PROPERTY AN "AS-IS" AND "WHERE IS" BASIS, WITH ALL FAULTS, AND WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES, ALL OF WHICH GRANTOR HEREBY DISCLAIMS (EXCEPT FOR THE EXPRESS COVENANT AND WARRANTY SET FORTH IN THIS SPECIAL WARRRANTY DEED ABOVE).

[SIGNATURE APPEARS ON THE FOLLOWING PAGE]

Dated this ____ day of _____, 2017.

GRANTOR:

CITY OF TEMPE, an Arizona municipal corporation

By: _____
Mark W. Mitchell, Mayor

ATTEST:

By: _____
Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

By: _____
Judith R. Baumann, City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Mark W. Mitchell, the Mayor of the City of Tempe, an Arizona municipal corporation.

Notary Public

My Commission Expires:

EXHIBIT A

TO SPECIAL WARRANTY DEED

DESCRIPTION OF REAL PROPERTY

PARCEL NO. 1:

Lot 7A of FOUNTAINHEAD LOT 7, a Replat of Lot 7, FOUNTAINHEAD CORPORATE PARK AMENDED,

according to the plat of said subdivision recorded in Book 864 of Maps, page 8 of the records of Maricopa County, Arizona;

EXCEPT that portion that was conveyed in instrument recorded as 2008-1071568 of Official Records, more particularly described as follows:

That portion of Lot 7A, FOUNTAINHEAD Lot 7 Replat, according to Book 864 of Maps, page 8, records of Maricopa County, Arizona, located in the Northeast quarter (NE 1/4) of Section 29, Township 1 North, Range 4 East, Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at a 3/8" iron bar 1 foot below ground tagged "RLS 42014" marking the center of said Section 29, being South 89 degrees 40 minutes 03 seconds West, 2676.43 feet from a City of Tempe (COT) brass cap in hand hole labeled GDAC 64022-1, marking the East quarter corner of said Section 29;

THENCE along the East-West midsection line of said Section 29, North 89 degrees 40 minutes 03 seconds East, 799.18 feet to the existing Easterly right of way line of Interstate Highway 10 (Phoenix-Casa Grande Highway);

THENCE along said existing Easterly right of way line, North 00 degrees 35 minutes 19 seconds East, 201.01 feet;

THENCE continuing along said existing Easterly right of way line, from a local tangent bearing of North 01 degrees 00 minutes 23 seconds West along a curve to the left having a radius of 3969.72 feet, a length of 354.65 feet to the Southwest corner of said Lot 7A and the POINT OF BEGINNING;

THENCE continuing along said existing Easterly right of way line also being the Westerly line of said Lot 7A, from a local tangent bearing of North 06 degrees 07 minutes 31 seconds West along said curve to the left, having a radius of 3969.72 feet, a length of 186.29 feet;

THENCE continuing along said Westerly line of Lot 7A, North 89 degrees 37 minutes 35 seconds East, 101.07 feet;

THENCE continuing along said Westerly line, from a local tangent bearing of North 08 degrees 36 minutes 18 seconds West, along a curve to the left, having a radius of 4069.72 feet, a length of 200.40 feet;

THENCE continuing along said Westerly line, North 89 degrees 38 minutes 42 seconds East, 13.02 feet;

THENCE from a local tangent bearing of South 11 degrees 22 minutes 44 seconds East, along a curve to the right, having a radius of 4082.72 feet, a length of 386.66 feet to the Southerly line of said Lot 7A;

THENCE along said Southerly line, South 89 degrees 40 minutes 03 seconds West, 113.25 feet to the POINT OF BEGINNING.

PARCEL NO. 2:

Nonexclusive easements and rights of pedestrian and vehicular access over and across private roads and streets, including but not limited to Fountainhead Parkway and 55th Street, by or pursuant to that certain "Declaration of Covenants, Conditions, Restrictions and Easements for Fountainhead Corporate Park" recorded February 25, 2005, in Document No. 20050232522, and re-recorded March 9, 2005, in Document No. 20050288447, Official Records of Maricopa County, Arizona, as amended in a First Amendment recorded April 1, 2009, in Document No. 20090288536, and in a Second Amendment recorded April 13, 2010, in Document No. 20100308375, Official Records of Maricopa County, Arizona.

PARCEL NO. 3:

A nonexclusive easement for a Water System by or pursuant to that certain "Water Delivery Agreement, Covenants Running with the Land and Easements" recorded December 26, 2006,

in Document No. 20061691569, and re- recorded April 19, 2007, in Document No. 20070457533, Official Records of Maricopa County, Arizona, as amended in a First Amendment recorded August 4, 2009, in Document No. 20090719807 and in a Second Amendment recorded December 17, 2009, in Document No. 20091154258, Official Records of Maricopa County, Arizona.

EXHIBIT B
TO SPECIAL WARRANTY DEED
PERMITTED EXCEPTIONS

**Exhibit C-2
of Land and Improvements Lease**

Form of Notice of Termination

When Recorded Return To:

**TERMINATION OF MEMORANDUM OF LAND AND IMPROVEMENTS LEASE AND
LAND AND IMPROVEMENTS LEASE**

THIS TERMINATION OF MEMORANDUM OF LAND AND IMPROVEMENT LEASE AND LAND AND IMPROVEMENT LEASE (“**Termination**”) is made and entered into as of _____, 20__, by and between CITY OF TEMPE, an Arizona municipal corporation (“**Landlord**”), and [_____], a [_____] (“**Tenant**”).

1. Landlord owns that certain real property in the City of Tempe, County of Maricopa, State of Arizona, more particularly described in the Memorandum (as defined below) and on Exhibit A attached hereto (the “**Ground Lease Premises**”).

2. Landlord and Tenant have entered into that certain Ground Lease, dated _____, 2017 (as the same may have been amended or modified from time to time, the “**Ground Lease**”) with respect to the Ground Lease Premises.

3. Landlord and Tenant have entered into that certain Memorandum of Land and Improvements, dated _____, 2017, recorded in the Official Records of Maricopa County on _____, 2017, as Recording No. _____, (the “**Memorandum**”).

4. Landlord and Tenant are hereby terminating the Ground Lease (except for the provisions of the Ground Lease that expressly survive the termination of the Ground Lease) and the Memorandum, which shall hereafter be of no further force and effect.

5. This Termination may be executed in two or more counterparts, each of which shall be considered an original instrument, but all of which together shall be considered one and the same agreement, and shall become binding when one or more counterparts have been executed and delivered by each of the parties hereto.

[Remainder of page intentionally left blank]

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

LANDLORD:

CITY OF TEMPE, an Arizona municipal corporation

By:
Mark W. Mitchell, Mayor

ATTEST:

By:
Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

By:
Judith R. Baumann, City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Mark W. Mitchell, the Mayor of the City of Tempe, an Arizona municipal corporation.

Notary Public

My Commission Expires:

TENANT:

_____,
a _____

By: _____
Name: _____
Title _____

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

State of California

County of _____

On _____ before me, _____ (here insert name and address)
me that he/she/they executed the same in his/her/their authorized capacity(ies),
and that by his/her/their signature(s) on the instrument the person(s), or the entity
upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT A
TO TERMINATION

DESCRIPTION OF REAL PROPERTY

PARCEL NO. 1:

Lot 7A of FOUNTAINHEAD LOT 7, a Replat of Lot 7, FOUNTAINHEAD CORPORATE PARK AMENDED,

according to the plat of said subdivision recorded in Book 864 of Maps, page 8 of the records of Maricopa County, Arizona;

EXCEPT that portion that was conveyed in instrument recorded as 2008-1071568 of Official Records, more particularly described as follows:

That portion of Lot 7A, FOUNTAINHEAD Lot 7 Replat, according to Book 864 of Maps, page 8, records of Maricopa County, Arizona, located in the Northeast quarter (NE 1/4) of Section 29, Township 1 North, Range 4 East, Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at a 3/8" iron bar 1 foot below ground tagged "RLS 42014" marking the center of said Section 29, being South 89 degrees 40 minutes 03 seconds West, 2676.43 feet from a City of Tempe (COT) brass cap in hand hole labeled GDAC 64022-1, marking the East quarter corner of said Section 29;

THENCE along the East-West midsection line of said Section 29, North 89 degrees 40 minutes 03 seconds East, 799.18 feet to the existing Easterly right of way line of Interstate Highway 10 (Phoenix-Casa Grande Highway);

THENCE along said existing Easterly right of way line, North 00 degrees 35 minutes 19 seconds East, 201.01 feet;

THENCE continuing along said existing Easterly right of way line, from a local tangent bearing of North 01 degrees 00 minutes 23 seconds West along a curve to the left having a

radius of 3969.72 feet, a length of 354.65 feet to the Southwest corner of said Lot 7A and the POINT OF BEGINNING;

THENCE continuing along said existing Easterly right of way line also being the Westerly line of said Lot 7A, from a local tangent bearing of North 06 degrees 07 minutes 31 seconds West along said curve to the left, having a radius of 3969.72 feet, a length of 186.29 feet;

THENCE continuing along said Westerly line of Lot 7A, North 89 degrees 37 minutes 35 seconds East, 101.07 feet;

THENCE continuing along said Westerly line, from a local tangent bearing of North 08 degrees 36 minutes 18 seconds West, along a curve to the left, having a radius of 4069.72 feet, a length of 200.40 feet;

THENCE continuing along said Westerly line, North 89 degrees 38 minutes 42 seconds East, 13.02 feet;

THENCE from a local tangent bearing of South 11 degrees 22 minutes 44 seconds East, along a curve to the right, having a radius of 4082.72 feet, a length of 386.66 feet to the Southerly line of said Lot 7A;

THENCE along said Southerly line, South 89 degrees 40 minutes 03 seconds West, 113.25 feet to the POINT OF BEGINNING.

PARCEL NO. 2:

Nonexclusive easements and rights of pedestrian and vehicular access over and across private roads and streets, including but not limited to Fountainhead Parkway and 55th Street, by or pursuant to that certain "Declaration of Covenants, Conditions, Restrictions and Easements for Fountainhead Corporate Park" recorded February 25, 2005, in Document No. 20050232522, and re-recorded March 9, 2005, in Document No. 20050288447, Official Records of Maricopa County, Arizona, as amended in a First Amendment recorded April 1, 2009, in Document No. 20090288536, and in a Second Amendment recorded April 13, 2010, in Document No. 20100308375, Official Records of Maricopa County, Arizona.

PARCEL NO. 3:

A nonexclusive easement for a Water System by or pursuant to that certain "Water Delivery Agreement, Covenants Running with the Land and Easements" recorded December 26, 2006, in Document No. 20061691569, and re-recorded April 19, 2007, in Document No. 20070457533, Official Records of Maricopa County, Arizona, as amended in a First Amendment recorded August 4, 2009, in Document No. 20090719807 and in a Second Amendment recorded December 17, 2009, in Document No. 20091154258, Official Records of Maricopa County, Arizona.

**Exhibit C-3
of Land and Improvements Lease**

Form of Assignment of Intangible Property

ASSIGNMENT OF INTANGIBLE PROPERTY

This Assignment of Intangible Property (this “**Assignment**”) is executed and delivered as of the ____ day of _____, 20____ (the “**Effective Date**”), by and among CITY OF TEMPE, an Arizona municipal corporation (“**Assignor**”), and [_____
_____] a [_____] (“**Assignee**”), covering the real property described in Exhibit A attached hereto (“**Property**”).

1. Transfer of Intangible Property. All the right, title and interest of Assignor, if any, in and to assignable licenses and permits relating to the use, maintenance, ownership and operation of the Property, assignable guaranties and warranties from any contractor, manufacturer or other person in connection with the construction or operation of the Property, and the right to use the name of the Property (if any), but specifically excluding any right, title or interest of Assignor in any trademarks, service marks and trade names of Assignor (collectively, the “**Intangible Property**”).

2. AS-IS. The Intangible Property is being transferred, to Assignee on an “as is,” and “where is” basis, with all faults, and without any representation or warranty, all of which Assignor hereby disclaims.

3. Counterparts. This Assignment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, with the same effect as if all parties had signed the same signature page.

4. Attorneys’ Fees. In any action between the parties to enforce any of the terms or provisions of this Assignment, the prevailing party in the action shall be entitled to recover from the non-prevailing party, in addition to damages, injunctive relief or other relief, and its reasonable costs and expenses, including, without limitation, costs and reasonable attorneys’ fees (including on appeal).

5. Miscellaneous. This Assignment shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, executors, administrators, successor-in-interest and assigns. If any term or provision of this Assignment shall be held invalid or unenforceable, the remainder of this Assignment shall not be affected. This Assignment shall be construed in accordance with and governed by the laws of the State of Arizona. Nothing in this Assignment, express or implied, is intended to confer upon any person or entity, other than the parties hereto and their respective successors and assigns, any rights or remedies.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date written above.

[Signature Pages to Follow]

ASSIGNOR:

CITY OF TEMPE, an Arizona municipal corporation

By: _____
Mark W. Mitchell, Mayor

ATTEST:

By: _____
Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

By: _____
Judith R. Baumann, City Attorney

ASSIGNEE:

_____,
a _____

By: _____
Name: _____
Title _____

EXHIBIT A

TO ASSIGNMENT OF INTANGIBLE PROPERTY

DESCRIPTION OF PROPERTY

PARCEL NO. 1:

Lot 7A of FOUNTAINHEAD LOT 7, a Replat of Lot 7, FOUNTAINHEAD CORPORATE PARK AMENDED, according to the plat of said subdivision recorded in Book 864 of Maps, page 8 of the records of Maricopa County, Arizona;

EXCEPT that portion that was conveyed in instrument recorded as 2008-1071568 of Official Records, more particularly described as follows:

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COMMENCING at a 3/8" iron bar 1 foot below ground tagged "RLS 42014" marking the center of said Section 29, being South 89 degrees 40 minutes 03 seconds West, 2676.43 feet from a City of Tempe (COT) brass cap in hand hole labeled GDAC 64022-1, marking the East quarter corner of said Section 29;

THENCE along the East-West midsection line of said Section 29, North 89 degrees 40 minutes 03 seconds East, 799.18 feet to the existing Easterly right of way line of Interstate Highway 10 (Phoenix-Casa Grande Highway);

THENCE along said existing Easterly right of way line, North 00 degrees 35 minutes 19 seconds East, 201.01 feet;

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THENCE continuing along said existing Easterly right of way line also being the Westerly line of said Lot 7A, from a local tangent bearing of North 06 degrees 07 minutes 31 seconds West along said curve to the left, having a radius of 3969.72 feet, a length of 186.29 feet;

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THENCE continuing along said Westerly line, North 89 degrees 38 minutes 42 seconds East, 13.02 feet;

THENCE from a local tangent bearing of South 11 degrees 22 minutes 44 seconds East, along a curve to the right, having a radius of 4082.72 feet, a length of 386.66 feet to the Southerly line of said Lot 7A;

THENCE along said Southerly line, South 89 degrees 40 minutes 03 seconds West, 113.25 feet to the POINT OF BEGINNING.

PARCEL NO. 2:

Nonexclusive easements and rights of pedestrian and vehicular access over and across private roads and streets, including but not limited to Fountainhead Parkway and 55th Street, by or pursuant to that certain “Declaration of Covenants, Conditions, Restrictions and Easements for Fountainhead Corporate Park” recorded February 25, 2005, in Document No. 20050232522, and re-recorded March 9, 2005, in Document No. 20050288447, Official Records of Maricopa County, Arizona, as amended in a First Amendment recorded April 1, 2009, in Document No. 20090288536, and in a Second Amendment recorded April 13, 2010, in Document No. 20100308375, Official Records of Maricopa County, Arizona.

PARCEL NO. 3:

A nonexclusive easement for a Water System by or pursuant to that certain “Water Delivery Agreement, Covenants Running with the Land and Easements” recorded December 26, 2006, in Document No. 20061691569, and re-recorded April 19, 2007, in Document No. 20070457533, Official Records of Maricopa County, Arizona, as amended in a First Amendment recorded August 4, 2009, in Document No. 20090719807 and in a Second Amendment recorded December 17, 2009, in Document No. 20091154258, Official Records of Maricopa County, Arizona.

Exhibit D
of Land and Improvements Lease

List of Permitted Exceptions

1. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the year [2017].¹
2. Any outstanding liabilities and obligations, including unpaid assessments, imposed upon said Land by reason of: (a) inclusion thereof within the boundaries of the Salt River Project Agricultural Improvement and Power District; (b) membership of the owner thereof in the Salt River Valley Water Users' Association, an Arizona corporation and (c) the terms of any Water Right Application made under the reclamation laws of the United States for the purposes of obtaining water rights for said Land.
3. Reservations contained in the Patent from the United States of America recorded March 7, 1891, in Book 26 of Deeds, Page 33, reading as follows:

Subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law.
4. Water rights, claims or title to water, whether or not disclosed by the public records.
5. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: electric lines and facilities
Recording Date: October 10, 1972
Recording No: Docket 9746, page 608
6. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: electric lines and facilities
Recording Date: June 21, 1973
Recording No: Docket 10190, page 1306

¹ To be updated with the applicable tax year upon conveyance.

7. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: electric lines and facilities
Recording Date: January 18, 1979
Recording No: Docket 13388, page 167

8. Terms, covenants and provisions of an "Encroachment Permit" recorded January 28, 1987, in Document No. 87- 052046.

9. Terms, covenants and provisions of an "Encroachment Permit" recorded September 22, 1987, in Document No. 87- 589313.

10. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: communications lines and facilities
Recording Date: April 25, 1988
Recording No: 88-192995

11. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: public utilities, ingress and egress for emergency vehicles and adjoining property owners
Recording Date: August 2, 1989
Recording No: 89-357002

12. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: power lines and facilities
Recording Date: November 1, 1991
Recording No: 91-0515267

13. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: public utilities, ingress and egress for emergency vehicles and adjoining property owners
Recording Date: October 15, 1996
Recording No: 96-0730763

14. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: power lines and facilities
Recording Date: February 10, 1998
Recording No: 98-0100389

15. Covenants, conditions, restrictions and easements but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

Recording No: 20050232522
Re-Recording No: 20050288447
And thereafter an Assignment and Assumption of Declarant's Rights
Recording No: 2005-0894015
And thereafter First Amendment
Recording No: 20090288536
And thereafter Notice Regarding Amendment to Declaration
Recording No: 20090759960
Re-Recording No: 20091052584
And thereafter Second Amendment
Recording No: 20100308375

Liens and charges as set forth in the above mentioned declaration,

Payable to: Fountainhead Corporate Park Association, Inc.

16. Water Delivery Agreement, Covenants Running with the Land and Easements according to the terms, covenants and provisions contained therein

Recording Date: December 28, 2006
Recording No.: 20061691569
Re-Recording No: 20070457533
And thereafter First Amendment
Recording No: 2009-0719807
And thereafter Second Amendment
Recording No: 20091154258
And thereafter Plat entitled "Private Irrigation Exhibit"
Recording No: Book 1035 of Maps, page 43

17. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: storm drainage and facilities
Recording Date: April 6, 2009
Recording No: 2009-0301003
And thereafter Amendment to Easement
Recording Date: September 13, 2011
Recording No: 20110759542

18. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: water lines and fire hydrants
Recording Date: February 19, 2010
Recording No: 2010-0138852

19. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: utilities and access
Recording Date: March 19, 2010
Recording No: 2010-0232141

20. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: electric lines and facilities
Recording Date: September 1, 2010
Recording No: 20100757927

21. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: telecommunication lines and facilities
Recording Date: April 1, 2011
Recording No: 20110280757

22. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: underground telecommunication
Recording Date: January 30, 2014
Recording No: 20140062955

23. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: power distribution
Recording Date: February 04, 2014
Recording No: 20140073724

24. Matters disclosed in that certain ALTA/ACSM Land Title Survey dated July 2011, last revised November 28, 2011, prepared by KSE Design Group, PLC, Job No. 11-045-028.
25. Rights of parties in possession, as tenants only, under unrecorded lease agreements, which rights do not include any rights of first refusal or options to purchase all or any portion of the real property.

Exhibit E
Of Land and Improvements Lease

TITLE AFFIDAVITS

GAP AFFIDAVIT

State of _____)
)ss
County of _____)

The undersigned certifies to _____ ("Title Company"):

That the City of Tempe, an Arizona municipal corporation ("City"), is the owner of the real estate described in Title Company's Commitment Number _____, dated _____ (the "Commitment"), and commonly known as 1625 West Fountainhead Parkway, Tempe, Arizona.

That the proposed insured _____, requires that said Title Insurance Company delete from its above-numbered commitment the following exception:

"Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment."

That except as shown on the Title Commitment, the City has not granted to any person any interest of any manner in said property other than its own.

That the City has not nor does it intend to file any petition in bankruptcy or for reorganization or to make any voluntary assignment for the benefit of creditors.

That except as shown on the Title Commitment, the City is not a party to any agreement, contract, commitment or option for the sale, lease or mortgage of the property except the contract with the proposed insured named above.

That the City is not subject to any delinquency for United States or State of Arizona income, sale, gift, estate, inheritance or use taxes nor are there any liens or assessments which are due or about to become due which have attached or could attach to the title to said real estate except those disclosed in the above-numbered commitment.

That the City makes this affidavit knowing that Title Company will rely upon it for the purpose of guaranteeing against any adverse matters accruing since the effective date of the above-numbered commitment.

[Signatures on following page]

Executed this _____ day of _____, _____.

CITY OF TEMPE, an Arizona municipal
corporation

By: _____
Mark W. Mitchell, Mayor

ATTEST:

By: _____
Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

By: _____
Judith R. Baumann, City Attorney

STATE OF ARIZONA)

) ss.

County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Mark
W. Mitchell, the Mayor of the City of Tempe, an Arizona municipal corporation.

Notary Public

My Commission Expires:

OWNER'S DECLARATION

The undersigned hereby declares as follows:

1. Declarant City of Tempe, an Arizona municipal corporation ("City") is the owner or lessee, as the case may be, of certain premises located at 1625 West Fountainhead Parkway, Tempe, Arizona, further described as follows: See Preliminary Report/Commitment No. _____ for full legal description (the "Land").
2. During the period of six months immediately preceding the date of this declaration, City has caused no work to be done, no surveys or architectural or engineering plans to have been prepared, and no materials to have been furnished in connection with the erection, equipment, repair, protection or removal of any building or other structure on the Land or in connection with the improvement of the Land in any manner whatsoever.
3. City has not previously conveyed the Land and is not a debtor in bankruptcy.
4. Except as shown in the above-referenced Preliminary Report/Commitment, City has caused no unpaid or unsatisfied mortgages, deeds of trust, Uniform Commercial Code financing statements, claims of lien, special assessments, or taxes that constitute a lien against the Land or that affect the Land but have not been recorded in the public records.
5. Except as shown on the above-referenced Preliminary Report/Commitment, City has not granted to any persons or entities, and the City is not a party to any unrecorded easements, claims of easement, or boundary disputes that affect the Land.
6. Except as shown on the above-referenced Preliminary Report/Commitment, City has not granted any outstanding options to purchase or rights of first refusal affecting the Land.

This declaration is made with the intention that _____ Title Insurance Company (the "Company") and its policy issuing agents will rely upon it in issuing their title insurance policies and endorsements.

The City certifies that the foregoing is true and correct and that this declaration was executed on _____ at _____.

CITY OF TEMPE, an Arizona municipal corporation

By: _____
Mark W. Mitchell, Mayor

ATTEST:

By: _____
Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

By: _____
Judith R. Baumann, City Attorney

Exhibit F
Of Land and Improvements Lease

2017 AD VALOREM TAX BILL FOR PREMISES



Maricopa County Treasurer's Office

Royce T. Flora, Treasurer

2017 Detailed Tax Statement for Parcel# 123-33-056B 1

Total amount due does not reflect any pending payments. Amount may change based on activity to this parcel.

| | |
|---|--|
| Current Mailing Name & Address KBSII FOUNTAINHEAD LLC 620 NEWPORT CENTER DR STE 1300 NEWPORT BEACH, CA 92660-8013 | Property (Situs) Address 1625 W FOUNTAINHEAD PK TEMPE, AZ 85282 |
|---|--|

| Your 2017 Property Tax Summary | | | |
|--------------------------------|----------------|---------------------------|----------------|
| Previous Year Total | \$1,618,353.76 | Total 2017 Assessed Taxes | \$1,629,828.26 |

| | 2016 | Ratio | Assessed | 2017 | Ratio | Assessed |
|-----------------------------|-----------------|---------|-----------------|-----------------|---------|-----------------|
| Limited Value (Primary) | \$60,671,126.00 | 18.00 % | \$10,920,803.00 | \$63,704,682.00 | 18.00 % | \$11,466,843.00 |
| Full Cash Value (Secondary) | \$93,000,000.00 | | | \$94,000,000.00 | NOT | TAXED |

| Assessed Values | | | | | | |
|------------------------------|-----------------|---------|-----------------|----------------------------------|-----------------|--|
| Primary Limited Values (PRI) | | | | Secondary Full Cash Values (SEC) | | |
| Type | Limited | Ratio | Assessed | Type | Full Cash | |
| Land/Building | \$63,704,682.00 | 18.00 % | \$11,466,843.00 | Land/Building | \$94,000,000.00 | |
| Personal Property | \$0.00 | | \$0.00 | Personal Property | \$0.00 | |
| Exemption | | | \$0.00 | Exemption | | |
| Primary Total | \$63,704,682.00 | | \$11,466,843.00 | Secondary Total | \$94,000,000.00 | |
| Area Code: 031600 | | | | | | |

Primary District Information

| Tax District | Rate/100 | 2016 | 2017 | Change |
|------------------------|----------|--------------|--------------|--------|
| City Of Tempe | 0.9246 | \$102,644.63 | \$106,022.43 | 3.30 % |
| County | 1.4009 | \$152,989.53 | \$160,639.00 | 5.00 % |
| Elderly Assistance | Credit | \$0.00 | \$0.00 | 0.00 % |
| State Aid | Credit | \$0.00 | \$0.00 | 0.00 % |
| State Equalization Tax | 0.4875 | \$54,713.22 | \$55,900.86 | 2.20 % |

School District

| Tax District | Rate/100 | 2016 | 2017 | Change |
|------------------------|----------|--------------|--------------|---------|
| Community College Dist | 1.1956 | \$135,155.86 | \$137,097.57 | 1.40 % |
| Tempe Elementary | 2.9552 | \$337,081.72 | \$338,868.27 | 0.50 % |
| Tempe High School | 2.0559 | \$244,298.14 | \$235,746.71 | -3.50 % |

| | Rate/100 | 2016 | 2017 | Change |
|---------------------------|---------------|-----------------------|-----------------------|---------------|
| Primary Tax Totals | 9.0197 | \$1,026,883.10 | \$1,034,274.84 | 0.70 % |

Secondary District Information

| Tax District | Rate/100 | 2016 | 2017 | Change |
|------------------------------------|----------|-------------|-------------|---------|
| Central Az Water Conservation Dist | 0.1400 | \$15,289.12 | \$16,053.58 | 5.00 % |
| Fire District Assistance Tax | 0.0102 | \$1,223.12 | \$1,169.62 | -4.40 % |
| Flood Control Of Maricopa County | 0.1792 | \$19,570.08 | \$20,548.58 | 5.00 % |
| Library District | 0.0556 | \$6,071.96 | \$6,375.56 | 5.00 % |
| Maricopa Special Health Dist | 0.1931 | \$21,350.16 | \$22,142.48 | 3.70 % |

Voter Approved Overrides

| Tax District | Rate/100 | 2016 | 2017 | Change |
|-----------------------------|----------|--------------|--------------|---------|
| Tempe Elementary Overrides | 0.9188 | \$105,527.72 | \$105,357.37 | -0.20 % |
| Tempe High School Overrides | 0.4054 | \$46,664.60 | \$46,486.57 | -0.40 % |

Voter Approved Bonds

| Tax District | Rate/100 | 2016 | 2017 | Change |
|--------------|----------|------|------|--------|
|--------------|----------|------|------|--------|

| | | | | |
|------------------------------------|--------|--------------|--------------|----------|
| City Of Tempe Bonds | 1.5688 | \$173,869.96 | \$179,891.68 | 3.50 % |
| Community College Dist Bonds | 0.2140 | \$24,844.70 | \$24,539.10 | -1.20 % |
| Maricopa Special Health Dist Bonds | 0.0920 | \$11,991.12 | \$10,549.57 | -12.00 % |
| Tempe Elementary Bonds | 1.1758 | \$134,347.88 | \$134,827.08 | 0.40 % |
| Tempe High School Bonds | 0.1908 | \$25,259.84 | \$21,878.81 | -13.40 % |






| | Rate/100 | 2016 | 2017 | Change |
|-----------------------------|----------|--------------|--------------|--------|
| Secondary Tax Totals | 5.1437 | \$586,010.26 | \$589,820.00 | 0.70 % |

Special District Information

| Special Districts | Rate/100 | 2016 | 2017 | Change |
|------------------------------------|----------|------------|------------|--------|
| EAST VALLEY INSTITUTE OF TECH | 0.0500 | \$5,460.40 | \$5,733.42 | 5.00 % |
| TOTAL FOR SPECIAL DISTRICTS | 0.0500 | \$5,460.40 | \$5,733.42 | |

Grand Totals

| | 2016 | 2017 | Change |
|--------------------------------------|----------------|----------------|--------|
| Grand Total For Tax Districts | \$1,618,353.76 | \$1,629,828.26 | 0.70 % |

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 FAX (602)506-1102
  Disclaimer