

**WHEN RECORDED, RETURN TO:**

City of Tempe Basket

**DEVELOPMENT AGREEMENT**

[C2015-187]

Resolution No. R2015.92

**THIS DEVELOPMENT AGREEMENT** (“Agreement”) is made as of the 9<sup>th</sup> day of October, 2016 (the “Effective Date”), between the **CITY OF TEMPE**, an Arizona municipal corporation (“City”), Arizona Fashion Source, LLC, an Arizona limited liability company and LabelHorde, LLC, an Arizona limited liability company (collectively “Developer”).

**RECITALS**

A. City owns the Tempe Performing Arts Center building, located at 132 East Sixth Street, Tempe, Arizona 85281 (the “TPAC Building”).

B. Developer operates a fashion industry incubator, learning and production and resource center focused on creating, building and growing the fashion industry and related companies in AZ, and training underserved regional populations for careers in the broader industry (“Incubator”).

C. Developer has approached City with a proposal to establish an Accelerator, incubator and apparel production business in Tempe (the “Project”), utilizing space within the TPAC Building.

D. City and Developer acknowledge and agree that significant benefits will accrue to City from the Project, including, without limitation, the promotion of fashion industry businesses and the creation of related jobs in Tempe, and that the Project will otherwise improve or enhance the economic welfare of the inhabitants of the City.

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

**AGREEMENT**

**NOW THEREFORE**, in consideration of the above premises, the promises contained in this Agreement and for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

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

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

**1.3 “Developer”** means Arizona Fashion Source and LabelHorde and its permitted successors and assigns.

**1.4 “Project”** means the establishment of the incubator, and the performance of those activities described in Section 3.2.

**1.5 “Schedule of Performance”** means the Schedule of Performance attached hereto as *Exhibit C*.

## ARTICLE II

### PRELIMINARY MATTERS

**2.1 Incorporation of Recitals.** The Recitals are true and correct and are incorporated herein by reference.

**2.2 Duration of Development Agreement.** Unless sooner terminated, this Agreement shall commence on the Effective Date and continue until December 31, 2020.

**2.3 General Cooperation.** City and Developer acknowledge and agree that they shall cooperate in good faith with each other and use their respective good-faith and commercially reasonable efforts to pursue the Project as contemplated by this Agreement. To further the commitment of City and Developer to cooperate in the implementation of this Agreement, City shall designate and appoint a representative to act as a liaison between City and its various departments and Developer shall designate and appoint a representative to act on its behalf under this Agreement. The initial representative for City (“City Representative”) shall be Donna Kennedy, and the initial representative for Developer (“Developer Representative”) shall be Sherri Barry or her designee Both representatives shall be available at all reasonable times to discuss and review performance under this Agreement and the progress of the Project.

**ARTICLE III  
DEVELOPMENT MATTERS**

**3.1 License.** City agrees to grant Developer a license to use those portions of the TPAC Building described on *Exhibit A* hereto for operation of the Project. The license shall be evidenced by a license agreement in substantially the form attached hereto as *Exhibit B* (the “License Agreement”), which shall be executed by City and Developer within thirty (30) days after completion of the renovations currently underway within the TPAC Building. The License Agreement shall have an initial term of 12 months and may be extended for an additional period of 12 months if Developer satisfies those performance benchmarks set forth in the Schedule of Performance attached hereto as *Exhibit C*. Developer will keep documentation on benchmark performance and provide quarterly updates to the City. The City shall provide satisfaction of performance benchmarks in writing to the Developer at least 90 days prior to the extension date. The Developer will be provided at least 60 days to satisfy the City’s performance benchmarks, if City deems satisfaction of benchmarks has not been met, 90 days before extension. If benchmarks are satisfied within the 60 days, the City shall extend the license agreement for the additional 12-month term. The City shall provide Developer a minimum of 6 months notice if it decides it will not provide any further extensions to the License Agreement. The City will negotiate in good faith, with similar terms, further extensions if both parties agree to do so. The License Agreement shall require a monthly license fee of , \$12.00, a reduction from market rate based on lessee’s public benefits as stated in the Schedule of Performance, of this Agreement and the License Agreement. So long as the License Agreement remains in effect, City agrees to provide Developer with three (3) parking passes (valued at \$1440 annually) to use the City Hall parking garage, at a price equal to 50% of the normal monthly rate.

**3.2 Operation of Accelerator and Incubator.** At its sole cost and expense, Developer shall perform or cause to be performed all services and provide or cause to be provided all materials required for completion of the Project in accordance with the plan set forth in the Schedule of Performance. Developer shall pay all costs, expenses and fees associated with the Project.

**3.3 Schedule of Performance.** City and Developer intend that the Project shall be achieved in phases pursuant to the Schedule of Performance. From time to time following the Effective Date, however, Developer and City shall, by mutual written agreement, refine and revise the Schedule of Performance as may be necessary to accommodate any unforeseen factors, events or unexpected occurrences that may necessitate such refinement or revision.

**ARTICLE IV  
DEFAULT; REMEDIES; TERMINATION**

**4.1 Default.** It shall be a default hereunder if either party fails to perform any of its obligations hereunder and such failure continues for a period of thirty (30) days after written notice from the non-defaulting party specifying in reasonable detail the nature of such failure; provided that if the nature of the default is such that it cannot reasonably be cured within the thirty-day

period, no default shall be deemed to exist if the defaulting party commences a cure within that thirty-day period and diligently and expeditiously pursues such cure to completion.

**4.1.1 Additional Developer Defaults.** In addition to the foregoing, it shall be a default hereunder if: (a) any petition or application for a custodian, as defined by Title 11, United States Code, as amended from time to time (the “Bankruptcy Code”) or for any form of relief under any provision of the Bankruptcy Code or any other law pertaining to reorganization, insolvency or readjustment of debts is filed by or against Developer or any partnership of which Developer is a partner, their respective assets or affairs, and such petition or application is not dismissed within ninety (90) days of such filing; (b) Developer makes an assignment for the benefit of creditors, is not paying material debts as they become due, or is granted an order for relief under any chapter of the Bankruptcy Code; (c) a custodian, as defined by the Bankruptcy Code, takes charge of any property of Developer or any property of any partnership of which Developer is a partner; (d) garnishment, attachment, levy or execution in an amount in excess of an amount equal to ten percent (10%) of its net worth is issued against any of the property or effects of Developer, or any partnership of which Developer is a partner, and such issuance is not discharged or bonded against within ninety (90) days; (e) the dissolution or termination of existence of Developer unless its successor by transfer or operation of law is continuing the business of operating the Project; or (f) there is a material breach of any representation and warranty by Developer in this Agreement when made.

**4.2 Developer’s Remedies.** If City is in default under this Agreement (beyond any applicable cure period) and the parties are not able to resolve the City’s default, Developer shall have the right to terminate this Agreement upon written notice to the City as its sole and exclusive remedy.

**4.3 City’s Remedies.** If the Developer is in default under this Agreement (beyond any applicable cure period) and the parties do not resolve the Developer’s default, then the City shall have the right to terminate this Agreement immediately upon written notice to Developer.

**4.4 Effect of Event of Termination.** Upon the termination of this Agreement as the result of the default or breach by the Developer (beyond any applicable cure period), the Developer shall have no further rights to the benefits of this Agreement, including without limitation the right to occupy the TPAC Building pursuant to the License Agreement from and after the termination of this Agreement.

## **ARTICLE V GENERAL PROVISIONS**

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

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

**5.3 Liability and Indemnification.** Developer hereby agrees to indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of Developer's performance or failure to perform its obligations under this Agreement.

**5.4 Conflict of Interest.** Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to A.R.S. § 38-511.

**5.5 Notice.** All notices which shall or may be given pursuant to this Agreement shall be in writing and transmitted by registered or certified mail, return receipt requested, or by personal delivery or by overnight mail, addressed as follows:

To Developer: Arizona Fashion Source, LLC  
C/O Sherri Barry  
2926 N 48<sup>th</sup> Pl  
Phoenix, AZ 85018

With a copy to:

To the City: City Manager  
City of Tempe  
31 East Fifth Street  
Tempe, Arizona 85281

With a copy to: City Attorney  
City of Tempe  
21 East Sixth Street, Suite 201  
Tempe, Arizona 85281

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

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

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

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

**5.9 Severability.** In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law, provided that the overall intent of the parties is not materially vitiated by such severability.

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

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

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

**5.13 Recordation of Agreement.** This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after execution of this Agreement by the City.

**5.14 City Manager's Power to Consent.** The City authorizes and empowers the City Manager to consent to any and all requests of the Developer requiring the consent of the City hereunder without further action of the City Council, except for any actions requiring City Council approval as a matter of law, including, without limitation, any amendment or modification of this Agreement.

{Remainder of page intentionally left blank}

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed on or as of the day and year first above written.

ATTEST:

***“CITY”***

THE CITY OF TEMPE, an Arizona municipal corporation

\_\_\_\_\_  
Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

By \_\_\_\_\_  
Mark W. Mitchell, Mayor

\_\_\_\_\_  
Judith R. Baumann, City Attorney

STATE OF ARIZONA        )  
  )  
COUNTY OF MARICOPA    )        ss

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Mark W. Mitchell, the Mayor of the City of Tempe.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

**“DEVELOPER”**

Arizona Fashion Source, LLC, an Arizona limited liability company

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

STATE OF )  
 )  
COUNTY OF ) ss

The foregoing instrument was acknowledged before me this \_\_\_\_day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

LabelHorde, LLC, an Arizona limited liability company

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

STATE OF )  
 )  
COUNTY OF ) ss

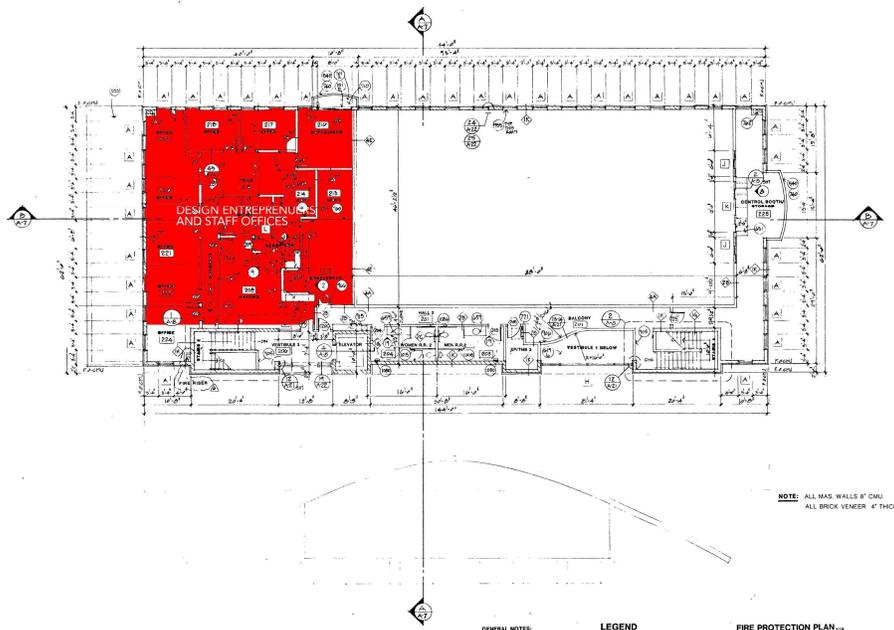
The foregoing instrument was acknowledged before me this \_\_\_\_day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

My Commission Expires:

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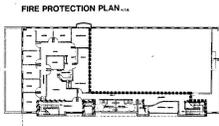




- KEYNOTES**
- 405 1/2\"/>

**SECOND FLOOR PLAN**  
SCALE: 1/8\"/>

- GENERAL NOTES**
- 1. ALL WALLS TO BE 8\"/>
- LEGEND**
- 1/2\"/>



**TEMPE PERFORMING ARTS CENTER**

**Deardorff & Pang Weymiller**

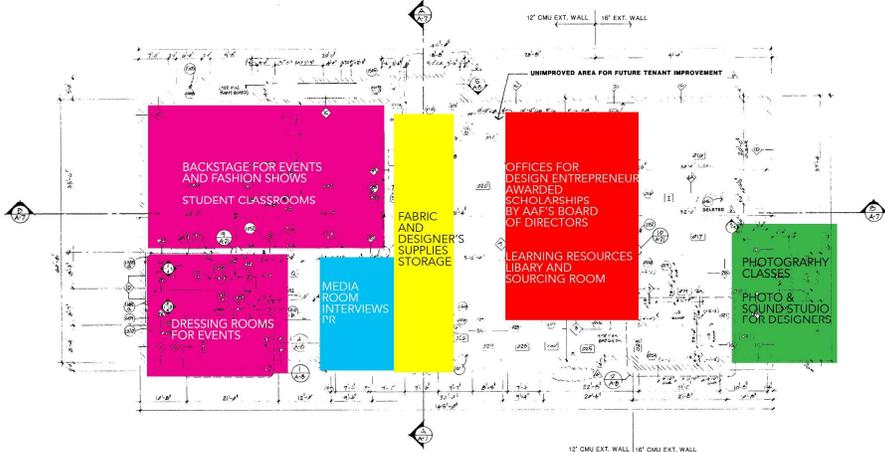
**ARCHITECT'S TIME**

Job No: 1314-01  
Date: 21 AUG 1989  
Drawn By:  
Checked By:

Revisions:  
TO BASE PLAN  
DATE: 8/27/89 BY: JLM

Sheet **A-5** of **24**

**SECOND LEVEL MP 896266 6-69**



- KEYNOTES**
- 511 METAL CORNER BRACKETS
  - 512 UNIMPROVED AREA FOR FUTURE TENANT IMPROVEMENT
  - 513 2\"/>

- GENERAL NOTES**
- 1. ALL WALLS TO BE 8\"/>
- LEGEND**
- 1/2\"/>



**TEMPE PERFORMING ARTS CENTER**

**Deardorff & Pang Weymiller**

**ARCHITECT'S TIME**

Job No: 8914-0371  
Date: 21 AUG 1989  
Drawn By:  
Checked By:

Revisions:  
TO BASE PLAN  
DATE: 8/27/89 BY: JLM

Sheet **A-3** of **24**

**BASEMENT LEVEL MP 896266 4-89**

Arizona Fashion Source and LabelHorde will utilize the current amenities and functionality in/of the TPAC building as follows:

- The Black Box Theater (with stage lighting) will be a split use for manufacturing, education, maker's space, community services, public programs, events and fashion shows.
- The Extension Rooms to the Black Box Theater will be used for private and group sewing lessons, the sourcing library (fabric and finishes), production and class supplies and Fashion Library.
- The Desk Space and Conference Room on the First Floor will be used for free co-working flex space for entrepreneurs/students, community meeting space and consultations.
- Member Design Entrepreneurs, staff and volunteers, will use the Offices on the Second Floor.
- The Basement Dressing and Make-up Rooms will be used to backstage Fashion Shows and Events.
- The Basement Photo and Sound Studios will be available for member use, student and co-working use and paid and free classes.

**EXHIBIT B**

Insert License Agreement.

**Exhibit C**  
**Schedule of Performance**

During Phase 1 of the Project (Sept. 23,2016-Oct 1, 2017), Arizona Fashion Source, LLC and LableHorde, LLC will

Pay half of all water, gas, heat, light, power, telephone and other utilities and services supplied to the Premises, together with any and all taxes related thereto, to the extent the cost of such services provided to the TPAC Building exceeds \$2,000 per month. If the Premises are not separately metered for any such services, Licensee shall pay a proportionate share as reasonably determined by City, of all charges jointly metered with other premises. .

Complete \$12,500 in City of Tempe tenant improvements from the attached Scope of Work.

Manage Phase 1 activities and plan Phase 2 implementation:

Phase 1 activities include the incubation of fashion industry companies/design entrepreneurs, supporting AAF in hosting community events and providing necessary resources to AAF for the delivery and execution of AAF's Programs and Services commitment as per the attached schedule.

Collaborate with AAF to begin recruiting 6 promising designers/labels to TPAC for scholarships awarded by AAF's board that will provide free rent shared resources, mentoring and training as a means to prove the viability of Phase 2.

Support AAF in hosting 2-4 fashion events for the community and industry.

Participate in the Tempe Arts Festival by hosting a fashion show and setting up booths for Design Entrepreneurs.

Manage and monitor the facility and day-to-day operations.

Licensee shall support AAF in hosting one workshop per quarter at the "in Tempe" Business Resource and Innovation Center at the Tempe Public Library.

Licensee shall support AAF in participating in the "Geeks Night Out" event, tentatively scheduled for March X 2017, by providing a booth demonstrating the STEM applications of their business and interacting with the event participants

Partner with ASU on educational and internship opportunities (details below).

Plan Phase 2 of the Project for City review/approval.

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<b>AAF Program and Services (Free to Public)</b>				
<b>Service</b>	<b>Value</b>	<b>Services/Mth</b>	<b>Total</b>	<b>Annual Value</b>
GRP Sewing Classes	\$300	2	\$600	\$7,200
GRP Sketching	\$300	2	\$600	\$7,200
GRP Modeling/Make-up	\$300	2	\$600	\$7,200
Grp Screen Printing	\$300	2	\$600	\$7,200
Machine Time	\$26	80	\$2,100	\$25,200
Machine Certification	\$70	4	\$280	\$3,360
Seminars	\$500	1	\$500	\$6,000
Supplies (for class participants)	\$5.00	168	\$840	\$10,080
Camps	\$187.50	20	\$3,750	\$15,000
Outdoor Events	\$1,000	0.5	\$500	\$6,000
<b>Total AAF P&amp;S Fees</b>			\$10,370	<b>\$94,440</b>

<b>Community Partnerships</b>				
<b>Service</b>	<b>Value</b>	<b>Services/Mth</b>	<b>Total</b>	<b>Annual Value</b>
EVIT Classes	\$400	2	\$800	\$9,600
EVIT Internships	\$3,000	2	\$6,000	\$12,000
EVIT Experience Tours	\$500	0.5	\$250	\$3,000
EVIT Fashion Show	\$5,000	1		\$5,000
Cinderella Affair Dress Drive & Drop off local	\$500	1		\$500
Cinderella Affair Alterations	\$1,000	2		\$2,000
Cinderella Affair Plus Size Dress Design and Manufacturing	\$4,000	1		\$4,000
Vetren's Workshops (1,2 & 3)	\$250	12	\$3,000	\$36,000
<b>Total Community Services</b>			N/A	<b>\$72,100</b>

<b>Design Entrepreneur Scholarships and Services</b>				
<b>Service</b>	<b>Value</b>	<b>Services/Mth</b>	<b>Total</b>	<b>Annual Value</b>
Meeting Space	\$200	12	\$2,400	\$28,800
Machine Time	\$26	48	\$1,260	\$15,120
Desk Space	\$175	6	\$1,050	\$12,600
Photo/Sound Studio	\$60	12	\$720	\$8,640
Event	\$2,250	1	\$2,250	\$5,000
Mentorship & Training	\$1,200	1	\$1,200	\$14,400
<b>Total DE Development Services</b>			\$7,680	<b>\$84,560</b>

<b>Total community &amp; public services provided to City of Tempe</b>				<b>\$251,100</b>
<b>Total Tenant Improvements</b>				<b>\$25,000</b>
<b>Total Contribution</b>				<b>\$276,100</b>

<b>Total Rent Value 23,000 SQFT @ 12/SQFT</b>				<b>\$276,000</b>
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Note: Free class offerings will give priority registration to City of Tempe residents.

AFS/LH is currently working on a collaborative partnership with ASU.

ASU can bring to the equation both academic fashion education and fashion skill training for manufacturing and supply chain management. Here are distinct areas that ASU/the incubator/factory can collaborate.

- Offer credit and non-credit classes at the Label Horde/AFS location. □

- Offer disability services along with the courses. ☐
- Sponsor internships for students. ☐
- Adjunct faculty come from the LabelHorde/AFS ranks. ☐
  - Faculty paid by ASU for all credit and non-credit courses offered at LabelHorde/AFS. ☐
- Support contests for designers at the site. ☐
- Supply accredited curriculum for design courses and garment ☐ manufacturing. ☐
- Create access and opportunities for research grants and education fundraising. ☐
- Student base for internships and events, volunteering. ☐

During Phase 2 (Oct 1, 2017-Oct 1, 2018) of the project AFS and LabelHorde will

Pay half of all water, gas, heat, light, power, telephone and other utilities and services supplied to the Premises, together with any and all taxes related thereto, to the extent the cost of such services provided to the TPAC Building exceeds \$2,000 per month. If the Premises are not separately metered for any such services, Licensee shall pay a proportionate share as reasonably determined by City, of all charges jointly metered with other premises.

LH/AFS will complete \$12,500 in City of Tempe tenant improvements from the attached Scope of Work.

Manage Phase 2 activities.

Phase 2 activities include the incubation of fashion industry companies/design entrepreneurs, supporting AAF in hosting community events and providing resources to AAF that are needed to deliver and execute AAF's Programs and Services commitment as per the attached Schedule.

Collaborate with AAF to develop the 6 designers/labels awarded scholarships at TPAC that provide free rent, shared resources, mentoring and training as a means to ensure they hit designated and mutually (City and Developer) agreed upon milestones. Support AAF in setting up advisory services and mentorship for companies to further milestones. Support AAF in hosting 2-4 fashion events for the community and industry.

Manage and monitor the facility and day-to-day operations.

Participate in the Tempe Arts Festival by hosting a fashion show and setting up booths for Design Entrepreneurs

Licensee shall support AAF in hosting one workshop per quarter at the "in Tempe" Business Resource and Innovation Center at the Tempe Public Library.

Licensee shall support AAF in participating in the “Geeks Night Out” event, tentatively scheduled for March X 2017, by providing a booth demonstrating the STEM applications of their business and interacting with the event participants

Partner with ASU on educational and internship opportunities (see detail under Phase 1).