

**FIRST AMENDMENT TO
TEMPORARY FIRE STATION LICENSE AGREEMENT**

This First Amendment to Temporary Fire Station License Agreement (“Amendment”) is made and entered into by and between The City of Maricopa, an Arizona municipal corporation (“City”), and Interlaken Capital, LLC, an Arizona limited liability company (“Interlaken”).

RECITALS

A. On August 15, 2005, Murphy Land Investors, LLC, an Arizona limited liability company (“Murphy”), and the Maricopa Fire District (“District”) entered into a Temporary Fire Station License Agreement (“Agreement”) to allow District to use a portion of Murphy’s property located at 36351 W. Honeycutt Road, Maricopa, Arizona, 85138 (“Licensed Site”) for the purpose of a temporary fire station.

B. On July 1, 2007, the District merged with and became a part of the City of Maricopa forming the Maricopa Fire Department.

C. Pursuant to the Agreement, the term for the License commenced on the date of the Agreement and ended on December 30, 2008.

D. After December 30, 2008, the City, with the consent of Murphy and the subsequent owners of the Licensed Site, continued to use the Licensed Site as a temporary fire station under the same terms and conditions as set forth in the Agreement.

E. On October 1, 2009, Interlaken obtained the Licensed Site as shown by the Special Warranty Deed recorded with the Pinal County Recorder as Fee Number 2009-102440.

F. The parties now desire to amend the Agreement to extend the term for the License and provide for monthly payments for the term extension.

AGREEMENT

NOW THEREFORE, the parties agree to amend the Agreement as follows:

1. Definitions. Any capitalized term used in this Amendment and not defined herein shall have the meaning set forth in the Agreement.

2. Paragraph 2, Purpose; Term, shall be amended to provide that in consideration of a monthly fee of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) (“License Fee”) to be paid by City on the 1st day of each month beginning August 1, 2012, a License is granted to City to use the Licensed Site as a temporary fire station and related purposes until terminated as provided herein. Other than the License Fee, the City

shall have no obligation to pay any other fees, assessments, taxes or charges in connection with its use of the Licensed Site under this Agreement.

3. Paragraph 7, Notices is amended to provide that all notices shall be addressed to the party at the following addresses:

City of Maricopa
Attn: City Manager
P.O. Box 610
Maricopa, Arizona 85239
Telephone: (520) 568-9098
Facsimile: (520) 568-9120

Interlaken Capital, LLC
16009 N. 81st Street, #200
Scottsdale, Arizona 85260
Attn: _____
Telephone: _____
Facsimile: _____

4. The following provisions shall be added to the Agreement:

a. **Termination.** The Agreement may be terminated by Interlaken or City by giving sixty (60) days prior written notice of termination to the other party.

b. **Restoration of Property.** Upon termination of the Agreement, all personal property of City and all vertical structures located on the Licensed Site shall be removed by City. City shall also properly terminate all utility connections to the Licensed Site. City shall not be obligated to remove any concrete or asphalt surfaces on the Licensed Site.

c. **Applicable Law; Venue.** The Agreement and this Amendment shall be governed by and construed in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in the Agreement or this Amendment shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either party shall bring suit to enforce any term of the Agreement or this Amendment or to recover any damages for and on account of the breach of any term or condition in the Agreement or this Amendment, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

d. **Waiver of Terms and Conditions.** The failure of Interlaken or City to insist in any one or more instances on performance of any of the terms or conditions of the Agreement or this Amendment or to exercise any right or privilege contained therein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect. Notwithstanding the foregoing, the parties acknowledge and consent to waiving past claims, rights and privileges under the Agreement under Paragraph 4 (h) of this Amendment.

e. **Entire Agreement.** The Agreement and this Amendment and any attachments represent the entire agreement between Interlaken and City and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of the Agreement or this Amendment shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of the Agreement and this Amendment, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

f. **Severability.** If any part, term or provision of the Agreement or this Amendment shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

g. **Conflicts of Interest.** Pursuant to Arizona Revised Statute §38-511, City may, within three years after its execution, cancel this Amendment, without penalty or future obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Amendment on behalf of City, or any of its departments or agencies is an employee or agent of Interlaken in any capacity or a consultant to Interlaken with respect to the subject matter of this Amendment. The cancellation under this section shall be effective when written notice from City is received by Interlaken, unless the notice specifies a later time.

h. **Mutual Release of Any Claim Arising Under Agreement.** In exchange for the promises and provisions of this Amendment, Interlaken and City acknowledge and mutually agree to release the other from any claim or possible claim arising from the Agreement or the use of the Licensed Site including, but not limited to, claims regarding unpaid fees, unauthorized use of the Licensed Site or any breach of the terms and conditions set forth in the Agreement. Interlaken and the City further acknowledge and consent that neither party at the time this Amendment is executed has any claims against the other arising from the Agreement, use of the Licensed Site or any breach of the terms and conditions set forth in the Agreement.

i. **Authority to Enter Into this Agreement.** Both parties represent that they have the full power and authority to enter into and perform this Agreement according to the terms hereof and the individuals executing this Agreement are authorized to do so.

5. Except as amended by this Amendment, all other terms and conditions of Agreement remain in full force and effect.

DATED this _____ day of October, 2012.

INTERLAKEN:

Interlaken Capital, LLC,
an Arizona limited liability company

By: Matrixx Management, LLC, an Arizona limited liability company
Its: Manager

By: Larry L. Miller
Its: Manager

CITY OF MARICOPA
An Arizona municipal corporation

Christian Price
Mayor

ATTEST:

Vanessa Bueras
City Clerk

APPROVED AS TO FORM:

Denis M. Fitzgibbons
City Attorney