

**DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF PEORIA
AND
NOVO DEVELOPMENT, LLC**

This ECONOMIC DEVELOPMENT AGREEMENT (“Agreement”) is entered into to be effective as of the ____ day of June, 2017 (the “Effective Date”), by and between the CITY OF PEORIA, a municipal corporation of the State of Arizona (“City”) and NOVO Development, LLC, an Arizona limited liability company (“Developer”). City and Developer are each a “Party” to this Agreement and may be referred to herein collectively as “Parties.”

1. **Recitals.** As background to this Agreement, the Parties recite, acknowledge and confirm the following, each of which shall be a material term and provision of this Agreement:

A. The City adopted an Economic Development Implementation Strategy (“EDIS”) which provides an implementation-based plan for achieving the economic development goals of City.

B. One of the strategies to implement the EDIS is through the City-adopted Economic Development Incentive and Investment Policy (“EDIIP”) and accompanying Economic Development Incentive and Investment Policy Guidelines (“EDIIP Guidelines”), which provide a framework for evaluating City financial incentives and investment towards the retention and expansion of existing local businesses, and attraction and expansion of targeted industries within the City in a manner that is consistent with applicable laws.

C. Developer is real estate developer engaged developing and delivering viable and functional real estate products, such as office space; medical office buildings; industrial and commercial products; multi-family, retail, sports/entertainment development, and hospitality development.

D. Developer has proposed to promote, market, and lease real property located at 15814 N. 83rd Ave, within the Arrowhead Entertainment Center (“Premises”), currently configured as a restaurant and bar, but to be repurposed for use as commercial or corporate office space (“Project”). The Premises is legally described on Exhibit “A” and an aerial depiction of the Premises in Exhibit “B,” attached hereto and incorporated herein by this reference.

E. Developer intends to promote and market the Premises, and make commercially reasonable efforts to identify a targeted industry company, as that is described in the adopted Economic Development Implementation Strategy (EDIS), with 50 full time equivalent (FTE) employees having an average annual salary of \$55,000.

F. Upon identification of a targeted-industry tenant and agreement with such tenant on the deal terms of a lease, Developer agrees to use the terms and conditions in the attached lease template (Exhibit “C”) for a lease agreement that may be entered into between Developer (or

its affiliate) and the City for occupancy of the Premises (the “Lease”), and then to enter into a lease with the tenant for occupancy of the Premises, in a form to be negotiated between Developer and such tenant. Developer agrees to invest at least \$2 million dollars in tenant improvements, and will enjoy priority tract, “front of the line” processing through the City’s approval process, and receive reimbursement of certain tenant improvement costs.

G. It is important to the City, in the current economic environment, that it encourage and promote employment within the City of Peoria, promote targeted industries (which synergistically stimulate related economic activity throughout the City), diversify the City’s economic base, as well as increase overall economic growth and generate tax and other income for the City.

H. Developer wishes to undertake all actions required in order to obtain tenant improvement permits for the Premises upon the terms and conditions set forth in this Agreement.

I. City has found and determined that the Project and Developer’s tenant’s anticipated employment of a targeted-industry workforce will enhance the economic vitality of the City by offering new employment opportunities to residents of the City of Peoria. Therefore, the City has offered to pay or reimburse certain amounts of the costs and expenses to Developer related to tenant improvements, to encourage the Project, thereby recruiting a targeted industry and new high-value employment within the City of Peoria.

J. City and Developer are entering into this Agreement pursuant to A.R.S. Section 9-500.11. The Parties hereto desire to enter into this Agreement to facilitate development consistent with the City’s General Plan, its zoning ordinances, the EDIS, the EDIIP and the EDIIP Guidelines. The Parties acknowledge that the activities described in this Agreement, and related to the Project, are economic development activities within the meaning of the State of Arizona’s laws concerning such matters, including but not necessarily limited to A.R.S. Section 9-500.11, and that all “expenditures” (as defined in A.R.S. Section 9-500.11) by the City pursuant to this Agreement constitute the appropriation and expenditure of public monies for and in connection with economic development activities as defined in A.R.S. Section 9-500.11.

K. The City, in the exercise of its legislative functions, and finding in such legislative capacity that the benefits conferred upon Developer are not grossly disproportionate to the benefits being received by City, has authorized the execution and performance of this Agreement and has otherwise taken all action required by law to enter into this Agreement and make it binding upon City.

2. **Agreements.** In consideration of the mutual promises and representations set forth herein and in the recitals, which are hereby incorporated by reference and set forth herein as part of this Agreement, the City and Developer agree as follows:

A. City grants to Developer, and based upon such grant Developer agrees and acknowledges that it has, exclusive authority under this Agreement to conduct sales and marketing of the herein identified Premises, and identify a leasing tenant or buyer for the Premises. That tenant shall be a member of the targeted industry pursuant to the City of Peoria EDIS, as amended,

or a tenant that meets the terms and conditions identified by the City, or both. The relevant portion of the EDIS is attached as Exhibit “D” and incorporated herein, by reference.

B. The Developer acknowledges and agrees to use commercially reasonable efforts to attract and lease the Premises to a targeted-industry tenant with no fewer than 50 FTE employees that have an average annual salary of \$55,000 for a full time employee.

C. Until such time as a tenant lease agreement has been executed between Developer and such tenant, and to maintain flexibility of design, Developer agrees to complete a design development set of plans for the exterior improvements, and demolition and preliminary interior plans demonstrating potential configurations of the tenant improvements.

D. Upon Developer’s selection of a tenant, and execution of a lease, the Developer shall invest no less than \$2 million in tenant improvements to convert the current restaurant/bar to a leased space for a commercial or corporate office use by a targeted-industry tenant. Developer, at its sole expense, notwithstanding any reimbursement made available by the Lease, shall cause to be constructed and installed buildings, structures, facilities and other alterations and improvements, fixtures, and equipment (collectively, the “Improvements”) within the Premises in compliance with the applicable zoning, City building and fire codes, and all generally applicable City requirements which are consistent with the use of the Premises as permitted under the terms and conditions of this Agreement. Upon commencement of the Improvements, Developer shall pursue diligently the construction of the Improvements to completion.

E. This Project is eligible for Priority Track Development Review Process services, as an identified targeted business in both the Economic Development Implementation Strategy II (EDIS II) and the Economic Development Incentive and Investment Policy (EDIIP). The Priority Track process provides “front of the line” and reduced time frame City development plan review services (including civil engineering, building, and fire plan review, permitting and inspection services), at no cost to the targeted industry/business prospects. Guidelines for Priority Track review are attached in Exhibit “E” and incorporated herein.

3. **Term.** The term of this Agreement shall begin on the Effective Date and continue through and including June 30, 2020, unless otherwise extended by mutual written agreement of the Parties.

4. **Notices.** Unless otherwise specifically provided herein, or unless written notice of a change of address has been previously given pursuant hereto, all notices, demands or other communication given hereunder (each, a “Notice”) shall be in writing and shall be deemed to have been duly delivered upon (i) personal delivery, (ii) upon delivery by a recognized overnight courier (e.g., Federal Express, United Parcel Service) for next business day delivery, or (iii) as of the second business day after mailing by United States mail, postage prepaid, by certified mail, return receipt requested, addressed as follows:

To Developer: Attn: Kurt W. Rosene

7337 East Doubletree Ranch Road, Suite #284
Scottsdale, Arizona 85258

Copy to: Robert N. Brier
Brier, Irish, Hubbard & Erhart, P.L.C.
2400 East Arizona Biltmore Circle, Suite 1300
Phoenix, Arizona 85016

To City: City Economic Development Dept.
8401 West Monroe Street
Peoria, Arizona 85345

Copy to: City Attorney
8401 West Monroe Street
Peoria, Arizona 85345

Communications may be made by facsimile or by electronic or digital means (for example, email), but such communications shall not constitute "Notice" as required by this Agreement unless also sent by one of the methods specified above, and shall be deemed only to be courtesies to the recipient.

5. **Unintended Delay.** If and to the extent that Developer's performance of this Agreement is impaired or delayed by war, fire, casualty, acts of God or terrorism or other similar causes (each, an "Unintended Delay"), then the requirements under this Agreement may be equitably extended as necessary to permit Developer the opportunity to meet the requirements herein. In no event will Unintended Delay include any delay resulting from general economic or market conditions, or from the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders, it being agreed that Developer will bear all risks of delay which are not Unintended Delay. In the event of the occurrence of any such Unintended Delay, the Party seeking the benefit of the provisions of this Section 5 shall, within thirty (30) days after such Party knows of any such Unintended Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Unintended Delay.

6. **Representations and Warranties.**

A. Developer represents and warrants that it is a limited liability company duly formed and validly existing under the laws of the State of Arizona and is admitted and is in good standing in the State of Arizona.

B. Developer represents and warrants that the person(s) executing this Agreement on behalf of Developer has full right, power, and authority to execute this Agreement and bind Developer hereunder.

C. Developer shall comply with all applicable federal, state and local regulations, codes and laws regarding its operations. Nothing in this Agreement constitutes an exemption or grant of a variance from applicable codes and laws.

D. City represents and warrants that the person(s) executing this Agreement on behalf of City has full right, power, and authority to execute this Agreement and bind City hereunder.

7. **Default.** In the event any Party fails to comply with any terms, conditions and obligations under this Agreement, which are applicable to such Party, within thirty (30) days after receipt of written notice from another Party (an "Event of Default"), such Party shall be deemed to be in default under this Agreement. After the occurrence of such Event of Default, the Parties hereby agree that the Parties shall attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the Mediation Rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator selected by the Parties. In the event the Parties cannot agree upon the selection of a mediator within ten (10) calendar days, then, within five (5) calendar days thereafter, the Parties shall request the presiding judge of the Superior Court of Maricopa County, Arizona to appoint the mediator. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to commercial property and development agreements. The cost of any such mediation shall be divided equally between the Parties involved in the mediation. The mediator shall not have the right to award any damages, including punitive damages. The results of the mediation shall be nonbinding and any Party shall have the right to initiate litigation to enforce the terms and conditions of this Agreement upon the later of the conclusion of the mediation or one hundred twenty (120) days after the Event of Default, subject to any extensions agreed to by the Parties in writing.

8 **Remedies.**

A. In the event that City is in default under this Agreement and fails to cure any such default within the time period described in Section 7 above, and the Parties do not resolve City's default pursuant to the nonbinding mediation described in Section 7 above, then, in that event and as Developer's sole and exclusive remedies, Developer shall have the right to seek specific performance of City's obligations contained herein or to pursue those remedies available under applicable law not inconsistent with the terms of this Agreement.

B. In the event that Developer is in default under this Agreement and fails to cure any such default within the time period described in Section 7 above, and the Parties do not resolve such default pursuant to the nonbinding mediation described in Section 7 above, then, in that event and as City's sole and exclusive remedies, City shall have the right to terminate this Agreement and thereafter recover from Developer all amounts actually reimbursed by City to Developer pursuant to this Agreement.

9. **Assignment.** Developer shall not assign any right or obligation in this Agreement other than to a subsidiary or affiliate of Developer, without City's prior written consent, which consent may be granted, conditioned or delayed in City's sole and absolute discretion. In order to be effective, any such assignment must contain an express written agreement and assumption by the assignee agreeing to be unconditionally liable for Developer's obligations contained herein. Any such assignment shall not relieve the assigning Party of its obligations in this Agreement until the City's consent is obtained.

10. **Additional Matters.**

A. **City's Right to Terminate.** 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 termination by City pursuant to the provisions of A.R.S. Section 38-511.

B. **Effective Date.** This Agreement is entered into and effective as of the Effective Date.

C. **Recitals.** The recitals set forth in this Agreement are incorporated in this Agreement by reference as if fully set forth herein.

D. **City Processes.** Nothing in this Agreement shall preclude City from the reasonable exercise of its normal zoning, planning and review processes or its enforcement of public health and safety. Nothing herein precludes the Developer from obtaining Priority Tract Development Review as provided in this Agreement.

E. **No Exemption.** Nothing in this Agreement exempts Developer from payment of any sales tax, rental tax, use tax or any other municipal fees or charges. Payment of such taxes, fees, or charges does not preclude any tenant improvement allowance available to the Developer under this Agreement.

F. **Severability.** City and Developer each believes that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any applicable constitutional provision, law, regulation, City code or City charter), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed Agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

G. **No Waiver.** The failure of any Party to exercise any right, power or remedy given to it under this Agreement, or to insist upon strict compliance with it, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach, nor a waiver by either Party of its rights at any time to require exact and strict compliance with all of the terms of this Agreement. The rights or remedies under this Agreement are exclusive of any other rights or remedies which may be granted by law.

H. Entire Agreement; Amendments; Counterparts. This Agreement (together with the separate Lease that may be entered into between City and Developer) constitutes the entire Agreement between City and Developer with respect to its subject matter, and all agreements, oral or written, entered into prior to this Agreement are revoked and superseded by this Agreement. This Agreement may not be changed, modified or rescinded, except in writing, signed by all Parties and any attempt at oral modification of this Agreement shall be void and of no effect. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

I. Attorney's Fees. In the event of any dispute between the Parties in connection with this Agreement, the Party prevailing in such action or proceeding shall be entitled to recover from the other Party all of its reasonable costs and fees, including reasonable attorneys' fees; provided, however, that no such amount shall be awarded, owed or payable until (i) the court in question has made a finding that one or the other party is the "prevailing party" in such proceeding, and (ii) a final, non-appealable order of judgment is entered by a court of competent jurisdiction, or where applicable, the mandate of an appellate court of competent jurisdiction shall issue.

J. Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action. The Parties irrevocably consent to the exclusive jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 10(J). The provisions of this Section 10(J) have been specifically bargained for by City and constitute additional consideration to City for its entering into, and agreeing to be bound by, this Agreement.

K. No Personal Liability. No member, agent, representative, official, officer, or employee of any Party shall be personally liable to any Party, or any successor-in-interest, in the event of any default or breach by a Party or for any amount which may become due to another Party or any successor in interest or on any obligation under the terms of this Agreement.

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

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

N. City Manager's Power to Consent. The City authorizes and empowers the City Manager to review and consent, at the sole discretion of the City Manager, to any minor modifications to the obligations imposed on a party, or any administrative changes to this Agreement. Such minor modifications or administrative changes shall advance the objectives and goals of this Agreement, and shall neither undermine nor run counter to the substantive requirements established by this Agreement. Notwithstanding the foregoing, any modification or change shall be taken to Council if: (i) such action is required by law to go to Council, or (ii) in the sole discretion of the City Manager, the modification or change should go to Council.

O. General Cooperation. The City agrees to use its best efforts to assist Developer or its affiliates in the development of the Project, including any assistance with other governmental agencies as appropriate. 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 liaison between the 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 the City ("City Representative") shall be Scott Whyte, and the initial representative for Developer ("Developer Representative") shall be Kurt W. Rosene. Both the City Representative and the Developer Representative shall be available at reasonable times to discuss and review the performance of the City and Developer under this Agreement and the development of the Project. A party may change its Representative at any time by giving notice to the other party as provided in Section 4.

P. Successors and Assigns; Recordation. 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. The provisions of this Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns of the parties hereto. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) calendar days after execution of this Agreement by the City.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties execute this Agreement through their duly authorized representatives and bind their respective entities to the terms and obligations herein contained on the date and year first written above.

<p>City of Peoria, Arizona, an Arizona municipal corporation</p> <p>By: _____ Carl Swenson, City Manager</p> <p>ATTEST:</p> <p>By: _____ Rhonda Geriminsky, City Clerk</p> <p>APPROVED AS TO FORM:</p> <p>By: _____ Steve Burg, City Attorney</p>	<p>NOVO Development, LLC, an Arizona limited liability company</p> <p>By: _____ _____</p> <p>Kurt W. Rosene</p> <p>Title: Manager</p>
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STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing Development Agreement was acknowledged before me this ____ day of _____, 2017, by Carl Swenson, City Manager of City of Peoria, Arizona, an Arizona charter municipality, on behalf of the City.

My Commission Expires: _____

Notary Public

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing Development Agreement was acknowledged before me this ____ day of _____, 2017, by Kurt W. Rosene, Manager, NOVO Development, LLC, an Arizona limited liability company, on behalf of the company.

Notary Public

My Commission Expires: _____

EXHIBIT A

EXHIBIT "A" **Legal Description**

PARCEL NO. 1:

LOT 1A, REPLAT OF LOTS 1, 9 AND TRACT L - ARROWHEAD ENTERTAINMENT CENTER, ACCORDING TO BOOK 580 OF MAPS, PAGE 37 AND CERTIFICATE OF CORRECTION RECORDED IN RECORDING NO. 2002- 293969, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 2:

AN UNDIVIDED 8% INTEREST IN AND TO TRACT "K", ARROWHEAD ENTERTAINMENT CENTER, ACCORDING TO BOOK 535 OF MAPS, PAGE 27, RECORDS OF MARICOPA COUNTY, ARIZONA AND NOTICE OF CORRECTION TO PLAT RECORDED IN RECORDING NO. 2015-222390; AND

AN UNDIVIDED 8% INTEREST IN AND TO TRACT "M-I", REPLAT OF LOT 10 AND TRACT M – ARROWHEAD ENTERTAINMENT CENTER, ACCORDING TO BOOK 583 OF MAPS, PAGE 39 AND CERTIFICATE OF CORRECTION RECORDED IN RECORDING NO. 2002-293970, RECORDS OF MARICOPA COUNTY, ARIZONA; AND

AN UNDIVIDED 8% INTEREST IN AND TO TRACT "L-I", REPLAT OF LOTS 1, 9 AND TRACT L - ARROWHEAD ENTERTAINMENT CENTER, ACCORDING TO BOOK 580 OF MAPS, PAGE 37 AND CERTIFICATE OF CORRECTION RECORDED IN RECORDING NO. 2002-293969, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 3:

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND PARKING PURPOSES AS CREATED, GRANTED AND MORE PARTICULARLY DESCRIBED IN THAT CERTAIN "RESTRICTIONS AND EASEMENTS" BY AND BETWEEN ARROWHEAD FOUNTAINS CENTER, L.L.C., AN ARIZONA LIMITED LIABILITY COMPANY AND HARKINS PHOENIX, CINEMAS, L.L.C., AN ARIZONA LIMITED LIABILITY COMPANY RECORDED IN RECORDING NO. 1999-994023, RECORDS OF MARICOPA COUNTY, ARIZONA.

EXHIBIT B

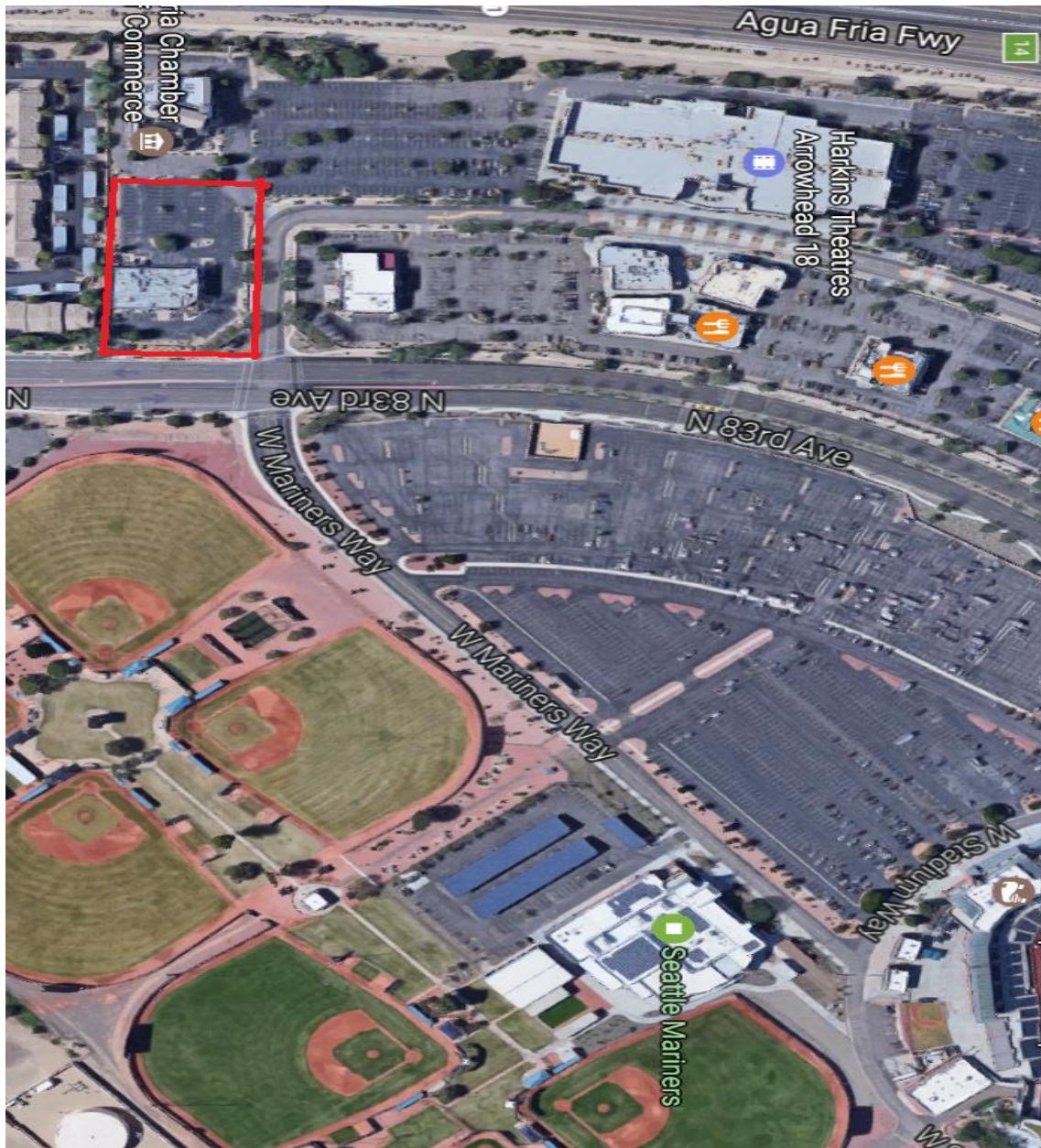


EXHIBIT C

LEASE TEMPLATE

LEASE AND PURCHASE OPTION AGREEMENT WITH NOVO DEVELOPMENT FOR PREMISES IN PEORIA, ARIZONA

This Lease and Purchase Option Agreement (“Lease”) for real property located 15814 North 83rd Ave in Peoria, Arizona and is made as of the ____ day of _____, 2017, by and between the **City of Peoria, Arizona**, an Arizona charter municipality (“Lessor”), and **NOVO Development, LLC**, an Arizona limited liability company (“Lessee”). Lessor and Lessee may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, Lessor is the owner of real property located at 15814 N. 83rd Ave within the Arrowhead Entertainment Center (“Premises”) as legally described on ***Exhibit “A”*** and an aerial depiction of Premises in ***Exhibit “B”*** attached hereto and incorporated herein by this reference.

WHEREAS, Lessor purchased the Premises with the intent to repurpose the building thereon from a restaurant and bar use to an employment-generating use, focusing on commercial or corporate office space for the attraction of targeted industries pursuant to the City Council adopted Economic Development Implementation Strategy (EDIS).

WHEREAS, in a letter dated April 6, 2017, Lessee submitted a proposal to lease the Premises, AS-IS (a restaurant, bar and grill), and redevelop and improve the Premises for office use (the “Project”).

WHEREAS, Lessee intends to invest over \$2 million in tenant improvements to convert the Premises to a office use by a targeted industry with no fewer than 50 full time equivalent (FTE) employees with an average annual salary of \$55,000.

WHEREAS, Lessee will lease the Premises with the intent to purchase, and thereby entering into a Lease with an option to purchase.

NOW, THEREFORE, the Parties agree to enter into this Lease and Purchase Option Agreement as follows:

SECTION 1 – FUNDAMENTAL LEASE PROVISIONS

Commencement Date: _____, 2017

Lessor: City of Peoria, Arizona, an Arizona charter municipal corporation, and any successor, assign or person or entity hereafter acquiring the Lessor's interest in all or a portion of this Lease.

Lessee: NOVO Development, LLC, an Arizona limited liability company and any successors, assigns or persons or entities hereafter acquiring all or a portion of Lessee's interest in this Lease.

Project: The Project is a triple net (NNN) lease for the redevelopment and tenant improvement to an existing restaurant space to convert the space for occupancy by a targeted industry tenant relocating or commercial or corporate office user that will provide a financial benefit to Peoria. The Premises is located within the Arrowhead Entertainment Center and legally described in Exhibit A and depicted in Exhibit B.

Priority Track: The improvements for this Project are eligible for the Priority Tract Program, providing "front of the line" services and reduced review timeframes. See Exhibit E.

Real Property: As used herein, the Premises leased to Lessee includes:

- (1) Lot 1A of Tract L replat;
- (2) Assessor Parcel Number 200-53-629;
- (3) approximately 12,150 square feet of gross floor area;
- (4) Subject to all related taxes, assessments, easements, rights of way, encumbrances, liens, covenants, conditions, and restrictions, obligations, and liabilities;
- (5) Parking Parcel and Easement: Easement, access, ingress/egress, and parking rights over, under, upon, across and through parking lots that are located within the Arrowhead Entertainment Center.

Planned Improvements: Any and all permanent or temporary structures, facilities, alterations and infrastructure in connection with the office improvements erected, constructed, altered or situated on, over, under and upon the Real Property thereof during the Term.

Improvement Allowance: Lessee shall be entitled to a tenant improvement allowance provided

in **SECTION 9**.

- Lease Term: The initial Lease Term is defined 65 years.
- Option to Purchase: Lessee shall have the option to purchase the Premises upon proper notice, as set forth in **SECTION 3.1, SECTION 24 AND SECTION 25**.
- Annual Rental: Lessee shall pay Rent monthly to Lessor as set forth in greater detail in **SECTION 4 – Rent**.
- Permitted Uses: Permitted Uses and Prohibited uses are defined **SECTION 8**.

The Recitals and foregoing Fundamental Lease Provisions are an integral part of this Lease. Any reference in the body of this Lease to any Recital or Fundamental Lease Provision shall be construed to incorporate all of the terms set forth above. In the event there is any conflict between any provisions set forth above and the balance of this Lease, the balance of this Lease shall control.

SECTION 2 - THE LEASE AGREEMENT

2.1 For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and subject to the promises, terms and conditions contained in this Lease, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the Premises, as described herein. Lessee acknowledges that it has inspected the Premises, is familiar with its condition and accepts the same “**AS IS**” in its present condition. Lessor acknowledges that Lessee has the right to make alterations and construct tenant improvements to utilize the Premises for office use, after obtaining Lessor’s written consent, which shall not be unreasonably withheld, conditioned or delayed. Lessor further acknowledges that all prior leases, rentals or other grant of possession of the Premises, if any, shall terminate and be of no further force or effect as of the Commencement Date of this Lease.

SECTION 3 - TERM

3.1 The lease term commences on the Commencement Date which shall mean the date this Lease is fully executed by both parties. This Lease shall continue thereafter for a period of sixty-five (65) years, unless such lease term shall be sooner terminated. Provided Lessee is not then in default hereunder beyond the expiration of any applicable cure period, the Lessee may opt to purchase the Premises upon the terms and conditions set forth in **SECTION 24** and **SECTION 25** below. Lessee’s rights to exercise the option in **SECTION 24** shall be in a form the same or similar to Exhibit F. The lease term, as well as any extension hereunder, is hereafter referred to as the “Term.”

SECTION 4 – RENT

4.1 Lessee shall pay rent ("Rent") to Lessor monthly, without notice or demand, for the use and occupancy of the Premises during the Term of this Lease, in the total amount of \$112,000 per year or \$9,333.33 per month (initial Rent).

4.2 Beginning on the Lease Commencement Date and continuing on or before the first day of each succeeding month of this Lease, the Rent shall be due and payable throughout the Term of this Lease. If the Commencement Date is on a date that is not the 1st of the month, Lessee agrees to pay Lessor the pro-rata amount related to the number of days remaining in the month prior to the succeeding 1st day of the month.

4.3 Lessee agrees the Lessor shall receive the Rent without deduction, offset, prior notice, demand, or delay (except as may be expressly provided in this Lease).

4.4 Beginning one (1) year after the Commencement Date and upon every annual anniversary thereafter, through the end of the Lease Term, the Rent shall increase by 3% (rent escalator).

4.5 Lessee shall be responsible for and shall pay the Rent and any Additional Charges, hereinafter provided for in **SECTION 5**, in lawful money of the United States of America to the "City of Peoria, Arizona" payable at 8401 W. Monroe, Peoria, Arizona 85345 and such payments shall be delivered to the attention of the City of Peoria, Arizona Chief Financial Officer, or to such other place or person as Lessor may designate in writing to Lessee from time to time.

4.6 If Lessee shall fail or neglect to pay any amount due and payable to Lessor, and the failure shall continue for five (5) calendar days after such amount is due (or in the case of payments other than Rent, within fifteen (15) calendar days after Lessee receives written notice of such amount), then beginning on the sixth (6th) or sixteenth (16th) day the payment shall be delinquent, as applicable, Lessee shall pay to Lessor a late payment charge in the amount of five percent (5%) of the delinquent amount ("Late Payment Charge"); and said Late Payment Charge shall be in addition to, and not in lieu of, any other rights Lessor may have. Notwithstanding the foregoing, for the first instance of a late payment of Rent or any Additional Charges during any twelve (12) month period during the Term, a late charge will not be assessed against Lessee unless Lessee fails to pay the amount due within five (5) calendar days after written notice thereof from Lessor.

SECTION 5 - ADDITIONAL CHARGES

5.1 All taxes, subject to the provisions of **SECTION 7**, including the City transaction privilege tax, assessments, insurance premiums, charges, costs, Property Owners Association fees, custodial services, building maintenance costs, utilities, and expenses which Lessee assumes, agrees or is obligated by law to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Lessee's failure to pay the same as herein provided, and all other damages, costs and expenses which Lessor may suffer or incur for which Lessee is liable under this Lease, and any and all other sums which may become due by reason of any default of Lessee, or failure on Lessee's part to comply with the agreements, terms, covenants and conditions of this Lease shall be referred to herein as "Additional Charges" and shall be due and payable by Lessee, and in the event of their nonpayment, after written notice from Lessor and a reasonable opportunity to cure, Lessor shall have, with respect thereto, all rights and remedies herein provided and

available in law or equity in the event of nonpayment of Rent. If not paid when due, all Rent and any Additional Charges payable to Lessor as expressly provided in this Lease shall accrue interest at eight percent (8%) per annum from their due date expressly provided in this Lease until paid.

5.2 The Parties agree that Additional Charges do not include costs related to the major building systems, such as the roof and mechanical services, e.g., HVAC (because Lessor is responsible for items outside the walls of the Premises, and Lessee is responsible for items inside the walls of the Premises).

SECTION 6 – NO COUNTERCLAIM OR ABATEMENT OF RENT

Except as expressly provided herein, Rent and Additional Charges and all other sums payable by Lessee hereunder shall be paid without notice, demand, counterclaim, setoff, recoupment, deduction or defense of any kind or nature and without abatement, suspension, deferment, diminution or reduction.

SECTION 7 - TAXES, ASSESSMENTS AND UTILITIES

7.1 It is the intention of the Parties hereto that, insofar as the same may be lawfully done, Lessor shall be free from all costs, expenses, obligations and all such taxes, assessments and all such other governmental impositions and charges, and that this Lease shall yield net to Lessor not less than the Rent reserved hereunder, throughout the Term (this is a NNN lease). Subject to the provisions of **Subsection 7.2** below, Lessee shall pay and discharge, as and when the same shall become due and payable without penalty, all real estate, personal property, business, transaction privilege, occupation and occupational license taxes, assessments (but not assessments for any presently existing public improvements or benefits); and all other governmental taxes, impositions and charges of every kind and nature, general or special, foreseen or unforeseen, whether similar or dissimilar to any of the foregoing, which at any time during the Term of this Lease shall be or become due and payable with respect to the Premises.

7.2 Property Taxes. Notwithstanding anything contained herein to the contrary, Lessee's obligation to pay real estate taxes or other improvements located thereon during the Term of this Lease shall be limited to the real estate taxes or excise taxes under the Government Property Lease Excise Tax (GPLET) statute owed as long as the City of Peoria remains the owner of the Premises. If a sale or other transfer of the Premises during the Term of this Lease to a party other than Lessee (or its affiliate) pursuant to the provisions of **SECTION 25** below results in any increase in real estate taxes or excise taxes from that which may otherwise be owed if the City of Peoria remained the owner, such increase in real estate taxes shall be paid by the successor Lessor, and Lessee may deduct such additional taxes from the Rent or other amounts payable to Lessor hereunder.

7.3 Lessee shall have the right to contest any claim, tax, assessment, or interest levied during the Term of this Lease or from Lessee's activities by posting bonds to prevent enforcement of any lien resulting therefrom. Lessee agrees to protect and hold harmless the Lessor, and all interests therein and improvements thereon, from any and all claims, taxes, assessments and like charges and from any lien or sale or other proceedings to enforce payment thereof, and all costs in connection therewith, but only as to those that arise or occur during the Term of this Lease. Lessor

agrees to cooperate with Lessee and shall promptly execute and deliver for filing any appropriate documents with reference to any such contest when so requested by Lessee.

7.4 Lessee, upon Lessor's written request, shall furnish to Lessor, within twenty (20) days thereafter, proof of the payment of any taxes, impositions or charges which Lessee and not Lessor shall have the obligation to pay under the provisions of this **SECTION 7**.

7.5 Lessee shall be solely responsible for, and shall pay the cost of, constructing or installing utility hookups from existing utility installations and shall be solely responsible for, and shall pay the cost of, all utility services, custodial services, and building maintenance costs consumed by Lessee during the Term of this Lease.

SECTION 8 – USE OF PREMISES

8.1 Permitted Uses. The Lessee, as well as any sublessees or assignees, shall use the Premises solely for commercial or corporate office space to be used by targeted companies, per the EDIS (attached as Exhibit "F" and incorporated by reference), meeting a minimum of 50 full time equivalent jobs with an average annual salary of \$55,000, and not for any other purpose without the prior written consent of Lessor. Lessee shall not use or permit the Premises to be used in violation of the Regulatory Requirements as defined in **SECTION 11**, below. Use of the Premises in violation of the terms of this shall cause Lessee to be in default hereunder; however, Lessee shall have the right to cure said default pursuant to the provisions of **SECTION 17** of this Lease.

8.2 Within one (1) year after the Commencement Date (or as soon thereafter as is reasonably practicable under the circumstances), Lessee shall have caused an occupant to begin using the Premises for the Permitted Uses established in this **SECTION 8**. If these performance criteria are not met in the time herein established, Lessee agrees that the full amount of the tenant improvement allowance reimbursed by the Lessor to Lessee, as established in **SECTION 9**, shall be due and payable back to the Lessor within thirty (30) days after Lessor's written demand for payment.

8.3 Prohibited Uses. Lessee shall not use the Premises to operate an adult movie theatre, an adult live cabaret, or any other form of sexually oriented business as that term is defined in the Peoria City Code, as that code provision may be amended, and shall not permit performances containing specified sexual activities or specified anatomical areas as those terms are defined in the Peoria City Code, as that code provision may be amended. Lessee shall not use the Premises to operate a laundromat, pawn shop, non-chartered financial institution, tattoo or body piercing studio, or gun and ammunition shops. Lessee shall not use the Premises to operate a bar requiring a Series 6 Liquor License from the State of Arizona. The Lessee shall not use the Premises to operate a restaurant, grill, dinner, café, sports bar, or any other eating establishment requiring license from state and local government.

8.4 Temporary Construction Easements. If requested by Lessee, Lessor will cooperate with Lessee to grant Lessee temporary construction easements across Lessor's City-owned property, which Lessor agrees will not be unreasonably withheld, conditioned or delayed so long as the easement does not negatively impact other City-owned property or City operations.

8.5 Reliance on Ordinances. Without limiting the applicability of the foregoing, the City may enact the following provisions and take the following actions on a uniform, non-discriminatory basis, which will be applicable to and binding on the development of the Premises:

a. Future updates of and amendments to the existing subdivision regulations, building, construction, plumbing, mechanical, electrical, drainage, and similar construction and safety related codes, specifications and regulations, which updates and amendments are generated by a nationally recognized construction/safety organization, or by Maricopa County, the State of Arizona, or the Federal government.

b. Ordinances, rules, regulations and legislation of the City reasonably necessary to alleviate legitimate severe threats to public health and safety in which event any ordinance, rule, regulation, or legislation imposed in an effort to contain or alleviate such legitimate severe threats to public health and safety will be the most minimal and the least intrusive alternative practicable.

c. Ordinances, rules, regulations and legislation of the City enacted as necessary to comply with mandatory requirements imposed on the City by Maricopa County, the State of Arizona, or the Federal government, including but not limited to court decisions and other similar superior external authorities beyond the City's control. If any such mandatory requirement prevents or precludes compliance with this Lease, if permitted by law, such affected provisions of this Lease will be modified as may be necessary to achieve the minimum possible compliance with such mandatory requirements.

d. Nothing in this Lease will be interpreted as relieving Lessee of any obligation it may have on the Commencement Date to comply with all governmental rules and regulations which apply to the Premises.

e. Ordinances, rules, regulations, and legislation imposed under the City's police power authority (exclusive of zoning), which is applied in the City to similarly situated properties.

f. Future enactment of fees and taxes or modifications thereto, which are imposed or charged by the City uniformly or only to similarly situated properties.

SECTION 9 – CONSTRUCTION OF IMPROVEMENTS

9.1 Improvements. Lessee, at its sole expense (notwithstanding any reimbursement that may be available to Lessee from the Lessor pursuant to this Lease), may cause to be constructed and installed buildings, structures, facilities and other alterations and improvements, fixtures, and equipment (collectively, the "Improvements") within the Premises in compliance with the applicable zoning, City building and fire codes, and all generally applicable City requirements which are consistent with the use of the Premises as permitted under the terms and conditions of this Lease. Upon commencement of the Improvements, Lessee shall pursue diligently the construction of the Improvements to completion.

9.2 Further, Lessee may, pursuant to **SECTION 16** of this Lease, sublease the Premises to a sublessee permitting the sublessee to develop any Permitted Use. Any sublessee developing

under this Lease will be responsible for the development of such subleased portions of the Premises in accordance with this Lease, the applicable zoning, and other development and planning ordinances of the City of Peoria.

9.3 Tenant Improvement Allowance. Lessee is entitled to a tenant improvement allowance reimbursement from the Lessor of costs, not to exceed \$425,250, for Improvements of the Premises. Upon timely and proper completion of the approved Improvements, and receipt of a certificate of occupancy from the City of Peoria, Lessee shall submit appropriate and relevant back-up documentation evidencing eligible Improvements made and paid for by or on behalf of the Lessee (including any sales, transaction privilege or other taxes paid thereon) prior to requesting Lessor reimbursement. For purposes of this section, “eligible” Improvements available for reimbursement shall not include furniture, fixtures, and equipment; landscaping; hardscaping; or any expense that Lessee is otherwise required by law to pay, e.g., permit fees, utilities, code compliance, environmental compliance, etc. Lessee must submit documentation evidencing that it has expended no less than \$2,000,000 in tenant improvements to convert the space at the Premises for commercial or corporate office use prior to any request for Lessor reimbursement of the tenant improvement allowance. The Lessor reimbursement allowance shall be for amounts only in excess of \$2,000,000. Under no circumstance will reimbursement exceed a total of \$425,250. Such appropriate and relevant back-up documentation may include, but is not limited to, drawings, paid invoices for surveys, design, and construction costs, or any other reasonable supporting documentation requested by Lessor evidencing expenditure of such costs.

9.4 Reimbursement. Lessor agrees to reimburse Lessee the tenant improvement allowance upon receipt of appropriate and relevant back-up documentation. The Lessor shall have thirty (30) calendar days after receipt to review the reimbursement request. The Lessor may object to all or any portion of the reimbursement request if it reasonably determines that any amount for which reimbursement is sought does not constitute an eligible Improvement(s) or is not supported by appropriate back-up documentation. If the Lessor has no such objection, the Lessor shall approve the reimbursement request and shall, within thirty (30) days of approval, issue payment for the total amount of the reimbursement request approved. If the Lessor objects to a reimbursement request, or any portion thereof, the Lessor shall notify Lessee of its objection within thirty (30) calendar days after receipt, and shall specify the nature of its objection and whether it is objecting to the payment of all or only a part of the amount sought to be paid pursuant to the reimbursement request. If the Lessor objects to only a portion of a reimbursement request, then the Lessor shall (i) within thirty (30) days after the Lessor approves such request, issue payment on the undisputed portion, and (ii) withhold any disputed amount until the Parties mutually agree as to the payment of the disputed amount. Notwithstanding the foregoing, the Lessor shall not act unreasonably when approving or disapproving any reimbursement requests. In no event will the amount of the reimbursement for tenant improvements exceed, in total, the sum of Four Hundred Twenty-Five Thousand Two Hundred Fifty Dollars (\$425,250).

9.5 This Project is eligible for Priority Track Development Review Process services, as an identified targeted business in both the Economic Development Implementation Strategy II (EDIS II) and the Economic Development Incentive and Investment Policy (EDIIP). The Priority Track process provides “front of the line” and reduced time frame City development plan review services (including civil engineering, building, and fire plan review, permitting and inspection

services), at no cost to the targeted industry/business prospects. Guidelines for Priority Track review are attached in Exhibit "E" and incorporated herein.

9.6 Priority Track Review. This Project is eligible for Priority Track Development Review Process services, as an identified targeted business in both the Economic Development Implementation Strategy II (EDIS II) and the Economic Development Incentive and Investment Policy (EDIIP). The Priority Track process provides "front of the line" and reduced time frame City development plan review services (including civil engineering, building, and fire plan review, permitting and inspection services), at no cost to the targeted industry/business prospects. Guidelines for Priority Track review are attached in Exhibit E and incorporated herein.

9.7 From time to time, upon request of Lessee and subject to **Subsection 9.8** 9.8 below, Lessor shall execute such reasonable documents, petitions, applications and authorizations as are necessary (and which have been prepared at Lessee's expense) as may in the reasonable and good-faith opinion of Lessee be necessary or appropriate for the purpose of obtaining any Required Permits, as defined hereinbelow, for the Improvements, any grant of easement for the installation or maintenance of any public utilities or public or private infrastructure, grant of easement for any street or alley and for any conditional use permit, variance, or any other regulatory action or other similar actions associated with the development of any portion of the Premises. Lessee shall furnish to Lessor promptly upon request copies of all applications for Required Permits, copies of the Required Permits when issued, and copies of all notifications from any governmental entity pertinent to any Required Permit. Lessor shall have the right, but not the obligation, to appear at any hearings, staff meetings or other similar gatherings held in connection with any proceedings having to do with such Required Permits. As used herein, "Required Permits" shall mean each and every building and development permit including, without limitation, demolition permits, site permits and addenda thereto (including, without limitation, foundation permits and structural permits), building permits, temporary and final certificate of occupancy permits and any other governmental or quasi-governmental approvals which must be issued by any governmental authority, department, commission, board, official or officer with respect to the Premises or otherwise required as a condition precedent to construction and occupancy of any Improvements.

9.8 At any time and from time to time, Lessee shall have the right to demolish or alter all or any portion of the then existing Improvements and replace them with uses consistent with this Lease. Lessee shall be required to provide 90 days' written notice to the Lessor prior to any material alteration of the improved Premises that requires a permit.

SECTION 10 – MAINTENANCE AND REPAIRS

10.1 Lessee at all times during the Term of this Lease, at its sole cost, shall keep and maintain in good order and repair and in a clean and sanitary condition the Premises and improvements, including but not limited to all buildings, facilities, structures, driveways, landscaped areas, and other improvements included within the Premises, and all equipment and appurtenances, both interior and exterior, structural and non-structural, ordinary or extraordinary, howsoever the necessity or desirability of repairs may occur. All repairs, replacements and renewals shall be made promptly and be equal in quality and class to the original work. Lessee waives any right created by any legal requirement (now or hereafter in force) to make repairs to

the Premises at Lessor's expense, it being understood that Lessor shall in no event be required to make any alterations, improvements or repairs during the Term; except that if any damage to the buildings, facilities, structures, or improvements on the Premises, or to any equipment or appurtenances located thereon, shall have been as a result of the negligent or intentional actions of Lessor, its agents, employees or contractors, Lessor shall pay the cost therefor to Lessee.

SECTION 11 – REGULATORY REQUIREMENTS

11.1 Lessee shall promptly observe and comply with all present and future laws, ordinances, requirements, rules and regulations of all governmental authorities having or claiming jurisdiction over the Premises or any part thereof and of all requirements in written insurance policies covering the Premises or any part thereof required in **SECTION 13** below (the "Regulatory Requirements"). Without limiting the generality of the foregoing, Lessee shall also procure each and every permit, license, certificate or other authorization required in connection with the permitted use of the Premises as described in **Subsection 8.1** above or required in connection with any building, structure or improvement now or hereafter erected thereon. Notwithstanding the foregoing, nothing contained herein shall be deemed to grant either Lessor or Lessee the right to alter the terms of this Lease without the express written consent of both Parties.

11.2 Lessee covenants and agrees not to use, generate, release, manage, treat, manufacture, store, or dispose of, on, under or about, or transport to or from (any of the foregoing hereinafter described as "Use") the Premises any Hazardous Materials (other than De Minimis Amounts). Lessee further covenants and agrees to pay all costs and expenses associated with enforcement, removal, remedial or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to Use of any Hazardous Materials in any amount by Lessee, its employees, agents, invitees, sublessees, licensees, assignees or contractors. For purposes of this Lease: (1) the term "Hazardous Materials" shall include but not be limited to asbestos, urea formaldehyde, polychlorinated biphenyls, oil, petroleum products, pesticides, radioactive materials, hazardous wastes, toxic substances and any other related or dangerous, toxic or hazardous chemical, material or substance defined as hazardous or regulated or as a pollutant or contaminant in, or the Use of or exposure to which is prohibited, limited, governed or regulated by, any Hazardous Materials Laws; (2) the term "De Minimis Amounts" shall mean, with respect to any given level of Hazardous Materials, that such level or quantity of Hazardous Materials in any form or combination of form (i) does not constitute a violation of any Hazardous Materials Laws and (ii) is customarily employed in, or associated with, similar facilities; and (3) the term "Hazardous Materials Laws" shall mean any federal, state, county, municipal, local or other statute, law, ordinance or regulation now or hereafter enacted which may relate to or deal with the protection of human health or the environment, including but not be limited to the Comprehensive Environment Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, et seq.; the Toxic Substances Control Act of 1976, 15 U.S.C. Section 2601, et seq.; Ariz. Rev. Stat. Ann., Title 49 (the "Arizona Environmental Quality Act of 1986"); and any rules or regulations legally adopted or promulgated pursuant to any of the foregoing as they may be amended or replaced from time to time. Notwithstanding anything to the contrary contained herein, Lessee shall have no liability or obligation in connection with any enforcement, remedial or other governmental or regulatory actions, agreements, orders, investigation, clean-up,

remediation, removal, restoration or other response costs related to any Hazardous Materials that were present on or about the Premises, or in the soil or groundwater on or under the Premises, prior to or at the Commencement Date or thereafter brought upon, disposed of or otherwise coming to be located on or about the Premises, or in the soil or groundwater on or under the Premises, except to the extent resulting from the actions of Lessee or Lessee's employees, agents, sublessees, licensees, assignees, contractors or anyone else under the control of Lessee, and Lessor hereby releases Lessee from all liability and obligations in connection with such matters.

11.3 Lessee shall have the right, at its sole cost and expense, to contest the validity of any Regulatory Requirements applicable to the Premises by appropriate proceedings diligently conducted in good faith; provided, however, that no such contest shall subject Lessor to any liability, cost or expense.

11.4 Lessor agrees to join in the execution of any instruments which may reasonably be required in order for Lessee to procure the issuance of any licenses, occupational permits, building permits or other government approvals required by Lessee in its use, occupancy or construction or alteration of the Premises. Lessee shall defend, indemnify and save Lessor harmless from any expense or loss whatsoever occasioned by Lessor's presence as a party to any such instrument, application or permit, except to the extent caused by the negligent or intentional acts of Lessor, its agents, representatives, officers, directors, elected and appointed officials and employees.

SECTION 12 – LIENS

12.1 Except for recording the Memorandum of Lease and Purchase Option Agreement as provided in **SECTION 32** below, Lessee shall have no authority to do any act or make any contract that may create or be the basis for any lien, mortgage or other encumbrance upon any interest of Lessor in the real property included within the Premises; provided however that Lessee shall not be prohibited from entering into any contracts in Lessee's capacity as a Lessee, rather than as the title holder of said real property. Should Lessee cause any construction, alterations, rebuildings, restorations, replacements, changes, additions, improvements or repairs to be made on the Premises, or cause any labor to be performed or material to be furnished thereon, therein or thereto, neither Lessor nor the real property included within the Premises shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished, and Lessee shall be solely and wholly responsible to contractors, laborers and materialmen performing such labor and furnishing such material.

12.2 If, because of any error, act, or omission (or alleged error, act or omission) of either Lessee or Lessor, any mechanics', materialmen's or other lien, charge or order for the payment of money shall be filed or recorded against the real property included within the Premises or against Lessor (whether or not such lien, charge or order is valid or enforceable as such), Lessee or Lessor, as the case may be, shall, at its own expense, either cause the same to be discharged of record or bonded over pursuant to A.R.S. § 33-1004 within thirty (30) days after either shall have received from the other a written notice requesting such discharge.

12.3 Lessor shall keep the fee title free and clear of all liens and encumbrances that may adversely affect Lessee's leasehold interest in this Lease.

SECTION 13 – PROPERTY AND LIABILITY INSURANCE

13.1 Lessee shall at all times, throughout the Term of this Lease, keep the Premises insured pursuant to the requirements set forth in this **SECTION 13**. Lessee shall ensure that all insurance policies in effect for the Premises name the City of Peoria as an additional insured.

13.2 The insurance policies required by this **SECTION 13** shall be written by insurance companies with an A.M. Best's Key Rating Guide of A- [minus] or better, authorized to do business in the State of Arizona, and shall be written on an occurrence basis or in a form reasonably satisfactory to Lessor. As often as any such policy shall expire or otherwise terminate, renewal or additional policies shall be procured and maintained by Lessee and its contractor(s) to provide uninterrupted coverage. Lessee agrees and shall cause its contractor(s) to agree to provide Lessor with certificates of insurance evidencing such insurance policies providing coverage for the Premises upon Lessor's request.

13.3 Lessee, during the entire Term of this Lease, shall provide, secure, pay for and maintain the following insurance coverage, indemnification and waivers as set forth in subsections a through e (inclusive) immediately below.

a. Statutory workers' compensation insurance, in an amount required by the State of Arizona and any and all applicable insurance required by any employee benefit acts or other statutes as will protect Lessee's employees from any and all liability under the aforementioned acts and statutes for work performed at the Premises.

b. Commercial general liability insurance in an amount not less than \$1,000,000.00 combined single limit per occurrence and not less than \$2,000,000.00 general aggregate, including but not limited to coverage for explosion, collapse, and underground work as well as contractual liability coverage and including Lessor as an additional insured on a primary non-contributory basis with respect to any other insurance available to Lessor.

c. Lessee (including also anyone holding under Lessee and any and all sublessees and other occupants of the Premises), as the case may be, shall: (i) provide waivers of liability in favor of Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees releasing the same from any and all liability for any and all bodily injury, personal injury and loss of or damage to property (including also any and all loss of use resulting therefrom); (ii) require any and all insurers for the Premises to name the Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees as Additional Insureds in all insurance policies required under this **Subsection 13.3**; and, (iii) require that Lessee (including also anyone holding under Lessee and any and all sublessees and other occupants of the Premises) and all insurers providing policies of insurance under this **Subsection 13.3** waive their rights of subrogation against Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees. The above-referenced waivers of liability and subrogation shall not apply to negligent or intentional actions of Lessor, its agents, representatives, officers, directors, elected and appointed officials, or employees, but said waivers of liability and subrogation shall be applicable to any negligence imputed to Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees by operation of law as a result of the action or non-action of Lessee (including anyone holding under Lessee and any and all

sublessees and other occupants of the Premises) and their respective insurers for work performed on, or services provided to, the Premises).

13.4 During the entire Term of this Lease except in the case of usual and customary maintenance, repair and replacement of the Premises, Lessee shall require any general contractor(s) performing work or services to the Premises with Lessee's consent or approval, to provide, secure, pay for and maintain the following insurance coverage, indemnification and waivers as set forth in subsections a through f (inclusive) immediately below.

a. Statutory workers' compensation insurance (if Lessee has any employees), with limits of not less than \$100,000.00 on an occurrence basis, \$100,000.00 disease for each employee, \$500,000.00 disease policy limit and any and all insurance required by any employee benefit acts or other statutes applicable where the work is to be performed as will protect said contractor's employees, and subcontractors from any and all liability under the aforementioned acts and statutes.

b. Commercial general liability insurance in an amount not less than \$1,000,000.00 combined single limit per occurrence and not less than \$2,000,000.00 general aggregate, including but not limited to coverage for explosion, collapse, and underground work as well as contractual liability coverage and including Lessor as an additional insured on a primary non-contributory basis with respect to any other insurance available to Lessor.

c. Comprehensive automobile liability insurance, including coverage for the ownership, maintenance and operation of any automobile equipment owned, hired or non-owned, which is assigned to or used by the contractor(s) in the performance of work on, or services provided to, the Premises, in an amount not less than \$1,000,000.00 combined single limit per accident.

d. Either of the following: (i) owner's and contractor's protective liability insurance with limits of not less than \$1,000,000.00 combined single limit per occurrence and not less than \$2,000,000.00 general aggregate as will insure Lessor as named insured against any and all claims for bodily injury, including death resulting therefrom, personal injury or damage to the property of others, arising from or in any way connected to Lessee's contractor(s) performance of work on, or services provided to, the Premises or (ii) in lieu of the foregoing owner's and contractor's protective liability insurance specified in this **Subsection 13.4(d)** an endorsement to the commercial general liability insurance specified in **Subsection 13.4(b)** above of this paragraph providing for a separate general aggregate limit of insurance of not less than \$2,000,000.00 on an occurrence basis.

e. Lessee shall cause the above-referenced contractor(s) and sub-contractor(s) (and their respective insurers) to: (i) provide waivers of liability in favor of Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees releasing and holding harmless the same from any and all liability for any and all bodily injury, including death resulting therefrom, personal injury and loss of or damage to property (including also any and all loss of use resulting therefrom); (ii) require the above-referenced contractor(s) and sub-contractor(s) to name the Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees as Additional Insureds in all insurance policies required under

this **Subsection 13.4**; and, (iii) require that the contractor(s), sub-contractor(s) and all insurers providing policies of insurance under this **Subsection 13.4** waive their rights of subrogation against Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees. The above-referenced waivers of liability and subrogation shall not apply to Lessor's negligent or intentional acts but shall be applicable to any negligence imputed to Lessor, its agents, representatives, officers, directors, elected officials and employees by operation of law as a result of the action or non-action of Lessee's contractor(s), sub-contractor(s) and their respective insurers for work performed on, or services provided to, the Premises.

f. Lessee's contractor(s) and sub-contractor(s) performing work on, or providing services to, the Premises shall maintain Errors & Omissions coverage in an amount not less than \$1,000,000.00 combined single limit per occurrence and not less than \$2,000,000.00 general aggregate.

13.5 At Lessee's election, the insurance required by this **SECTION 13** may be provided under a blanket policy.

13.6 Certificates of insurance evidencing all of the coverages required in this **SECTION 13** shall be delivered to Lessor prior to the start of construction of any buildings, structures or improvements on or in the Premises and renewal certificates of insurance shall be delivered to Lessor at least thirty (30) days prior to the expiration dates of the respective policies. Such certificates shall also provide that Lessor will receive written notice of any cancellation, non-renewal or reduction in coverage in accordance with the terms of such policies. Lessor reserves the right to require Lessee to furnish proof, reasonably satisfactory to Lessor, that any and all insurance policies for the Premises remain in full force and effect.

13.7 Lessee further covenants and agrees to reasonably increase the required insurance hereunder to such additional amounts that the Lessor requires of all similarly situated lessees of the Lessor.

13.8 In the event of loss or destruction under any such policy or policies, Lessee shall promptly proceed with the repair and restoration of the damaged or destroyed buildings, structures or improvements in accordance with and subject to the provisions of **SECTION 16** of this Lease. The insurance proceeds, if less than Two Hundred Fifty Thousand Dollars (\$250,000.00) shall be paid to Lessee for application to such repair and restoration and, if in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) shall be paid to Lessee and thereafter endorsed over to Lessee's mortgagee, or if none, to Lessor to be held in trust by a bank or title companies designated by Lessor, to be paid out upon architect's certificates and contractors', subcontractors' and materialmen's waivers of lien for the cost and expense of repairing or restoring the buildings, structures or improvements damaged or destroyed; provided, however, that in the event that such insurance proceeds shall be insufficient to pay fully the cost of completion of such repair or restoration, Lessee shall have paid a sufficient portion of such cost to Lessor before any such repair and restoration are commenced so that it shall appear to the satisfaction of Lessor that the amount of insurance money in the hands of said trustee shall at all times be sufficient to pay for the completion of said repairs or restoration free and clear of liens. Upon the completion of said repair or restoration, free and clear of all liens, any surplus of insurance monies shall be paid to Lessee, provided that Lessee is not then in material, monetary default under this Lease (which shall mean

that any required notice has been given and any applicable cure period has expired). In the event that this Lease shall have been terminated for any default of Lessee under any of the terms and provisions contained in this Lease, all insurance proceeds in the hands of said trustee and all claims against insurers shall be and become the absolute property of Lessor.

SECTION 14 – DAMAGE OR DESTRUCTION

14.1 In the event of damage to or destruction of any of the buildings, structures or improvements included within the Premises by fire or other casualty, Lessee shall give Lessor and any mortgagee prompt notice thereof and shall at its own expense and whether or not the insurance proceeds are sufficient for the purpose, following receipt of insurance proceeds and required building permits, commence and thereafter diligently pursue completion of the repair, restoration or rebuilding of the same so that upon completion of such repairs, restoration or rebuilding, the value and rental value of the buildings, structures or improvements shall be substantially equal to the value and rental value thereof immediately prior to the occurrence of such fire or other casualty.

14.2 Notwithstanding anything to the contrary contained herein, if the buildings, structures or improvements included within the Premises should be rendered untenable by fire or other casualty to the extent of thirty-five percent (35%) or more of the replacement cost of said buildings, structures or improvements, Lessee may, at Lessee's option, terminate this Lease, provided however, that Lessee shall pay all property insurance proceeds received or receivable by reason of the destruction of said buildings, structures or improvements in the following order of priority: (1) to any leasehold mortgagees in the order of their priority for the outstanding balances of said mortgages; (2) to Lessee for the costs of restoring the Premises substantially to its condition on the Lease Commencement Date; (3) to Lessor for any unpaid Rent; and (4) any residual to Lessee. Lessee's option to terminate shall be evidenced by a written notice given to Lessor within ninety (90) days after the occurrence of such damage or destruction.

SECTION 15 – INDEMNIFICATION

15.1 Lessee shall defend, protect, indemnify and hold Lessor, its agents, representatives, officers, directors, elected and appointed officials and employees harmless from and against imposed upon or asserted against Lessor, its agents, representatives, officers, directors, elected or appointed officials, and employees, by reason of any of the following (unless resulting from negligent or intentional actions of Lessor, its agents, representatives, officers, directors, elected and appointed officials, or employees): (i) any use or nonuse of, or any condition created by Lessee on the Premises or any part thereof; (ii) any accident, injury to or death of persons (including workmen) or loss of or damage to property occurring on or about the Premises or any part thereof; (iii) performance of any labor or services or the furnishing of any materials or other property with respect to the Premises or any part thereof; or (iv) any failure on the part of Lessee to comply with any of the matters set forth in **SECTION 11** (Regulatory Requirements) of this Lease, including but not limited to any failure by Lessee to clean up any Hazardous Materials that were not in existence with respect to the Premises or any part thereof as of the Commencement Date of this Lease.

15.2 In the event Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees should be made a defendant in any action, suit or proceeding brought by reason of any the occurrences described in this **SECTION 15**, Lessee shall at its own expense resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Lessee and reasonably approved by Lessor. Except for the negligent or intentional acts of Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees, if any such action, suit or proceeding should result in a final judgment against Lessor, Lessee shall promptly appeal, or satisfy and discharge, such judgment or shall cause such judgment to be promptly appealed, or satisfied and discharged. The obligations of Lessee under this **SECTION 15** arising by reason of any such occurrence taking place while this Lease is in effect shall survive any termination or other form of cancellation of this Lease.

15.3 Notwithstanding any limitation contained in **Subsection 15.2** above, Lessee shall be required to protect, defend, indemnify, satisfy or hold harmless Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees for any liabilities, obligations, claims, suits, damages, penalties, causes of action, costs and expenses (including without limitation, reasonable attorneys' fees and court costs) arising out of this Lease in which event negligence is imputed by operation of law against Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees as a result of the actions or non-action of Lessee, its agents, servants, employees, directors, representatives, officials, customers, vendors, guests, licensees or invitees on the Premises, except in the event of actual (rather than imputed) negligent or intentional acts of Lessor, its agents, representatives, officers, directors, elected and appointed officials, and employees.

SECTION 16 – ASSIGNMENT AND SUBLETTING

16.1 Assignment.

a. Lessee shall not assign or sublet all, any portion or any interest in this Lease, other than one time to an Affiliated Entity with prior notice to Lessor, without first obtaining the written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment or sublet shall comply with the Permitted Uses established herein. Any attempted assignment, without such written consent, shall be void and confer no rights upon any third person, and at the option of Lessor, shall cause a termination of this Lease, in which event said third person may occupy the Premises as a tenant at sufferance.

b. Exceptions. Lessee shall not be deemed to have assigned its interests herein as a result of (a) any addition or withdrawal of a partner or member, if Lessee is a partnership or limited liability company, (b) any change in stock ownership, if Lessee is a corporation, (c) any change in the beneficial ownership, if Lessee is any other form of entity, or (d) assignment by Lessee of part or all of its interest herein to an Affiliated Entity, or members of the Lessee and their successors and heirs if a limited liability company. As used herein, an "Affiliated Entity" means a limited liability company, partnership, corporation, trust or other legal entity which controls, is controlled by or is under common control with Lessee. "Control", for these purposes, shall mean ownership of more than fifty percent (50%) of the ownership interests, interest in profits, or beneficial interest of an entity.

SECTION 17 – DEFAULTS BY LESSEE

17.1 Each of the following occurrences shall be an event of default hereunder:

a. If Lessee shall fail to pay any Rent or Additional Charges or any sum due hereunder promptly when due and such failure shall continue for ten (10) calendar days after notice thereof in writing to Lessee.

b. If Lessee fails to perform or comply with any of the other covenants, agreements, conditions or undertakings herein to be kept, observed and performed by Lessee (not including the occurrence of any event referred to in subparagraphs (c) through (d) of this ***Subsection 17.1***) and such default shall continue for thirty (30) days after notice thereof in writing to Lessee.

c. If Lessee shall voluntarily file any petition, or have an involuntary petition filed on its behalf, under any chapter or section of the Federal Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing, or shall file an answer admitting insolvency or inability to pay its debts; provided however, that Lessee shall not be deemed to be in default if Lessee shall continue to pay all Rent and Additional Charges and comply with all other terms and conditions of this Lease.

d. If Lessee shall make an assignment for the benefit of its creditors.

17.2 Upon the occurrence of any default that is not cured within the applicable cure period, and at any time after the expiration of the applicable cure period, Lessor shall have the right, at its election, to reenter the Premises and the buildings, structures and improvements then situated thereon, or any part thereof, pursuant to judicial action only, and to expel, remove and put out Lessee and all persons occupying or upon the same under Lessee, using such force as may be necessary in so doing, and again to possess the Premises and enjoy the same as in their former estate and to take full possession of and control over the Premises and the buildings, structures and improvements thereon and to have, hold and enjoy the same and to receive all rental income of and from the same. No reentry by Lessor shall be deemed an acceptance of a surrender of this Lease, nor shall it absolve or discharge Lessee from any liability under this Lease. Upon such reentry, all rights of Lessee to occupy or possess the Premises shall cease and terminate.

17.3 Upon the occurrence of any default that is not cured within the applicable cure period, and at any time after the expiration of the applicable cure period, if Lessor has other adequate and effective remedies for the default, such as damages or reentry, then Lessor shall first resort to such other remedies, and, only if they prove not to be adequate or effective shall Lessor exercise its right, at its election, to give written notice to Lessee stating that this Lease shall terminate on the date specified by such notice, and upon the date specified in such notice this Lease and all rights of Lessee hereunder shall terminate. Upon such termination, Lessee shall quit and peacefully surrender to Lessor the Premises and the buildings, structures and improvements then situated thereon.

17.4 At any time and from time to time after such reentry, Lessor may relet the Premises and the buildings, structures and improvements thereon, or any part thereof, in the name of Lessor or otherwise, for such term or terms (which may be greater or less than the period which would

otherwise have constituted the balance of the Term of this Lease), and on such conditions (which may include concessions or free rental) as Lessor, in its reasonable discretion, may determine, but shall relet in compliance with a Permitted Use established herein, and Lessor may collect and receive the rental therefore. Lessor shall use reasonable efforts to mitigate its damages as required under Arizona law. Even though it may relet the Premises, Lessor shall have the right thereafter to terminate this Lease and all of the rights of Lessee in or to the Premises.

17.5 Lessee shall pay such damages to Lessor annually on the anniversary of the Commencement Date, and Lessor shall be entitled to recover from Lessee annually, as the same shall arise (subject to the duty to mitigate damages). Lessee shall be liable for such damages on an annual basis, whether or not in any prior year the net proceeds described in subparagraph (b) below shall have exceeded the Rent and Additional Charges described in subparagraph (a) below. Unless Lessor shall have notified Lessee in writing that it has elected to terminate this Lease, no such reentry or action in lawful detainer or otherwise to obtain possession of the Premises shall relieve Lessee of its liability and obligations under this Lease; and all such liability and obligations shall survive any such reentry. In the event of any such reentry, Lessee, until the end of what would have been the Term of this Lease in the absence of such reentry, shall be liable to Lessor and shall pay to Lessor, as and for liquidated and agreed damages for Lessee's default:

a. The amount of Rent and Additional Charges which would be payable under this Lease by Lessee if this Lease were still in effect, less

b. The net proceeds of any reletting (subject to the duty to mitigate damages), after deducting all of Lessor's reasonable expenses in connection with such reletting, including without limitation all reasonable repossession costs, brokerage commissions, legal expenses, attorneys' fees, alteration costs and expenses of preparation for such reletting.

c. Any tenant improvement allowance paid to Lessee under this Lease and that is due and payable under this Lease.

17.6 In the event of any breach by Lessee of any of the terms, covenants or agreements contained in this Lease, Lessor shall have, in addition to any specific remedies provided in this Lease, the right to invoke any right or remedy allowed by law or in equity or by statute or otherwise, including the right to enjoin such breach.

17.7 Each right and remedy of Lessor provided for in this Lease shall be cumulative and in addition to every other right or remedy provided for in this Lease now or hereafter existing at law or in equity or by statute or otherwise; and the exercise or beginning of the exercise by Lessor of any one or more of such rights or remedies shall not preclude the simultaneous or later exercise by Lessor of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

17.8 Any violation of any covenant or provision of this Lease, whether by act or omission, by any sublessee or any other persons occupying any portion of the Premises or any buildings, structures or improvements thereon under the rights of Lessee shall be deemed a violation of such provision by Lessee and a default under this Lease. Any such violation shall not be deemed to be a default hereunder if and so long as Lessee in good faith and at its own expense

takes and diligently pursues any and all steps it is entitled to take and which steps if completed will cure said default.

17.9 Notwithstanding any other provision of this **SECTION 17**, Lessor agrees that if the default complained of, other than for the payment of monies, is of such a nature that the same cannot be rectified or cured within the thirty (30) day period for rectification or curing as specified in the written notice relating thereto, then such default shall be deemed to be rectified or cured if Lessee, within such period of thirty (30) days, shall have commenced the rectification and curing thereof and shall continue thereafter with all due diligence to effect such rectification and curing and does so complete the same with the use of such diligence as aforesaid.

17.10 In the event of a breach, default or noncompliance under this Lease by Lessor, Lessee agrees, before exercising any right or remedy available Lessee, to give Lessor written notice of the claimed breach, default or noncompliance. For thirty (30) days following such notice (or such longer period of time as may be reasonably required to cure a matter which, due to its nature, cannot reasonably be remedied within thirty (30) days), Lessor shall have the right to cure the breach, default or noncompliance involved. In the event Lessor fails to cure the breach, default or noncompliance within the time period provided, Lessee shall be entitled to all remedies available at law or in equity.

17.11 Notwithstanding any other provision of this **SECTION 17**, any dispute between the Parties, during the time that the City of Peoria remains the Lessor, regarding an issue involving this Lease including an event of default, the moving Party shall submit its concerns and issues to the other Party in within ten (10) Business Days of the occurrence of the event giving rise to the concern of the moving Party. Within ten (10) Business Days of the issuance of the written notice, the Parties shall schedule an informal meeting allowing the moving Party the opportunity to explain the nature of the dispute and permit the Parties to seek resolution of the issue. If the Parties are unable to resolve their differences, the moving Party may pursue the Dispute Resolution procedural steps set forth herein in **Subsections 38.1 and 38.2**.

SECTION 18 – OPERATING COVENANT

18.1 Lessee covenants and agrees that following completion of the Improvements contemplated by this Lease and for the remainder of the Term, it will continuously and without interruption offer for sublease any vacant space at the Premises that is intended to be operated for targeted industries similar to those identified in the EDIS (See Exhibit “D”), and shall have available to the Premises competent personnel (who may be employees or independent contractors) to maintain the Improvements in a manner which conforms to commercially reasonable management practices for comparable facilities (“Operating Covenant”); provided, however, that the Operating Covenant shall not apply during (i) weekends and holidays and (ii) any period when the Premises are untenable by reason of fire, other Force Majeure Event or by eminent domain.

18.2 If Lessee fails to use commercially reasonable efforts to fulfill the Operating Covenant and such failure is not cured within the applicable cure period, then, as Lessor’s exclusive remedy for such failure, Lessor may terminate this Lease upon sixty (60) days’ prior written notice to Lessee after which all obligations of Lessee and Lessor under this Lease shall

terminate and be of no further force and effect; provided, however, that if Lessor elects to terminate this Lease then Lessee may exercise its option to purchase the Premises pursuant to this Lease, and this Lease shall not terminate until the purchase is consummated.

SECTION 19 – INTENTIONALLY OMITTED

SECTION 20 – CORPORATE STATUS OF LESSEE

Lessee covenants that it is a valid and existing limited liability company under the laws of the State of Arizona, that it is duly qualified to do business in the State of Arizona, and that it has full right and authority to enter into this Lease.

SECTION 21 – WAIVER OF PERFORMANCE

No failure by Lessor or Lessee to insist upon the strict performance of any term or condition hereof or to exercise any right, power or remedy consequent upon a breach thereof and no submission by Lessee or acceptance by Lessor of full or partial Rent or Additional Charges during the continuance of any such breach shall constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, nor the respective rights of Lessor or Lessee with respect to any other then existing or subsequent breach.

SECTION 22 – REMEDIES CUMULATIVE

Each right, power and remedy provided for in this Lease or now or hereafter existing at law, in equity or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law, in equity or otherwise; and the exercise or beginning of the exercise of any one or more of the rights, powers or remedies provided in this Lease shall not preclude the simultaneous or later exercise of any or all such other rights, powers or remedies.

SECTION 23 – TITLE TO BUILDINGS AND IMPROVEMENTS

23.1 Ownership at Termination. Unless Lessee has purchased the Premises pursuant to the purchase rights set forth in this Lease, on the expiration or sooner termination of the Lease Term, title to all improvements which constitute or are a part of the Premises, exclusive of trade fixtures and personal property of Lessee and sublessees, shall (without the payment of compensation to Lessee or others) remain in Lessor free and clear of all claims and encumbrances by Lessee, and anyone claiming under or through Lessee. All improvements shall be surrendered to Lessor in “as is” condition. Upon request, Lessee shall then quitclaim to Lessor its possessory interest in the improvements. Lessee agrees to and shall defend, indemnify and hold Lessor harmless from and against all liability and loss which may arise from the assertion of any claims and any encumbrances on such improvements that arose during the Lease Term; provided, however, such duty to indemnify and hold harmless shall not apply to any claims or encumbrances which are attributable to the acts or conduct of the Lessor. Additionally, Lessee shall assign to Lessor without representation or warranty of any kind, and Lessor shall be entitled to the benefit of, any licenses, warranties or guarantees applicable to equipment, systems, fixtures or personal

property conveyed or otherwise transferred to, or for the benefit of, Lessor under this Lease. The foregoing notwithstanding, Lessee shall not quitclaim its possessory interest in the aforementioned improvements to Lessor until such improvements have been inspected by Lessor and they have been determined not to present a potential environmental hazard. This section shall survive the expiration or earlier termination of this Lease. Notwithstanding anything contained herein to the contrary, while this Lease remains in effect, Lessor alone shall be entitled to claim depreciation on the buildings, structures, improvements, additions and alterations therein included within the Premises, and all renewals and replacements thereof, for all taxation purposes.

SECTION 24 – PURCHASE OPTION

24.1 Lessor hereby grants to Lessee the option to purchase the Premises at any time during the Lease Term in accordance with the terms and conditions of this section (the “Purchase Option”).

24.2 Lessee may not exercise the Purchase Option if it is in material monetary default in the performance or observance of its obligations under this Lease beyond any applicable cure period; provided, however, that if Developer is in default of any non-monetary obligation under this Lease, it may nevertheless exercise the Purchase Option if (i) the closing of such Purchase Option will either cure or mitigate the effect of such default on Lessor or such default is of a nature that it cannot be cured, and (ii) Lessee agrees in writing in favor of Lessor that any claims Lessor may have against Lessee with respect to such default shall survive the closing of the Purchase Option.

24.3 Should Lessee exercise the Purchase Option prior to the point where Lessor has recouped its Tenant Improvement Allowance reimbursement (if any such reimbursement was paid by Lessor to Lessee) through rent paid to Lessor by Lessee, then Lessee shall pay to Lessor the amount of the Tenant Improvement Allowance previously paid by Lessor to Lessee, less the total of all annual Rent previously paid to Lessor, as a condition to the close of escrow. This provision is intended, in part, to allow Lessor to recoup its Tenant Improvement Allowance contribution through the receipt of annual Rent.

24.4 To exercise the Purchase Option, Lessee shall provide Lessor with Lessee's “Notice of Intent to Exercise Option” (the “Option Notice”) in the form attached hereto as ***Exhibit “F”***. The Option Notice shall include the date by which Lessee desires to close on the purchase. Such Notice shall be given not less than two (2) months nor more than six (6) months prior to the proposed closing date. Upon issuance of the Option Notice by Lessee, the Parties will enter into a commercially reasonable Purchase and Sale Agreement that will provide that Lessee shall have sixty (60) days of due diligence from the date of execution of the Purchase and Sale Agreement, and an additional thirty (30) days to close the sale. All brokerage fees, if any, for Lessee’s broker will be borne by the Lessee.

24.5 If Lessee exercises the Purchase Option for the Premises prior to the fifth (5th) anniversary from the Commencement Date, Lessee may purchase the Premises at Lessor’s appraisal value of the Premises at the time of the Effective Date of the Development Agreement between Lessor and Lessee (the “Development Agreement”), which shall be \$1,400,000

(reflecting a deed restriction prohibiting any future use of the building for a restaurant, bar or sports bar establishment), pursuant to the December 14, 2016 appraisal completed by Philip M. Barlow & Associates. Upon conveyance of the Premises, Lessee agrees to incorporate deed restrictions prohibiting any future use for a restaurant, bar, or sports bar establishment.

24.6 If Lessee exercises the Purchase Option for the Premises after the fifth (5th) anniversary from the Commencement Date, the Option Notice shall be accompanied by a then-current real estate appraisal valuing the Premises “as-is,” at its highest and best use. The appraisal shall be completed at Lessee’s sole cost supporting the proposed purchase price and prepared by an appraiser who is a member of the American Institute of Real Estate Appraisers (or if it shall not then be in existence, a member of the most nearly comparable organization) who is licensed by the State of Arizona and has a minimum of five (5) years’ experience in the Phoenix Metropolitan Area, and who is not affiliated with either Party. Upon conveyance of the Premises, Lessee agrees to incorporate deed restrictions prohibiting any future use for a restaurant, bar, or sports bar establishment.

24.7 Lessor shall promptly review the real estate appraisal (if any) and detailed plan and advise Lessee within thirty (30) days whether the proposed purchase is acceptable, with such approval not to be unreasonably withheld, conditioned or delayed. If Lessor accepts Lessee’s real estate appraisal (or if Lessor fails to notify Lessee of its objection within such 30-day period), the appraised value shall be the purchase price. If Lessor objects to Lessee’s appraisal in writing (the “PP Objection Notice”) within such thirty (30) day period, the Parties shall meet and confer within ten (10) calendar days following the PP Objection Notice in an effort to agree on the purchase price for the Premises. If the Parties are unable to agree on the purchase price for the Premises, within thirty (30) days following issuance of a PP Objection Notice, then the purchase price for the Premises shall be determined by a single appraiser who is a member of the American Institute of Real Estate Appraisers (or if it shall not then be in existence, a member of the most nearly comparable organization) who is licensed by the State of Arizona and has a minimum of five (5) years’ experience in the Phoenix Metropolitan Area, and who is not affiliated with either Party. The appraiser’s determination of the purchase price for the Premises shall be binding on both Parties as the purchase price for the Premises. Each Party shall pay one-half (1/2) of the appraiser’s fee.

24.8 Once the purchase price for the Premises (“Premises Price”) has been determined in accordance with this section, Lessor shall open escrow and provide Lessee with a current title report for the Premises within ten (10) days of the opening of Escrow. Within thirty (30) days of receiving Lessor’s title report, Lessee shall give notice in writing to Lessor of any defects in or objections to the title as so evidenced, and Lessor shall clear the title defects and objections so specified.

24.9 Closing Costs and Prorations. At close of Escrow, Lessor and Lessee shall share equally the costs of any escrow fees and recording fees. At close of Escrow, Lessor shall pay the cost of the premium for the owner’s Title Policy to the extent of the premium attributable to a standard coverage policy. Lessee shall pay the additional premium associated with ALTA extended coverage, any survey costs or the cost of any title endorsements requested by Lessee. At close of Escrow, all other closing costs shall be allocated between the parties according to law or

custom in Maricopa County, Arizona. Each Party shall bear its own legal and other professional fees which shall not be payable through the Escrow. Annual Rent to the extent paid for any period on or after the date of close of Escrow shall be prorated and credited to Lessee's account. Any Additional Charges to be paid by Lessee to any municipality, government agency, taxing authority, utility company, or other third party shall also be prorated at close of Escrow.

24.10 Upon payment of the Premises Price and close of Escrow, Lessor shall convey its fee simple interest in the Premises to Lessee by special warranty deed. In the event the purchase transaction fails to close, then this Lease (and the Development Agreement, if still in effect) shall continue in full force and effect.

24.11 Upon recording in the Maricopa County Recorder's Office of the special warranty deed for the Premises by Lessor to Lessee, this Lease (and the Development Agreement, if still in effect) shall terminate. The Parties shall thereafter execute and deliver one to the other any and all necessary documents to evidence the termination of this Lease, the Development Agreement, and the Memorandum hereof.

24.12 Lessee may not sell, assign, convey, or transfer the option rights set forth in this section separately from the assignment of this Lease (and the Development Agreement, if still in effect) without the prior, express, and written consent of Lessor. Any sale, assignment, conveyance, or transfer of this option made, attempted, or suffered, by operation of law or otherwise, without such prior written consent, shall render the option rights of no further force or effect

SECTION 25 – ONGOING RIGHT OF FIRST PURCHASE

25.1 If Lessor, or any successor or assign of Lessor, intends to list or market for sale, or otherwise intends to sell, convey or dispose of the real property included within the Premises, Lessee shall be given prompt written notice of such intent with respect to the real property ("Notice of Sale"). Until the later of (i) ninety (90) days after receipt of a Notice of Sale from Lessor or any successor to Lessor or (ii) ten (10) calendar days following the determination of Fair Market Value ("FMV") in accordance with this section (the "Negotiation Period"), Lessee shall have the first right to purchase the Premises at the FMV (with the Premises being valued for its highest and best use) and on such other terms and conditions as the Parties may reasonably determine. Notwithstanding the foregoing, if Lessor delivers a Notice of Sale to the Lessee prior to the fifth (5th) anniversary of the Commencement Date, the Lessee shall have the first right to purchase the Premises at the lesser of (a) FMV or (b) \$1,400,000. If Lessee disputes Lessor's estimate of FMV, it shall notify Lessor within thirty (30) days following receipt of a Notice of Sale (an "Objection Notice") and the Parties shall meet and confer within ten (10) calendar days following Lessee's Objection Notice in an effort to agree on the FMV. Lessee may obtain its own appraisal at its own expense.

25.2 If Lessee elects not to purchase the real property included within the Premises within the Negotiation Period or if the Parties are unable to agree upon the terms of sale, Lessor (or any successor to Lessor) may proceed to solicit and accept other offer(s) to purchase the Premises or otherwise sell, convey or dispose of the Premises for the price offered by Lessor to

the Lessee without further notice to Lessee. In the event Lessor or any successor to Lessor shall accept an offer to purchase or otherwise sell, convey or dispose of the Premises for the price offered to the Lessee, it shall thereupon be released from all liabilities and obligations imposed upon Lessor under this Lease (and the Development Agreement, if still in effect) (except those accruing prior to such conveyance or other disposition) and such liabilities and obligations shall be binding solely on the then new owner of the Premises, which owner shall be deemed to have assumed Lessor's obligations under this Lease (and the Development Agreement, if still in effect), including the obligation to offer the real property included within the Premises to Lessee in the event of any future sale.

25.3 If Lessee elects to purchase the real property included within the Premises within the Negotiation Period and the parties agree to a purchase price determined in accordance with this section, Lessor shall open escrow and the Parties will enter into a commercially reasonable Purchase and Sale Agreement that will provide that the Lessee shall have sixty (60) days of due diligence from the date of execution of the Purchase and Sale Agreement, and an additional thirty (30) days to close the sale.

25.4 Closing Costs and Prorations. At close of Escrow, Lessor and Lessee shall share equally the costs of any escrow fees and recording fees. At close of Escrow, Lessor shall pay the cost of the premium for the owner's title policy to the extent of the premium attributable to a standard coverage policy. Lessee shall pay the additional premium associated with ALTA extended coverage, any survey costs or the cost of any title endorsements requested by Lessee. At close of Escrow, all other closing costs shall be allocated between the parties according to law or custom in Maricopa County, Arizona. Each Party shall bear its own legal and other professional fees which shall not be payable through the Escrow. Annual Rent to the extent paid by Lessee to Lessor for any period on or after the date of close of Escrow shall be prorated and credited to Lessee's account. Any Additional Charges to be paid by Lessee to any municipality, government agency, taxing authority, utility company, or other third party shall also be prorated at close of Escrow.

25.5 Upon payment of the purchase price under this section and close of Escrow, Lessor shall convey its fee simple interest in the Premises to Lessee by special warranty deed. In the event the purchase transaction fails to close, then this Lease (and the Development Agreement, if still in effect) shall continue in full force and effect.

25.6 Upon recording in the Maricopa County Recorder's Office of the special warranty deed for the Premises by Lessor to Lessee, this Lease (and the Development Agreement, if still in effect) shall terminate. The Parties shall thereafter execute and deliver one to the other any and all necessary documents to evidence the termination of this Lease, the Development Agreement, and the Memorandum hereof.

SECTION 26 – ATTORNEYS FEES

In the event Lessor should bring suit for possession of the Premises, for the recovery of any sum due hereunder, or for any other relief against Lessee, declaratory or otherwise, arising out of a breach of any term or condition of this Lease, or in the event Lessee should bring any action for any relief against Lessor, declaratory or otherwise, arising out of this Lease, the prevailing

Party shall be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

SECTION 27 – PROVISIONS SUBJECT TO APPLICABLE LAW

All rights, powers and remedies provided herein shall be exercised only to the extent that the exercise thereof shall not violate any applicable law and are intended to be limited to the extent necessary so that they shall not render this Lease invalid or unenforceable under any applicable law. If any term or condition of this Lease shall be held to be invalid, illegal or unenforceable or against public policy, such provision shall be deemed stricken from this Lease and the validity of the other terms of this Lease shall in no way be affected thereby and this Lease, absent the stricken provision, shall otherwise remain in full force and effect.

SECTION 28 – RIGHT TO CURE LESSEE'S DEFAULTS

Except with respect to Lessee's failure to operate its business, in the event Lessee shall be in default of this Lease, which default remains uncured after the expiration of any applicable cure period provided herein, and if such default continues for thirty (30) days after written notice from Lessor of the default and of Lessor's intent to cure such default, Lessor may at any time, without further notice, cure such breach for the account and at the expense of Lessee. If Lessor at any time, by reason of such breach, is compelled to pay or elects to pay any sum of money or to do any act that will require the payment of any sum of money, or is compelled to incur any expense, including reasonable attorneys' fees, in instituting, prosecuting or defending any actions or proceedings to enforce Lessor's rights under this Lease or otherwise, the sum or sums so paid by Lessor, with all interest, costs and damages, shall be deemed to be Additional Charges and shall be due from Lessee to Lessor on the first day of the month following the incurring of such expenses or the payment of such sums.

SECTION 29 – NOTICES

All notices, demands, requests, consents, approvals and other communications required or permitted hereunder shall be in writing and shall be deemed to have been given upon personal delivery to the respective Party, after delivery by electronic mail (provided that a copy must also simultaneously be sent via another approved form of delivery) or a nationally recognized overnight courier service (e.g., UPS, Federal Express), or within three (3) calendar days after the same has been mailed by registered or certified mail, postage prepaid, at the address shown below:

To Lessee: NOVO Development, LLC
7337 E. Doubletree Ranch Road, Suite 284
Scottsdale, Arizona 85258
Attention: Kurt W. Rosene, Manager
Email: krosene@novodevelops.com

With a Copy to: Brier, Irish, Hubbard & Erhart, P.L.C.
2400 East Arizona Biltmore Circle, Suite 1300
Phoenix, Arizona 85016-2115

Attention: Robert N. Brier
Email: bbrier@bihlaw.com

To LESSOR: City Manager
City of Peoria, Arizona
8401 W. Monroe St.
Peoria, Arizona 85345
Email: carl.swenson@peoriaaz.gov

With a Copy to: City Attorney
City of Peoria, Arizona
P.O. Box 4038
Peoria, Arizona 85380-4038
Email: cityattorney@peoriaaz.gov

or at such other address as either Party shall from time to time designate in writing to the other.

SECTION 30 – WARRANTIES OF LESSOR

30.1 Lessor hereby makes the following representations and warranties, each of which (i) is material and is being relied upon by Lessee in entering into this Lease, and (ii) is true in all respects as of the date hereof:

- a. Lessor owns the real property included within the Premises.
- b. Lessor has the full right, power and authority to enter into and perform Lessor's obligations pursuant to this Lease and to lease the Premises to Lessee, and to grant to Lessee the First Right to Purchase and the Purchase Option, in the manner contemplated in this Lease, subject only to the consent and approval of the Peoria City Council.
- c. No other person or entity other than Lessee has a right to possession of all or any part of the real property included within the Premises.
- d. Lessor is not now involved in or aware of any pending or threatened proceeding, claim or controversy, which affects or may affect the real property included within the Premises in any way whatsoever.
- e. Except as provided elsewhere herein, to the extent of Lessor's actual knowledge, there are no agreements, contracts, leases or restrictions that would limit, restrict, impair or prevent the construction of Lessee's improvements within the Premises or Lessee's contemplated use of the Premises including any liens or encumbrances on Lessor's fee title to the Premises except for those identified and agreed upon by the Parties and contained in the title commitment caused to be issued by Lessor prior to execution of this Lease agreement.
- f. To the extent of Lessor's actual knowledge, neither this Lease nor Lessee's contemplated use of the Premises, as contemplated by this Lease, violates any contract, agreement

or instrument to which Lessor is a party, or any law, regulation, order or decree to which Lessor is subject to by which Lessor is bound.

g. To the extent of Lessor's actual knowledge, there are no contracts or employment, management, maintenance, service or supply and no union contracts which affect the Premises or Lessee's contemplated use thereof.

h. To the extent of Lessor's actual knowledge, the Premises are in full compliance with all applicable laws, including but not limited to those relating to the environmental conditions on or under the Premises.

i. No third party has any option or preferential right to purchase all or any part of the Premises.

j. Lessor has not received or given any written notice that the Premises or the operations thereon are or were in violation of any governmental law or regulation, including, without limitation, any Hazardous Materials Laws or the Americans with Disabilities Act, nor is Lessor aware of any such violation. The Permitted Uses (as described in Section 8.1) are permitted under the zoning classification currently in effect for the Premises.

30.2 Quiet Enjoyment. Upon Lessee performing all covenants of this Lease to be performed by Lessee, Lessee shall have quiet, exclusive and undisturbed use, possession and enjoyment of the Premises, together with all appurtenances thereto without hindrance or ejection by any person lawfully claiming by, through or under Lessor.

SECTION 31 – UNSUBORDINATED LEASE

This is an unsubordinated Lease Agreement. Lessor is not and shall not be obligated to subordinate its rights and ownership interest in the real property included within the Premises to any loan or money encumbrance. During the Lease Term, Lessor shall not mortgage, hypothecate or otherwise encumber its fee simple title in the Premises, except for the grant of easements granted herein.

SECTION 32 – ESTOPPEL CERTIFICATE

Lessor or Lessee, as the case may be, will execute, acknowledge and deliver to the other, within fifteen (15) calendar days following request therefor, a written certificate in a recordable form certifying (a) that this Lease is in full force and effect without modification except as to those specified in said certificate, and (b) the dates, if any, to which Rent, Additional Charges and other sums payable hereunder have been paid, (c) that no notice has been received by Lessor or Lessee of any default which has not been cured, except as to defaults specified in said certificate, and (d) any other factual matters as may be reasonably so requested. Any such certificate may be relied upon by any prospective purchaser, assignee, sublessee or encumbrancer of the Premises or any part thereof. Either Party's failure to deliver such certificate within the time permitted hereby shall be conclusive upon such Party that this Lease is in full force and effect, except to the extent any modification has been represented by the requesting Party, that there are no uncured defaults in such Party's performance, and that not more than one month's rent has been paid in advance.

SECTION 33 – COOPERATION

33.1 Appointment of Representatives. To further the cooperation of the Parties in implementing the provisions of this Lease, Lessor and Lessee each shall designate and appoint a representative to act as a liaison between the Lessor and its various departments and Lessee. The initial representative for Lessor (the “Lessor Representative”) shall be Mr. Scott Whyte, Director of the City’s Economic Development Services Department, and the initial representative for the Lessee shall be Kurt Rosene (the “Lessee Representative”). The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Lease and the development and maintenance of the Premises.

33.2 Lessor Facilitation with Other Entities. Lessor agrees to use its best efforts to assist Lessee (or its permitted assigns), to the extent reasonably possible, by cooperation with other City, County, State, and federal agencies and departments that may have any authority or jurisdiction over or for the Premises.

SECTION 34 – MEMORANDUM FOR RECORDING

Within ten (10) calendar days after the Commencement Date of this Lease, the Parties shall sign, and Lessee shall execute and cause to be recorded with the Maricopa County Recorder’s Office, and any other public or private official, a Memorandum of Lease and Purchase Option Agreement in substantially the form set forth in *Exhibit “C”* evidencing the existence of this Lease.

SECTION 35 – PARTIES BOUND

This Lease shall be binding upon and inure to the benefit of and be enforceable by the Parties hereto, their personal representatives, their respective successors in office and permitted assigns of the Parties hereto for the entire Term of this Lease.

SECTION 36 – TIME OF ESSENCE

Time is declared to be of the essence of this Lease.

SECTION 37 - SECTION HEADINGS; REFERENCES; INTERPRETATION

The section headings contained in this Lease are for purposes of convenience and reference only and shall not limit, describe or define the meaning, scope or intent of any of the terms or provisions hereof. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require. If the last day of any time period stated herein shall fall on a Saturday, Sunday or legal holiday in the State of Arizona, then the duration of such time period shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday in the State of Arizona.

SECTION 38 – IMPASSE; ALTERNATIVE DISPUTE RESOLUTION

38.1 Appeal to City Manager. The Parties agree that if at any time Lessee reasonably believes an impasse has been reached with Lessor on any issue affecting the Premises, Lessee shall

have the right to immediately appeal the issue to the City Manager for an expedited decision pursuant to this 0. If the issue on which an impasse is reached is an issue where a final decision can be reached by City staff, the City Manager shall give Lessee a final decision within 30 days after Lessee's request for an expedited decision.

38.2 In the event that there is a dispute which the Parties cannot resolve between themselves, the Parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by non-binding mediation before commencement of litigation. The mediator selected shall have five (5) years' experience in mediating or arbitrating disputes related to commercial property development. The cost of mediation shall be divided equally between the Parties, or in such fashion as the mediator may order. The results of the mediation shall be non-binding on the Parties and any Party shall be free to initiate litigation upon conclusion of the mediation.

38.3 This 0 shall not apply to any legal rights of either Party that must be exercised within a certain number of days that is less than 45.

SECTION 39 – SEVERABILITY

If any provision of this Lease is declared void, unenforceable or against public policy, such provision shall be deemed stricken and severed from this Lease, with the remainder of this Lease to remain in full force and effect.

SECTION 40 – GOVERNING LAW AND CHOICE OF FORUM

This Lease shall be governed by and construed in accordance with the substantive laws of the State of Arizona without giving effect to the principles of conflict of laws. Any action brought to interpret, enforce or construe any provision of this Lease shall be commenced and maintained in the Superior Court of Maricopa County, Arizona (or, as may be appropriate, in the Justice Courts of Maricopa County or in the United States District Court for the District of Arizona if, and only if, the Maricopa County Superior Court lacks or declines jurisdiction over such action).

SECTION 41 – PAYMENT OF COSTS AND EXPENSES

Whenever, in this Lease, anything is to be done or performed by Lessee or Lessor, unless otherwise expressly provided to the contrary, it shall be done or performed at the sole cost and expense of Lessee or Lessor as the case may be.

SECTION 42 – NO WARRANTIES

Lessee acknowledges and covenants to Lessor that it has made a complete investigation of the real property included within the Premises, the surface and sub-surface conditions thereof, the present and proposed uses thereof, and agrees to accept all the same "as is" except as provided in **SECTION 2**. Lessee further agrees that, except as expressly provided herein, no representation or warranty, expressed or implied, in fact or by law, has been made by Lessor or anyone else, as to any matter, fact, condition, prospect or anything else of any kind or nature.

SECTION 43 – BROKERS OR AGENTS

Each party represents and warrants to the other that such party has had no dealings or discussions with any broker or agent (licensed or otherwise) in connection with this Lease and each party covenants to pay, hold harmless and indemnify the other party from and against any and all losses, liabilities, damages, costs and expenses (including reasonable legal fees) arising out of or in connection with any breach of this representation and warranty.

SECTION 44 - CONSENT OR APPROVAL

Except as otherwise expressly provided herein, any consent or approval required in this Lease shall not be unreasonably withheld, conditioned or delayed, and if neither approval nor rejection is given within a time period specified in this Lease as to any particular approval which may be requested by one party or the other (or, if no such time is specified, then within thirty (30) days after request for approval is given by a notice), then the approval thus requested shall be conclusively and irrevocably deemed to have been given. The requesting Party shall be entitled to seek specific performance at law and shall have such other remedies as are reserved to it under this Lease, but in no event shall Lessor or Lessee be responsible for damages to anyone for such failure to give consent or approval.

SECTION 45 – DELAY OF PERFORMANCE (FORCE MAJEURE)

Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, acts of terrorism, economic recession or depression, unreasonable market barriers or regulator imposed restrictions on Lessee's access to financing, and other causes beyond the control of the Party obligated to perform (a "Force Majeure Event"), shall excuse the performance by such Party for a period equal to any such prevention, delay or stoppage, except the obligations imposed with regard to rental and other monies to be paid by Lessee pursuant to this Lease.

SECTION 46 – RELATIONSHIP

This is a real estate lease agreement. This Lease shall not be construed as creating a joint venture, partnership or any other cooperative or joint arrangement between Lessor and Lessee, and it shall be construed strictly in accordance with its terms and conditions. Nothing contained herein is intended to confer a benefit upon any third parties.

SECTION 47 – LEASE AMENDMENT

23.2 This Lease may be amended only upon written agreement by the Parties. In the event a Party wishes to amend one or more provisions of this Lease, it shall make a written request to the other Party setting forth the nature of the request. The Parties agree to meet in good faith to negotiate and document the terms of the requested Lease modifications. In the event the Parties

agree upon the terms of the proposed Lease modifications, Lessor's approval of any proposed amendments shall be subject to its City Council's review and approval.

SECTION 48 – FURTHER INSTRUMENTS AND DOCUMENTS

Lessor and Lessee shall, upon request from the other, promptly acknowledge and deliver to the other any and all further documents, instruments or assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Lease.

SECTION 49 – INTEGRATION CLAUSE; NO ORAL MODIFICATION

This Lease is the result of arms-length negotiations between parties of roughly equivalent bargaining power and represents the entire agreement of the Parties with respect to its subject matter (together with the separate Development Agreement), and all previous agreements, whether oral or written, entered into prior to this Lease are hereby revoked and superseded by this Lease (except for the separate Development Agreement). This Lease shall not be construed for or against either Party as a result of its participation, or the participation of its counsel, in the preparation and/or drafting of this Lease or of any exhibits or documents prepared to carry out the intent of this Lease. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Lease. This Lease may not be changed, modified or rescinded, except as provided for herein, absent a written agreement signed by Lessor and Lessee. Any attempt at oral modification of this Lease shall be void and of no effect.

SECTION 50 – COUNTERPARTS

This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

SECTION 51 – CONFLICT OF INTEREST

Pursuant to Arizona law, rules and regulations, no member, official or employee of Lessor shall have any personal interest, direct or indirect, in this Lease, nor shall any such member, official or employee participate in any decision relating to this Lease 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 Lease shall be subject to cancellation pursuant to the provisions of A.R.S. §38-511 relating to conflicts of interest.

[The remainder of this page is left intentionally blank]

IN WITNESS WHEREOF, the Parties have executed this Lease and Purchase Option Agreement on the date listed below.

City of Peoria, Arizona, an Arizona municipal corporation By: _____ Carl Swenson, City Manager ATTEST: By: _____ Rhonda Geriminsky, City Clerk APPROVED AS TO FORM: By: _____ Steve Burg, City Attorney	NOVO Development, LLC, an Arizona limited liability company By: _____ Kurt W. Rosene, Manager
---	---

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing Lease and Purchase Option Agreement was acknowledged before me this ____ day of _____, 2017, by Carl Swenson, City Manager of City of Peoria, Arizona, an Arizona charter municipality, on behalf of the City.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing Lease and Purchase Option Agreement was acknowledged before me this ____ day of _____, 2017, by Kurt W. Rosene, Manager, NOVO Development LLC, an Arizona limited liability company, on behalf of the company.

Notary Public

My Commission Expires:

EXHIBIT "A"
Legal Description

PARCEL NO. 1:

LOT 1A, REPLAT OF LOTS 1, 9 AND TRACT L - ARROWHEAD ENTERTAINMENT CENTER, ACCORDING TO BOOK 580 OF MAPS, PAGE 37 AND CERTIFICATE OF CORRECTION RECORDED IN RECORDING NO. 2002- 293969, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 2:

AN UNDIVIDED 8% INTEREST IN AND TO TRACT "K", ARROWHEAD ENTERTAINMENT CENTER, ACCORDING TO BOOK 535 OF MAPS, PAGE 27, RECORDS OF MARICOPA COUNTY, ARIZONA AND NOTICE OF CORRECTION TO PLAT RECORDED IN RECORDING NO. 2015-222390; AND

AN UNDIVIDED 8% INTEREST IN AND TO TRACT "M-I", REPLAT OF LOT 10 AND TRACT M - ARROWHEAD ENTERTAINMENT CENTER, ACCORDING TO BOOK 583 OF MAPS, PAGE 39 AND CERTIFICATE OF CORRECTION RECORDED IN RECORDING NO. 2002-293970, RECORDS OF MARICOPA COUNTY, ARIZONA; AND

AN UNDIVIDED 8% INTEREST IN AND TO TRACT "L-I", REPLAT OF LOTS 1, 9 AND TRACT L - ARROWHEAD ENTERTAINMENT CENTER, ACCORDING TO BOOK 580 OF MAPS, PAGE 37 AND CERTIFICATE OF CORRECTION RECORDED IN RECORDING NO. 2002-293969, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 3:

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND PARKING PURPOSES AS CREATED, GRANTED AND MORE PARTICULARLY DESCRIBED IN THAT CERTAIN "RESTRICTIONS AND EASEMENTS" BY AND BETWEEN ARROWHEAD FOUNTAINS CENTER, L.L.C., AN ARIZONA LIMITED LIABILITY COMPANY AND HARKINS PHOENIX, CINEMAS, L.L.C., AN ARIZONA LIMITED LIABILITY COMPANY RECORDED IN RECORDING NO. 1999-994023, RECORDS OF MARICOPA COUNTY, ARIZONA.

Exhibit "B"

AERIAL DEPICTION OF PREMISES

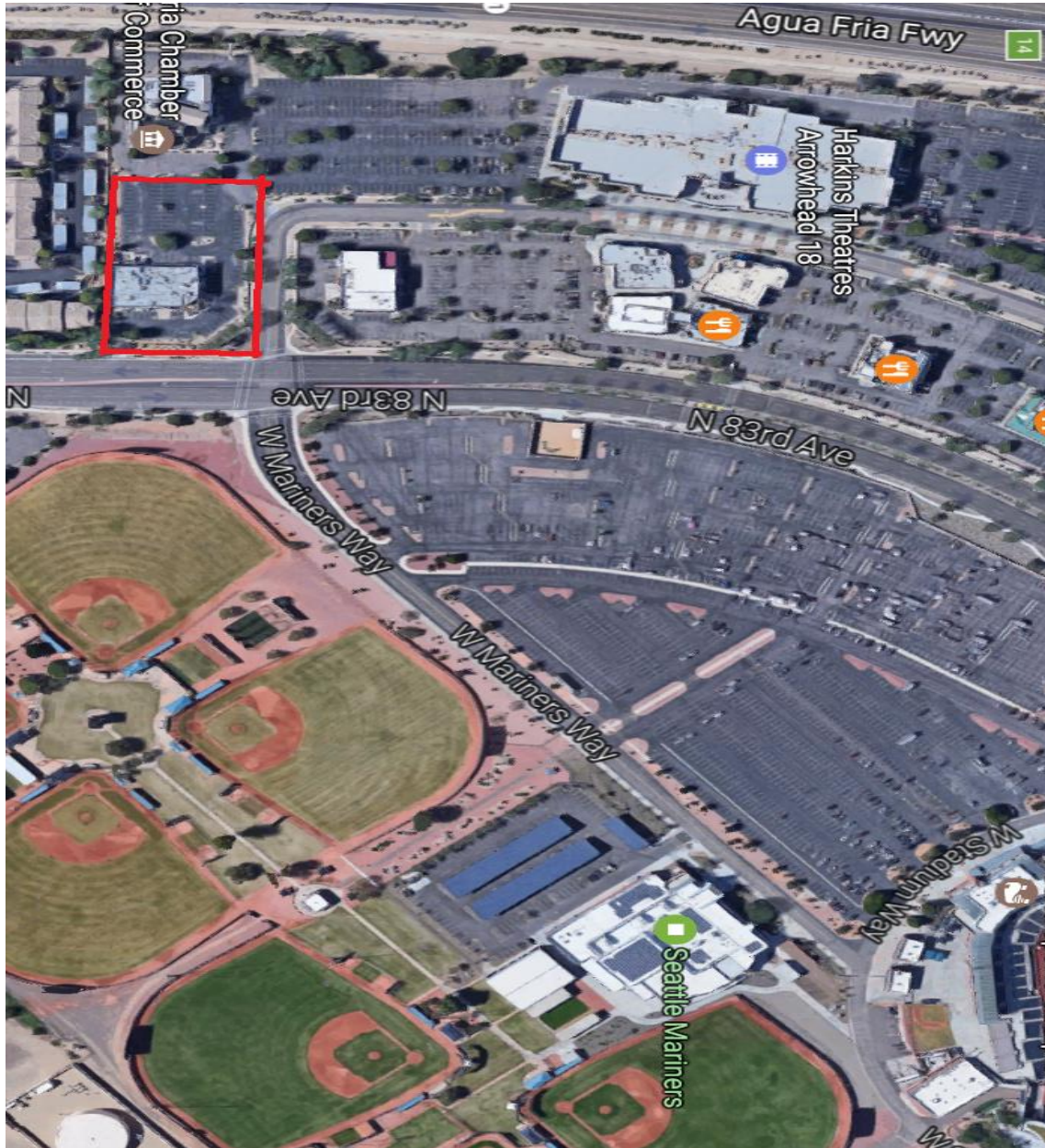


Exhibit "C"

MEMORANDUM OF LEASE AND
PURCHASE OPTION AGREEMENT

WHEN RECORDED RETURN TO:

Office of the Peoria City Clerk
8401 W. Monroe Street
Peoria, Arizona 85345

MEMORANDUM OF LEASE AND
PURCHASE OPTION AGREEMENT

This is a Memorandum of that certain Lease and Purchase Option Agreement dated the ____ day of _____, 2017, wherein the City of Peoria, Arizona, an Arizona municipal corporation ("Lessor"), demised and leased to NOVO Development, LLC ("Lessee"), the real property described on ***Exhibit "A"*** attached hereto for an original term of _____ beginning on the ____ day of _____, 2017.

The Lease and Purchase Option Agreement also grants Lessee the option to purchase Lessor's real property and improvements.

Lessor: City Manager
City of Peoria, Arizona
8401 W. Monroe Street
Peoria, Arizona 85345

Lessee: NOVO Development, LLC
7337 E. Doubletree Ranch Road, Suite 284
Scottsdale, Arizona 85258
Attention: Kurt W. Rosene, Manager

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of that certain Lease and Purchase Option Agreement effective as of the ____ day of _____, 2017.

*

*

<p>City of Peoria, Arizona, an Arizona municipal corporation</p> <p>By: _____ Carl Swenson, City Manager</p> <p>ATTEST:</p> <p>By: _____ Rhonda Geriminsky, City Clerk</p> <p>APPROVED AS TO FORM:</p> <p>By: _____ Steve Burg, City Attorney</p>	<p>NOVO Development, LLC</p> <p>By: _____</p> <p>_____ Kurt W. Rosene, Manager</p>
---	--

STATE OF ARIZONA)
) ss.
 COUNTY OF MARICOPA)

The foregoing Lease and Purchase Option Agreement was acknowledged before me this ____ day of _____, 2017, by Carl Swenson, City Manager of City of Peoria, Arizona, an Arizona charter municipality, on behalf of the City.

My Commission Expires: _____

 Notary Public

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing Memorandum of Lease and Purchase Option Agreement was acknowledged before me this ____ day of _____, 2017, by Kurt W. Rosene, Manager, NOVO Development, LLC, an Arizona limited liability company, on behalf of the company.

Notary Public

My Commission Expires:

EXHIBIT D

Targeted Industries per the City of Peoria Economic Development Implementation Strategy II

- Advanced business services
- Software development & engineering
- Aerospace & aviation operations
- Healthcare and bioscience industries
- Financial service industries
- Information and technology companies
- Research & development companies
- Data center operations
- Regional corporate headquarters
- Marketing and Communications
- Higher education (4-year college or university offering on-site seated courses in STEM related degrees and/or providing advanced services towards technology development, transfer and/or commercialization)
- Software as a service
- Minimum average salary of \$55,000 for all FTE jobs created through businesses attracted to the project

Exhibit “E”



Ha
nd

Peoria Priority Track Development Review Guidelines Amendment No. 1

In December 2015, the Peoria City Council approved the Economic Development Implementation Strategy (EDIS) II which provides an implementation-based plan for achieving the economic development goals of the City, as established by the City Council. One such strategy identified in the EDIS I is the creation and implementation of an Economic Development Incentive and Investment Policy (EDIIP) that sets forth in detail the type of public incentives and investments that the City is authorized and willing to make on a discretionary basis in furtherance of retaining existing businesses and attracting certain targeted businesses and industries identified in the EDIS.

One such mechanism towards attracting targeted industries is the Peoria Priority Track Development Review Process. The Priority Track process provides “front of the line” and reduced time frame City development plan review services (including civil engineering, building, and fire plan review, permitting and inspection services), *at no cost* to the targeted industry/business prospects. These services are offered only to eligible entities identified in the EDIS, as updated, and the EDIIP, as amended, including:

- Advanced Manufacturing
- Corporate or Divisional Headquarter Operations
- Advanced Business Services
- Back Office Operations (e.g. data centers, etc.)
- Research and development, or processes which involve the utilization of high technology or innovative new technologies
- Bioscience
- Alternative Energy
- Telecommunications
- Health Care
- Higher Education

Other compelling advanced industries, such as software development, and information, computing, technology will be eligible on a case by case basis, as determined by the City in its sole discretion. The preceding types of businesses shall meet the following criteria to be eligible for consideration in the Peoria Priority Track Development Review Process:

1. The expanding or relocating business must create a minimum of 10 new permanent full-time jobs with an average education level of a 4-year degree and average salary of \$50,000 per year on a FTE basis, with benefits.
2. The new or expanding business must invest a total of \$250,000 in capital expenditures.

Redevelopment and New Development Projects -The EDIIP also identifies projects that will economically reposition unused or underutilized properties as complying with the minimum EDIIP project qualification criteria.

1. Entities focused on redevelopment/reinvestment in EDIS Investment Zones ***and*** approved by the City Council for participation in the following city programs are eligible for the Peoria Priority Track Development Review Process.
 - i. Old Town Commercial Revitalization Program, and;
 - ii. P83 Building Reuse Program
2. New commercial office and industrial development projects located in EDIS Investment Zones ***and*** part of a City Council approved agreement are eligible for Peoria Priority Track Development Review Process services.

CITY DEVELOPMENT REVIEWS INCLUDED IN THE PRIORITY TRACK PROGRAM

The Priority Track Program includes the review of new commercial office and industrial development, as well as tenant improvements in existing commercial or industrial space by the Fire Department, Engineering Department, Planning and Community Development Department, and the Public Works Department. Review times are generally 50% less than standard review times and can be customized to fit the type of business use, or development requirement.

PRIORITY TRACK REVIEW TIME FRAMES

Review times are based on a 4-day work week (not including holidays) and are subject to the following:

Please Note: Review times can be affected by size and complexity, required public meetings/hearings, and if the process involves further review by federal, state, or county agencies.

Building, Site, Fire, Environmental Reviews:

1. New Commercial, Industrial Tenant, Spec Suite, Commercial Shell, Commercial or Industrial Tenant Improvement
 - a. First Review -8 days maximum
 - b. Subsequent Reviews -4 days maximum

Engineering Reviews:

1. Commercial or Industrial Project, Final Plat
 - a. First Review -8 days maximum
 - b. Subsequent Reviews – 6 days maximum

Planning and Community Development Reviews:

1. Proposed sites which require General Plan Amendments, rezoning, conditional use permits, variances, and other public review processes to accommodate the project will receive accelerated reviews within a compressed schedule as reasonably practical, pursuant to the required public review process and notification timeframes.

All other reviews:

- a. First Review -8 days maximum
- b. Subsequent Reviews – 8 days maximum

AUTHORIZATION AS A PRIORITY TRACK PROJECT

The Priority Track Program is available only to eligible entities as determined by the City to meet the minimum project qualifications pursuant to the EDIS, Old Town Commercial Revitalization Program, P83 Building Reuse Program, new commercial office or industrial development in EDIS Investment Zones *with* a City Council approved agreement, and the EDIIP, as amended. Such determination can be made in the following ways:

1. Approval of an economic development agreement or equivalent agreement type by the City Council evidencing its support for Priority Track Program eligibility for an economic development purpose; or
2. Approval in writing for projects, that in the sole discretion of the City Manager meet the requirements of the EDIS and EDIIP, and which City Council approval is not required.

Either of these authorizations must include the estimated cost for the waiver of all of the associated plan review, permit, and inspection fees by the applicant. It shall also provide the City funding source used to subsidize the costs. All requests for Priority Track Development processing must be **in writing** to the Director of the Economic Development Services Department. Projects not meeting the qualifications in these guidelines may be considered eligible on a case-by-case basis. For projects to be approved by sole discretion of the City Manager, after consultation with the Economic Development Services, Engineering, and Planning and Community Development Department Directors, Finance and Budget, and the Fire Chief, the City Manager may determine eligibility and potential department review time frame commitments. The applicant must provide to the review agencies a written development schedule (working backwards from their proposed construction completion date).

If approved, the Priority Track Review Team, which represents all affected City departments in the review process, will hold a kick off meeting with the requestor's Development Team to discuss the project schedule and agree to project specific Priority Track review timelines. After the meeting, the Engineering and Development Services Department will issue a Letter of Mutual Understanding for the applicant to execute, with a copy to all effected City departments (see attached). This Letter must be signed by the applicant and submitted along with the plans to the City to initiate the entire development review process. When the development plans are received, they will receive a special designation for Priority Track Review.

Date: _____, 2017

Owner/Applicant Name:

Address:

Subject: *Mutual Understanding for Priority Track Project*

Dear:

The City of Peoria has determined that your project has met the requirements of the Priority Track Development Review Guidelines and will receive PRIORITY TRACK status. This status is contingent upon on your acceptance of, and compliance with, the responsibilities outlined below. Read these responsibilities and sign this document on behalf of your company. Please return the completed document to the Deputy Director of Development, who will be responsible for oversight of the PRIORITY TRACK status of your project from initial plan submittal through Certificate of Occupancy.

Mutual Understanding

<i>The Priority Track Review Team shall...</i>	<i>The Owner/Applicant shall...</i>
<i>1. Have the Deputy Director of Development act as the single point of contact through the plan review and construction processes.</i>	<i>1. Identify a representative to act as the single point of contact during the review and construction process and provide a development schedule to the city for compatibility with city review processes.</i>
<i>2. Complete, at no cost to the applicant, a technical review of the preliminary site plan.</i>	<i>2. Submit adequate plans for the technical review of the preliminary site plan.</i>
<i>3. Establish a building plan review turnaround timeframe that meets the proposed project timeframe.</i>	<i>3. Provide 100% complete plan review submissions that are responsive to staff comments.</i>
<i>4. Provide clear and concise review comments that are reduced in subsequent reviews if issues are addressed and no new changes are introduced.</i>	<i>4. Meet with the Priority Track Review team after the First Review comments are returned and analyzed.</i>
<i>5. Contact the applicant, without delay, once plans are available for pickup.</i>	<i>5. Retrieve the plan review documents as soon as possible following the city contact.</i>
<i>6. Assure permit issuance in a timely manner.</i>	<i>6. Ensure the design team is available for questions.</i>

Engineering and Development Services Director

Date

Project Owner/Applicant

Date

EXHIBIT “F”

NOTICE OF INTENT TO EXERCISE OPTION

From: _____

(Lessee)

To: _____

(Lessor)

Date: _____

You are hereby notified that the undersigned, as the Lessee under that certain Lease and Purchase Option Agreement dated _____, 2017 (“Agreement”), does hereby exercise the purchase option under said Agreement to purchase the property described as and/or situated at: _____, for the purchase price of \$_____
_____ as agreed upon in said Agreement.

NOVO Development, LLC

By: _____

Kurt W. Rosene, Manager