

When Recorded Return to:  
City of Peoria  
City Clerk's Office  
8401 W. Monroe Street  
Peoria, Arizona 85345

**DEVELOPMENT AGREEMENT  
BETWEEN  
THE CITY OF PEORIA AND DROMEDARY CC, LLC**

THIS DEVELOPMENT AGREEMENT (“**Agreement**” as defined below) is entered into to be effective as of the      day of     , 2024 (the “**Effective Date**”), by and between **Dromedary CC, LLC**, a Colorado limited liability company (“**Developer**”), and the **CITY OF PEORIA**, an Arizona municipal corporation (“**City**”). Developer and City are collectively referred to herein as the “**Parties**,” or individually as a “**Party**.”

**RECITALS:**

- A. The City owns certain real property in Peoria, Arizona, that is located at 15814 North 83<sup>rd</sup> Avenue, Peoria, Arizona 85382 (Assessor Parcel Number: 200-53-629) the legal description of which is attached hereto as Exhibit A.
- B. The City released a Request for Proposals entitled “Development of P83 Central Business District” (P22-004) dated January 26<sup>th</sup>, 2023 (the “**RFP**”). The RFP invited proposals for the opportunity to develop the Property into a 20,000-30,000 square foot office building or other allowable use (the “**Project**”).
- C. City selected Developer as the successful respondent to the RFP to develop commercial office space or other allowable use on the Property. Parties acknowledge the City would not agree to sell the Property but for Developer’s expertise in development, the Developer’s commitment to be the developer of the Project, and commitment to the timely commencement of the development.
- D. The Parties intend that Developer will purchase the Property from the City by way of a separate Real Estate Purchase Agreement (the “**PSA**”) to be executed concurrently with this Agreement, said purchase will be contingent upon Developer agreeing to develop the Property pursuant to the terms of this Agreement. In the event of any conflict between the language in the body of this Agreement and the PSA, the body of this Agreement will govern. In the event any term is not defined in the body of this Agreement but is defined in the PSA, the term should have the meaning as defined in the PSA.

- E. Developer acknowledges that as stated in the PSA, there is currently a single story 12,150 square foot building (the “**Existing Building**”) on the Property. Parties agree that the sale price reflects the Existing Building. As described in the PSA, Developer accepts the Existing Building AS IS, WHERE IS and WITH ALL FAULTS. Parties agree that Developer may determine whether to utilize the Existing Building or to scrape the Property and develop a new structure.
- F. The City has caused an Appraisal of the Property, subject to existing site conditions (the “**Appraisal**”). The Purchase Price for the Property in its current condition, based on the Appraisal, shall be \$980,000 (the “**Purchase Price**”).
- G. As more fully described in this Agreement, the Parties intend that Developer will cause development of the Property as generally depicted on a City-approved Site Plan attached hereto as Exhibit B (the “**Site Plan**”). The Site Plan establishes the basic components of the Project and is subject to review and approval by the City. As provided herein, City will have the right to demand reconveyance of the Property from Developer in the event Developer fails to develop the Project according to the terms of this Agreement.
- H. Developer has preliminarily determined to its satisfaction, (but subject to Developer’s right to conduct its due diligence investigation pursuant to the PSA): (i) the suitability of the Property for the Project; and (ii) the Project’s viability (including, but not limited to, market demand, site utilization, anticipated tenant and owner mix, estimated development costs and operating pro formas).
- I. City and Developer are entering into this Agreement pursuant to Arizona Revised Statutes §9-500.05, which authorizes the City to enter into a development agreement related to real property located inside the incorporated area of the City with a landowner or other person having an interest in the real property. The Parties acknowledge Developer’s interest in the Property, which exists by virtue of this Agreement, and accordingly, desire to enter into this Agreement to facilitate development of the Project consistent with the Site Plan and the City’s General Plan as applicable to the Property on the date of this Agreement, and the City’s Zoning Ordinance. 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 limited to Arizona Revised Statutes §9-500.11, and that all “expenditures” (as defined therein) 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 therein.
- J. The City, in the exercise of its legislative functions, and finding in such legislative capacity that the benefits conferred upon Developer are proportionate to the direct benefits being received by the City, has authorized the execution and performance of this Agreement.

In consideration of the mutual promises and representations set forth in this Agreement, the above

Recitals, and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the City and Developer agree as follows:

**AGREEMENT:**

1. **Incorporation of Recitals.** The Parties acknowledge that the Recital Paragraphs A through J inclusive (the “**Recitals**”) set forth above are true and correct in all material respects and are incorporated into this Agreement as though fully set forth herein.
2. **Definitions.** In the Agreements, unless a different meaning clearly appears from the context:

“**Actual Knowledge of the City**” (or words of similar import) shall mean and be limited to the actual (and not imparted, implied, or constructive) current knowledge of the City’s Director of Economic Development, the City’s City Attorney, and the City’s Manager, without any duty or obligation of inquiry or investigation. Notwithstanding anything herein to the contrary, no such person is a party to this Agreement and no such person has or will ever have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or City’s representations, covenants, agreements, and/or warranties contained therein in any respect.

“**Agreement**” means this Agreement, as amended and restated or supplemented in writing from time to time, and includes all exhibits and schedules hereto; including without limitation the PSA. Unless otherwise stated, references to recitals refer to Recitals as defined in Section 1, references to sections are references to numbered sections in the body of this Agreement, and references to exhibits are references to Exhibits attached to this Agreement.

“**Applicable Laws**” means the federal, state, county, and local laws (statutory and common law), ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City, as they may be adopted, implemented, or amended from time to time, which apply to the development of the Project as of the date of any application or submission.

“**Appraisal**” means as defined in Recital F of this Agreement.

“**City**” means the Party designated as the City on the first page of this Agreement.

“**City Approvals**” means approval by the appropriate City department, administrator, or body for each Project-related activity or submission that requires City review and approval.

“**Claims**” means as defined in Section 9 of this Agreement.

“**Closing**” means the consummation of the purchase of the Property in accordance with the Agreements.

“**Closing Date**” means as defined in Section 3.3.4.

“**Closing Deadline**” means the 270<sup>th</sup> calendar day following the Opening of Escrow (defined below) whereby the Close of Escrow (defined below) must have occurred pursuant to Section 2 of the PSA.

“**Close of Escrow**” means the date of consummation of the purchase of the Property contemplated hereby as described in Section 2 of the PSA.

“**Commence Construction**” means Developer has applied for and City has granted all City Approvals necessary for Developer to commenced grading of the land or begin construction of the vertical elements of the Project.

“**Default by City**” means as defined in Section 10.2 of this Agreement.

“**Default by Developer**” means as defined in Section 10.1 of this Agreement.

“**Developer**” means the Party designated as Developer on the first page of this Agreement.

“**Developer Applications**” means as defined in Section 3.3.3.1 of this Agreement.

“**Developer Undertakings**” means as defined in Section 3 of this Agreement.

“**Due Diligence Period**” means as defined in Section 2(c) of the PSA.

“**Earnest Money**” means (as described in Section 2(b) of the PSA) a deposit Developer must provide to Escrow Agent in the sum of \$49,000.

“**Effective Date**” means as defined on Page 1 of this Agreement.

“**Enforceability Challenge**” means as defined in Section 13 of this Agreement.

“**Escrow Agent**” means the entity designated as the Escrow Agent on page 16 of this Agreement.

“**Existing Building**” means as defined in Section 1 of the PSA.

“**Force Majeure**” means as defined in Section 6 of this Agreement.

“**Indemnity**” means as defined in Section 9 of this Agreement.

“**Milestones**” means as defined in Section 3.3 of this Agreement.

“**Notice**” means as defined in Section 15.6 of this Agreement.

“**Opening of Escrow**” means as defined in Section 2(a) of the PSA.

“**Party and Parties**” means as designated as the City the Developer on the first page of this Agreement.

“**Project**” means as defined in Recital B of this Agreement.

“**Property**” means as defined in Section 1 of the PSA.

“**Purchase Price**” means as defined in Recital F of this Agreement.

“**Real Estate Purchase Agreement**” and “**PSA**” both mean that certain Real Estate Purchase Agreement between City and Developer, which shall be executed by the Parties as substantially in the form of Exhibit “C” attached hereto. Upon execution by City and Developer, the provisions of the executed PSA shall be incorporated as part of this Agreement by this reference.

“**Recital**” means as defined in Section 1 of this Agreement.

“**RFP**” means as defined in Recital B of this Agreement.

“**Site Plan**” means as defined in Recital G of this Agreement.

“**Substantial Completion**” means Developer has substantially completed construction of Project improvements and obtained a certificate of occupancy for the Project based solely on the City approved Site Plan (excluding any tenant improvements that may be required), and solely as a result of the degree of completion of the improvements.

“**Term**” means as defined in Section 7 of this Agreement.

“**Transfer**” means as defined in Section 12 of this Agreement.

“**Working Day**” means Monday, Tuesday, Wednesday, and Thursday, except Federal holidays as defined in 5 U.S.C. 6103 that are observed on a Monday, Tuesday, Wednesday, or Thursday.

3. Developer Undertakings. Developer agrees to undertake the following (the “**Developer Undertakings**”):

3.1 Land Acquisition. Developer agrees to purchase the Property pursuant to and subject to the terms, contingencies, and conditions of the PSA.

3.2 Development. Developer agrees to develop the property in compliance with this Agreement including without limitation the following:

3.2.1.1 Developer shall design, construct, and install a 20,000-30,000 square foot office building or other allowable use on the Property.

3.2.1.2 Developer may use the Existing Building or demolish the Existing Building. Except for those express representations and warranties set forth in the PSA, Developer accepts the Existing Building AS IS, WHERE IS, and WITH ALL FAULTS. The City makes no avowals, representations, or warranties regarding the Existing Building.

3.2.1.3 Developer or its affiliate will manage the construction and development of the Project in compliance with the terms of this Agreement and the City approved Site Plan.

3.2.1.4 Developer, unless approved in writing by the City Engineering Director, shall respond to City comments and make corrections to any Developer Applications within thirty (30) Working Days.

3.2.1.5 Developer shall develop the Project consistently with and at the same or a substantially similar level of quality as other buildings located within the same plaza. Developer agrees that the design and development of the Project shall be consistent with certain common architectural, aesthetic, and thematic features approved by the City in the Site Plan.

3.3 Milestones. Subject only to delays caused by Force Majeure or caused by the City, Developer agrees to comply with the following Project schedule when developing the Property (the “**Milestones**”):

3.3.1 Within thirty (30) calendar days following the Effective Date, Developer will cooperate with City to ensure:

3.3.1.1 Formal execution of the PSA, and;

3.3.1.2 The Opening of Escrow in accordance with the PSA.

3.3.2 On the Opening of Escrow the Due Diligence Period will begin.

3.3.3 Prior to the Close of Escrow, Developer at its own cost and expense, shall:

3.3.3.1 Cause the submission of a Site Plan to the City of Peoria Planning and Community Development Department for

approval, post all bonds as required by the City, and obtain any necessary approvals, zoning, permits, or authorizations required by the City of Peoria, county, state, or Federal authorities having jurisdiction relating to the development of the Property (the “**Developer Applications**”);

- 3.3.3.2 Provide proof of full Project construction financing commitment on the part of a viable construction lender for the Project; and,
- 3.3.3.3 Provide proof of executed contracts for construction of the Project building through core and shell (excluding interior tenant improvements).

Notwithstanding any other provision of this Agreement, a failure of Developer to obtain such approvals shall not be a Default of Developer and City’s sole remedy for such failure shall be to terminate the Agreements and upon such termination, the Earnest Money shall be returned to the Developer. If the City in its sole discretion determines that Developer has not provided adequate proof of satisfaction of the above contingencies to the City prior to the Close of Escrow, this agreement will terminate and the Earnest Money (and all interest accrued thereon) shall be returned to Developer.

3.3.4 No later than two hundred and seventy (270) calendar days following the Opening of Escrow, the Due Diligence Period shall end in accordance with Section 2 (c) of the PSA and the consummation of the purchase of the Property and Close of Escrow shall occur in accordance with Section 2 of the PSA. This date shall be the “**Closing Date**”.

3.3.5 No later than two hundred and seventy (270) calendar days following the Closing Date, Developer must have Commenced Construction.

3.3.6 No later than Nine Hundred and Ninety (990) calendar days following the Closing Date, Developer must have developed the Project to Substantial Completion.

3.3.7 Subject to Section 5 of this Agreement, if the City in its sole discretion finds Developer has made good faith progress toward the completion of the Milestones contained in this Section 3.3, the City in its sole discretion may choose to cooperate with Developer to make one or more reasonable extensions to the Milestones herein; provided however that Developer provides Notice to City at least twenty (20) days in advance of said Milestone deadline. Any such extension must be mutually agreed upon in writing.

- 3.4 With respect to any Milestones after the Closing, Developer's failure to abide by these Milestones unless extended by mutual written agreement or cured pursuant to Section 12.3 is a Default and material breach of this Agreement.
- 3.5 The Developer Undertakings will be considered satisfied upon Substantial Completion of the Project, at which time any further obligation of Developer to comply with these Milestones and any City remedy related to these Milestones will terminate.
4. City Undertakings:
- 4.1 The City will make reasonable efforts to review the Developer Applications based on the following priority review schedule. Approval of the Developer Applications shall not be unreasonably withheld, and may in the City's sole discretion, include allowances for additional periods of time if reasonably required for City's review and approval of submissions, or for approval of any other authority having jurisdiction over Project approval or funding:
- a. First review by the City shall occur within twenty (20) Working Days.
  - b. All subsequent reviews shall occur within twelve (12) Working Days.
  - c. Notwithstanding any other provisions in this Agreement, the Developer's sole remedy to City's delay under this Section 4.1 shall be an extension of all Milestones or deadlines not yet satisfied and affected by the City's delay in the same duration as the City's delay.
- 4.2 City will use reasonable efforts to make land in the vicinity of the Project available to Developer for construction staging upon request of the Developer in accordance with separate staging licenses and/or temporary construction easements. Developer acknowledges use of the land made available by the City for construction staging shall be limited in duration and subject to terms, conditions, and of limited duration in the sole discretion of the City.
- 4.3 Development of the Project will proceed in accordance with the City Approvals and Applicable Laws. Developer may request amendments to the City Approvals from time to time, and any such amendments will be reviewed and processed by the City in its sole discretion, pursuant to this Agreement and in accordance with Applicable Laws.
5. Extensions and Amendments. From time to time, Developer and City (acting through its City Manager or the City Manager's designee) may, by mutual written agreement, refine,

amend, revise, change, or correct any part of this this Agreement as the City and Developer deem necessary or preferable. The City Council authorizes its City Manager or the City Manager’s designee to exercise his or her administrative authority to act under this Section 5, without seeking additional approval from the City Council.

6. Force Majeure: The time for performance of any obligations, Milestones, or deadlines in this Agreement shall be extended by a period of time equal to any period of time that is delayed due to any strike, riot, act of war, act of violence, intemperate weather, material and/or labor shortage, service provider delay, delay in the delivery of materials, act of God, national emergency, pandemic, interference or delay by the City and/or any other governing authorities having jurisdiction over the Property, (including but not limited to, any delay to grant necessary approvals or issue necessary permits) or any other similar act, occurrence or non-occurrence (being hereby excluded) (“**Force Majeure**”). In no event will Force Majeure include any delay resulting from general economic or market conditions, financial inability, delays to secure financing, unavailability for any reason of tenants, delays caused by an event that commenced or occurred prior to the Effective Date, even if such event continues to occur after the Effective Date, or delay in acquisition or unavailability of materials or equipment, it being agreed that Developer will bear all risks of delay that are not caused by a Force Majeure event. In the event of the occurrence of any such Force Majeure, the time for performance of the obligations, Milestones, or deadlines of the Party claiming delay will be extended for a period of the Force Majeure; provided that, as a condition to availing itself to the extensions described above, based on an event of Force Majeure, the Party shall give written Notice promptly to the other Party.
7. Term. The duration (the “**Term**”), of this Agreement is that period: (1) commencing on the Effective Date, and (2) terminating on the earlier of:
  - 7.1 The date on which Developer has Substantially Completed construction of the Project; or
  - 7.2 The date this Agreement has been terminated earlier pursuant to any section of this Agreement; or
  - 7.3 The date that is ten (10) years from the Effective Date as it may be extended as set forth in this Agreement.
8. Insurance Requirement. Developer shall maintain in full force and effect policies of commercial general liability and workers’ compensation insurance in amounts reasonably acceptable to the City and approved by City’s Risk Manager prior to being granted access to the Property. All such commercial general liability policies shall name the City of Peoria, its employees, agents, and officers as additional insured and shall state that they may not be cancelled prior to expiration without thirty (30) calendar days prior written Notice to City. Notwithstanding any other agreement, Developer shall indemnify, protect, defend, and hold City harmless from all Claims, costs, fees, or liability of any kind to the extent arising out of the acts of Developer or Developer’s

agents pursuant to this Section 8 except for the sole negligence or willful misconduct of the City.

9. Indemnity. Developer will pay, defend, indemnify and hold harmless City and its City Council members, officers and employees from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and court costs associated with such matters; all of the foregoing, collectively, "**Claims**") that arise in whole or in part from, or relating to, Developer's design, construction, and structural engineering acts or omissions related in any way to, of, or in connection with, any element of the Project (including, but not limited to, land used for construction staging pursuant to temporary construction easements), and all subsequent design, construction, engineering, and other work by or on behalf of Developer in connection with Project (collectively, "**Indemnity**"). Such Indemnity shall survive the expiration or earlier termination of this Agreement. The indemnification set forth in this Section shall not apply to the extent such Claims arise from or relate solely to the grossly negligent or intentional acts of the City and its City Council members, officers, and employees. If the City and its City Council members, officers and employees are made defendant(s) in any action, suit or proceeding brought by a third party by reason of any of the occurrences described in this Section, Developer shall at its own expense: (i) resist and defend such action suit or proceeding or cause the same to be resisted and defended by counsel designated by Developer and reasonably approved by the City; and (ii) if any such action, suit or proceeding results in a final judgment against the indemnified party, Developer promptly shall satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged.

10. Breach & Remedies.

10.1 Default by Developer. Default by Developer under this Agreement includes without limitation, any failure by Developer to satisfy any obligation or agreement herein, including without limitation, one or more of the following:

10.1.1 Any representation or warranty made in this Agreement by Developer was materially inaccurate when made or will prove to be materially inaccurate during the Term;

10.1.2 Pursuant to Section 3.4 of this Agreement, if Developer fails to timely comply with any Milestone contained in Section 3.3 of this Agreement relating to Milestones after the Closing, and such Milestone is not timely extended by mutual written agreement or cured pursuant to Section 10.3, such failure to timely comply with the Milestone shall be considered a default and material breach of this Agreement;

10.1.3 Foreclosure (or deed in lieu of foreclosure) upon any mechanics', materialmen's, or other lien on the Property or any improvement thereon prior to Substantial Completion, but such lien will not constitute a Default if Developer deposits in escrow sufficient funds to discharge the

lien or otherwise bonds over such lien in a customary fashion subject to City's reasonable approval;

- 10.1.4 Developer Transfers or attempts to Transfer or assign this Agreement in violation of said Agreement;
  - 10.1.5 An uncured failure by Developer to observe or timely perform any other covenant, deadline obligation, or agreement required of it under this Agreement.
- 10.2 Default by City. Default by City under this Agreement will mean one or more of the following.
- 10.2.1 Any representation or warranty made in this Agreement by City was materially inaccurate when made or will prove to be materially inaccurate during the Term; or
  - 10.2.2 An uncured failure by City to observe or timely perform any other covenant, deadline obligation, or agreement required of it under this Agreement.
- 10.3 Cure Period. Upon the occurrence of an event of Default subject to cure by any Party, such Party must, upon written Notice from the other Party, proceed immediately to cure or remedy such Default and, in any event, (1) such Default must be cured within thirty (30) calendar days after receipt of such Notice; or (2) if such Default is of a nature not capable of being cured within thirty (30) calendar days, such cure or remedy must be commenced within such period and diligently pursued to completion, but must be cured or remedied within ninety (90) calendar days from the receipt of such Notice unless mutually agreed upon in writing by the Parties. Notwithstanding the foregoing, City agrees to cooperate with Developer and Developer's lender to execute a commercially reasonable form of subordination, non-disturbance and attornment agreement that is acceptable to the City in its reasonable discretion.
- 10.4 Remedies for Default. Whenever any event of Default occurs that is not timely cured by the defaulting Party in accordance with this Agreement, the other Party may avail themselves of the following remedies:
- 10.4.1 Remedies of City. Notwithstanding any other provision of this Agreement, the City's remedies for an uncured event of Default by Developer shall include, without limitation, any of the following:
    - 10.4.1.1 If an uncured event of Default by Developer occurs prior to the Closing Date, City's sole remedy shall be to cancel this Agreement

and to refund the Earnest Money to Developer (together with all accrued interest) and, thereafter, neither party shall have any further obligations to the other under this Agreement except as explicitly provided herein.

- 10.4.1.2 If an uncured event of Default by Developer of a Milestone contained in Section 3.3 of this Agreement occurs and continues after the Closing of Escrow and prior to Substantial Completion, such Default will constitute a Default and a material breach of this Agreement. In such event, the City may terminate this Agreement. If City terminates this agreement pursuant to this Section, City shall have the right in its sole discretion to cause a reversion of fee title to the Property including all of Developer's interest in the Property and any improvements thereon back to City free and clear of any and all liens and other encumbrances not acceptable to the City. City must Notify Developer of City's election of the remedy of reversion contained in this Section within thirty (30) days of the City's Actual Knowledge of a relevant uncured event of Default. In such event, upon such Notice from the City, Developer shall re-convey the Property to the City, free and clear of any and all liens and other encumbrances not acceptable to the City. The City shall then pay Developer the amount of \$980,000 for such reconveyance. Upon the reversion of title in City, Developer shall fully satisfy all liens, encumbrances, mortgages, and obligations encumbering the Developer's interest in the Property within thirty (30) days. In the event that the City fails to Notify Developer of its election to cause the Property to revert to the City in such thirty (30) day period, then City shall have waived its right of reversion and shall be deemed to have elected to terminate this Agreement. Upon the satisfaction of the Developer Undertakings and issuance of a final certificate of occupancy for the Project, or the earlier termination of this Agreement, this reversion right shall terminate, and City shall release and extinguish the same by recording evidence of the same in the Maricopa County Recorder's Office at Developer's written request.
- 10.4.1.3 Notwithstanding the foregoing, City at any time may enforce its rights given under any bond or similar financial assurance given or provided by or for the benefit of Developer pursuant to this Agreement, however, if City has Notified Developer of City's election to cause the Property to revert to City under Section 10.1.4.2, City may not also elect to enforce its rights given under any bond or similar financial assurance.

10.4.2 Remedies of Developer. In the event of an uncured Default by City under this Agreement, Developer has the following remedies:

10.4.2.1 If the uncured Default by City occurs prior to the Closing Date, Developer may elect either:

10.4.2.1.1 To cancel the Agreements by providing written Notice to City and Escrow Agent, in which event Escrow Agent shall return to Developer all Earnest Money (plus any accrued interest earned thereon), together with all other documents Developer has deposited with Escrow Agent in connection with this Escrow, in which case this Agreement and the PSA shall terminate and Developer and City shall have no other rights or obligations thereunder except those that are explicitly stated to survive termination; or,

10.4.2.1.2 To proceed with whatever actions Developer may deem necessary in order to enforce the rights available to Developer under this Agreement, at law or in equity, including the right to seek specific performance of the Agreement, or to recover its actual damages from City not to exceed the amount of the Earnest Money deposit.

10.4.2.2 If the uncured Default by City occurs after the Closing, Developer's exclusive remedies will consist of and will be limited to a special action or other similar relief (whether characterized as mandamus, injunction, or otherwise) requiring City to undertake and fully and timely to perform its obligations under this Agreement and the right to seek and recover actual damages subject to Section 12.5.

10.5 Waiver of Certain Damages. Notwithstanding anything in this Agreement to the contrary, each of City and Developer waives its right to seek and recover consequential, exemplary, special, beneficial, numerical, punitive, or similar damages from the other, the only permitted claim for damages being actual damages reasonably incurred by the aggrieved Party.

10.6 Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement, will not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Default by the other Party must be made in writing and will not be considered as a waiver by the performing Party of rights with respect to any other Default or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the

Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches, or otherwise at a time when it may still hope to resolve the problems created by the Default.

11. Compliance with Law. Developer and City shall comply with all Applicable Laws that affect the Property as are now in effect or as may hereafter be adopted or amended.
12. Assignability, Restriction on Transfers. The rights established under this Agreement not personal rights but attach to and run with the Property. All the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto pursuant to A.R.S. 9-500.05(D). Notwithstanding the foregoing, no assignment or similar Transfer of Developer's interest in the Property or this Agreement, or in the current management, ownership, or control of Developer (each, a "**Transfer**") may occur without the City's written consent, which may be withheld in City's sole discretion. Notwithstanding the prior sentence, one time within 365 calendar days of the date of Closing, Developer may assign this Agreement or nominate a substitute Developer for this Agreement without obtaining City's prior written consent by delivering to City and Escrow Agent a written assignment of this Agreement and a written assumption of all obligations of Developer hereunder to an entity that (i) controls, is controlled by, or under common control with Developer or any of Developer's affiliates or principals, or (ii) results from the merger or consolidation with Developer or any of Developer's affiliates or principals. Upon such assignment and assumption, Developer may then be relieved of its obligations hereunder. Developer shall provide to City a true and correct copy of any such assignment, together with a copy of the document or instrument pursuant to which such assignee fully assumes all of Developer's covenants and obligations under this Agreement and agrees to be bound by the terms and conditions of this Agreement. Except as otherwise expressly provided in this Agreement, the assignment by Developer of its rights under this Agreement shall not relieve Developer personally of any obligations, unless City expressly agrees to such relief in writing, and any assignment that does not comply in all respects with this Section 12 shall be void, and not voidable. Developer shall have the right collaterally to assign its rights under this Agreement as security for one or more lenders in conjunction with Project financing, which will be contingent upon obtaining the City's prior consent thereto. No voluntary or involuntary successor in interest to Developer may acquire any rights or powers under this Agreement except as expressly set forth in this Agreement, and any Transfer in violation of this Agreement will be void, and not voidable.
13. Enforceability of the Agreements. The City may elect in its sole discretion to defend the validity and enforceability of the Agreements in the event of any proceeding or litigation by a third party arising from its terms that names the City or Developer as a party or that challenges the authority of the City to enter into or perform any of its obligations hereunder (an "**Enforceability Challenge**"). In the event of an Enforceability Challenge, Developer may, in its sole discretion, join such action and defend itself against any such Enforceability Challenge. If such a defense of the Agreements is undertaken under this Section 13, the City and Developer may cooperate in defending the Enforceability

Challenge and may, by mutual agreement, select joint legal counsel and enter into a joint defense agreement with respect to the Enforceability Challenge. Parties will comply with any court order affecting the enforceability of the Agreements and Developer hereby acknowledges that Developer shall not have any claim against the City if one or more provisions of the Agreements are deemed, as a result of an Enforceability Challenge or a judicial or administrative decision and pursuant to such court order, to be void and/or legally unenforceable. In the event of an Enforceability Challenge, the Closing Date under shall be extended until the 10<sup>th</sup> day following final resolution of such Enforceability Challenge. Neither the City nor the Developer shall have any obligation to defend an Enforceability Challenge, and in the event that such Enforceability Challenge shall occur prior to the Closing, City or Developer may terminate this Agreement and the PSA and the Earnest Money shall be returned to Developer and neither Party shall have further rights or obligations under the Agreements. In the event that an Enforceability Challenge occurs post-Closing, if the City elects to defend against said challenge, the time for all Milestones shall be automatically extended for the amount of time for such Enforceability Challenge to be finally resolved.

14. Survival of Representations and Warranties. All representations and warranties contained in the Agreements are true on and as of the date so made, will be true in all material respects on and as of the Closing Date, and will survive Close of Escrow and execution, delivery, and recordation of the Deed. If any representation or warranty by a Party is untrue, the other Party shall have all rights and remedies as provided in the Agreements.
15. Miscellaneous. The following additional provisions apply to this Agreement:
  - 15.1 Amendments and Interpretation. The Agreements may not be amended except by a formal writing executed by both Parties. The City's City Manager may exercise his or her administrative authority to correct scrivener's errors, administer, and approve amendments to this Agreement, without seeking additional approval from the City Council.
  - 15.2 Severability. Upon mutual written agreement of the Parties, if any term, condition, covenant, stipulation, agreement, or provision in this Agreement is held to be invalid or unenforceable for any reason, the invalidity of any such term, condition, covenant, stipulation, agreement, or provision shall in no way affect any other term, condition, covenant, stipulation, agreement, or provision of this Agreement.
  - 15.3 No Partnership. This Agreement shall not be construed as creating a joint venture, partnership, or any other joint arrangement between Developer and City.
  - 15.4 Runs With the Land. Except as set forth in this paragraph, this Agreement shall run with the land and be binding upon and inure to the benefit of the Parties

hereto and their respective heirs, personal representatives, successors, and assigns.

- 15.5 Further Instruments and Documents. Each Party hereto shall, promptly upon the request of the other Party or Escrow Agent, acknowledge and deliver to the other Party or Escrow Agent any and all further instruments reasonably requested or appropriate to evidence or give effect to the provisions of the Agreements.
- 15.6 Notices. Notices hereunder (each, a “**Notice**”) shall be given in writing delivered to the other Party or other applicable person or entity, or mailed by registered or certified mail, return receipt requested, postage prepaid, or by FedEx or other reliable overnight courier service that confirms delivery. With respect to the Parties, a Notice shall be addressed to a Party as follows:

To City: Henry Darwin, City Manager  
City of Peoria  
8401 West Monroe Street  
Peoria, Arizona 85345

With a copy to: Emily Jurmu, City Attorney  
City’s Counsel: City of Peoria  
8401 West Monroe Street  
Peoria, Arizona 85345

To Developer: Dromedary CC, LLC  
PO Box 10  
Scottsdale, Arizona 85252  
Attn: Garrett Neiffer

With a copy to: Gibson Knecht PC  
7250 North 16th Street, Suite 412  
Phoenix, Arizona 85020  
Attn: Colby Larson

To Escrow Agent: Fidelity National Title Agency, Inc.  
14000 North Pima Road, Suite 100  
Scottsdale, Arizona 85260  
Phone: (480) 214-4510 ext. 2  
Email: [kristina.gooding@fnf.com](mailto:kristina.gooding@fnf.com)  
Attn: Kristina Gooding

Service of any Notice by mail in accordance with the foregoing shall be deemed to be complete three (3) Working Days (excluding Friday, Saturday, Sunday, and legal holidays) after the Notice is deposited in the United States mail. Service of any Notice by overnight courier in accordance with the foregoing shall be deemed to be complete upon receipt or refusal to receive.

- 15.7 Payments. Payments shall be made and delivered in the same manner as Notices and shall be effective at the same time that a Notice would be deemed effective under Section 15.6.
- 15.8 Integration Clause; No Oral Modification. The Agreements, constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all other written or verbal agreements between the Parties with respect to the Property. This Agreement may not be changed, modified, or rescinded, except in writing, signed by all Parties hereto.
- 15.9 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. Parties have been represented by legal counsel, both Parties have participated in the drafting of this Agreement, and this Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against either Party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, that might otherwise favor Developer or City.
- 15.10 Section Headings. The section headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of the Agreements.
- 15.11 No Third-Party Beneficiaries. No person or entity shall be a third-party beneficiary to the Agreements nor have any right or cause of action hereunder. City shall have no liability to third parties for any approval of plans, Developer's construction of improvements, Developer's negligence, Developer's failure to comply with the provisions of this Agreement, or otherwise as a result of the existence of this Agreement.
- 15.12 Exhibits. All exhibits attached hereto as specified herein are hereby incorporated into and made an integral part of this Agreement for all purposes.
- 15.13 Days. If the last day of any time period stated in this Agreement or the date on which any obligations to be performed under this Agreement falls on a Friday, Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Friday, Saturday, Sunday or legal holiday.
- 15.14 Attorneys' Fees. If legal action is brought by a Party because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party is entitled to reasonable attorney fees and costs as determined by the court or other decision maker.

- 15.15 Choice of Law. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules.
- 15.16 Venue & Jurisdiction. Legal actions regarding and related to this Agreement shall be instituted in the Superior Court of the County of Maricopa, State of Arizona, or in the Federal District Court in the District of Arizona sitting in Maricopa County. City and Developer agree to the exclusive jurisdiction of such courts. Claims by Developer shall comply with time periods and all other requirements of City's claims procedures from time to time.
- 15.17 No Liability of City Officials. Notwithstanding any other language in the Agreements, no City Council Member, officer, director, trustee, partner, principal, member, employee, agent, affiliate, official, representative, agent, attorney, or employee of the City shall be personally liable to Developer, or to any successor in interest to Developer, in any way whatsoever including without limitation in the event of Default by the City, for any amount that may become due to Developer or its successors, or with respect to any obligation of the City under the terms of the Agreements.
- 15.18 Counterparts; Termination. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument. In the event of any termination of this Agreement, the PSA shall be terminated concurrently, and the Parties shall have no obligations to each other except for any obligations that are stated to survive a termination of this Agreement or the PSA.
- 15.19 Time is of the Essence. Time is hereby declared to be of the essence for the performance of all conditions and obligations under this Agreement.
- 15.20 Arizona Law Provisions. To the extent required by Arizona State law:
- 15.20.1 No member, official or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to this Agreement, that is prohibited by law. This Agreement shall be subject to cancellation pursuant to the provisions of A.R.S. § 38-511 relating to conflicts of interest.
  - 15.20.2 Developer certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a "boycott," as that term is defined in § 35-393, Arizona Revised Statutes, of Israel.
  - 15.20.3 To the extent applicable under A.R.S. § 41-4401, Developer warrants compliance with all federal immigration laws and regulations that relate to their employees and contractors and their compliance with

the e-verify requirements under A.R.S. § 23-214(A). The failure by Developer to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

15.20.4 To the extent applicable under A.R.S. § 35-394, Developer hereby certifies it does not currently, and for the duration of this Agreement shall not use: (a) the forced labor of ethnic Uyghurs in the People's Republic of China, (b) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China, and (c) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

**[REMAINDER OF PAGE INTENTIONALLY BLANK;  
SIGNATURES FOLLOW ON NEXT PAGES]**

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) written below.

**CITY:**

**CITY OF PEORIA**, an Arizona municipal corporation

By: \_\_\_\_\_  
Jason Beck, Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Agnes Goodwine, City Clerk

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Emily Jurmu, City Attorney

Date: \_\_\_\_\_

**DEVELOPER:**  
**DROMEDARY CC, LLC**, an Arizona limited liability company

By: Neiffer Capital Investments, LLC,  
a Colorado limited liability company  
Its: Managing Member

By: \_\_\_\_\_  
Garrett Neiffer, its Manager

Date: \_\_\_\_\_

STATE OF ARIZONA  
County of Maricopa

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me personally appeared Garrett Neiffer, Manager of Neiffer Capital Investments LLC, a Colorado limited liability company, the Manager of Neiffer Capital Investments Peoria LLC, an Arizona limited liability company, for and on behalf thereof, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be and acknowledged that he signed the above/attached document.

\_\_\_\_\_

EXHIBIT A  
Legal Description for the Property

EXHIBIT B

Site Plan for the Project

EXHIBIT C

Form of Real Estate Purchase Agreement

(see attached)